

**WSR 11-19-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-228—Filed September 7, 2011, 1:55 p.m., effective September 7, 2011, 1:55 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100K; and amending WAC 220-47-311.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable pink salmon are available for the nontreaty fishery. Gill net fishers declined to participate in this fishery; as a result, the estimated chinook mortalities are below pre-season model mortalities, and an additional day of fishing is not expected to exceed the pre-season level. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 7, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-47-31100K Purse seine—Open periods.

Notwithstanding the provisions of chapter 220-47-311 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Area 10:

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

Hours	Dates
7:00 AM - 8:00 PM	9/8

(a) Participation limited to 4 boats. It is lawful for the vessels "New Oregon," "Sound Star," "Harbor Gem," and "Tradition" to participate.

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

(c) Purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(d) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water, or a brailing bunt is used. All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next haul may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(e) It is unlawful to take or fish for salmon without department observers on board.

(2) "Quick Reporting Fisheries":

All fisheries opened under this section are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:01 p.m. September 8, 2011:

WAC 220-47-31100K Purse seine—Open periods

**WSR 11-19-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-227—Filed September 7, 2011, 1:58 p.m., effective September 8, 2011]

Effective Date of Rule: September 8, 2011.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The lake will begin draining on September 6 to allow the lake bed to dry out prior to maintenance dredging. The lake capacity has been reduced because of silt deposition in the lake bottom. Dredging is necessary to maintain the lake for spring chinook acclimation

prior to release, and for trout fishing opportunities. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 7, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900N Exceptions to statewide rules—Curl Lake. Notwithstanding the provisions of WAC 232-28-619, effective September 8 through October 31, 2011, it is unlawful to fish in waters of Curl Lake.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2011:

WAC 232-28-61900N Exceptions to statewide rules—Curl Lake.

WSR 11-19-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-229—Filed September 7, 2011, 3:22 p.m., effective September 12, 2011]

Effective Date of Rule: September 12, 2011.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Baker Lake sockeye are no longer of sufficient quality to attract interest by anglers, and are moving toward spawning areas in anticipation of spawn-

ing activity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 7, 2011.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective September 12, 2011:

WAC 232-28-61900X Exceptions to statewide rules—Baker Lake (Whatcom Co.) 11-159

WSR 11-19-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-232—Filed September 8, 2011, 1:29 p.m., effective September 12, 2011, 6:00 a.m.]

Effective Date of Rule: September 12, 2011, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Sets the fourth weekly commercial gillnet fishing period for the 2011 fall season. Continues to allow the sale of platform and hook-and-line-caught fish from mainstem tribal fisheries (above and below Bonneville Dam), and fish caught in Yakama Nation tributary fisheries. Based on pre-season forecasts, adult fall chinook and steelhead are available for treaty Indian harvest. Fisheries are expected to remain within the impact limits set for ESA-listed salmonids. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 10 and August 25, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

Date Adopted: September 8, 2011.

Sara G. LaBorde
for Philip Anderson
Director

NEW SECTION

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

1. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: 6:00 AM September 12 through 6:00 PM September 16, 2011.
 - b. Gear: Gill nets only. Minimum mesh size is 8 inches.
 - c. Allowable sales: Salmon, steelhead, shad, yellow perch, bass, walleye, carp and catfish may be sold or retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes.
 - d. Standard sanctuaries in effect.
2. Open Area: SMCRA 1F, 1G, 1H (Zone 6):
 - a. Season: Immediately until further notice.
 - b. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.
 - c. Allowable sales: Salmon, steelhead, shad, yellow perch, bass, carp and catfish. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools, may be retained for subsistence purposes only.
 - d. Standard sanctuaries in effect.
3. Open Area: Columbia River Tributaries above 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 the Wind, White Salmon, and Klickitat rivers.

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

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

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

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

e. Season: Immediately until further notice.

f. Gear: Hook and line, or as defined by each tribe's MOU or MOA.

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

4. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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 effective 6:00 a.m. September 12, 2011:

WAC 220-32-05100G Columbia River salmon seasons above Bonneville Dam. (11-207)

**WSR 11-19-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-230—Filed September 8, 2011, 1:30 p.m., effective September 8, 2011, 1:30 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: These lakes are scheduled for rehabilitation using rotenone. Licensed anglers may harvest remaining game fish prior to rehabilitation. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 8, 2011.

Sara G. LaBorde
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Q Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 232-28-619:

(1) Alta Lake (Okanogan Co.)

Effective immediately through September 30, 2011, size and daily limit for game fish: none.

Effective October 1, 2011, until further notice, closed to fishing.

(2) Fish Lake and Schallow Pond (Okanogan Co.)

Effective immediately through October 21, 2011, size and daily limit for game fish: none.

Effective October 22 2011, until further notice, closed to fishing.

**WSR 11-19-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-231—Filed September 9, 2011, 9:37 a.m., effective September 9, 2011, 9:37 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The fishery was agreed to during the preseason planning process (North of Falcon) but was inadvertently omitted from the 2011/12 sportfishing rules pamphlet. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—McAllister Creek (Thurston Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately through November 30, 2011, it is permissible to fish for and possess salmon in waters of McAllister Creek from the mouth upstream to Steilacoom Road Bridge. Daily limit of six salmon, of which no more than 2 may be adult salmon. Selective gear rules are in effect, except bait is allowed through November 30, 2011.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2011:

WAC 232-28-61900S	Exceptions to statewide rules—McAllister Creek (Thurston Co.)
-------------------	---

**WSR 11-19-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-236—Filed September 9, 2011, 11:13 a.m., effective September 9, 2011, 11:13 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The weekly landing limit and period are necessary to mitigate handling mortality from sorting soft shelled crab and are in conformity with the coastal Dungeness crab summer fishery management plan. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04000D Coastal crab fishery—Weekly trip limits. Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice:

(1) It is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 2,500 pounds taken during the following coastal crab accounting period:

September 11 through September 15, 2011

(2) Any crab taken prior to September 11, 2011, and not landed before 11:59 p.m. September 10, 2011, become part of the September 11 through September 15, 2011 accounting period catch.

WSR 11-19-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-235—Filed September 9, 2011, 11:15 a.m., effective September 10, 2011]

Effective Date of Rule: September 10, 2011.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Returning fall bright chinook to the North Fork Lewis River are expected to exceed spawning production goals and provide significant harvest opportunity. The escapement goal for the North Fork Lewis fall bright chinook is 5,700. Over 10,000 are expected back to the river. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules—North Fork Lewis River. Notwithstanding the provisions of WAC 232-28-619, effective September 10 through September 30, 2011, it is permissible to fish for and possess salmon in waters of the North Fork Lewis River from the mouth to Merwin Dam. Daily limit of 6 salmon, of which no more than 2 may be adult Chinook. Minimum size 12 inches in length; release all salmon other than Chinook and hatchery coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2011:

WAC 232-28-61900A Exceptions to statewide rules—North Fork Lewis River.

WSR 11-19-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-237—Filed September 9, 2011, 2:30 p.m., effective September 12, 2011]

Effective Date of Rule: September 12, 2011.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: All hatchery fall chinook being released into the Tilton River are now adipose fin clipped, allowing selective fishing rules to go into effect. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules—Tilton River. Notwithstanding the provisions of WAC 232-28-619, effective September 12, 2011, until fur-

ther notice, in waters of the Tilton River from the mouth to the West Fork, release wild Chinook salmon.

WSR 11-19-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-233—Filed September 9, 2011, 3:59 p.m., effective September 14, 2011]

Effective Date of Rule: September 14, 2011.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Adult chinook salmon released as juveniles from the net pens just below the Chelan PUD powerhouse are expected to return in sufficient numbers to provide a recreational fishery. The population is not listed under the Endangered Species Act. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900W Exceptions to statewide rules—Lake Chelan. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective September 14 through October 15, 2011, it is permissible to fish for and possess salmon in waters of Lake Chelan Project (powerhouse) tailrace from the railroad

bridge to the Chelan PUD safety barrier below the powerhouse. Daily limit of 6 Chinook salmon; up to 3 may be adults, of which only one may be a wild adult. Minimum size 12 inches.

(2) It is unlawful to fish from a floating device. Night closure and anti-snagging rules are in effect.

(3) All Chinook salmon with a floy (anchor) tag attached and/or with one or more holes (round, approximately 1/4-inch diameter) punched in the caudal (tail) fin must be released.

(4) It is unlawful to fish in waters of the Chelan River upstream from the powerhouse tailrace to Lake Chelan.

