

WSR 13-02-062
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 27, 2012, 1:55 p.m., effective December 28, 2012]

Effective Date of Rule: December 28, 2012.

Purpose: To amend and add new sections to chapter 388-845 WAC, DDD home and community based services waivers, to be in compliance with the requirements of SSB 6384 and related federal waivers recently renewed through Centers for Medicare and Medicaid Services (CMS). These changes add dental services as a waiver service and align this chapter with the changes being made to those in chapter 388-828 WAC for community services. This emergency filing supersedes and replaces the previous emergency filed as WSR 12-18-055.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0110, 388-845-0205, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0505, 388-845-0800, 388-845-0820, 388-845-1110, 388-845-1105, 388-845-1150, 388-845-1400, 388-845-1410, 388-845-2110, 388-845-2205, and 388-845-2210.

Statutory Authority for Adoption: RCW 71A.12.030 General authority of secretary—Rule adoption and 34.05.350 (1)(c) Emergency rules and amendments.

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

Reasons for this Finding: The passing of SSB 6384 required coordination with CMS to agree on waiver language before we could develop new WAC language. This emergency filing adds dental as a waiver service, keeping in effect language adopted under emergency filed as WSR 12-18-055. The division of developmental disabilities is required to develop and implement the use of a consistent, statewide outcome-based vendor contract for employment and day services as recommended by the joint legislative audit and review committee to include activity listings and dollars appropriated for: Employment services, day services, child development services and county administration of services to the developmentally disabled.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 17, 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 2, Amended 17, Repealed 0.

Date Adopted: December 19, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0110 Are there limitations to the waiver services I can receive? There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care or individual support plan.

(2) Mental health stabilization services may be added to your plan of care or individual support plan after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services (~~or employment/day program services~~).

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your health and welfare needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

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

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	<p>AGGREGATE SERVICES:</p> <p>Behavior management and consultation</p> <p>Community guide</p> <p>Environmental accessibility adaptations</p> <p>Occupational therapy</p> <p>Physical therapy</p> <p>Specialized medical equipment/supplies</p> <p>Specialized psychiatric services</p> <p>Speech, hearing and language services</p> <p>Staff/family consultation and training</p> <p>Transportation</p>	<p>May not exceed \$1454 per year on any combination of these services</p>
	<p>EMPLOYMENT((DAY))</p> <p>PROGRAM SERVICES:</p> <p>(Community access)</p> <p>Person-to-person</p> <p>Prevocational services</p> <p>Supported employment</p>	<p>(May not exceed \$6804 per year)</p> <p>Limits are determined by DDD assessment and employment status</p>
	<p><u>DAY PROGRAM SERVICES:</u></p> <p><u>Community access</u></p>	<p>Limits are determined by DDD assessment</p>
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by the DDD assessment
	Personal care	Limits are determined by the CARE tool used as part of the DDD assessment

BASIC WAIVER	SERVICES	YEARLY LIMIT
	<p>MENTAL HEALTH STABILIZATION SERVICES:</p> <p>Behavior management and consultation</p> <p>Mental health crisis diversion bed services</p> <p>Skilled nursing</p> <p>Specialized psychiatric services</p>	<p>Limits are determined by a mental health professional or DDD</p>
	<p>Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic waiver</p>	<p>\$6000 per year; Preauthorization required</p>

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

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	<p>AGGREGATE SERVICES:</p> <p>Behavior management and consultation</p> <p>Community guide</p> <p>Environmental accessibility adaptations</p> <p>Occupational therapy</p> <p>Physical therapy</p> <p>Skilled nursing</p> <p>Specialized medical equipment/supplies</p> <p>Specialized psychiatric services</p> <p>Speech, hearing and language services</p> <p>Staff/family consultation and training</p> <p>Transportation</p>	<p>May not exceed \$6192 per year on any combination of these services</p>
	<p>EMPLOYMENT((DAY))</p> <p>PROGRAM SERVICES:</p>	<p>(May not exceed \$9944 per year)</p>

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	((Community access Person to person)) Prevocational services Supported employment <u>Individual technical assistance</u>	((This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need)) <u>Limits are determined by DDD assessment and employment status</u>
	<u>DAY PROGRAM SERVICES:</u> <u>Community Access</u> Adult foster care (adult family home) Adult residential care (boarding home)	<u>Limits are determined by DDD assessment</u> Determined per department rate structure
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE tool used as part of the DDD assessment
	Respite care	Limits are determined by the DDD assessment
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance is only for aggregate services (and/or employment/day program services) contained in the Basic Plus waiver <u>Adult dental services</u>	\$6000 per year; Preauthorization required <u>Limits are determined by Chapter 182-535 WAC</u>

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0215 CORE waiver services.

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community guide Community transition Environmental accessibility adaptations Occupational therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the plan of care or individual support plan, not to exceed the average cost of an ICF/MR for any combination of services
	Residential habilitation	<u>Limits are determined by assessment</u> <u>Limits are determined by DDD assessment and employment status</u>
	<u>Day program services</u> Community access ((Person to person)) <u>Employment program services</u> Prevocational services Supported employment <u>Individualized technical assistance</u>	
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

CORE WAIVER	SERVICES	YEARLY LIMIT
	Personal care	Limits determined by the CARE tool used as part of the DDD assessment
	Respite care	Limits are determined by the DDD assessment
	<u>Adult dental services</u>	<u>Limits are determined by chapter 182-535 WAC</u>

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0220 Community protection waiver services.

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy	Determined by the plan of care or individual support plan, not to exceed the average cost of an ICF/MR for any combination of services
	Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	
	Residential habilitation	
	((Person to person)) <u>Employment Program Services:</u>	<u>Limits determined by DDD assessment and employment status</u>
	Prevocational services	

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Supported employment <u>Individual technical assistance</u>	
	<u>Adult dental services</u>	<u>Limits are determined by chapter 182-535 WAC</u>
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services.

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> • Behavior management and consultation • Staff/family consultation and training • Environmental accessibility adaptations • Occupational therapy • Physical therapy • Sexual deviancy evaluation • Nurse delegation • Specialized medical equipment/supplies • Specialized psychiatric services • Speech, hearing and language services • Transportation • Assistive technology • Therapeutic equipment and supplies • Specialized nutrition and clothing • Vehicle modifications 	Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.

CIIBS Waiver	Services	Yearly Limit
	Personal care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Respite care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	<u>Behavioral health stabilization services:</u> <u>Behavioral support and consultation</u> <u>Crisis diversion bed services</u> <u>Specialized psychiatric services</u>	<u>Limits determined by mental health specialist</u>

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0505 Who is a qualified provider of behavior ((management)) support and consultation? Under the Basic, Basic Plus, Core, and Community Protection waivers, the provider of behavior ((management)) support and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; ((or))
- (11) Polygrapher; or
- (12) State operated behavior support agency limited to behavioral health stabilization services.

NEW SECTION

WAC 388-845-0780 What is adult dental services? Adult dental services are provided to individuals age twenty-one years and older. Dental services provide comprehensive dental coverage as defined in chapter 182-535 WAC. Adult dental service coverage is limited to individuals on the Basic Plus, Core and Community Protection waivers.

NEW SECTION

WAC 388-845-0785 Who are qualified providers of adult dental services? Providers for adult dental services covered under the waiver program must have a current state license and have core provider agreement with the state medicaid agency.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0800 What is emergency assistance? Emergency assistance is a temporary increase to the yearly aggregate services and ~~((or employment/day program services))~~ dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0820 Are there limits to my use of emergency assistance? All of the following limitations apply to your use of emergency assistance:

- (1) Prior approval by the DDD regional administrator or designee is required based on a reassessment of your plan of care or individual support plan to determine the need for emergency services;
- (2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care or individual support plan;
- (3) Emergency assistance services are limited to the aggregate services ~~((and employment/day program services))~~ in the Basic and Basic Plus waivers;
- (4) Emergency assistance may be used for interim services until:
 - (a) The emergency situation has been resolved; or
 - (b) You are transferred to alternative supports that meet your assessed needs; or
 - (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services? Providers of mental health crisis diversion bed services must be:

- (1) DDD certified residential agencies per chapter 388-101 WAC; ((or))

- (2) Other department licensed or certified agencies; or
 (3) State operated agency.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1110 What are the limits of mental health crisis diversion bed services? (1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in the Basic, CIIBS, Basic Plus, Core, and Community Protection waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1150 What are mental health stabilization services? Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in the Basic, Basic Plus, Core, CIIBS and Community Protection waivers to ~~((adults))~~ individuals determined by mental health professionals or DDD to be at risk of institutionalization in a psychiatric hospital without one of more of the following services:

- (1) Behavior management and consultation;
- (2) Specialized psychiatric services; or
- (3) Mental health crisis diversion bed services.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1400 What are prevocational services? (1) Prevocational services occur in a specialized or segregated settings and include monthly employment related activities in the community. Prevocational services are designed to prepare you for gainful employment in an integrated setting through training and skill development.

(2) Prevocational services are available in the Basic, Basic Plus, Core and Community Protection waivers.

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

WAC 388-845-1410 Are there limits to the prevocational services I can receive? The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

(2) New referrals for prevocational services require prior approval by the DDD regional administrator and county coordinator or their designees.

(3) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual vocational assessment will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

- (a) Compensation at more than fifty percent of the prevailing wage;
- (b) Significant progress made toward your defined goals;
- (c) Your expressed interest in competitive employment; and/or
- (d) Recommendation by your individual support plan team.

(4) You will not be authorized to receive prevocational services in addition to community access services or supported employment services.

~~(5) ((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.~~

~~(6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9235.

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

WAC 388-845-2110 Are there limits to the supported employment services I can receive? The following limitations apply to your receipt of supported employment services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive supported employment services.

(2) Payment will be made only for the employment support you require as a result of your disabilities.

(3) Payment for individual supported employment excludes the supervisory activities rendered as a normal part of the business setting.

(4) You will not be authorized to receive supported employment services in addition to community access or prevocational services.

~~(5) ((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.~~

~~(6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9235 and might not equal the number of hours you spend on the job or in job related activities.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2205 Who is qualified to provide transportation services? (1) The provider of transportation services can be an individual or agency contracted with DDD.

(2) For adult dental services only, provider can be contracted as a transportation broker through medicaid.

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

WAC 388-845-2210 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive unless provided by a contracted transportation broker to access adult dental services.

(11) Transportation services require prior approval by the DDD regional administrator or designee, unless provided by transportation broker for adult dental services.

(12) If your individual personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to sixty miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of sixty miles per month. This cost is not counted toward the dollar limitation for aggregate services in the Basic or Basic Plus waiver.

WSR 13-03-003

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed January 2, 2013, 1:03 p.m., effective January 2, 2013, 1:03 p.m.]

Effective Date of Rule: Immediately.

Purpose: In response to a court-approved settlement agreement, the agency is adopting WAC 182-531-1400 concerning coverage for applied behavioral analysis (ABA) services for children with autism spectrum disorders. The new rules address prior authorization for services, evaluating and prescribing provider requirements, ABA provider requirements, and payment.

Statutory Authority for Adoption: RCW 41.05.021.

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 agency has been working with stakeholders and experts in autism spectrum disorders to craft rules to ensure public health and safety; however, the agency must file an emergency WAC for the short term to meet the agreed upon January 2, 2013, deadline.

The agency is proceeding with the permanent rule adoption process initiated by the CR-101 filed under WSR 12-14-100. The agency anticipates filing the CR-102 sometime in March 2013.

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

Date Adopted: January 2, 2013.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-531-1410 Applied behavior analysis (ABA). (1) Applied behavior analysis (ABA) assists children with autism spectrum disorders and their families to improve the core symptoms associated with autism spectrum disorders.

(2) The agency pays for ABA services when the services:

(a) Are covered;

(b) Are medically necessary;

(c) Are within the scope of the eligible client's medical care program;

(d) Are within currently accepted standards of evidence-based medical practice;

(e) Do not replicate ABA services being rendered in other settings;

(f) Are authorized, as required within this section, chapters 182-501 and 182-502 WAC, and the agency's applicable, published medicaid provider guides; and

(g) Are billed according to this section, chapters 182-501 and 182-502 WAC, and the agency's applicable, published medicaid provider guides.