(5) It is unlawful to fish in the Chelan Co. PUD Powerhouse Park swimming area.

(6) Fishing along the southwest shoreline (shoreline on the same side of the river as the Chelan Co PUD Powerhouse Park) is limited to wading only (no fishing from the bank).

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2011:

WAC 232-28-61900W Exceptions to statewide
rules—Lake Chelan.

WSR 11-19-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-234—Filed September 9, 2011, 4:00 p.m., effective September 12, 2011]

Effective Date of Rule: September 12, 2011.

Purpose: Amending recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A high percentage of Endangered Species Act listed spawning spring chinook are being impacted by anglers that are trout fishing. There is evidence of very high prespawn mortality rates due to the associated handling. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Kendall Slough, North Fork Nooksack River. Notwithstanding the provisions of WAC 232-28-619, effective September 12 through September 30, 2011, it is unlawful to fish in waters of Kendall Slough from the mouth of Kendall Creek (Kendall Creek Hatchery outlet) to markers at the mouth of Kendall Slough.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2011:

WAC 232-28-61900Z Exceptions to statewide rules—Kendall Slough, North Fork Nooksack River.

**WSR 11-19-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-238—Filed September 12, 2011, 4:17 p.m., effective September 13, 2011, 12:01 a.m.]

Effective Date of Rule: September 13, 2011, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Hatchery chinook salmon returning to the Makah National Fish Hatchery are not expected to make egg-take goals if normally scheduled fisheries occur. A sport closure around the river mouth is necessary. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 12, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62000K Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. September 13, 2011, until further notice, it is unlawful to violate the following provisions:

(1) Catch Record Card Area 1: Open immediately through September 30. Daily limit of 2 salmon, only one of which can be a Chinook. Release wild coho.

a) October 1 until further notice - Closed.

(2) Catch Record Card Area 2: Open immediately through September 18. Daily limit of 2 salmon, only one of which can be a Chinook. Release wild coho.

a) September 19 until further notice - Closed.

(3) Willapa Bay (Catch Record Card Area 2-1): Open immediately until further notice. Daily limit of 6 salmon, of which not more than 3 may be adult salmon. Release chum and wild Chinook.

(4) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):

a) Open September 16 until further notice. Daily limit of 2 salmon. Release Chinook and chum.

b) Notwithstanding the provisions of this subsection, Westport Boat Basin and Ocean Shores Boat Basin: Open only immediately until further notice. Daily limit of 6 salmon, of which not more than 4 may be adult salmon. Release wild Chinook.

(5) Catch Record Card Area 3:

a) Open immediately through September 18. Daily limit of 2 salmon, only one of which can be a Chinook. In years ending in odd numbers, one additional pink salmon may be retained as part of the daily limit. Release wild coho.

b) September 19 until September 23 - Closed.

c) Notwithstanding the provisions of this subsection, waters north of 47°50'00"N latitude and south of 48°00'00"N latitude also open September 24 through October 9. Daily limit 2 salmon, only one of which can be a Chinook. In years ending in odd numbers, one additional pink salmon may be retained as part of the daily limit. Release wild coho.

d) October 10 until further notice - Closed.

(6) Catch Record Card Area 4:

a) Open immediately through September 18. Daily limit of 2 salmon, only one of which can be a Chinook. In years ending in odd numbers, one additional pink salmon may be retained as part of the daily limit. Release wild coho. Release chum salmon. Release Chinook east of the Bonilla-Tatoosh Line.

b) Effective September 13 waters east of the 124 degrees, 41 minutes line are closed, which is from Waatch Point to Anderson Point.

c) September 19 until further notice - Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 13, 2011:

WAC 232-28-62000J Coastal salmon—Saltwater seasons and daily limits. (11-219)

**WSR 11-19-043
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed September 13, 2011, 9:52 a.m., effective September 13, 2011, 9:52 a.m.]

Effective Date of Rule: Immediately.

Purpose: To establish the rules and process for determining which schools are eligible for enhanced funding through the K-3 high poverty class size reduction.

Statutory Authority for Adoption: This funding mechanism was established in the 2011-13 biennial budget bill. The bill states that schools with greater than fifty percent poverty will have K-3 class size funded at 24.10 instead of the regular K-3 class size of 25.23 as established in SHB 2776. The office of superintendent of public instruction was tasked with the process and implementation behind determining eligible schools, and allocating the funds appropriately to those schools.

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

Reasons for this Finding: Without guidance with respect to school eligibility and funding implementation, the high poverty funding enhancement would not be possible.

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

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

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

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

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

Date Adopted: September 12, 2011.

Randy Dorn

State Superintendent
of Public Instruction

NEW SECTION

WAC 392-140-915 High poverty funding—Process and definition of eligible schools. For the purposes of this section, an eligible school is one in which the free and reduced priced lunch percentage for students in grades K-6 exceeds fifty percent within the school building, and the school is not part of a district that receives any type of K-6 small school or remote and necessary funding. CEDARS data as of October of the previous school year will be used to determine school eligibility. If a school is determined to be eligible, the K-3 full-time equivalent enrollment as reported to the office of superintendent of public instruction on the P-223 will be used to generate funding at an enhanced class size as determined by the legislature.

A preliminary CEDARS extract of October data will be pulled on March 31st to be used to determine a preliminary list of eligible schools to be published in April. This list will be used by districts as a basis for estimating the total eligible high poverty enrollment to be put into the F-203 for budgeting purposes. Districts will have until September 30th to make adjustments to this data before it is considered final for funding purposes.

A secondary CEDARS extract of October data will be pulled on July 30th. An updated list of eligible schools will be presented to districts in August.

On September 30th, the October CEDARS data for the previous school year will be considered final for K-3 high poverty funding purposes. A final data extract will be used to determine schools that are eligible for high poverty funding. Final determination of eligible schools for the current school year will be available in mid-October.

Funding of K-3 high poverty schools will be based upon budgeted K-3 enrollment in eligible high poverty schools as stated in a district's F-203 from September through December. Funding based on average annual full-time equivalent enrollment reported in final approved eligible schools will begin in January and continue through August.

WSR 11-19-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-239—Filed September 13, 2011, 10:34 a.m., effective September 16, 2011, 12:01 a.m.]

Effective Date of Rule: September 16, 2011, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: There are harvestable numbers of fall chinook salmon available for harvest in fisheries below Bonneville Dam, including Lower River Hatchery and Upriver Bright stocks of fall chinook. Fisheries are consistent with the provisions of the biological opinion and *U.S. v. Oregon* Management Agreement. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 13, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619:

a) The Columbia River from the Buoy 10 line upstream to a line projected from Rocky Point on the Washington bank through red buoy #44 to a navigation light at Tongue Point on the Oregon bank: Effective September 16 through September 30, 2011, daily limit two salmon or hatchery steelhead or one of each. Chinook minimum size is 24 inches and coho 16 inches. Release all salmon other than Chinook and hatchery coho.

b) The Columbia River from a line projected from Rocky Point on the Washington bank through red buoy #44 to a navigation light at Tongue Point on the Oregon bank upstream to a line from the Warrior Rock Lighthouse on the Oregon bank through red buoy #4 to the orange marker atop the dolphin on the Washington shore: Effective September 16 through September 18, 2011, daily salmonid limit is 6 fish, of which no more than 2 may be adult salmon or hatchery steelhead or one of each. Salmon minimum size is 12 inches. Release all salmon other than Chinook and hatchery coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2011:

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

WSR 11-19-046
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 13, 2011, 12:23 p.m., effective September 13, 2011, 12:23 p.m.]

Effective Date of Rule: Immediately.

Purpose: To establish the rules and process for determining which schools are eligible for enhanced funding through the K-3 high poverty class size reduction.

Statutory Authority for Adoption: SHB 2776.

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

Reasons for this Finding: Without guidance with respect to school eligibility and funding implementation, the high poverty funding enhancement would not be possible.

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

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

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

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

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

Date Adopted: September 13, 2011.

Randy Dorn
State Superintendent
of Public Instruction

NEW SECTION

WAC 392-140-915 High poverty funding—Process and definition of eligible schools. For the purposes of this section, an eligible school is one in which the free and reduced priced lunch percentage for students in grades K-6 exceeds fifty percent within the school building, and the school is not part of a district that receives small school or remote and necessary funding. CEDARS data as of October of the previous school year will be used to determine school eligibility. If a school is determined to be eligible, the K-3 full-time equivalent enrollment as reported to the office of superintendent of public instruction on the P-223 will be used to generate funding at an enhanced class size as determined by the legislature.

A preliminary CEDARS extract of October data as of March 31st will be used to determine a preliminary list of eligible schools to be published in April. This list will be used by districts as a basis for estimating the total eligible high poverty enrollment to be put into the F-203 for budgeting purposes. Districts will have until September 30th to make adjustments to this data before it is considered final for funding purposes.

A second CEDARS extract of October data as of July 30th will be used to update the list of eligible schools and will be available in August.

As of September 30th, the October CEDARS data for the previous school year will be considered final for K-3 high poverty funding purposes. A final data extract will be used to determine schools that are eligible for high poverty funding. Final determination of eligible schools for the current school year will be available in October.

Funding of K-3 high poverty schools will be based upon budgeted K-3 enrollment in eligible high poverty schools as stated in a district's F-203, and used as the basis for funding from September through December. Funding based on average annual full-time equivalent enrollment reported in final approved eligible schools will begin in January and continue through August.

WSR 11-19-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-240—Filed September 13, 2011, 3:11 p.m., effective September 14, 2011, 12:01 a.m.]

Effective Date of Rule: September 14, 2011, 12:01 a.m.
Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2011 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 closes Catch Areas 23A-S/23D, 23C, 28A-D and 29 to protect female spot shrimp at the onset of the egg bearing period. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 13, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas (SMA) 2W, 3 and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

i) All waters of SMA 1A, 1B, 1C, 2E, 4 and the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 2W, and Catch Areas 23A-C, 23A-E, 23A-W, 23B, 25A and 26D, are closed to the harvest of spot shrimp.

iii) Effective 6:00 p.m. September 15, 2011, all waters of Catch Areas 23A-S/23D, 23C, 28A, 28B, 28C, 28D and 29 are closed to the harvest of spot shrimp.

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

(c) Effective immediately, until 6:00 p.m. September 15, 2011, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 900 pounds per week in Catch Area 23C, or to exceed 300 pounds per week in Catch Areas 28A-D, or to exceed 160 pounds per week in Catch Area 23A-S/23D.

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

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

(2) Shrimp beam trawl gear:

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

(b) Catch Area 20A is open, effective immediately until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 14, 2011:

WAC 220-52-05100C Puget Sound shrimp beam trawl fishery—Season. (11-225)

WSR 11-19-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-241—Filed September 13, 2011, 3:12 p.m., effective September 13, 2011, 3:12 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Sets the first week of the late fall season. The seasons are consistent with the 2008-2017 interim management agreement. Salmon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 28, 2011, and September 12, 2011. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: September 13, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000D Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010 and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. Mainstem Columbia River - all Zone fishery

a. SEASON: 9 PM September 18 to 6 AM September 19

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E.

c. GEAR: Drift gillnets only. 8-inch minimum mesh size.

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. Nets not lawful for use for that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Grays, Elokomin-A, Cowlitz, Kalama-A, Lewis-A, Washougal and Sandy Rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of seven (7) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

2. Mainstem Columbia River - Upper Zones fishery

a. SEASON: 8 PM September 19 to 6 AM September 20

8 PM September 20 to 6 AM September 21

8 PM September 22 to 6 AM September 23

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

c. GEAR: Drift gillnets only. 8-inch minimum mesh size. Nets not lawful for use for that time and area may be onboard the boat if properly stored. A "properly stored" net is defined as a net on a drum that is fully covered by tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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.

d. SANCTUARIES: Washougal and Sandy Rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of seven (7) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

3. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open hours are 7 PM to 7 AM through September 16, and 6 PM to 8 AM thereafter.

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

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

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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.

d. ALLOWABLE SALES: Salmon.

4. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open 7 PM to 7 AM through September 16, and 4 PM to 10 AM thereafter.

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

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard gillnets legal for the South Channel fishing area.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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.

d. ALLOWABLE SALES: Salmon.

5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 28, 2011. 7 PM to 9 AM through September 16, and 4 PM to 9 AM thereafter.

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

c. GEAR: Gill net. Monofilament gear is allowed. 6-inch maximum mesh. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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.

d. ALLOWABLE SALES: Salmon.

6. Quick Reporting: 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

7. Observer program: As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during an open fishery.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000C Columbia River season below Bonneville. (11-224)

WSR 11-19-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-214—Filed September 13, 2011, 4:31 p.m., effective September 16, 2011]

Effective Date of Rule: September 16, 2011.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Returns of hatchery and natural-origin summer run steelhead to the upper Columbia River have exceeded the run criteria of 8,300 counted over Priest Rapids Dam. This number (8,300) are required to open a conservation-based fishery under the Endangered Species Act. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 13, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900M Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective September 16 through October 31, 2011, a person may fish for steelhead in waters of the Columbia River from the Highway 395 Bridge upstream to the Old Hanford townsite wooden powerline towers. Daily limit, two hatchery steelhead; minimum size is 20 inches in length. Mandatory retention of adipose fin-clipped hatchery origin steelhead.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2011:

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

**WSR 11-19-060
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services)

[Filed September 15, 2011, 8:39 a.m., effective September 15, 2011, 8:39 a.m.]

Effective Date of Rule: Immediately.

Purpose: The proposed amendments to WAC 388-845-0600 and 388-845-0610 are needed to revise the current working age adult policy to allow clients to choose between employment and community access services as directed by the legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0600 and 388-845-0610.

Statutory Authority for Adoption: RCW 34.05.350 (1)(c).

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: HB 1087 section 205 (g)(i) directed the department to revise the current working age adult policy to allow clients to choose between employment and community access activities. Clients age twenty-one and older who are receiving services through a home and community-based waiver shall be offered the choice to transition to a community access program after nine months of enrollment in an employment program and the option to transition from a community access program to an employment program at any time.

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

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

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

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

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

Date Adopted: September 14, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0600 What are community access services? Community access services are provided in the community to enhance or maintain your community integration, physical or mental skills.

(1) ~~((If you are age sixty-two or older, these))~~ Services ~~((are available to))~~ assist you to participate in activities, events and organizations in the community in ways similar to others of ~~((retirement))~~ similar age.

(2) These services are available in the Basic, Basic Plus, and CORE waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0610 Are there limits to community access services I can receive? The following limits apply to your receipt of community access services:

(1) You must be age sixty-two or older or you have accessed nine consecutive months of employment services.

(2) You cannot be authorized to receive community access services if you receive prevocational services or supported employment services.

(3) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

**WSR 11-19-061
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed September 15, 2011, 8:46 a.m., effective September 15, 2011, 8:46 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending chapter 388-106 WAC, Long-term care services. Amendments are necessary to implement adult day health (ADH) changes as required under 2ESHB 1087 (2011-2013 operating budget).

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0815.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 2ESHB 1087.

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 adding ADH services and eligibility into the community options program entry system (COPES) waiver effective September 1, 2011, as a result of the legislation action under 2ESHB 1087. The department is directed to eliminate the ADH service under the state plan 1915(i) option and to reestablish it under the COPES waiver under WAC 388-106-0300 and 388-106-0305.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 12, 2011.

September 12, 2011

Katherine I. Vasquez

Rules Coordinator

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

WAC 388-106-0815 Am I eligible for adult day health? ~~((1) You are eligible for adult day health services if you meet all of the following criteria. You are:~~

~~(a) Age eighteen years or older;~~

~~(b) Enrolled in one of the following medical assistance programs:~~

~~(i) Categorically needy (CNP);~~

~~(ii) Categorically needy qualified medicare beneficiaries (CNP-QMB);~~

~~(iii) General assistance—Expedited medicaid disability (GA-X); or~~

~~(iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).~~

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

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

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

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

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

~~(2) You are not eligible for adult day health if you:~~

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

~~(b) Have referred care needs that:~~

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

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

~~(iii) Can be met in a less structured care setting; or~~

~~(iv) In the case of skilled care needs, are being met by paid or unpaid caregivers.~~

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

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

You are eligible for adult day health if you meet the conditions described in WAC 388-106-0300 or 388-106-0305.

WSR 11-19-066

EMERGENCY RULES

DEPARTMENT OF

EARLY LEARNING

[Filed September 15, 2011, 2:20 p.m., effective September 15, 2011, 2:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending sections in the department of early learning (DEL) child care licensing WAC chapters to establish a process as required by SB 5625 for child care licensees to obtain and maintain a nonexpiring child care license. This filing includes sections of WAC:

- Chapter 170-151 WAC, School-age child care center minimum licensing requirements;
- Chapter 170-295 WAC, Minimum licensing requirements for child care centers; and
- Chapter 170-296 WAC, Child care business regulations for family home child care. (Note, the sections of chapter 170-296 WAC included in this filing are proposed for repeal when new chapter 170-296A WAC is adopted and effective - see proposed rules filed as WSR 11-09-081. The sections of chapter 170-296 WAC in this filing will be in effect until replaced by comparable sections of new chapter 170-296A WAC.)