(3) **Definitions.** The following definitions and those found in chapter 182-500 WAC, medical assistance definitions, and this chapter, physician-related services, apply to this section.

ABA treatment plan - An individualized, goal-directed treatment plan developed by a lead behavior analysis therapist meeting the criteria in subsection (15)(a)(i)(A) of this section.

Applied behavior analysis or ABA - Applied behavior analysis (ABA) involves the systematic application of scientifically validated principles of human behavior to change socially significant behaviors. Behavior analysis uses scientific methodology to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods include: Behavioral assessment consisting of caregiver interviews, direct observation, and collection of data on targeted behaviors; use of single-case design to demonstrate the relationship between the environment and behavior as a means to promote lasting change; and implementation of client-specific plans and goals. ABA is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA also includes the implementation of functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behavior.

Autism - A diagnosis along the autism spectrum disorder as defined by the most current DSM criteria and made by a licensed health care professional who is associated with an agency-recognized center of excellence (COE).

Autism diagnostic tool - A tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and the development of a treatment plan. Examples of autism diagnostic tools include:

- (a) Autism diagnosis interview (ADI); and
- (b) Autism diagnostic observation schedule (ADOS).

Autism screening tool - A tool used to detect indicators or risk factors for autism and may indicate a suspicion of the condition which would then require confirmation. Examples of screening tools include:

- (a) Ages and stages questionnaire (ASQ);
- (b) Communication and symbolic behavior scales (CSBS);
- (c) Parent's evaluation and developmental status (PEDS);
- (d) Modified checklist for autism in toddlers (MCHAT); and
- (e) Screening tools for autism in toddlers and young children (STAT).

Centers of excellence or COE - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

Comprehensive evaluation diagnostic assessment - An evaluation and assessment meeting the criteria in subsection (8) of this section.

Day services program - An agency approved, structured, nonresidential, facility-based group program designed to meet the needs of enrolled children with autism and devel-

opmental disabilities through individualized plans of care. The program is comprehensive, providing a variety of health, social, therapeutic activities (occupational, speech, and physical therapy), supervision, support, and in some cases personal care. These services support learning and assistance in any of the following areas: Self-care, receptive and expressive language, learning, mobility, and self-direction.

Diagnostic and statistical manual of mental disorders (DSM)" - A manual published by the American Psychiatric Association that provides a common language and standard criteria for the classification of mental disorders.

Lead behavior analysis therapist or LBAT - A person meeting the qualifications for lead behavior analysis therapist (LBAT) as described in subsection (15)(a) of this section and having sufficient competency to complete an individualized ABA treatment plan and oversee its implementation.

Therapy assistant - A person meeting the qualifications for therapy assistants as described in subsection (15)(a)(ii)(A) of this section and having sufficient competence to perform the tasks of a therapy assistant as described in subsection (15)(a)(ii)(B) of this section.

(4) The agency covers ABA services when the following requirements are met:

(a) Client eligibility, as described in subsection (5) of this section;

(b) Completion of stages, as described in subsections (7) through (13) of this section; and

(c) Provider requirements, as described in subsections (14) and (15) of this section.

(5) **Eligibility.** To be eligible for ABA services, clients must meet all of the following:

(a) Program eligibility:

(i) Be twenty years of age and younger;

(ii) Be covered under one of the following agency programs:

(A) Children's health care programs as defined in WAC 182-505-0210, Apple health for kids and other children's medical assistance programs;

(B) Categorically needy program (CNP); or

(C) Medically needy program (MNP); and

(iii) Be younger than eighteen years of age and younger and covered under the agency's medical care services as described in WAC 182-505-0210 (within Washington state or bordering city only, as described in WAC 182-501-0175).

(b) Clinical eligibility:

(i) The client may be screened using a valid autism screening tool;

(ii) The client's health care record contains documentation by a clinician which may incorporate family member observations, establishing the presence of any of the core symptoms of autism: Functional impairment; delay in communication, behavior, and/or social interaction; or repetitive or stereotyped behavior;

(iii) There is documentation by a clinician which may incorporate family member observations, that the client's behaviors are having an adverse impact on either development or communication, or both, such that:

(A) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit(s) interferes with these activities; or

(B) The child exhibits behavior in the nature of self-injury, aggression towards others, destruction of property, stereotyped/repetitive behaviors, elopement, or severe disruptive behavior, where the behavior may be construed that the physical health or safety of the person or others may be placed in serious jeopardy; and

(iv) The agency's recognized center of excellence (COE) has confirmed:

(A) The client has a diagnosis on the autism spectrum disorder, as defined by the most current DSM version;

(B) Either of the following:

(I) That less intrusive or less intensive behavioral interventions have been tried and have not been successful; or

(II) There is no equally effective and substantially less costly alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors; and

(C) There is a reasonable expectation that the requested services will result in measurable improvement in either the client's behavior, skills, or both.

(6) The following stages must be completed:

(a) Stage one - Referral to a COE for evaluation, treatment plan, and order/prescription;

(b) Stage two - ABA assessment and treatment plan; and

(c) Stage three - Delivery of ABA services with agency's authorization.

Stage one - Referral to a COE for evaluation and order

(7) A client who may meet the eligibility criteria in subsection (5) of this section may be referred to a COE for an evaluation and treatment plan by:

(a) The primary care provider or other licensed health care practitioner including, but not limited to, a speech therapist or occupational therapist;

(b) A school-based health care professional as the result of an individual education plan (IEP);

(c) The client's parent or guardian; or

(d) As required by their managed care plan coverage, if indicated.

(8) The COE must provide a comprehensive evaluation and treatment plan that includes:

(a) Routine developmental surveillance performed by providers at well child visits, as available;

(b) Audiology and vision assessment results, as available, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism screening questionnaire, including date completed and significant results, as available;

(d) Documentation of how diagnosis was confirmed by COE physician or psychologist:

(i) Results of formal diagnostic procedures performed by an experienced clinician, including name of measure, dates, and results, as available; or

(ii) Clinical findings and observations used to confirm diagnosis;

(e) Documentation of a formal cognitive and/or developmental assessment performed by a qualified clinician, includ-

ing name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores, as available. Examples of these assessment tools are:

(i) Mullen;

(ii) Weschler; or

(iii) Bayley;

(f) Documentation of a formal adaptive behavior assessment performed by a qualified clinician, including name of measure, dates, results, and standardized scores providing scores of each domain, as available. Examples of these assessment tools are:

(i) Vineland adaptive behavior scales; or

(ii) Adaptive behavior assessment system (ABAS);

(g) Documentation that the client's behaviors are having an adverse impact on development or communication, or demonstrating injurious behavior, such that:

(i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit(s) interferes with these activities; or

(ii) The client presents a safety risk to self or others;

(h) Expanded laboratory evaluation, if indicated;

(i) Documentation that:

(i) Less intrusive or less intensive behavioral interventions have been tried and not been successful; or

(ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors, if ABA is included in the plan;

(j) A multidisciplinary individualized treatment plan (ITP) with recommendations that consider the full range of autism treatments with ABA as a treatment component, if clinically indicated;

(k) A statement that the evaluating and prescribing provider expects that the requested ABA services will result in measurable improvement in the client's behavior or skills; and

(l) An order/prescription for ABA services. If ordered/prescribed, a copy of the comprehensive evaluation and treatment plan must be forwarded to the family selected ABA provider in subsection (15) of this section or provided to the parent to forward to the selected ABA provider.

Stage two - ABA assessment and plan development

(9) If the COE's evaluating and prescribing provider orders ABA services, the client may begin stage two - ABA assessment and treatment plan development.

(10) ABA services are rendered in one of the following settings. Prior authorization is required by the agency prior to providing any direct care services:

(a) Day services program - Available to children two to five years of age. This is an agency-approved, outpatient facility or clinic-based program that:

(i) Provides multidisciplinary services in a short-term day treatment program setting;

(ii) Delivers comprehensive intensive services;

(iii) Embeds early, intensive behavioral interventions in developmentally appropriate context;

(iv) Provides individualized treatment;

(v) Includes family support and training; and

(vi) Includes multidisciplinary team members as clinically indicated to include an applied behavioral therapist, occupational therapist, speech therapist, physical therapist, psychologist, and dietitians.

(b) Home, office, and community-based program (i.e., natural setting) - Available to all clients twenty years of age and younger. This is a program that:

(i) May be used after discharge from a day services program (see (a) of this subsection);

(ii) Provides an individualized, developmentally appropriate ABA treatment plan developed for each child;

(iii) Provides ABA services in the home, office, or community setting, as required to accomplish the treatment plan. Examples of community-based services are: The park, restaurant, or school and must be included in the ABA treatment plan with services being provided by the medicaid-enrolled LBAT or therapy assistant approved to provide services via authorization;

(iv) Requires recertification of medical necessity through continued authorization; and

(v) Includes family support and training.

(11) After the client and family select the setting in which to receive services, a functional assessment must be conducted and an individualized ABA treatment plan developed by an LBAT in the chosen setting. The ABA treatment plan must follow the agency's ABA treatment plan report template and:

(a) Be signed by the LBAT responsible for the plan development and oversight;

(b) Be time-limited (e.g., three months) and based on the comprehensive evaluation (see subsection (8) of this section) that took place no more than twelve months before the functional assessment;

(c) Address the behaviors, skill deficit(s), and symptoms that prevent the client from adequately participating in home, school, community activities, or present a safety risk to self or others;

(d) Be specific and individualized to the client;

(e) Be multidisciplinary in nature, client-centered, family-focused, community based, culturally competent and minimally intrusive;

(f) Take into account all school or other community resources available to the client, provide evidence that the requested services are not redundant to other services already being provided or otherwise available, and coordinate therapies (e.g., from school and special education) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);

(g) Focus on family engagement and training;

(h) Identify and describe in detail the targeted behaviors and symptoms;

(i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;

(j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms,

including documentation of the number of service hours, in terms of frequency and duration for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in a three- to six-month treatment period;

(l) Incorporate strategies for generalized learning skills;

(m) Integrate family education, goals, training, and support services;

(n) Incorporate strategies for coordinating treatment with school-based special education programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

Stage three - Delivery of ABA services

(12) The agency requires prior authorization of ABA services prior to delivery. The LBAT must submit the comprehensive evaluation and treatment plan from the COE described in subsection (8) of this section and the ABA treatment plan described in subsection (11) of this section to the agency as described in WAC 182-501-0163 and other documents required as described in the agency's medicaid provider guides.

(13) After the individual ABA treatment plan is developed by an LBAT, the ABA treatment plan is implemented by the LBAT or a therapy assistant. If services are rendered via a therapy assistant, the therapy assistant must:

(a) Assess the client's response to techniques and report that response to the LBAT;

(b) Provide direct on-site services in the client's natural setting found in the home, office, or community;

(c) Be supervised by a licensed behavior analysis therapist for a minimum of five percent of total direct care per week (e.g., one hour per twenty hours of care);

(d) Consult with the LBAT when considering modification to technique, when barriers and challenges occur that prohibit implementation of plan, and as otherwise clinically indicated;

(e) Assure family involvement and training to support generalization and maintenance of achieved behaviors;

(f) Keep documentation of daily visits with the client and family to include targeted behavior, interventions, response, modifications in techniques, and plan for next visit along with behavior tracking sheets that record and graph data collected for each visit; and

(g) Keep documentation of parent or guardian's confirmation that visit occurred recording signature and date.

Provider requirements

(14) **Stage one.** The COE's evaluating and prescribing providers must function as a multidisciplinary team whether facility-based or practitioner-based.

(a) The qualifications for a center of excellence are:

(i) The entity or individual employs:

(A) A person or persons licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and has a specialty in one of the following:

(I) Neurology;

- (II) Pediatric neurology;
- (III) Developmental pediatrics;
- (IV) Psychology;
- (V) Pediatric psychiatry; or
- (VI) Psychiatry; and

(B) A licensed midlevel practitioner (i.e., advanced registered nurse practitioner (ARNP) or physician assistant (PA)) who works under the tutelage of one of the specialists in (a)(i)(A) of this subsection and meets the qualifications in (a)(ii) of this subsection;

(ii) The entity or individual has been prequalified by the medicaid agency as meeting or employing persons meeting the following criteria:

(A) For physicians or psychologists only, have sufficient expertise to diagnose or confirm the diagnosis of autism spectrum disorder using a validated diagnostic tool or through observation of client's behavior, review of documentation available from client's primary care provider, child's individualized education plan (IEP), and interview of family members;

(B) Have sufficient experience in or knowledge of the medically necessary use of ABA; and

(C) Are sufficiently qualified to conduct and document both a comprehensive evaluation diagnostic assessment, and a treatment plan as described in subsection (12)(d) of this section; and

(iii) The entity or individual has a core provider agreement (CPA) with the agency or is a performing provider on an approved CPA with the agency.

(b) Examples of providers who can qualify and be paid for these services as a designated COE are:

- (i) Multidisciplinary clinics;
- (ii) Individual physician offices; and
- (iii) Neurodevelopment centers.

(15) **Stages two and three.** Regardless of the service delivery option, ABA providers must meet the specified minimum qualifications and comply with applicable state laws:

(a) LBAT.

(i) Requirements.

(A) The LBAT must be:

(I) Able to practice independently by being licensed by the department of health (DOH) as a physician, psychologist, or mental health professional under Title 18 RCW in good standing with no license restrictions;

(II) Employed by or contracted with an agency that is enrolled as a participating provider and licensed under DOH as a hospital, a mental health facility, a home health agency, or an in-home agency with certification by DOH to provide ABA services, and be able to practice independently by being licensed by DOH as a physician, psychologist, mental health professional, or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

(III) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in WAC 388-865-0469 (5)(a);

(B) The LBAT must:

(I) Enroll as a performing/servicing provider and be authorized to supervise ancillary providers; and

(II) Provide proof of board certification as an applied behavior analyst; or

(III) Have two hundred forty hours of course work related to behavior analysis and seven hundred fifty hours of supervised experience, or two years of practical experience in designing and implementing comprehensive ABA treatment plans.

(ii) Role. The LBAT must:

(A) Develop and maintain a comprehensive ABA treatment plan; and

(B) Supervise a minimum of five percent of the total direct care provided by the therapist assistant per week (e.g., one hour per twenty hours of care).

(b) Therapist assistant.

(i) Requirements.

(A) Therapy assistants must be:

(I) Able to practice independently by being licensed by DOH as a mental health professional or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions;

(II) Employed by or contracted with an agency that is enrolled as a participating provider and licensed under DOH as a hospital, a mental health facility, a home health agency, or an in-home agency with certification by DOH to provide ABA services, and be able to practice independently by being licensed by DOH as a mental health professional or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

(III) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in WAC 388-865-0469 (5)(a);

(B) The therapist assistant must:

(I) Have sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a child with core symptoms with autism;

(II) Have a written letter of attestation signed by the lead LBAT that the therapist assistant has demonstrated compliance in implementing ABA treatment plans and delivering ABA services prior to providing services to covered clients; and

(III) Enroll as a providing/servicing provider.

(C) Role. The therapist assistant must:

(I) Deliver services according to the ABA treatment plan;

(II) Be supervised by an LBAT who meets the requirements in (a)(i) of this subsection; and

(III) Obtain approval and review of the ABA treatment plan every two weeks and review progress with the LBAT.

(c) Licensure for facility-based day program setting. This applies to the model described in subsection (10)(a) of this section. Outpatient hospital facilities providing these services must meet the applicable DOH licensure requirements. Providers rendering direct ABA services must meet the applicable licensure or certification requirements as described in this subsection and meet the qualifications

described in this subsection, as applicable. Other providers serving as members of the multidisciplinary care team must be licensed under Title 18 RCW, as required.

(16) Prior authorization and recertification of ABA services.

(a) The agency requires prior authorization and recertification of the medical necessity of ABA services.

(b) Requirements for prior authorization requests are described in subsection (13) of this section.

(c) The following are requirements for recertification of ABA services:

(i) Continued ABA services require the agency's authorization. Authorization is granted in three-month increments, or longer at the agency's discretion;

(ii) The LBAT must request authorization of continuation of services three weeks prior to the expiration date of the current authorization. A reevaluation and revised ABA treatment plan which documents the client's progress showing measurable changes in the frequency, intensity, and duration of the targeted behavior/symptoms addressed in the previously authorized ABA treatment plan must be submitted with this request. Documentation must include:

- (A) Projection of eventual outcome;
- (B) Assessment instruments;
- (C) Developmental markers of readiness; and
- (D) Evidence of coordination with providers; and

(iii) In deciding whether to authorize continued ABA services, the agency may obtain the evaluating and prescribing COE provider's review and recommendation. This COE provider must review the ABA treatment date, conduct a face-to-face visit, facilitate a multidisciplinary record review of the client's progress, hold a parent conference, or request a second opinion before recommending continued ABA services.

(d) Basis for denial of services includes, but is not limited to, the following:

(i) Lack of medical necessity;

(ii) Failure to respond to ABA services, even after trying different ABA techniques and approaches, if applicable;

(iii) There are no meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family disruption, change of residence, etc.), if applicable. For changes to be meaningful they must be:

- (A) Confirmed through data;
- (B) Documented in charts and graphs;
- (C) Durable over time beyond the end of the actual treatment session; and

(D) Generalizable outside of the treatment setting to the client's residence and the larger community within which the client resides; and

(iv) Noncompliance (e.g., failure to keep appointments, failure for parents to attend all treatment sessions, failure for parents to attend scheduled parent training sessions, etc.), if applicable.

(17) Coverage.

(a) The agency covers only the following ABA services delivered in settings described in stage three, as noted in subsections (9) and (10) of this section, for eligible clients:

(i) The ABA assessments to determine the relationship between environmental events and behaviors;

(ii) The direct provision of ABA services by the therapy assistant or LBAT;

(iii) Development of a written, initial ABA treatment plan, limited to one per year;

(iv) Revision of the treatment plan to meet client's needs, limited to four per year;

(v) Supervision of the therapy assistant;

(vi) Training of family members, caregivers, or others to carry out the approved ABA treatment plans;

(vii) Observation of caregiver (or other plan implementer) and individual's behavior to assure correct implementation of the approved ABA treatment plan;

(viii) Observation of client's behavior to determine effectiveness of the approved ABA treatment plan; and

(ix) On-site assistance in a difficult or crisis situation.

(b) The agency covers the following services which may be provided in conjunction with ABA services under other agency programs:

- (i) Speech and language therapy;
- (ii) Occupational therapy;
- (iii) Physical therapy;
- (iv) Auditory and sensory therapy; and
- (v) Counseling.

(c) The agency does not authorize ABA services if the services are duplicative of services being rendered in another setting.

(d) The agency does not cover the following services including, but not limited to:

- (i) Dolphin therapy;
- (ii) Equine therapy;
- (iii) Hippo therapy;
- (iv) Language development training;
- (v) Primarily educational services;
- (vi) Recreational therapy;
- (vii) Respite care;
- (viii) Safety monitoring services;
- (ix) School-based services;
- (x) Social skills training;
- (xi) Vocational rehabilitation;
- (xii) Life coaching; and
- (xiii) Treatment that is unproven or investigational (e.g., holding therapy, Higashi (day life therapy), auditory integration therapy, etc.).

(18) Limits in amount or frequency of the covered services described in this section are subject to the provisions in WAC 182-501-0169, limitation extension.

WSR 13-03-007

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-01—Filed January 3, 2013, 8:46 a.m., effective January 4, 2013, 7:00 a.m.]

Effective Date of Rule: January 4, 2013, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000T, 220-52-04600D and 220-69-24000A; and amending WAC 220-52-040, 220-52-046, and 220-69-240.

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: Current pot limits were instituted in order to slow the early season landings and maintain a manageable supply to area buyers. The need to limit this flow has eased in some areas which allows for an increase in pots from fifty pots per license to seventy-five pots per license in Region 2 East. The same situation applies in Region 1 and Region 3-1 which will both increase from seventy-five pots per license to one hundred pots per license as a result of this regulation. This regulation continues the closure of Region 2 West where the Puget Sound state commercial fishery has reached its initial allocation. This regulation continues the closure of the Everett Flats portion of Region 2 East in order to protect soft shell crabs that occur at this time of year in this area. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes. There is insufficient time to adopt permanent regulations.

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 3, Amended 0, Repealed 3.

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

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

Date Adopted: January 3, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000V Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(2) Effective at 7:00 a.m., Friday, January 4, 2013, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management Region 2 East. This region includes Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26AE.

(3) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

NEW SECTION

WAC 220-52-04600F Puget Sound crab fishery— Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

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

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

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

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

(f) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(2) Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

(a) Crab Management Region 2 West. This region includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D and 26AW.

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

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

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

(3) Effective immediately, until further notice, the Everett Flats portion of Region 2 East will be closed. This area is defined as follows:

(a) That portion of catch area 26A east of a line from Howarth Park due north to the south end of Gedney Island, and that portion of 24B east of a line from the north end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point.

NEW SECTION

WAC 220-69-24000B Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective immediately, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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

REPEALER

The following sections of the Washington Administrative Code are repealed effective 7:00 a.m. January 4, 2013:

WAC 220-52-04000T	Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (12-282)
WAC 220-52-04600D	Puget Sound crab fishery— Seasons and areas. (12-282)
WAC 220-69-24000A	Duties of commercial purchasers and receivers. (12-223)

WSR 13-03-008 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-02—Filed January 3, 2013, 8:47 a.m., effective January 5, 2013]

Effective Date of Rule: January 5, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The Marblemount Hatchery has been unable to collect enough returning hatchery winter steelhead broodstock to meet egg take needs. Closure of the fishery is needed to collect sufficient fish to meet egg take needs. 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: January 3, 2012 [2013].

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules— Cascade River. Notwithstanding the provisions of WAC 232-28-619, effective January 5 through January 31, 2013, it is unlawful to fish in waters of the Cascade River from the Rockport-Cascade Road downstream to the mouth.

REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2013:

WAC 232-28-61900P	Exceptions to statewide rules— Cascade River.
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WSR 13-03-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-03—Filed January 3, 2013, 3:58 p.m., effective January 8, 2013, 12:01 p.m.]

Effective Date of Rule: January 8, 2013, 12:01 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000N; and amending WAC 220-56-360.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. 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: January 3, 2013.

James B. Scott, Jr.
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000N Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. January 10 through 11:59 p.m. January 12, 2013, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. January 8 through 11:59 p.m. January 14, 2013, razor clam digging is allowed in Razor

Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. January 10 through 11:59 p.m. January 12, 2013, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the Copalis River (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. Effective 12:01 p.m. January 11 through 11:59 p.m. January 12, 2013, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Copalis River and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

5. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 15, 2013:

WAC 220-56-36000N Razor clams—Areas and seasons.

WSR 13-03-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-04—Filed January 3, 2013, 4:09 p.m., effective January 6, 2013, 12:01 a.m.]

Effective Date of Rule: January 6, 2013, 12:01 a.m.

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: Based on spawner survey and harvest information available to date Washington department of fish and wildlife (WDFW) is concerned that the winter chum return to the Nisqually River is not as abundant as forecast and has the potential to fall short of our escapement goal. Given this information and the need to achieve our shared conservation goals both WDFW and the Nisqually Tribe are closing their respective fisheries for chum salmon. 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: January 3, 2013.

James B. Scott, Jr.
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Nisqually River. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. January 6, 2013, until further notice, it is unlawful to fish in waters of the Nisqually River from the mouth to the military tank crossing bridge.

WSR 13-03-014

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-05—Filed January 3, 2013, 4:12 p.m., effective January 5, 2013]

Effective Date of Rule: January 5, 2013.

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: Condit Dam on the White Salmon River was breached in the fall of 2011. There has been a closure to fishing in this area above and below the dam due to safety concerns while the structure was being removed. The area has been reopened for public access now that the work is complete. 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: January 3, 2013.

James B. Scott, Jr.
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—White Salmon River. Notwithstanding the provisions of WAC 232-28-619, effective January 5, 2013, until further notice, it is permissible to fish for and retain steelhead in waters of the White Salmon River from the county road bridge below the former powerhouse to Northwestern Lake Road Bridge. Daily limit of two hatchery steelhead, selective gear rules are in effect. All other species, including salmon must be released.