Citation of Existing Rules Affected by this Order: Repealing WAC 170-296-0260; and amending WAC 170-151-010, 170-151-085, 170-151-097, 170-151-098, 170-151-992, 170-295-0010, 170-295-0090, 170-295-0110, 170-295-0140, 170-295-7040, 170-295-7080, 170-296-0020, 170-296-0330, 170-296-0340, 170-296-0350, 170-296-0410, 170-296-0440, 170-296-0540, and 170-296-0860.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070 (2)(c), chapter 43.215 RCW.

Other Authority: SB 5625 (chapter 297, Laws of 2011).

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: Compared to emergency rules previously filed as WSR 11-15-091, the revised rules clarify:

- The process for a child care agency licensed by the department to transition from an initial license to a non-expiring full license;
- That the annual due date for a licensee to submit license fees, declarations, and background check information

necessary for a licensee to maintain a nonexpiring full license shall be thirty calendar days prior to the licensee's license anniversary date; and

- Ensure consistency in the annual fee and related provisions of the licensing chapters in moving from license renewal every three years to nonexpiring licenses.

This revised rule is necessary to give child care agencies licensed under chapter 43.215 RCW and chapters 170-151, 170-295, or 170-296 WAC adequate time to meet the annual requirements under SB 5625 to maintain a nonexpiring full license. The revised rule is expected to reduce the risk that a license may be terminated for failure to meet the annual requirements provided in SB 5625. Such termination would be disruptive to the continuity of care for children and their parents who need stable child care in order to work or participate in other approved activities.

When SB 5625 took effect on July 22, 2011, certain DEL licensing rules regarding child care license applications, transition from "initial" to "full" licenses, license renewals, and enforcement became obsolete and may conflict with the law. Failure of child care licensees to follow new requirements to obtain or retain a nonexpiring child care license may result in a prompt expiration of the license as provided in SB 5625. Emergency rules are needed so that child care business owners may understand the new annual licensing conditions and requirements for a nonexpiring license under SB 5625, and so prevent unnecessary child care license expirations that could impact the safety, health and welfare of the children in care or welfare of the child care licensee's business. The rules are also expected to result in cost savings to the state by reducing most of the current administrative paperwork for DEL child care licensing staff surrounding the tri-annual license renewal process for each of the approximately 7,250 licensed child care facilities statewide. Achieving such efficiencies is consistent with the Governor's Executive Order 06-02 to develop innovative regulatory best practices, and to promote effective ongoing regulatory improvement.

Establishment of a nonexpiring full license is generally supported by regulated child care licensee businesses. The process provided in SB 5625 and these rules is expected to significantly reduce the volume and complexity of license renewal paperwork that licensees previously needed to complete every three years.

Proceeding with these rules is consistent with state office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are, "required by federal or state law or required to maintain federally delegated or authorized programs," and "beneficial to or requested or supported by the regulated entities, local governments or small businesses that (the rule) effects."

The department has filed a notice of intent to adopt permanent rules to implement SB 5625. See WSR 11-12-076.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 19, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 19, Repealed 1.

Date Adopted: September 15, 2011.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-010 What definitions are important for the school-age child care center program? The following definitions are important under this chapter:

"Capacity" means the maximum number of children the licensee is authorized to have on the premises at a given time.

"Child abuse or neglect" means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child as defined in RCW 26.44.020 and chapter 388-15 WAC.

"Department" means the state department of early learning (DEL), or its predecessor the department of social and health services (DSHS), the state agency with the legal authority to regulate and certify school-age child care centers.

"Department of health" means the state department of health.

"I," "you," and "your" refer to and mean the licensee or applicant for child care license.

"License" means a permit issued by the department to a person or organization to operate a school-age child care center and affirming the licensee meets requirements under licensure.

"Licensee" means the person, organization, or legal entity named on the facility license and responsible for operating the center.

"Licensor" means the person employed by the department to regulate and license a school-age child care center.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-151-087.

"Premises" means the building where the center is located and the adjoining grounds over which the licensee has control.

"School-age child" means a child five years of age through twelve years of age enrolled in a public or private school.

"School-age child care center" means a program operating in a facility other than a private residence, accountable for school-age children when school is not in session. The program must meet department licensing requirements, provide adult-supervised care, and a variety of developmentally appropriate activities.

"Staff" means a person or persons employed by the licensee to provide child care and to supervise children served at the center.

"The Washington state training and registry system (STARS)" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy the department's training requirements.

"We" or "our" refer to and mean the department of early learning (DEL), including DEL licensors.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-085 (~~How do I get an~~) Initial (~~license?~~) licenses. (1) The department may issue an initial license (~~to you if you are~~) if an applicant is not currently licensed to provide child care, when (~~you~~) the applicant:

(a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but

(b) Cannot demonstrate compliance with the rules pertaining to:

- (i) Staff-child interactions(~~;~~);
- (ii) Group size and staff-child ratios(~~;~~);
- (iii) Behavior management and discipline(~~;~~);
- (iv) Activity programs(~~;~~);
- (v) Child records and information(~~;~~); and
- (vi) Other rules requiring department observation of the applicant's ability to comply with rules(~~;~~); and

(c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.

(2) The department may issue an initial license (~~to you~~) for a period not to exceed six months, renewable for a period not to exceed two years.

(3) The department must evaluate (~~your~~) an applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a nonexpiring full license under WAC 170-151-087.

(4) The department may issue a nonexpiring full license to (~~you if you~~) a licensee operating under an initial license who:

(a) Demonstrates (~~your~~) full compliance with (~~all rules contained in~~) the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with the other requirements of this chapter at any time during the period of initial licensure; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-151-087.

(5) The department must (~~not issue~~) deny a nonexpiring full license to (~~you if you do~~) a licensee operating under an initial license who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

NEW SECTION

WAC 170-151-087 Nonexpiring licenses. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days

prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

(a) An annual nonrefundable licensing fee;

(b) A declaration to the department on a department-approved form indicating:

(i) The intent to continue operating a licensed child care program; or

(ii) The intent to cease operation on a date certain;

(c) A declaration on a department-approved form of compliance with all licensing rules; and

(d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(4) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(5) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-097 (~~What if I do not pay the~~) Civil (~~penalty?~~) penalties—Failure to pay. The department may suspend, revoke, or not (~~renew~~) continue a license for failure to pay a civil monetary penalty the department has assessed within ten days after such assessment becomes final.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-098 (~~Under what circumstances may the department issue a~~) Probationary (~~license?~~) licenses. (1) The department may issue a probationary license to a licensee in accordance with the process provided in RCW 43.215.290, and must base the decision to issue a probationary license on the following factors:

(a) Willful or negligent noncompliance by (~~you~~) the licensee;

(b) History of noncompliance(~~;~~);

(c) Extent of deviation from the requirements(~~;~~);

(d) Evidence of a good faith effort to comply(~~;~~); and

(e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing law does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, the department may issue a probationary license in addition to civil penalties or other sanctions. Such situations may include:

- (a) Substantiation that a child (or children) was abused or neglected while in the care of the center((:));
- (b) Disapproved fire safety or sanitation report((:));
- (c) Use of unauthorized space for child care((:));
- (d) Inadequate supervision of children((:));
- (e) Understaffing for the number of children in care((:));

or

- (f) Noncompliance with requirements addressing:
 - (i) Children's health((:));
 - (ii) Proper nutrition((:));
 - (iii) Discipline((:));
 - (iv) Emergency medical plan((:)); or
 - (v) Sanitation and personal hygiene practices.
- (3) ~~((You))~~ The licensee must notify parents of all children in care or who may apply for care when the department issues a probationary license ((to you)). The licensee must:
- (a) ~~((You must))~~ Notify the parents or guardians of all children in care of the program's probationary status within five working days of receiving the department's notification that the department has issued a probationary license;
 - (b) ~~((You must))~~ Notify parents and guardians in writing, and the department must approve the notice before ((you)) the licensee sends the notification; and
 - (c) ~~((You must))~~ Provide documentation to the department that ((you have)) he or she has notified parents or guardians of all children in care within ten working days after ((you)) the licensee receives notification that the department has issued a probationary license. Documentation must consist of a copy of the letter ((you have)) the licensee has sent to the parents((:)) or guardians.
- ~~((4))~~ (4) The department may issue a probationary license for up to six months, and at the department's discretion, the department may extend the probationary license for an additional six months.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-992 Fee payment ~~((and refunds))~~. ~~((4))~~ Fees are due with applications for initial license or renewal. The department will not proceed on applications until required fees are paid.