WSR 13-03-026

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-07—Filed January 7, 2013, 4:42 p.m., effective January 7, 2013, 4:42 p.m.]

Effective Date of Rule: Immediately.

Purpose: To prevent the spread of chronic wasting disease in Washington, this rule adds Missouri and Texas to the list of states from which it is unlawful to harvest and then import into or possess in Washington deer, elk, or moose, or parts thereof.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-12-02100C; and amending WAC 232-12-021.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

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

Reasons for this Finding: The department will begin the process for creating a permanent rule to incorporate these changes. However, the changes are needed immediately, to prevent the spread of chronic wasting disease into Washington.

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: January 7, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-12-01200D Importation and retention of dead nonresident wildlife (1) Notwithstanding the provisions of WAC 220-12-021, effective immediately until further notice, it is unlawful to import or possess deer, elk, or moose, or parts thereof, harvested in Missouri, Texas, Colorado, Wyoming, Utah, New Mexico, Wisconsin, Illinois, South Dakota, Nebraska, Kansas, New York, West Virginia, Virginia, North Dakota, Alberta, Maryland, Minnesota, and Saskatchewan, with the following exceptions:

- (a) Meat that has been deboned in the state or province where it was harvested and is imported as boned out meat;
 - (b) Skulls and antlers, antlers attached to the skull plate, or upper canine teeth (buglers, whistlers, ivories) from which all soft tissue has been removed;
 - (c) Hides or capes without heads attached;
 - (d) Tissue imported for use by a diagnostic or research laboratory;
 - (e) Finished taxidermy mounts.
- (2) Unless otherwise amended, all permanent rules remain in effect.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-12-01200D is probably intended to be WAC 232-12-02100D.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-12-01200C Importation and retention of dead nonresident wildlife.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-12-01200C is probably intended to be WAC 232-12-02100C.

WSR 13-03-027

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-06—Filed January 7, 2013, 4:44 p.m., effective January 7, 2013, 4:44 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend cougar hunting rules described in WAC 232-28-297.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-29700A; and amending WAC 232-28-297.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: To correct an error that establishes contradictory rules governing areas open for hunting cougar. The seasons for cougar hunting have started so there is not time for standard rule-making timeframes; and this correction will help hunters avoid hunting illegally.

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: January 7, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-29700B 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations. Notwithstanding the provisions of WAC 232-28-297, effective immediately until further notice:

General cougar seasons are closed in Game Management Units (GMUs) 157 and 522.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-29700A 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations.

WSR 13-03-036
EMERGENCY RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed January 8, 2013, 5:30 p.m., effective January 21, 2013]

Effective Date of Rule: January 21, 2013.

Purpose: (1) Repeal of WAC 208-512-210 through 208-512-300, inclusive, related to limits on loans and extensions of credit by Washington state-chartered commercial banks, generally authorized by RCW 30.04.111; and (2) adoption of a comprehensive rule by way of chapter 208-512A WAC, entitled "Limits on loans and extensions of credit." This rule making primarily restates and clarifies the provisions of the existing rule without changing their effect. However, it also clarifies interpretation of existing authorities under RCW 30.04.111, 30.04.215(3), 30.08.140(16), and 32.08.157, including exceptions to the general lending limit rule related to nonconforming loans, circumstances involving a general decline in capital markets, and extraordinary emergencies (as authorized by the director upon application); and/or mandated by Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013, related to Washington state-chartered commercial banks (Title 30 RCW) and savings banks (Title 32 RCW) treating "derivatives transactions" as "extensions of credit" and accounting for their credit exposure in relation to their concentration of "derivatives" investment according to standards generally consistent (with exceptions) to the newly adopted "lending limits" standards for "derivatives transactions" adopted by the Office of the Comptroller of the Currency (by way of 12 C.F.R. Part 32) in relation to national banks and federal savings associations. In this latter case, on account of RCW 32.08.157, savings banks under Title 32 RCW will be permitted, on or after January 21, 2013, to continue to engage in "derivatives transactions" (if at all), provided they are subject to the provisions of RCW 30.04.111 and chapter 208-512A WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 208-512-210 through 208-512-300, inclusive.

Statutory Authority for Adoption: RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050.

Other Authority: Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013.

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: Necessary on account of Section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(y)), which takes effect January 21, 2013; clarifies interpretation of existing state law under RCW 30.04.111, 30.04.215(3), 30.08.140(16), and 32.08.157, including especially to permit state-chartered savings banks under Title 32 RCW to continue to engage in "derivatives transactions."

Number of Sections Adopted in Order to Comply with Federal Statute: New 7, Amended 1, Repealed 0; Federal Rules or Standards: New 8, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 7, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 13, Amended 2, Repealed 0.

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

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

Date Adopted: January 8, 2013.

Richard M. Riccobono
Director of Banks

Chapter 208-512A WAC

LIMITS ON LOANS AND EXTENSIONS OF CREDIT

NEW SECTION

WAC 208-512A-001 Promulgation of rules. The division of banks of the department of financial institutions (hereinafter, the "division"), after due and proper notice, and pursuant to the provisions of RCW 30.04.030, 30.04.111, 30.04.215, 30.08.140, 32.08.157, 43.320.040, and 43.320.050, hereby adopts and promulgates this chapter, effective January 21, 2013.

NEW SECTION

WAC 208-512A-003 Findings and purpose. (1) The director of the division (hereinafter, the "director of banks"), by and through the director of bank's delegated authority from the director of the department of financial institutions under RCW 43.320.040 and 43.320.050, finds and determines, that pursuant to RCW 30.04.030, the division has the broad administrative authority to adopt and promulgate rules and regulations that establish and maintain appropriate standards of safety and soundness with respect to the loans and extensions of credit made by Washington state-chartered banks under Titles 30 and 32 RCW including, without limita-

tion, nonloan investments in derivative and similar transactions.

(2) As of January 21, 2013, the effective date of section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter, "Dodd-Frank Act"), codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1828(y), a state insured bank may engage in a derivative transaction, as defined in section 5200 (b)(3) of the Revised Statutes of the United States (12 U.S.C. Sec. 84 (b)(3)), only if the law with respect to lending limits of the state in which the state-insured bank is chartered takes into consideration credit exposure to derivative transactions. In addition to making loans, Washington state-chartered banks under Titles 30 and 32 RCW invest in derivative transactions as a regular and often-essential component of their overall investment strategy, including, without limitation, as a tool to manage their liquidity. It is necessary that Washington state law (including statute or regulation, or interpretation of the same by the division), be in compliance with the afore-stated federal statute and preserve the authority of banks under Titles 30 and 32 RCW to continue to engage in derivative transactions on or after January 21, 2013. Therefore, it is prudent and expeditious for the division to assert the full measure of its statutory authority to adopt this chapter so as to clearly set forth the manner in which a bank under Title 30 or 32 RCW may, in addition to its investment in other types of loans and extensions of credit, safely and soundly engage in derivative transactions.

(3) Section 610(a) of the Dodd-Frank Act, amending the National Bank Act, at 12 U.S.C. Sec. 84(b), revises the definition of "loans and extensions of credit" to include credit exposure of a national bank arising from its investment in a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. The aforementioned section 611 of the Dodd-Frank Act redefines "loans and extensions of credit" to include derivative transactions by, in effect, making derivative transactions applicable to state "lending limits" laws. Section 611 of the Dodd-Frank Act does not specifically address repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions. However, the director of banks finds and determines that it serves the convenience and advantage of depositors, borrowers, and the general public that Washington state-chartered banks and savings banks be able to continue to prudently invest in repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions despite any future contingency that may be made applicable to them by federal banking regulations. Therefore, director of banks further finds and determines that the division may, in its safety and soundness standards for state member banks and state insured banks, respectively, apply the same definition of "loans and extensions of credit" as applicable to national banks under section 610 of the Dodd-Frank Act (12 U.S.C. Sec. 84(b)), but only to the extent required by the board of governors of the Federal Reserve System (hereinafter, the "Federal Reserve Board") or the Federal Deposit Insurance Corporation (hereinafter, the "FDIC").

(4) The director of banks finds and determines that, pursuant to RCW 30.04.111(5) and 30.04.215 (3) and (5), it serves the convenience and advantage of depositors, borrowers, and the general public, and further maintains the fairness of competition between state-chartered banks and national banks, that, on or after January 21, 2013, banks under Title 30 RCW be permitted to continue to invest in derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions as national banks are generally permitted to under the National Bank Act (12 U.S.C. Sec. 84(b)) and applicable rules of the Office of the Comptroller of the Currency (hereinafter, "OCC"), subject to (a) the restrictions, limitations, and requirements applicable to such powers and authorities of national banks, and (b) the authority of the division to adopt and promulgate rules for banks, which, consistent with Title 30 RCW, vary from the precise powers and authorities of national banks.

(5) The director of banks finds and determines that, pursuant to RCW 32.08.157, a mutual or stock savings bank under Title 32 RCW may be permitted to engage in derivative transactions on or after January 21, 2013, the same as for a bank under Title 30 RCW, provided it subjects itself to all of the restrictions, limitations, and requirements for exercise of any powers and authorities under RCW 30.04.111 as set forth in this chapter respecting loans and extensions of credit applicable to banks under Title 30 RCW.

(6) There are certain standards of safety and soundness embodied in definitions of terms and other provisions used in RCW 30.04.111, including, without limitation, the term "capital and surplus," which have heretofore been inconsistent with the standards for computation of lending limits for national banks under the National Bank Act and the OCC rules. Pursuant to RCW 30.04.215 (3) and (5), the director of banks finds and determines that it both serves the convenience and advantage of depositors, borrowers, and the general public, and further maintains the fairness of competition and parity between Washington state-chartered banks and national banks, if the division adopts, for purposes of RCW 30.04.111, the same definition of "capital and surplus" as permitted for national banks, while maintaining the higher general lending limit of twenty percent of "capital and surplus" for banks under Title 30 RCW than exists for national banks under the OCC rules. In addition, the director of banks finds and determines that changes in other definitions of terms and technical provisions, as set forth in this chapter, serve the convenience and advantage of depositors, borrowers, and the general public, and further maintain the fairness of competition and parity between Washington state-chartered banks and national banks.

(7) Since RCW 30.04.111 does not define "loans and extensions of credit" and the words "extensions of credit" are not specified, the director of banks herein exercises the director of bank's broad administrative authority under RCW 30.04.030 and looks to applicable federal banking law and regulation for clarification of the term "extensions of credit," in keeping with well-settled principles of statutory construction. Accordingly, in promulgating and adopting the definition of "loans and extensions of credit" set forth in this chapter, the director of banks is herein guided by the restrictions

on insider lending set forth in Federal Reserve Board Regulation O, at 12 C.F.R. Sec. 215.3, to the extent that (a) "extension of credit" has been therein broadly defined by the Federal Reserve Board to include "an extension of credit in any manner whatsoever" and (b) on account of Regulation O having been adopted by the Federal Reserve Board based on comparable principles of safety and soundness in regard to banks.

(8) The director of banks finds and determines that certain powers and authorities of an out-of-state state-chartered bank with a branch or branches in Washington state, which affect the operations of banking and delivery of financial services in Washington state, and which provide certain exceptions to the general lending limit in emergency circumstances, ought to and will be deemed to be exceptions to the general lending limit under RCW 30.04.111, subject to the conditions set forth in this chapter.

(9) These rules and regulations are intended to:

(a) Prevent one person, or a relatively small group of persons who directly benefit from each other or who are engaged in a common enterprise, from borrowing or otherwise obtaining an unduly large amount of a bank's funds or other extension of credit;

(b) Safeguard a bank's depositors by establishing and maintaining standards that promote spreading of a bank's loans and extensions of credit among a relatively large number of persons engaged in different lines of business; and

(c) Prescribe standards of safety and soundness with respect to the credit exposure of a bank to its investment in derivative transactions, and to the extent required by the board of governors of the Federal Reserve System and the Federal Deposit Insurance Corporation for state member banks and state insured banks, respectively, to the credit exposure of a bank to its investment in repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions.

(10) These rules include, without limitation, provisions for:

(a) Defining or further defining or clarifying terms used in RCW 30.04.111;

(b) Establishing limits or requirements other than those specified in RCW 30.04.111 for particular classes or categories of loans and extensions of credit;

(c) Determining when a loan or extension of credit putatively made to a person shall, for purposes of this section, be attributed to another person;

(d) Setting standards for computation of time in relation to determining limits on loans and extensions of credit; and

(e) Implementing and incorporating other changes in limits on loans and extensions of credit necessary to conform to federal statute and rule required or otherwise authorized by RCW 30.04.111.

NEW SECTION

WAC 208-512A-005 "Loans and extensions of credit" and "contractual commitment to advance funds"—Defined. (1) "Loan or extension of credit" generally includes:

(a) Any direct or indirect advance of funds to a person made on a basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person;

(b) Any credit exposure of a bank arising from a derivative transaction or a securities financing transaction, but only to the extent that a securities financing transaction is required, by the Federal Reserve Board or the FDIC, with respect to state member banks and state insured banks, respectively, to be treated as a loan or extension of credit for purposes of RCW 30.04.111 and this chapter; and

(c) Any contractual commitment to advance funds, and includes a renewal, modification, or extension of the maturity date of a loan or extension of credit.

(2) Notwithstanding any other provision of this section, a "loan or extension of credit" excludes the following:

(a) Special exceptions, conditions and limitations to the general lending limit to the extent set forth in WAC 208-512A-020 through 208-512A-090, inclusive;

(b) A renewal, extension or restructuring of an existing loan, with interest paid current and no further advance of funds, by a bank under the direction and control of a conservator appointed by the director;

(c) A renewal or restructuring of a loan as a new loan or extension of credit, following the exercise by a bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the bank to the borrower (except as permitted by WAC 208-512A-015), or a new borrower replaces the original borrower, or unless the division determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit;

(d) Additional funds advanced for the benefit of a borrower by a bank for payment of taxes, insurance, utilities, security, and maintenance and operating expenses necessary to preserve the value of real property securing the loan, consistent with safe and sound banking practices, but only if the advance is for the protection of the bank's interest in the collateral, and provided that such amounts must be treated as an extension of credit if a new loan or extension of credit is made to the borrower;

(e) Accrued and discounted interest on an existing loan or extension of credit, including interest that has been capitalized from prior notes and interest that has been advanced under terms and conditions of a loan agreement;

(f) Financed sales of a bank's own assets, including other real estate owned, if the financing does not put the bank in a worse position than when the bank held title to the assets;

(g) Amounts paid against uncollected funds in the normal process of collection;

(h) Credit exposures arising from securities financing transactions in which the securities financed are Type I securities, or securities listed in section 5 (c)(1)(C), (D), (E), and (F) of the Home Owners Loan Act and general obligations of a state or subdivision as listed in section 5 (c)(1)(H) of the Home Owners Loan Act, at 12 U.S.C. Sec. 1464 (c)(1)(C), (D), (E), (F), and (H);

(i) Intraday credit exposures arising from a derivative transaction or securities financing transaction; and

(j) That portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that, in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. When an originating bank funds the entire loan, it must receive funding from the participants before the close of business of its next business day. If the participating portions are not received within that period, then the portions funded will be treated as a loan by the originating bank to the borrower. If the portions so attributed to the borrower exceed the originating bank's lending limit, the loan may be treated as nonconforming subject to WAC 208-512A-012, rather than a violation, if:

(i) The originating bank had a valid and unconditional participation agreement with a participant or participants that was sufficient to reduce the loan to within the originating bank's lending limit;

(ii) The participant reconfirmed its participation and the originating bank had no knowledge of any information that would permit the participant to withhold its participation; and

(iii) The participation was to be funded by close of business of the originating bank's next business day.

As used in this chapter and to the extent used in RCW 30.04.111, the term "loans and extensions of credit," unless otherwise indicated, shall have the meaning set forth in this section. As used in RCW 30.04.111 and this chapter, the terms "loan," "loans," "extension of credit," "extensions of credit," and "loan or extension of credit" refer, as applicable, to the singular or plural of "loans and extensions of credit."

(3) "**Contractual commitment to advance funds**" generally means a bank's obligation to advance funds under a legally binding contractual commitment to make a loan or extension of credit.

(a) For purposes of this chapter and calculation of the general lending limit, "contractual commitment to advance funds" includes:

(i) A bank's obligation to make payment (directly or indirectly) to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with the third person, or to make payments upon some other stated condition;

(ii) A bank's obligation to guarantee or act as surety for the benefit of a person; and

(iii) A bank's obligation to advance funds under a standby letter of credit, a put, or other similar arrangement.

(b) For purposes of this chapter and calculation of the general lending limit, "contractual commitment to advance funds" does not include:

(i) The undisbursed portion of any loan or extension of credit;

(ii) The entire amount of any such commitment that has not yet been drawn upon; and

(iii) Letters of credit and similar instrument:

(A) Which do not guarantee payment;

(B) Which do not provide for payment in the event of a default of a third party; and

(C) In which the issuing bank expects the beneficiary to draw on the issuer.

NEW SECTION

WAC 208-512A-007 Other general chapter definitions. As used in this chapter and to the extent used in RCW 30.04.111, the following additional terms, unless otherwise indicated, mean:

(1) "**ALLL**" means a bank's allowance for loan and lease losses.

(2) "**Bank**" includes a commercial bank chartered and regulated under Title 30 RCW and, to the extent applicable to this chapter pursuant to WAC 208-512A-009, a mutual or stock savings bank chartered and regulated under Title 32 RCW.

(3) "**Borrower**" means:

(a) A person who is named as a borrower or debtor in a loan or extension of credit;

(b) A person to whom a bank has credit exposure arising from a derivative transaction or a securities financing transaction, entered by the bank; or

(c) Any other person, including a drawer, endorser, or guarantor, who is deemed to be a borrower under the "direct benefit" or the "common enterprise" tests set forth in WAC 208-512A-100.

(4) "**Call report**" means a bank's Consolidated Report of Condition and Income.

(5) "**Capital and surplus**" means:

(a) A bank's Tier 1 and Tier 2 capital as reported in a bank's call report; plus

(b) The balance of a bank's ALLL not included in the bank's Tier 2 capital as reported in the bank's call report.

(6) "**Close of business**" means the time at which a bank closes its accounting records for the business day.

(7) "**Control**" is presumed to exist when a person directly or indirectly, or acting through or together with one or more persons:

(a) Owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(c) Has the power to exercise a controlling influence over the management or policies of another person.

(8) "**Credit derivative**" has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(9) "**Current market value**" means the bid or closing price listed for an item in a regularly published listing or an electronic reporting service.

(10) "**Derivative transaction**" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event

relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(11) "**Director of banks**" means the director of the division of banks of the department of financial institutions.

(12) "**Division**" means the division of banks of the department of financial institutions.

(13) "**Effective margining arrangement**" means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty created by the derivative transactions covered by the agreement, subject to any monetary threshold requirements as prudently determined by the bank and its counterparty as contained in the master legal agreement.

(14) "**Eligible credit derivative**" means a single-name credit derivative or a standard, nontranched index credit derivative provided that:

(a) The derivative contract meets the requirements of an eligible guarantee, as defined in 12 C.F.R. Part 3, Appendix C, and has been confirmed by the protection purchaser and the protection provider;

(b) Any assignment of the derivative contract has been confirmed by all relevant parties;

(c) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(d) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(e) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss with respect to the derivative reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(f) If the derivative contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(g) If the credit derivative is a credit default swap, the derivative contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(15) "**Eligible guarantee**" means a guarantee that:

(a) Is written and unconditional;

(b) Covers all or a pro rata portion of all contractual payments of the obligor on the reference exposure;

(c) Gives the beneficiary a direct claim against the protection provider;

(d) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary;

(e) Is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced;

(f) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligor on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment;

(g) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; and

(h) Is not provided by an affiliate of the bank, unless the affiliate is an insured depository institution, bank, securities broker or dealer, or insurance company that:

(i) Does not control the bank; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies (as the case may be).

(16) "**Eligible protection provider**" means:

(a) A sovereign entity (a central government, including the U.S. government, an agency, department, ministry, or central bank);

(b) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(c) A federal home loan bank;

(d) The Federal Agricultural Mortgage Corporation;

(e) A depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c);

(f) A bank holding company, as defined in section 2 of the Bank Holding Company Act, as amended, 12 U.S.C. 1841;

(g) A savings and loan holding company, as defined in section 10 of the Home Owners' Loan Act, at 12 U.S.C. 1467a;

(h) A securities broker or dealer registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. 78o et seq.;

(i) An insurance company that is subject to the supervision of the Washington state office of insurance commissioner;

(j) A foreign banking organization;

(k) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies; and

(l) A qualifying central counterparty.

(17) "**FDIC**" means the Federal Deposit Insurance Corporation.

(18) "**Federal Reserve Board**" means the board of governors of the Federal Reserve System.

(19) "**Financial instrument**" means stocks, notes, bonds, and debentures traded on a national securities exchange, over-the-counter (OTC) margin stocks as defined in Regulation U, 12 C.F.R. Part 221, commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type that issue shares in which banks may perfect a security interest. Financial instruments may be denominated in foreign currencies that are freely convertible to U.S. dollars. The term "financial instrument" does not include mortgages.

(20) "**OCC**" means the Office of the Comptroller of the Currency.

(21) "**Person**" means: An individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; limited liability company; limited liability partnership; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization.

(22) "**Qualifying central counterparty**" has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(23) "**Qualifying master netting agreement**" has the same meaning as this term has in 12 C.F.R. Part 3, Appendix C, section 2.

(24) "**Readily marketable collateral**" means financial instruments and bullion which are saleable under ordinary circumstances with reasonable promptness at a fair market value determined by daily quotations based on actual transactions on an auction or a similarly available daily bid and ask price market.

(25) "**Readily marketable staple**" means an article of commerce, agriculture, or industry, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper and lead, in the form of standardized interchangeable units, that is easy to sell in a market with sufficiently frequent price quotations. An article comes within this definition if the exact price is easy to determine and the staple itself is easy to sell at any time at a price that would not be considerably less than the amount at which it is valued as collateral. Whether an article qualifies as a readily marketable staple is determined on the basis of the conditions existing at the time the loan or extension of credit that is secured by the staples is made.

(26) "**Securities financing transaction**" means a repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.

(27) "**State insured bank**" denotes a bank, as defined in this chapter, which is an "insured depository institution" as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(28) "**State member bank**" denotes a bank, as defined in this chapter, which is a member of a federal reserve bank as authorized under section 9 of the Federal Reserve Act (12 U.S.C. Sec. 321) and, for purposes of this chapter, has the same meaning as that term is defined in section 3(d) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(d)).

(29) "**Subsidiary**" means:

(a) Any company twenty-five percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is

directly or indirectly owned or controlled by such person, or is held by it with power to vote;

(b) Any company the election of a majority of whose directors is controlled in any manner by such person; or

(c) Any company with respect to the management or policies of which such person has power, directly or indirectly, to exercise a controlling influence, as determined by the division, after notice and opportunity for hearing.

(30) "**Type I securities**" has the same meaning as set forth in 12 C.F.R. Sec. 1.2(j) and includes:

(a) Obligations of the United States;

(b) Obligations issued, insured, or guaranteed by a department or an agency of the United States government, if the obligation, insurance, or guarantee commits the full faith and credit of the United States for the repayment of the obligation;

(c) Obligations issued by a department or agency of the United States, or an agency or political subdivision of a state of the United States, that represent an interest in a loan or a pool of loans made to third parties, if the full faith and credit of the United States has been validly pledged for the full and timely payment of interest on, and principal of, the loans in the event of nonpayment by the third-party obligor(s);

(d) General obligations of a state of the United States or any political subdivision thereof; and

(e) Municipal bonds if the bank is well capitalized as defined as that term is used in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1831o (b)(1).