Except as otherwise provided in these rules, fees shall be paid for a minimum of one year:

(2) Fees for licenses issued for other than yearly periods shall be prorated based on the stated annual fee.

(3) When the department issues a license for more than one year:

(a) Fees may be paid for the entire licensing period by paying at the rate established at the time the application was submitted, or

(b) If the licensee does not pay the fee for the entire license period, annual fees shall be due thirty days prior to

each annual anniversary date of the license, at the annual fee rate established by these rules at the time such fee is paid.

(4) Except as otherwise provided in these rules, if an application is withdrawn prior to issuance or denial, one-half of the fee shall be refunded.

(5) If there is a change of or by the licensee requiring a new license, the fee paid for a period beyond the next license anniversary date shall be refunded. Changes requiring a new license shall require a new application and payment of fee as provided herein.

(6) If there is a change by the applicant or licensee that requires an amendment placing the licensee in a higher fee category, the additional fee shall be prorated for the remainder of the license period.

(7) Fees becoming due on or after the effective date of this chapter shall be at the rates provided herein.

(8) To the extent fees are reduced through regular rule adoption of this chapter on or before December 31, 1982, fees shall be refunded.

(9) Fee payments shall be by mail. Payment shall be by check, draft, or money order.) (1) The department does not process an application or continuation until the applicant or licensee, as applicable, has paid the required fee.

(2) Applicants or licensees can pay licensing fees for:

(a) A minimum of one year; or

(b) Multiple years.

(3) Applicants and licensees must pay their fees by mailing a check or money order for the required amount to the department.

(4) If there is a change in a facility that places the facility in a different fee category, the department prorates the additional fee amount over the remainder of the license period.

(5) If an applicant or licensee withdraws an application before the department denies or issues a license, the fee shall not be refunded.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"Anti-bias" is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status,

gender, sexual orientation, class, religion, creed, disability, or age.

"Capacity ((that you are licensed for))" means the maximum number of children that ((you are)) a licensee is authorized to have on the premises of the child care at any one time.

"Center" means the same as **"child care center."**

"Certification" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see **"Tribal certification"**).

"Child abuse or neglect" means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

"Child-accessible" means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"Child care center" means the same as a **"child day care center"** or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

"Clean" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

"CACFP" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"Commercial kitchen equipment" means equipment designed for business purposes such as restaurants.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface).

"Cultural relevancy" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"Department," "we," "us," or "our" refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS).

"Developmentally appropriate practice":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"Director" means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"Domestic kitchen" means a kitchen equipped with residential appliances.

"External medication" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"License" means a permit issued by the department authorizing ((you)) a licensee by law to operate a child care center and certifying that ((you)) the licensee meets the minimum requirements under licensure.

"Licensee" or **"you"** means the person, organization, or legal entity responsible for operating the center.

"Maximum potential capacity based on square footage" is the maximum number of children ((you)) a licensee can be licensed for based on the amount of useable space (square footage) in ((your)) the licensee's center. ((You)) The licensee may be licensed for less than the maximum potential capacity. ((You)) A licensee may not be licensed for more than the maximum potential capacity.

"Moisture impervious" or **"moisture resistant"** means a surface incapable of being penetrated by water or liquids.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-295-0095.

"Parent" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"Pesticides" means chemicals that are used to kill weeds, pests, particularly insects.

"Potentially hazardous food" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"Potable water" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"Premises" means the building where the center is located and the adjoining grounds over which ~~((you have))~~ the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Program supervisor" means the person responsible for planning and supervising the center's learning and activity program.

"Sanitize" means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

"Satellite kitchen" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"School-age child" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"Staff" means a child care giver or group of child care givers employed by the licensee to supervise children served at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

"Supervised access" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

(2) Parent participation as part of a special theme; or

(3) A relative visiting a child on the premises.

"The Washington state training and registry system (STARS)" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirement.

"Toddler" means a child twelve months through twenty-nine months of age.

"Terminal room cleaning" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a communicable disease before it is occupied by another person.

"Tribal certification" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"Unsupervised access" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full background authorization clearance under chapter 170-06 WAC.

"Useable space" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0090 ~~((When does the department issue))~~ **Initial and nonexpiring full licenses**~~((, and when are))~~ Licensing fees ~~((due?))~~. ~~((We))~~ The department may issue an initial license to centers that have not yet begun providing care, but are accepting applications for potential clients.

(1) ~~((We))~~ The department may issue an initial license when ~~((you))~~ an applicant can show that ~~((you are))~~ he or she is following the rules regarding the child's health and safety.

(2) ~~((We))~~ The department may issue an initial license if ~~((you have))~~ an applicant has not yet opened for business, and so ~~((are))~~ is not yet able to show that ~~((you are))~~ he or she is complying with the rules pertaining to:

(a) Staff to child interactions;

(b) Group size and staff to child ratios;

(c) Behavior management and discipline;

(d) Activity programs;

(e) Child records and information; and

(f) Other rules that require us to observe ~~((your))~~ the facility's ability to comply with rules.

(3) ~~((You))~~ Applicants must provide ~~((us))~~ the department with a plan to comply with the rules listed in subsection (2)(a) through (f) of this section. ~~((We))~~ The department must approve of that plan.

(4) ~~((We))~~ The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(5) When ~~((you have))~~ a licensee has an initial license ~~((we:~~

~~((a) Evaluate your))~~ the department evaluates the licensee's ability to comply with all rules contained in this chapter prior to issuing a nonexpiring full license~~((;~~

~~((b) May issue a full license to you when you have demonstrated compliance with chapter 170-295 WAC; and~~

~~((c) Do not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in chapter 170-295))~~ under WAC 170-295-0095.

(6) ~~((You must pay licensing fees at the time you apply for an initial license and when your license is being renewed.~~

~~((7) We do))~~ The department may issue a nonexpiring full license to a licensee operating under an initial license who:

(a) Demonstrates full compliance with the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with the other requirements of this chapter at any time during the period of initial licensure; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-295-0095.

(7) The department must deny a nonexpiring full license to a licensee operating under an initial license who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

(8) Fees are due with applications for initial licenses or continuations of a nonexpiring full license.

(9) The department does not process ~~((your))~~ an application or continuation until ~~((you have))~~ the applicant or licensee, as applicable, has paid the required fee.

~~((8) You)~~ (10) Applicants or licensees can pay licensing fees for:

- (a) A minimum of one year; or
- (b) ~~((The entire length of your license.))~~ Multiple years.

~~((9) You pay your fee))~~ (11) Applicants and licensees pay their fees by mailing a check or money order for the required amount to the department ~~((, according to instructions on the licensing application.))~~

~~((10) If you pay your fee one time per year, you pay the annual rate each time. The annual fee is due thirty days before each annual anniversary date of the license.~~

~~((11) If you pay for more than one year, the total fee you pay is based on the annual fee rate. For example, if you are licensed for three years and want to pay the licensing fee for the entire period at once, you multiply the annual fee by three years, and pay that amount at the time of your license application or renewal.))~~

(12) If there is a change in ~~((your))~~ a facility that places ~~((your))~~ the facility in a ~~((higher))~~ different fee category, ~~((we))~~ the department prorates the additional fee amount over the remainder of the license period.

(13) If ~~((you))~~ an applicant or licensee withdraws ~~((your))~~ an application before ~~((we deny))~~ the department denies or issues a license, ~~((we refund one-half of))~~ the fee shall not be refunded.

~~((14) If there is a change that requires a new license, we refund any fee that remains after your next licensing date. A new license requires a new application and fee.~~

~~((15) If we deny, revoke, or suspend your license, we do not refund your licensing fee.~~

~~((16) If you reapply for a license after we revoke or suspend your license, you must pay a new license fee.~~

~~((17) If you do not pay licensing fees when they are due, we suspend or deny your license.))~~

NEW SECTION

WAC 170-295-0095 Nonexpiring full license. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

- (a) An annual nonrefundable licensing fee;
- (b) A declaration to the department on a department-approved form indicating:
 - (i) The intent to continue operating a licensed child care program; or
 - (ii) The intent to cease operation on a date certain;
- (c) A declaration on a department-approved form of compliance with all licensing rules; and
- (d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(4) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(5) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0110 ~~((When can I be fined for not following the minimum licensing requirements?))~~ Civil fines. (1) ~~((We notify you))~~ The department notifies licensees in writing of ~~((our))~~ the department's intention to impose a civil fine. ~~((We))~~ The department may use personal service, ~~((including by our))~~ the department's licensor, or certified mail. The letter will include:

(a) A description of the violation and a quote of the law or rule that ~~((you have))~~ the licensee has failed to meet;

(b) A statement of what ~~((you))~~ the licensee must do to come into compliance;

(c) The date by which ~~((we))~~ the department requires compliance;

(d) Information about the maximum allowable penalty ~~((we))~~ the department can impose if ~~((you do))~~ the licensee does not come into compliance by the given date;

(e) How ~~((you))~~ the licensee can get technical assistance services provided by ~~((us))~~ the department or by others; and

(f) Information about how ~~((you))~~ the licensee can request an extension to the date ~~((you must))~~ to be in compliance, if ~~((we))~~ the department decides ~~((you have))~~ he or she has a good reason.

(2) The length of time ~~((we establish))~~ the department establishes for ~~((you))~~ the licensee to come into compliance depends on:

(a) The seriousness of the violation;

(b) The potential threat to the health, safety and welfare of children in ~~((your))~~ the licensee's care; or

(c) If ~~((you have))~~ the licensee has had previous opportunities to correct the deficiency and ~~((have))~~ has not done so.

(3) ~~((We))~~ The department uses the following criteria to determine if ~~((we))~~ the department imposes a civil fine based on, but not limited to, these reasons:

(a) The child care center has previously been subject to an enforcement action for the same or similar type of violation for the same statute or rule; or

(b) The child care center has previously been given notice of the same or similar type of violation of the same law or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) ~~((We can))~~ The department may impose a civil fine in addition to or at the same time as other disciplinary actions against a child care center. These include probation, suspension, or other action.

(5) ~~((You))~~ A licensee must pay any civil fines no more than twenty-eight days after ~~((you receive))~~ receiving the notice that ~~((you have))~~ he or she has a fine. ~~((We))~~ The department may specify a later date.

(6) ~~((We can))~~ The department may waive the fine if ~~((your))~~ the licensee's center comes into compliance during the notification period.

(7) ~~((You))~~ A licensee must post the final notice of a civil fine in a noticeable place in ~~((your))~~ his or her center. The notice must remain posted until ~~((we notify you))~~ the department notifies the licensee that ~~((we have))~~ the department has received ~~((your))~~ the payment.

(8) Each violation of a law or rule is a separate violation. ~~((We can))~~ The department may penalize each violation. ~~((We can))~~ The department may impose a penalty for each day the violation continues or as a flat amount of the maximum allowable penalty.

(9) If ~~((you))~~ a licensee fails to pay ~~((your))~~ a fine within ten days after the assessment becomes final, ~~((we can))~~ the department may suspend, revoke, or not ~~((renew your))~~ continue his or her license.

(10) ~~((You))~~ Licensees have the right to a hearing when ~~((we assess))~~ the department assesses a civil fine under RCW 43.215.307 and chapter 170-03 WAC.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0140 ~~((When can the department issue a))~~ Probationary licenses ~~((to a child care center operator?))~~; (1) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee in accordance with the process provided in RCW 43.215.290, based on the following factors:

(a) ~~((You))~~ The licensee's willful or negligent failure to comply with the regulations;

(b) ~~((You))~~ The licensee's history of noncompliance with the regulations;

(c) How far ~~((you))~~ the licensee deviates from the regulations;

(d) Evidence of ~~((your))~~ the licensee's good faith effort to comply with the regulations; and

(e) Any other factors relevant to ~~((your))~~ the licensee's unique situation.

(2) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee when the willful or negligent violation of the licensing requirements does not present an immediate threat to the health and well being of the children, but would be likely to do so if allowed to continue. ~~((We can))~~ The department may also issue civil fines or other sanctions in this case. Such situations can include:

(a) Substantiation that a child was abused or neglected while in the care of the center;

(b) A fire safety inspection or health/sanitation inspection report that has been disapproved;

(c) Use of unauthorized space for child care;

(d) Inadequate supervision of children;

(e) Under staffing for the number of children in care; and

(f) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation and personal hygiene practices.

(3) ~~((You))~~ Licensees are required to notify parents when a probationary license is issued. ~~((You))~~ The licensee must:

(a) Notify in writing the parents or guardians of all children in care that the center is in probationary status. This notification must be within five working days of ~~((your))~~ receiving notification of being placed on probationary status or being issued a probationary license. ~~((We))~~ The department must approve the notification before ~~((you))~~ the licensee sends it; and

(b) Provide documentation to ~~((us))~~ the department that parents or guardians of all children in care have been notified. ~~((You))~~ The licensee must provide this documentation within ten working days of being notified that ~~((you have))~~ he or she has been issued a probationary license.

(4) A probationary license ~~((can))~~ may be issued for up to six months and ~~((can))~~ may be extended at ~~((our))~~ the department's discretion for an additional six months.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7040 ~~((Am I required to keep licensing information available on site for parents to review?))~~ Facility records. ~~((You))~~ The licensee must keep a file on-site containing ~~((the following licensing information:~~

(1) ~~Copies of the most recent child care center checklists for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

(2) ~~copies of the most recent child care center(s) monitoring checklist and facility licensing compliance agreement for any deficiencies noted.~~

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7080 ~~((What am I required to post in the center?))~~ Materials that must be posted. ~~((You))~~ Licensees must post the following items so that they are clearly visible to the parent and staff:

(1) The center's child care license issued under this chapter;

(2) A schedule of regular duty hours with the names of staff;

(3) A typical activity schedule, including operating hours and scheduled mealtimes;

(4) Meal and snack menus for the month;

(5) Fire safety record and evacuation plans and procedures, including a diagram of exiting routes;

(6) Emergency telephone numbers near the telephone;

(7) Nondiscrimination poster;

(8) For the staff, ~~((you))~~ the licensee must post:

(a) Dietary restrictions and nutrition requirements for particular children;

- (b) Handwashing practices;
- (c) Diaper changing procedures, if applicable;
- (d) Disaster preparedness plan; and
- (e) Center policies and procedures.

(9) ~~((You))~~ The licensee must post a notification advising parents that ~~((you are))~~ the licensee is required to keep ~~((the following licensing information available))~~ a file on-site for their review(~~(:~~

~~(a) Copies of the most recent child care center checklist for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

~~(b))~~ containing copies of the most recent child care center~~(s)~~ monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-296-0020 ~~((What))~~ Definitions ~~((do I need to know to understand this chapter?))~~; For the purpose of this chapter:

"Accessible to children" means areas of the facility and materials that children can easily get to on their own.

"Age appropriate" means the developing stages of growth typical of children within a given age group.

"American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member of or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found to be Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood;

(3) Considered to be Indian by a federally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"Antibias" is an approach that recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, sexual orientation, gender, class, religion, creed, disability, or age.

"Assistant" means a person fourteen years or older (whether a volunteer or an employee) who assists a licensed home provider in the operation of the family home child care and is not solely responsible for the supervision of children.

"Capacity" means the highest number of children ~~((you))~~ a licensee can care for at any time, as written on ~~((your))~~ his or her license.

"Child" means a person who has not yet reached the age of twelve years.

"Child care" means the developmentally appropriate care, protection and supervision of children that is designed to promote positive growth and educational experiences for children outside of their home for periods of less than twenty-four hours a day.

"Child abuse and neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreat-

ment of a child by any person indicating that the child's health, welfare, and safety is harmed.

"Communicable disease" means an illness that can be spread from one person to another, in the child care setting, by either direct or indirect contact.

"Conditions of the license" means what ~~((you))~~ a licensee must do to keep a license.

"Confidentiality" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Corporal punishment" means the infliction of pain by any means for the purpose of punishment, correction, discipline, instruction or any other reason.

"Cultural relevancy" means an environment in which the learning experiences, play materials and activities are meaningful, inclusive and respectful for the participating children, their families and the community at large.

"Department," "we," "us," or "our" refers to and means the state department of early learning (DEL), and its predecessor agency the department of social and health services (DSHS).

"Department of health" means the state department of health.

"Developmentally appropriate" means activities and interactions that recognize and address how children learn and what they can do at each stage of development - Socially, emotionally, cognitively, and physically.