NEW SECTION

WAC 208-512A-009 Applicability of chapter. This chapter is applicable, notwithstanding any other provision thereof, only to:

(1) A commercial bank under Title 30 RCW;

(2) A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in derivative transactions;

(3) A mutual or stock savings bank under Title 32 RCW, which, on January 21, 2013, or thereafter, invests in securities financing transactions, if:

(a) The mutual or stock savings bank is a state member bank and the Federal Reserve Board has determined that loans and extensions of credit apply to securities financing transactions; or

(b) The FDIC has determined that loans and extensions of credit apply to securities financing transactions in relation to state-chartered banks and savings banks; and

(4) A mutual or stock savings bank under Title 32 RCW that has notified the division, as of January 21, 2013, or thereafter, that it has elected to be regulated by and comply with this chapter, even if it does not invest in derivative transactions or securities financing transactions.

NEW SECTION

WAC 208-512A-010 General limitation on loans and extensions of credit. The total amount of loans and extensions of credit by a bank to a person outstanding at one time and not fully secured by collateral in a manner set forth in WAC 208-512A-011, shall not exceed twenty percent of the

capital and surplus of such bank; provided, that a bank shall not be deemed to have violated this section on account of any loan or extension of credit, if such loan or extension of credit would be classified as an exception to the lending limit for national banks or federal savings associations under applicable federal banking laws and rules that existed as of July 28, 1985, or as of any subsequent date not later than July 27, 2003.

NEW SECTION

WAC 208-512A-011 Exception to general limitation—Loans and extensions of credit fully secured by readily marketable collateral. (1) A loan or extension of credit by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, shall not be subject to any limitations based on capital and surplus.

(2) Notwithstanding subsection (1) of this section, if the total of such loans and extensions of credit, together with loans made under general limitations pursuant to WAC 208-512A-010 exceed forty-five percent of capital and surplus, the division will review the credits as a possible concentration, with regard to both risk diversification within the bank's asset structure and diversification or other risk in the marketable collateral securing the loan. This limitation shall be separate and in addition to the general twenty percent limitation set forth in WAC 208-512A-010.

(3) Each loan or extension of credit based on the foregoing limitation shall be secured by readily marketable collateral having a current market value of at least one hundred fifteen percent of the amount of the loan or extension of credit at all times.

(4) Financial instruments may be denominated in foreign currencies which are freely convertible to United States dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

(5) Each bank must institute adequate procedures to ensure that the collateral value fully secures the outstanding loan at all times. If collateral values fall below one hundred fifteen percent of the outstanding loan, to the extent that the loan is no longer in conformance with this section and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking action.

NEW SECTION

WAC 208-512A-012 Exception to general limitation—Nonconforming loans. (1) A loan or extension of credit that was within the limit on loans and extensions of credit when made, will not be deemed a violation of the legal lending limit and will be treated as "nonconforming" if the

loan or extension of credit is no longer in conformity with the bank's limit on loans and extensions of credit because:

(a) The bank's capital has declined, borrowers have subsequently merged or formed a common enterprise, lenders have merged, or the limit on loans and extensions of credit or capital rules have changed; or

(b) Collateral securing the loan or extension of credit, in order to satisfy the requirements of an exception to the limit, has declined in value; or

(c) In the case of an extension of credit arising from a derivative transaction (or, if required by the FDIC or Federal Reserve Board, a securities financing transaction), and measured by the internal model method described in WAC 208-512A-300, the extension of credit subject to the lending limit increases after execution of the transaction.

(2) A bank must use reasonable efforts to bring a loan or extension of credit that is nonconforming as a result of subsection (1)(a) or (c) of this section into conformity with the bank's limit on loans and extensions of credit unless to do so would be inconsistent with safe and sound banking practices.

(3) A bank must bring a loan or extension of credit that is nonconforming as a result of circumstances described in subsection (1)(b) of this section into conformity with the bank's limit on loans and extensions of credit within thirty calendar days, except when judicial proceedings, regulatory actions, or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

(4) Notwithstanding any provision of this section, the director of banks may by interpretation and policy statement prescribe standards for treatment of nonconforming extensions of credit that are derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, or securities borrowing transactions, and may, if required for state insured banks or state member banks, rely upon rules or interpretations of the FDIC or the Federal Reserve Board, as applicable.

NEW SECTION

WAC 208-512A-013 Exception to general limitation—Declining capital—Inability to otherwise effectively operate in marketplace—Director discretion. Notwithstanding any provision of this chapter to the contrary, in the event that a bank's capital declines sufficiently to seriously impair the bank's ability to effectively operate in its marketplace or serve the needs of its customers or the community in which it is located, the director of banks may, upon written application and in the exercise of his or her discretion, grant a bank temporary permission to fund loans and extensions of credit in excess of such bank's limit on loans and extensions of credit. In the exercise of discretion, the director of banks may further specify conditions for granting such emergency exception and may limit emergency lending authority to particular types or classes of loans and extensions of credit.

NEW SECTION

WAC 208-512A-014 Exception to general limitation—Extenuating facts and circumstances—Standards for division determination—Director of banks' discre-

tion. (1) Notwithstanding any provision of this chapter to the contrary, the director of banks, in his or her discretion, may grant an exception to the limit on loans and extensions of credit based on extenuating facts and circumstances.

(2) In deciding whether to grant an exception under this section, the director of banks shall consider:

(a) The proposed transaction for which the exception is sought;

(b) How the requested exception would affect the capital adequacy and safety and soundness of the requesting bank if the exception is not granted or, if the exception is granted, if the proposed borrower should ultimately default;

(c) How the requested exception would affect the loan portfolio diversification of the requesting bank;

(d) The competency of the bank's management to handle the proposed transaction and any resulting safety and soundness issues;

(e) The marketability and value of the proposed collateral (if any); and

(f) The extenuating facts and circumstances that warrant an exception in light of the purpose of the limit on loans and extensions of credit set forth in RCW 30.04.111 and this chapter.

NEW SECTION

WAC 208-512A-015 Renewals and additional advances under a contractual commitment to advance funds—Project funding. (1) A bank may renew a contractual commitment to advance funds and complete funding under that commitment if all of the following criteria are met:

(a) The completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank;

(b) The completion of funding will enable the borrower to complete a project for which the contractual commitment to advance funds was made;

(c) The amount of the additional funding does not exceed the unfunded portion of the bank's contractual commitment to advance funds; and

(d) Such contractual commitment to advance funds, when combined with all other outstanding loans and contractual commitments to advance funds to a borrower, was within the bank's lending limit when entered into, calculated pursuant to WAC 208-512A-200.

(2) In determining whether a contractual commitment to advance funds is within the bank's lending limit when made, the bank may deduct from the amount of the commitment the amount of any legally binding loan participation commitments that are issued concurrent with the bank's commitment and that would be excluded from the definition of loan or extension of credit.

NEW SECTION

WAC 208-512A-020 Special rule—Discount of commercial or business paper. A loan or extension of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse is excluded from the calculation of the general lending limit, subject to the following terms and conditions:

(1) This exclusion applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in the fabrication of a product, or to be used for any other business purposes which may reasonably be expected to provide funds for payment of the paper; and

(2) Loans or extensions of credit arising from the discount of paper must bear the full recourse endorsement of the owner; provided, however, that:

(a) Loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; and

(b) If transferred without full recourse, the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper.

NEW SECTION

WAC 208-512A-030 Special rule—Purchase of bankers' acceptances. The purchase of bankers' acceptances of the kind described in section 13 of the Federal Reserve Act and which are issued by other depository institutions, is excluded from the calculation of the general lending limit, subject to the following terms and conditions:

(1) Acceptances by a bank of time drafts which do not meet the requirements for discount with a Federal Reserve Bank, are subject to the general twenty percent limitation of WAC 208-512A-010; and

(2) During any period within which a bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to appropriate limitations.

NEW SECTION

WAC 208-512A-040 Special rule—Readily marketable staples. (1) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of thirty-five percent of capital and surplus, in addition to the general limit set forth in WAC 208-512A-010, if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit.

(2) The following additional terms and conditions shall apply to a loan or extension of credit secured by staples:

(a) The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(b) For purposes of such a transaction, "capital and surplus" shall be calculated at thirty-five percent in addition to the general twenty percent limitation.

(c) A "readily marketable staple" means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make (i) the price easily and definitely ascertainable, and (ii) the staple itself easy to realize upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral.

(d) Staples eligible for this exception must be nonperishable, may be refrigerated or frozen.

(e) This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify at a later date.

(f) Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable staples.

(g) Since commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(h) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for (i) not more than ten months if secured by nonperishable staples, and (ii) not more than six months if secured by refrigerated or frozen staples.

(i) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of the instruments for this exception.) Only documents with these characteristics are eligible security for loans under this exception. In the event of default on a loan secured by one of these documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation. Generally, documents qualifying as "documents of title" under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(j) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premises.

(k) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with a registrar whose consent is required before the commodities can be withdrawn from the warehouse.

NEW SECTION

WAC 208-512A-050 Special rule—U.S. bonds, notes, certificates of indebtedness, or treasury bills, etc. Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations wholly guaranteed as to principal and interest by the United States are excluded from the calculation of the general lending limit in WAC 208-512A-010, subject to the following terms and conditions:

(1) This exception applies only to loans or extensions of credit which are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(2) If the market value of the collateral declines so that the loan is no longer in conformance with this exception and exceeds the general lending limit set forth in WAC 208-512A-010, the loan must be brought into conformance within five business days.

(3) Securities issued by any department, agency, bureau, board, commission or establishment of the United States, or any corporation wholly owned, directly or indirectly, shall not be considered eligible collateral for purposes of this subsection (3), unless such securities shall be direct obligation of or fully guaranteed as to principal and interest by the United States.

NEW SECTION

WAC 208-512A-060 Special rule—Unconditional takeout commitments or guarantees of federal government. Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall be excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) This exclusion will apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(2) For purposes of this exclusion, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

(3) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

NEW SECTION

WAC 208-512A-070 Special rule—Segregated deposit account in lender bank. Loans or extensions of credit secured by a segregated deposit account in the lending bank are excluded from the calculation of the general lending

limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(2) The bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(3) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to United States dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remains fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the United States dollar value of the deposit. If the United States dollar value of the deposit falls to the extent that the loan is in non-conformance with this exception and exceeds the general twenty percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for a bank to take deposits denominated in foreign currencies.

NEW SECTION

WAC 208-512A-080 Special rule—Sale of bank's assets—Unpaid portion of purchase price. The unpaid portion of the purchase price of a sale of a bank's asset or assets, if secured by such asset or assets, shall be excluded from the calculation of the general lending limit set forth in WAC 208-512A-010, subject to the following terms and conditions:

(1) Any sale of a bank's asset or assets, resulting in an unpaid purchase price exceeding the bank's lending limit must be approved in advance of the sale by the board of directors, including the terms of payment of such unpaid purchase price, and if the purchase is by a director, officer or employee of the bank, shall conform to RCW 30.12.050 and the Federal Reserve Board's Regulation O, at 12 C.F.R. Sec. 215.3.

(2) The bank must ensure that a security interest has been perfected in the collateral, including execution and recording or filing of documents and any other action required by state law.

NEW SECTION

WAC 208-512A-090 Special rule—Discount of negotiable or nonnegotiable installment consumer paper. (1) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject to a maximum limitation equal to twenty per centum of capital and surplus.

(2) If a bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is

reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(3) This exception allows a bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to twenty per centum of its capital and surplus if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(4) For purposes of this section:

(a) "Consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale; and

(b) "Consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(5) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where (i) through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and (ii) an officer designated by the bank's chairman or chief executive officer pursuant to authorization by the board of directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper. Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(6) If a loan under this subsection is in default and the dealer or seller of the loan has contractually committed to repurchase the paper, then the loan will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

(7) If loan payments are received and/or controlled by the dealer or seller of the paper and remitted to the bank, then those loans will be aggregated with the dealer or seller's other outstanding debt for lending limit purposes and will be subject to the twenty per centum limitation.

NEW SECTION

WAC 208-512A-100 Combining loans and extensions of credit made to separate persons—Generally. (1) Loans or extensions of credit to one person will be attributed to another person or persons when:

(a) The proceeds of the loans or extensions of credit are intended for or are used for the direct benefit of the other person or persons; or

(b) A "common enterprise" exists between the persons.

(2) The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the "direct benefit" of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction, where the proceeds are used to acquire property, goods, or services.

(3) Determination of whether a "common enterprise" exists depends upon a realistic evaluation of the facts and circumstances of the applicable transactions. A "common enterprise" exists when:

(a) The expected source of repayment for each of the multiple loans or extensions of credit is the same for each person; or

(b) Separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own or control more than fifty percent of the voting securities; or

(c) The loans or extensions of credit are made to persons who are related by common control and (i) are engaged in interdependent business or (ii) there is substantial financial interdependence among them; or

(d) The division determines, based upon a reasonable evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(4) "Substantial financial interdependence" occurs when fifty percent or more of one person's gross receipts or gross expenditures (on an annual basis) are derived from transactions with one or more persons related through common control (gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments).

(5) Throughout this section, the term "control" is presumed to exist when one or more persons acting in concert, directly or indirectly:

(a) Own, control, or have power to vote twenty-five percent or more of any class of voting securities of another person;

(b) Exercise a controlling influence over the management or policies of another person; or

(c) Control in any manner the election of a majority of the directors, trustees or other persons exercising similar functions of another person. "Common control" includes control of one person by another person.

NEW SECTION

WAC 208-512A-110 Loans to partnerships, joint ventures, and associations. (1) Loans or extensions of credit to a partnership, joint venture, or association shall, for purposes of this chapter, be considered loans or extensions of

credit to each member of such partnership, joint venture, or association.

(2) Loans or extensions of credit to members of a partnership, joint venture, or association shall be considered loans or extensions of credit to the partnership, joint venture, or association if one or more of the tests set forth in WAC 208-512A-100 is satisfied with respect to one or more of the members. However, loans to members of a partnership, joint venture, or association will not be attributed to other members of the partnership, joint venture, or association unless one or more of the tests set forth in WAC 208-512A-100 is satisfied with respect to such other members. The tests set forth in WAC 208-512A-100 shall be deemed satisfied when loans or extensions of credit are made to members of a partnership, joint venture, or association for the purpose of purchasing an interest in such partnership, joint venture, or association.

(3) The rule set forth in subsection (1) of this section is not applicable to limited partners in limited partnerships or to members of joint ventures if such partners or members, by the terms of the partnership or membership agreement, are not to be held liable for the debts or actions of the partnership, joint venture, or association. However, the rules set forth in WAC 208-512A-100 are applicable to such partners or members.

NEW SECTION

WAC 208-512A-120 Loans to limited liability companies. Loans or extensions of credit to a limited liability company shall, for purposes of this chapter, be considered loans or extensions of credit to a corporation, and shall not be subject to the provisions of WAC 208-512A-110.

NEW SECTION

WAC 208-512A-130 Loans to subsidiaries and corporate groups. (1) Loans or extensions of credit to a person and its subsidiaries or to subsidiaries of one person will not be combined where the person and its subsidiaries are not engaged in a "common enterprise" as defined in WAC 208-512A-100(2).

(2) If members of a corporate group (a person and all its subsidiaries) are either:

(a) "Substantially financially interdependent," as defined in WAC 208-512A-100(3); or

(b) Engaged in "common enterprise," as defined in WAC 208-512A-100(2), then the total amount of loans or extensions of credit to these persons must be attributed to each of the other persons in the corporate group.

Conversely, if members of a corporate group are neither substantially financially interdependent nor engaged in "common enterprise," then the loans to different members are separately subject to a twenty percent limitation. In no event may the total amount of loans or extensions of credit by a state bank to a corporate group exceed fifty percent of the bank's capital and surplus.

(3) For purposes of this section, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns, directly or indirectly, more than

fifty percent of the voting securities or voting interests of the corporation or limited liability company.

NEW SECTION

WAC 208-512A-200 Computation of time—Calculation date of lending limits. (1) For purposes of determining compliance with RCW 30.04.111 and this chapter, a bank shall determine its lending limit as of the most recent of the following dates:

- (a) The last day of the preceding calendar quarter; or
- (b) The date on which there is a change in the bank's capital category for purposes of the Federal Deposit Insurance Act, at 12 U.S.C. 1831o (b)(1).

(2) A bank's lending limit calculated in accordance with subsection (1)(a) of this section will be effective as of the earlier of the following dates:

- (a) The date on which the bank's call report is submitted; or
- (b) The date on which the bank's call report is required to be submitted.

(3) A bank's lending limit calculated in accordance with subsection (1)(b) of this section will be effective on the date that the limit is to be calculated.

(4) If the division determines for safety and soundness reasons that a bank should calculate its lending limit more frequently than required by subsection (1) of this section, the division may provide written notice to the bank directing it to calculate its lending limit at a more frequent interval, and the bank shall thereafter calculate its lending limit at that interval until further notice.

NEW SECTION

WAC 208-512A-300 Credit exposure arising from derivative transactions. (1) This section sets forth the rules for calculating the credit exposure arising from a derivative transaction entered into by a bank for purposes of determining the bank's lending limit pursuant to RCW 30.04.111 and this chapter.

(2) Subject to the direction of the division, a bank shall calculate the credit exposure to a counterparty arising from a derivative transaction by means of:

- (a) The internal model method;
 - (b) The conversion factor matrix method; or
 - (c) The remaining maturity method.
- (3) Except as otherwise required by the division, a bank shall use the same method for calculating counterparty credit exposure arising from all of its derivative transactions.

(4) The division may require a bank to use the internal model method, the conversion factor matrix method, or the remaining maturity method to calculate the credit exposure of derivative transactions if it finds that such method is necessary to promote the safety and soundness of the bank.

(5) The requirements for using the internal model method are as follows:

- (a) The credit exposure of a derivative transaction under the internal model method shall equal the sum of the current credit exposure of the derivative transaction and the potential future credit exposure of the derivative transaction.

(b) A bank shall determine its current credit exposure by the mark-to-market value of the derivative contract. If the mark-to-market value is positive, then the current credit exposure equals that mark-to-market value. If the mark-to-market value is zero or negative, then the current credit exposure is zero.

(c) A bank may not use the internal model method in its calculation of potential credit exposure to a derivative transaction unless the bank obtains prior approval of the division or unless it is already using the internal model method, as of January 21, 2013, and the division thereafter determines that the bank's internal model method is safe and sound and that bank's management is competent to administer its derivative investment program using such internal model method.

(d) A bank that calculates its credit exposure by using the internal model method may net credit exposures of derivative transactions arising under the same qualifying master netting agreement.

(6) The credit exposure arising from a derivative transaction under the conversion factor matrix method shall equal and remain fixed at the potential future credit exposure of the derivative transaction as determined at the execution of the transaction by reference to Table 1 below.

Table 1 - Conversion Factor Matrix for Calculating Potential Future Credit Exposure¹

Original Maturity ²	Interest Rate	Foreign Exchange Rate and Gold	Equity	Other ³ (includes commodities and precious metals except gold)
1 year or less	0.015	0.015	0.20	0.06
Over 1 to 3 years	0.030	0.030	0.20	0.18
Over 3 to 5 years	0.060	0.060	0.20	0.30
Over 5 to 10 years	0.120	0.120	0.20	0.60
Over ten years	0.300	0.300	0.20	1.00

¹ For an OTC derivative contract with multiple exchanges of principal, the conversion factor is multiplied by the number of remaining payments in the derivative contract.

² For an OTC derivative contract that is structured such that on specified dates any outstanding exposure is settled and the terms are reset so that the market value of the contract is zero, the remaining maturity equals the time until the next reset date. For an interest rate derivative contract with a remaining maturity of greater than one year that meets these criteria, the minimum conversion factor is 0.005.

³ Transactions not explicitly covered by any other column in Table 1 are to be treated as "Other."

(7) The credit exposure arising from a derivative transaction under the remaining maturity method shall equal the greater of zero or the sum of the current mark-to-market value of the derivative transaction added to the product of the notional amount of the transaction, the remaining maturity in years of the transaction, and a fixed multiplicative factor determined by reference to Table 2 below.

Table 2 - Remaining Maturity Factor for Calculating Credit Exposure

	Interest Rate	Foreign Exchange Rate and Gold	Equity	Other ¹ (includes commodities and precious metals except gold)
Multiplicative Factor	1.5%	1.5%	6%	6%

¹Transactions not explicitly covered by any other column in Table 2 are to be treated as "Other."

(8) Notwithstanding any other provision of this section, a bank that uses the conversion factor matrix method or remaining maturity method, or that uses the internal model method without entering an effective margining arrangement, shall calculate the counterparty credit exposure arising from credit derivatives entered by the bank by adding the net notional value of all protection purchased from the counterparty on each reference entity.

(9) A bank shall calculate the credit exposure to a reference entity arising from credit derivatives entered by the bank by adding the notional value of all protection sold on the reference entity. However, the bank may reduce its exposure to a reference entity by the amount of any eligible credit derivative purchased on that reference entity from an eligible protection provider.

NEW SECTION

WAC 208-512A-310 Securities financing transactions. (1) Only to the extent required by the FDIC, a bank that is a state insured bank shall comply with all rules governing limits on extensions of credit related to a state insured bank's credit exposure to securities financing transactions.

(2) Only to the extent required by the Federal Reserve Board, a bank that is a state member bank shall comply with all rules governing limits on extensions of credit related to a state member bank's credit exposure to securities financing transactions.

NEW SECTION

WAC 208-512A-320 Policies and procedures related to derivative transactions, etc. To fulfill the requirements of section 611 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, codified as section 18(y) of the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1828(y), and the requirements (if any) of the FDIC and the Federal Reserve Board in relation to securities financing transactions by state insured banks and state member banks, respectively, the division may publish and implement policies and procedures, consistent with RCW 30.04.111 and this chapter, related to examination for and supervision and enforcement of WAC 208-512A-300 and 208-512A-310.

NEW SECTION

WAC 208-512A-400 Effect of OCC rules, interpretations and opinions as guidance. Where RCW 30.04.111 and

this chapter do not specifically address certain transactions involving loans and extensions of credit, the division may, as necessary, in its interpretations and supervision and enforcement of banks, be guided by applicable rules, interpretations, and opinions of the Office of the Comptroller of the Currency in the interest of a bank's safety and soundness, but only to the extent that such rules, interpretations, and opinions are compatible with the provisions of RCW 30.04.111 and this chapter.

NEW SECTION

WAC 208-512A-500 Loans and extensions of credit to insiders and their immediate family. No provision of Titles 30 and 32 RCW, chapter 208-512 WAC, or this chapter, shall limit the duty of a bank or a bank's affiliate, independent of any requirements of this chapter, to also comply with the provisions of Federal Reserve Board Regulation O, 12 C.F.R. Part 215, which relates to loans and extensions of credit to insiders of a bank or bank affiliate and their immediate family.

NEW SECTION

WAC 208-512A-600 Transitional rules. (1) Loans or extensions of credit that were in violation of RCW 30.04.111 and the former lending limits rules prior to January 21, 2013, will be considered to remain in violation of law until they are paid in full, regardless of whether the loans or extensions of credit conform to the rules established in this chapter. Renewals or extensions of such loans or extensions of credit will also be considered violations of law.

(2) A bank that has outstanding loans or extensions of credit to a person in violation of RCW 30.04.111 and the former lending limits rules as of January 21, 2013, may make additional advances to such person after those dates if the additional advances are permitted under this chapter. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans or extensions of credit.

(3) Loans or extensions of credit which were in conformance with RCW 30.04.111 and the former lending limits rules prior to January 21, 2013, but are not in conformance with this chapter will not be considered to be violations of law during the existing contract terms of such loans or extensions of credit. Renewals or extensions of such loans or extensions of credit which are not in conformance with this chapter may be made on or after January 21, 2013, if the non-conformity is caused by WAC 208-512A-005 (1)(b) and 208-512A-300; however, all loans or extensions of credit made under such renewals or extensions must conform with this chapter no later than June 1, 2013. Loans or extensions of credit which are not in conformance with this chapter for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(4) If a bank, prior to January 21, 2013, entered into a legally binding commitment to advance funds on or after such date, and such commitment was in conformance with RCW 30.04.111 and the former lending limits rules, advances under such commitment may be made notwithstanding the fact that such advances are not in conformance

with this chapter. The bank must, however, demonstrate that the commitment represents a legal obligation to fund, either by a written agreement or through file documentation.