"Discipline" means a process of guiding children to develop internal, positive social behaviors through methods that include consistent use of the following: Modeling appropriate behavior, positive reinforcement, active listening, limit setting, redirecting and modifying the environment.

"Facility licensing compliance agreement" means a written notice of rule violations and the intention to initiate enforcement, including a corrective action plan.

"Family home" means a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Family home child care" means a facility licensed to provide direct care, supervision and early learning opportunities for twelve or fewer children, in the home of the licensee where the licensee resides and is the primary provider.

"Family home child care provider" means a person who provides direct care, supervision, behavior management, and early learning opportunities for twelve or fewer children in their family home living quarters for periods of less than twenty-four hours.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means areas kept or items stored in a manner that makes it impossible for children to reach, enter, or use potentially hazardous items or areas. Examples of how this can be accomplished are through the use of locks, gates, or other means that are effective to prevent access by the children in ~~((your))~~ a licensee's care.

"Infant" means a child birth through eleven months of age.

"License" means an official document that certifies ~~((you have))~~ a licensee has been granted permission by the

department to operate a family home child care in compliance with the rules.

"Licensed space," means the indoor and outdoor space approved by the department as useable space where children in care may be present, or space that is otherwise accessible to children.

"Licensee" means the person or persons named on the license as having been issued the license and who are responsible for maintaining compliance with the regulations.

"Licensor" means the person with authority to grant licenses.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-296-0350.

"Parent" means a child's parent or legal guardian.

"Premises" means the buildings where the home is located and the adjoining grounds (at the same address) over which the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Primary staff person" means a person who has been authorized by DEL to care for or have unsupervised access to children in child care under chapter 170-06 WAC, age eighteen years or older, who has responsibilities for the operation of the program and the direct supervision, behavior management and care of children.

"Provider" means the same as licensee.

"Repeatedly" means a violation of a licensing regulation that is written on a facility licensing compliance agreement that occurs more than once during a twelve-month time frame.

"Reportable communicable disease" means an illness that can be spread from one person to another by either direct or indirect contact, and is of the type that is required by law to be reported to the department of health. Examples include Hepatitis, measles, smallpox, and tuberculosis.

"Revocation" means the formal act of closing ~~((your))~~ a licensee's child care business and taking ~~((you))~~ a license from ~~((you))~~ a licensee due to ~~((your))~~ the licensee's failure to follow the rules.

"Sanitize" means a surface must be clean and the number of germs reduced to a level where disease transmissions by that surface are unlikely.

"Staff" means a child care giver or group of child care givers employed by the licensee to assist with or supervise children served at the family home child care who have been authorized by DEL to care for or have unsupervised access to children in child care under chapter 170-06 WAC.

"STARS" (Washington state training and registry system) means the entity approved by the department to determine the classes, courses, and workshops that licensees and staff may take to satisfy training requirements.

"Summary suspension" means the formal act of immediately stopping your license for a certain time because the health, safety or well being of a child is at risk.

"Supervision of children," means the knowledge of and responsibility for the activity and whereabouts of each child in care and assuring immediate intervention of staff to safeguard a child from harm.

"Terms of the license" means the address, number and ages of children, and the beginning and ending dates listed on the license issued by the department.

"Toddler" means a child twelve months through twenty-nine months of age.

"Useable space" means the space actually available for children to engage in developmentally appropriate activities, that has been inspected and approved by the department for providing child care.

"Weapons" means an instrument or device of any kind that is designed to be used to inflict harm on another person. For example, BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, shotguns, knives.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

~~WAC 170-296-0330 ((Is there more than one category))~~ Categories of ((license?)) licenses. ~~((We))~~ The department issues three types of licenses:

- (1) Initial (see WAC 170-296-0340);
- (2) Nonexpiring full (see WAC 170-296-0350); and
- (3) Probationary (see WAC 170-296-0440).

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

~~WAC 170-296-0340 ((When will the department issue an))~~ Initial ((license to me?)) licenses. (1) If ~~((you are))~~ an applicant is not currently licensed ~~((we))~~, the department may issue an initial license ~~((to you))~~ to provide child care when all the health and safety rules have been met, but ~~((you))~~ the applicant:

(a) Cannot demonstrate compliance with the rules pertaining to:

- (i) Supervision;
- (ii) Capacity;
- (iii) Behavior management;
- (iv) Activity and routines; and
- (v) Child records and information.

(b) Can provide a plan that is acceptable to ~~((us))~~ the department, to comply with rules found in subsection (1)(a) of this section.

(2) ~~((We))~~ The department may issue an initial license ~~((to you))~~ for a period not to exceed six months, renewable for a period not to exceed two years.

(3) ~~((We))~~ The department must evaluate ~~((your))~~ an applicant's ability to follow all the rules contained in this chapter during the initial licensing period prior to issuing a nonexpiring full license under WAC 170-296-0350.

(4) The department may issue a nonexpiring full license to a licensee operating under an initial license who:

(a) Demonstrates full compliance with the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with the other requirements of this chapter at any time during the period of initial licensure; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-296-0350.

(5) The department must deny a nonexpiring full license to a licensee operating under an initial license who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0350 ~~((When will the department issue a))~~ **Nonexpiring full license ((to me?))**, (1) ~~((We may issue a full license to you when you can demonstrate compliance with all rules contained in this chapter at any time that you have an initial license.~~

~~((2) We must not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in this chapter during the period you have an initial license.))~~ To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

(a) An annual nonrefundable licensing fee;

(b) A declaration to the department on a department-approved form indicating:

(i) The intent to continue operating a licensed child care program; or

(ii) The intent to cease operation on a date certain;

(c) A declaration on a department-approved form of compliance with all licensing rules; and

(d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(4) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(5) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0410 ~~((What happens if I fail))~~ **Failure to pay ((the)) a fine((?))**, If ~~((you))~~ a licensee fails to pay a fine within ten days after the fine assessment becomes final,

~~((we))~~ the department may suspend, revoke or not ~~((renew you))~~ continue a license.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0440 ~~((When would the department issue a))~~ **Probationary ((license?)) licenses**, (1) ~~((We))~~ The department may, but ~~((are))~~ is not required to, issue a probationary license to a licensee in accordance with the process provided in RCW 43.215.290 as part of a corrective action plan with a licensed provider. In addition to issuing ~~((you))~~ the licensee a probationary license, ~~((we))~~ the department may also assess civil penalties or other sanctions.

(2) ~~((We))~~ The department must base our decision about whether to issue a probationary license on the following:

(a) Intentional or negligent noncompliance with the licensing rules;

(b) A history of noncompliance with the rules;

(c) Current noncompliance with the rules; and

(d) Any other factors relevant to the specific situation.

(3) When ~~((we))~~ the department issues ~~((you))~~ a licensee a probationary license ~~((you))~~, the licensee must give notification of ~~((you))~~ his or her probationary license status to:

(a) The parents or guardians of all children in ~~((you))~~ the licensee's care, within five working days of receiving notification from ~~((us))~~ the department; and

(b) New applicants for child care, before enrolling new children.

(4) The notification must be in writing and must be approved by ~~((us))~~ the department prior to being sent.

(5) Within ten working days of receiving notification of the probationary license, ~~((you))~~ the licensee must provide documentation to ~~((us))~~ the department that parents or guardians of all children in ~~((you))~~ the licensee's care have been notified.

(6) ~~((We))~~ The department may issue a probationary license for up to six months ~~((We))~~, and at the department's discretion, may extend the probationary license for an additional six months.

(7) ~~((You))~~ The licensee must return ~~((you))~~ his or her nonexpiring full license to ~~((us))~~ the department.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0540 ~~((What items am I required to post and where do I post them?))~~ **Materials that must be posted**, ~~((You))~~ Licensees are required to post these items in the licensed space of your family home child care where the public can easily view them:

(1) The home's child care license issued under this chapter;

(2) Evacuation plans and procedures, that include a written record of the required monthly fire drills and smoke detector checks;

(3) Emergency telephone numbers;

(4) Any civil penalty imposed; and

(5) ~~((You must post))~~ A notification advising parents that ~~((you are))~~ the licensee is required to keep ~~((the following licensing information available))~~ a file on-site for their review((:

~~(a) Copies of the most recent family home child care checklist for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

~~(b)) containing copies of the most recent family home child care monitoring checklist and facility licensing compliance agreement for any deficiencies noted.~~

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0860 ((What must I do to prevent)) Preventing the spread of infections and communicable diseases((?)). (1) You must take precautions to guard against infections and communicable diseases.

(2) ~~((You, your))~~ A licensee, the licensee's staff, and volunteers with a reportable communicable disease in an infectious stage, as defined by the department of health, must not be on duty until ((you, your)) the licensee, the licensee's staff, and volunteers have approval from the local health department for returning to work.

(3) Applicants for a license, staff, volunteers and persons sixteen years and older authorized to have access to children in a family home child care must have a tuberculin (TB) skin test by the Mantoux method of testing. They must have this skin test upon being employed or licensed unless the person has evidence:

(a) Of negative testing within the previous twelve months;

(b) That they have a negative chest X ray since previously having a positive skin test; or

(c) Of having completed adequate preventive therapy or adequate therapy for active tuberculosis.

(4) The department does not require a tuberculin skin test if a physician indicates that the test is medically inadvisable.

(5) Persons whose tuberculosis skin test is positive must have a chest X ray within thirty days following the skin test.

(6) The department does not require retesting at the time of license ~~((renewal))~~ continuation, unless the licensee or staff person believes they have been exposed to someone with tuberculosis or if their health care provider recommends testing.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 170-296-0260 Do I need to renew my license?

WSR 11-19-067
RESCISSION OF EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed September 15, 2011, 2:37 p.m.]

Effective immediately upon this filing, the department of early learning rescinds emergency rules filed on June 20, 2011, as WSR 11-15-091, revising rules in chapters 170-151,

170-295, and 170-296 WAC to implement 2011 SB 5625. The department has filed subsequent emergency rules on this date to replace and supersede the rules filed as WSR 11-15-091.

Elizabeth M. Hyde
Director

WSR 11-19-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-245—Filed September 15, 2011, 3:23 p.m., effective September 19, 2011, 6:00 a.m.]

Effective Date of Rule: September 19, 2011, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Sets the fifth weekly commercial gillnet fishing period for the 2011 fall season. Continues to allow the sale of platform and hook-and-line-caught fish from mainstem tribal fisheries (above and below Bonneville Dam), and fish caught in Yakama Nation tributary fisheries. Based on in-season forecasts, adult fall chinook and steelhead are available for treaty Indian harvest. Fisheries are expected to remain within the impact limits set for ESA-listed salmonids. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 10 and September 15, 2011. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate

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

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

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

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

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

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

Date Adopted: September 15, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-051001 Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm

Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

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

a. Season: 6:00 AM September 19 through 6:00 PM September 23, 2011.

b. Gear: Gill nets only. Minimum mesh size is 8 inches.

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

d. Standard sanctuaries in effect.

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

a. Season: Immediately until further notice.

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

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

d. Standard sanctuaries in effect.

3. Open Area: Columbia River Tributaries above 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 the Wind, White Salmon, and Klickitat rivers.

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

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

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

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

e. Season: Immediately until further notice.

f. Gear: Hook and line, or as defined by each tribe's MOU or MOA.

g. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-

line-caught fish is allowed. Sales may not occur on USACE property.

4. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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 effective 6:00 a.m. September 19, 2011:

WAC 220-32-05100H Columbia River salmon seasons above Bonneville Dam. (11-232)

WSR 11-19-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-242—Filed September 15, 2011, 3:49 p.m., effective September 15, 2011, 3:49 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Washington department of fish and wildlife permitted gear recovery is allowed by permanent regulation fifteen days following the close of the commercial season to allow fish and wildlife officers time to enforce rules relative to fishing during the closed season. An earlier start to the permitted gear recovery gives participants more time to recover lost gear before weather conditions become prohibitive to safe gear recovery efforts. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 15, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04000E Coastal crab fishery—Coastal crab gear recovery permit. Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, five days after the close of the primary commercial crab season, a coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean.

WSR 11-19-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-246—Filed September 15, 2011, 4:18 p.m., effective September 15, 2011, 4:18 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sufficient numbers of harvestable white sturgeon remain on the guideline for the Columbia River above the Wauna power lines, providing for additional opportunity for white sturgeon retention in this area. This rule modifies the sturgeon retention season by allowing sturgeon retention an additional three days in the Columbia River and tributaries above the Wauna power lines. This rule is consistent with decisions of the Columbia River joint state hearing of September 15, 2011. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 15, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900J Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619, effective October 1 through December 31, 2011, it is unlawful to retain white sturgeon caught in those waters of the Columbia River and all adjacent Washington tributaries from the Wauna powerlines upstream to Bonneville Dam, except that a person may retain white sturgeon on Thursdays, Fridays and Saturdays.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900D Exceptions to statewide rules—Columbia River sturgeon. (11-164)

**WSR 11-19-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-243—Filed September 16, 2011, 2:54 p.m., effective September 19, 2011]

Effective Date of Rule: September 19, 2011.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100L; and amending WAC 220-47-311.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Two vessels have been selected for the limited participation salmon net fisheries in

Salmon Management and Catch Reporting Area 8A. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 16, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-31100L Puget Sound purse seine fishery. Notwithstanding the provisions of WAC 220-47-311 it is permissible for the vessels "Cape Flattery" and "Sea Pride" to participate in the Purse seine fishery in Puget Sound Salmon Management and Catch Reporting Area 8A on September 19 and September 26, 2011.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. September 26, 2011:

WAC 220-47-31100L Puget Sound purse seine fishery.

**WSR 11-19-078
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-247—Filed September 16, 2011, 2:55 p.m., effective September 17, 2011]

Effective Date of Rule: September 17, 2011.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation change opens to angling an additional section of the Washougal River downstream of the new weir which is holding a large number of hatchery fish. Significant additional harvest is expected to reduce the number of hatchery fall chinook being trapped and surplussed at the weir. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 16, 2011.

Joe Stohr
for Philip Anderson
Director

Reasons for this Finding: The Fraser River Panel has relinquished control of Puget Sound Salmon Management and Catch Reporting Area 7. Surplus hatchery coho salmon are available for harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 20, 2011.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Washougal River. Notwithstanding the provisions of WAC 232-28-619, effective September 17, 2011, until further notice, closed waters: 200 feet below the Washougal adult fish weir.

**WSR 11-19-095
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-248—Filed September 20, 2011, 1:51 p.m., effective September 20, 2011, 1:51 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-40100G; and amending WAC 220-47-401.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

NEW SECTION

WAC 220-47-40100G Reef net—Open periods. (1) Notwithstanding the provisions of WAC 220-47-401, it is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes from Puget Sound Salmon Management and Catch Reporting Area 7, except from September 25 through October 1, 2011, from 5:00 a.m. to 9:00 p.m. each day.

(2) It is unlawful to retain unmarked Chinook, unmarked coho, sockeye, and pink salmon. It is unlawful to retain chum prior to October 1, 2011. It is unlawful to retain marked Chinook after September 30, 2011.

(3) Marked Chinook may only be retained if the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook.

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

REPEALER

The following section of the Washington Administrative Code is repealed, effective October 2, 2011:

WAC 220-47-40100G Reef net—Open periods.

**WSR 11-19-099
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed September 20, 2011, 3:57 p.m., effective September 20, 2011, 3:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: To ensure that expenditures do not exceed funds appropriated under the 2011-2013 operating budget, 2ESHB 1087, signed by Governor Gregoire on June 15, 2011. The department is proposing to amend by emergency adoption WAC 388-478-0030 in order to decrease the grant payment standards to disability lifeline (DL) and ADATSA recipients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0030.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090, 74.04.005, and 74.04.770.

Other Authority: 2ESHB 1087.

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

Reasons for this Finding: The department needs to reduce DL grant payment standards for October 2011 because of greater-than-anticipated benefit expenditures, less-than-anticipated SSI recoveries, and other costs associated with program administration, expenditures are anticipated to exceed funds appropriated for the DL program under 2ESHB 1087 by approximately \$5 million during the month of October 2011. The department cannot pursue reductions under the regular rule-making process because the DL program will end October 31, 2011, per ESHB 2082. Therefore, the department must immediately reduce the monthly grant standard by approximately twenty-six percent to stay within the appropriated funds. The changes under this emergency rule filing will address the anticipated shortfall by reducing program expenditures by approximately \$2.2 million.

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

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

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

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

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

Date Adopted: September 20, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-24-070, filed 11/30/10, effective 1/1/11)

WAC 388-478-0030 Payment standards for disability lifeline and ADATSA. (1) The payment standards for disability lifeline (DL) and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard
1	\$((266)) <u>197</u>
2	((336)) <u>248</u>

(2) The payment standards for DL and ADATSA assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	\$((162)) <u>120</u>
2	((206)) <u>152</u>