(5) As used in this section, "former lending limits rules" means WAC 208-512-210 through 208-512-300, inclusive.

(6) Notwithstanding any other provision of this chapter, a savings bank under Title 32 RCW will not be considered to be in violation of law during the existing contract terms of any loan or extension of credit, which:

(a) In the case of a savings bank under WAC 208-512A-009 (2) or (3), was made and funded prior to June 1, 2013; or

(b) In the case of a savings bank under WAC 208-512A-009(4) but not subject to WAC 208-512A-009 (2) or (3), was made and funded prior to a date, earlier than June 1, 2013, upon which the savings bank gave notice to the division of its election to conform to the provisions of this chapter pursuant to WAC 208-512A-009(4).

(7) Notwithstanding any other provision of this chapter, a renewal or extension of such a loan or extension of credit by a savings bank under subsection (6)(a) and (b) of this section, which is not in conformance with this chapter, may be made if the nonconformity is caused by WAC 208-512A-005 (1)(b) and 208-512A-300; however, any loan or extension of credit made under such renewals or extensions must conform with this chapter no later than December 31, 2013. However, a loan or extension of credit by such a savings bank which is not in conformance with this chapter for any other reason (i.e., a reduction in the bank's capital) must conform to this section upon renewal or extension.

(8) A bank will not be deemed to be in violation of law, including this chapter, if:

(a) It is engaged in derivative transactions prior to January 21, 2013;

(b) Uses an internal model method in connection with any part of its derivative transaction program;

(c) It is later determined by the division that the bank's specific internal model method is unsafe and unsound or that the bank's management is not competent to administer its derivative transaction program using such specific internal model method; and

(d) The director of banks does not find that the bank has shown a lack of good faith in its use of a specific internal model method.

(9) In the event of a determination pursuant to subsection (8) of this section, the division will treat the bank's derivative transactions program as "nonconforming" rather than a violation of law. In that event, the director of banks may issue a directive to the bank to exercise reasonable efforts to either bring its derivative transactions program into compliance or, if the director of banks so finds in exceptional cases, unwind its derivative transactions program.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-512-210	Promulgation.
WAC 208-512-220	Purpose.

WAC 208-512-230	Definitions.
WAC 208-512-240	General limitations.
WAC 208-512-250	General limitation—Loans fully secured by readily marketable collateral.
WAC 208-512-260	Combining loans to separate borrowers.
WAC 208-512-270	Loans to corporations.
WAC 208-512-280	Loans to partnerships, joint ventures, and associations.
WAC 208-512-290	Exceptions to the lending limits.
WAC 208-512-300	Transitional rules.

**WSR 13-03-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-09—Filed January 11, 2013, 1:51 p.m., effective January 15, 2013]

Effective Date of Rule: January 15, 2013.

Purpose: To amend cougar hunting rules described in WAC 232-28-297.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-29700B; and amending WAC 232-28-297.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.150.

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

Reasons for this Finding: To correct an error that establishes contradictory rules governing areas open for hunting cougar. The seasons for cougar hunting have started so there is not time for standard rule-making timeframes; and this correction will help hunters avoid hunting illegally.

This change also closes specific cougar hunt areas that have met or exceeded the area harvest guideline. Immediate action is necessary to protect cougars from overharvest in hunt areas that have met or exceeded the area harvest guideline.

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: January 11, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-29700C 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations. Notwithstanding the provisions of WAC 232-28-297, effective immediately until further notice: General cougar seasons are closed in Game Management Units (GMUs) 105, 108, 111, 117, 121, 145, 157, 166, 175, 178, 149, 154, 157, 162, 163, 328, 329, 335, 522, 642, 648, and 651.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-29700B 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations.

WSR 13-03-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-10—Filed January 14, 2013, 4:01 p.m., effective January 16, 2013]

Effective Date of Rule: January 16, 2013.

Purpose: Amend recreational fishing rules.

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

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 winter steelhead broodstock collection has been achieved at the Marblemount Hatchery, allowing the closed portion of the Cascade River to reopen. 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: January 14, 2013.

Joe Stohr
for Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective January 16, 2013:

WAC 232-28-61900P Exceptions to statewide rules—Cascade River. (13-02)

WSR 13-03-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-08—Filed January 15, 2013, 3:57 p.m., effective January 17, 2013]

Effective Date of Rule: January 17, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900T; 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 Kendall Hatchery has been unable to collect enough returning hatchery winter steelhead broodstock to meet egg-take needs. Closure of the fishery is needed to collect sufficient fish to meet egg-take needs. 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: January 15, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—North Fork Nooksack River. Notwithstanding the provisions of WAC 232-28-619, effective January 17 through January 31, 2013, it is unlawful to fish in waters of the North Fork Nooksack River from the yellow post located at the upstream-most corner of the hatchery grounds, approximately 1,000 feet upstream of the mouth of Kendall Creek, downstream to the Mosquito Lake Road Bridge.

REPEALER

The following section of the Washington Administrative Code is repealed effective February 1, 2013:

WAC 232-28-61900T Exceptions to statewide
rules—North Fork Nooksack
River.

WSR 13-03-095
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-12—Filed January 15, 2013, 4:13 p.m., effective January 25, 2013, 12:01 p.m.]

Effective Date of Rule: January 25, 2013, 12:01 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000P; and amending WAC 220-56-360.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches to be safe for human consumption. 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: January 15, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000P Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

1. Effective 12:01 p.m. January 25 through 11:59 p.m. January 27, 2013, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. January 25 through 11:59 p.m. January 27, 2013, razor clam digging is allowed in Razor Clam Area 3. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. January 26 through 11:59 p.m. January 26, 2013, razor clam digging is allowed in Razor Clam Area 4. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. Effective 12:01 p.m. January 26 through 11:59 p.m. January 26, 2013, razor clam digging is allowed in Razor Clam Area 5. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

5. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 28, 2013:

WAC 220-56-36000P Razor clams—Areas and seasons.

WSR 13-03-097
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-11—Filed January 15, 2013, 6:57 p.m., effective January 15, 2013, 6:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: To prevent the spread of chronic wasting disease in Washington, this rule adds Missouri and Texas to the list of states from which it is unlawful to harvest and then import into or possess in Washington deer, elk, or moose, or parts thereof.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-12-02100D; and amending WAC 232-12-021.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

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

Reasons for this Finding: The department will begin the process for creating a permanent rule to incorporate these changes. However, the changes are needed immediately, to prevent the spread of chronic wasting disease into Washington.

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: January 15, 2013.

Philip Anderson
 Director

NEW SECTION

WAC 232-12-02100E Importation and retention of dead nonresident wildlife (1) Notwithstanding the provisions of WAC 232-12-021, effective immediately until further notice, it is unlawful to import or possess deer, elk, or moose, or parts thereof, harvested in Missouri, Texas, Colorado, Wyoming, Utah, New Mexico, Wisconsin, Illinois, South Dakota, Nebraska, Kansas, New York, West Virginia, Virginia, North Dakota, Alberta, Maryland, Minnesota, and Saskatchewan, with the following exceptions:

(a) Meat that has been deboned in the state or province where it was harvested and is imported as boned out meat;

(b) Skulls and antlers, antlers attached to the skull plate, or upper canine teeth (buglers, whistlers, ivories) from which all soft tissue has been removed;

(c) Hides or capes without heads attached;

(d) Tissue imported for use by a diagnostic or research laboratory;

(e) Finished taxidermy mounts.

(2) Unless otherwise amended, all permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-12-02100D Importation and retention of dead nonresident wildlife.

WSR 13-03-102
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-13—Filed January 16, 2013, 3:05 p.m., effective January 18, 2013, 7:30 a.m.]

Effective Date of Rule: January 18, 2013, 7:30 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000V and 220-52-04600F; and amending WAC 220-52-046.

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 emergency regulation continues the closure of the Everett Flats portion of Region 2 East in order to protect soft shell crabs that occur at this time of year in this area. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes. There is insufficient time to adopt permanent regulations.

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

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

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

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

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

Date Adopted: January 16, 2013.

James B. Scott, Jr.
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04600G Puget Sound crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective immediately, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

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

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

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

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

(f) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(2) Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

(a) Crab Management Region 2 West. This region includes Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D and 26AW.

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

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

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true

north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(3) Effective immediately, until further notice, the Everett Flats portion of Region 2 East will be closed. This area is defined as follows:

(a) That portion of catch area 26A east of a line from Howarth Park due north to the south end of Gedney Island, and that portion of 24B east of a line from the north end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 7:30 a.m. January 18, 2013:

WAC 220-52-04000V	Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (13-01)
WAC 220-52-04600F	Puget Sound crab fishery—Seasons and areas. (13-01)

WSR 13-03-116 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-14—Filed January 18, 2013, 11:42 a.m., effective January 18, 2013, 11:42 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000U and 220-52-04600E; and amending WAC 220-52-040 and 220-52-046.

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: Mandatory meat pick-out rate allowance for coastal crab will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair start provisions. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 18, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-52-0400W Commercial crab fishery. Lawful and Unlawful gear, methods and other unlawful acts. (1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean through February 28, 2013, from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel.

(b) Vessel hold inspection certificates dated from December 30, 2012, to January 22, 2013, are only valid for the area south of 46°28.00.

(c) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through February 28, 2013.

(2) Notwithstanding the provisions of WAC 220-52-040, it is permissible for a vessel not designated on a Dungeness crab coastal fishery license to transport or deploy up to 250 pots at any one time for deployment in the coastal crab fishery between Klipsan Beach (46°28.00) and the U.S./Canada Border. The primary or alternate operator of the crab pot gear named on the license associated with the gear must be on board the vessel when the gear is being deployed. All other provisions of the permanent rule remain in effect.

(a) Such a vessel may deploy crab pot gear only during the 64-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date.

NEW SECTION

WAC 220-52-04600H Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay: Open.

(2) Temporary pot limits in place in the area between Klipsan Beach (46°28.00) to the WA/OR border (46°15.00)

and Willapa Bay are lifted, and fishers may use their entire permanent pot limit starting at 8:00 am on January 21, 2013

(3) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(4) Dungeness crab license holders, or any vessel or vessel operator designated on the license that participated in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46° 28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from:

a. Fishing in the area between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 A.M., February 3, 2013.

b. Fishing in the area between Oysterville (46°33.00) and the U.S./Canada border until 8:00 A.M., February 28, 2013.

(5) Crab gear may be set in the area between Klipsan Beach (46°28.00) and the U.S./Canada Border, including Grays Harbor, beginning at 8:00 a.m. January 21, 2013.

(6) It is permissible to pull crab gear in the area between Klipsan Beach and the U.S./Canada Border, including Grays Harbor, beginning at 12:01 a.m. January 24, 2013.

(7) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

Northeast Corner (Raft River):	47°28.00 N. Lat.	124°20.70 W. Lon.
Northwest Corner:	47°28.00 N. Lat.	124°34.00 W. Lon.
Southwest Corner:	47°08.00 N. Lat.	124°25.50 W. Lon.
Southeast Corner (Copalis River):	47°08.00 N. Lat.	124°11.20 W. Lon.

(8) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

Northeast Corner (Cape Johnson):	47°58.00' N. Lat.	124° 40.40' W. Lon.
Northwest Corner:	47°58.00' N. Lat.	124°49.00' W. Lon.
Southwest Corner:	47°40.50' N. Lat.	124°40.00' W. Lon.
Southeast Corner (Destruction Island):	47°40.50' N. Lat.	124°24.43' W. Lon.

(9) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

Northeast Corner (Tatoosh Island):	48°19.50 N. Lat.	124°50.45 W. Lon.
Northwest Corner:	48°19.50 N. Lat.	124°50.45 W. Lon.

- Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.
- Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

(10) All other provisions of the permanent rule remain in effect.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-------------------|---|
| WAC 220-52-04000U | Commercial crab fishery.
Lawful and Unlawful gear,
methods and other unlawful
acts. (12-284) |
| WAC 220-52-04600E | Coastal crab seasons (12-
284) |