

WSR 13-24-006
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed November 21, 2013, 7:49 a.m., effective November 22, 2013]

Effective Date of Rule: November 22, 2013.

Purpose: To extend the emergency rule filed on July 28, 2013, and expires November 22, 2013. The CR-101 was filed on July 28, 2013. Stakeholder work continues and further comments continue to be received. The emergency WAC supports E2SSB 5405 Extended foster care services. E2SSB 5405 authorized children's administration to additionally provide extended foster care services to youth age eighteen up to twenty-one years who are eligible to receive foster care services authorized under RCW 74.13.031 and participating in a program or activity designed to promote employment or remove barriers to employment secondary vocational program. Youth whose dependency has been dismissed may enter a voluntary placement agreement (VPA) one time. A youth must agree to the entry of a dependency order within one hundred eighty days of the date the youth was placed in foster care through the VPA to continue to receive services. CR-102 was filed on November 20, 2013, as WSR 13-23-102 and hearing scheduled on January 7, 2014.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-25-0518, 388-25-0520, 388-25-0522, 388-25-0524, 388-25-0526 and 388-25-0538; and amending WAC 388-25-0110, 388-148-0010, 388-25-0502, 388-25-0504, 388-25-0506, 388-25-0508, 388-25-0510, 388-25-0516, 388-25-0528, 388-25-0530, 388-25-0532, 388-25-0534, 388-25-0536, 388-25-0540, 388-25-0544, 388-25-0546, and 388-25-0548.

Statutory Authority for Adoption: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030.

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

Reasons for this Finding: E2SSB 5405 Extended foster care services, enables Washington state to access a federal match of funds under 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." The act provides an option permitting states to use Title IV-E foster care funds for youth who wish to pursue secondary or post-secondary education programs from age eighteen up to twenty-one years old. E2SSB 5405 authorizes continued extended foster care services for youth ages eighteen to twenty-one years to complete a postsecondary academic or postsecondary vocational education program and expands the services to eligible youth participating in an employment related program.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 17, Repealed 6; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 17, Repealed 6.

Date Adopted: November 14, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0110 What is the effective date for termination of foster care payments? (1) The department ends payment on the day before the child actually leaves the foster home or facility. The department does not pay for the last day that a child is in a foster care home or facility.

(2) The department terminates family foster care payments for children in family foster care effective the date:

(a) The child no longer needs foster care; or

(b) The child no longer resides in foster care (~~except as provided in WAC 388-25-0180~~); (~~or~~)

(c) The child reaches the age of eighteen(~~-~~); or

(d) The child is no longer eligible for the extended foster care program and the dependency action is dismissed or voluntary placement agreement (VPA) is revoked. To be eligible for the extended foster care program a child, age eighteen must be:

(i) ~~((If the child continues to attend, but has not finished, high school or an equivalent educational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child completes the high school program or equivalent educational or vocational program. The department must not extend payments for a youth in care beyond age twenty-))~~ Completing a high school diploma or high school equivalency certificate;

(ii) ~~((If the child has applied and demonstrates he or she intends to timely enroll, or is enrolled and participating in a post-secondary education program, or a post-secondary vocational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child reaches his or her twenty-first birthday or is no longer enrolled in and participating in a post-secondary program, whichever is earlier))~~ Completing a post-secondary academic or vocational program;

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment.

(3) The department must terminate foster care payments for children in the behavior rehabilitative services program effective the date:

- (a) The child no longer needs rehabilitative services; or
- (b) The child is no longer served through contracted rehabilitative services program except as provided in WAC 388-25-0030; or
- (c) The child reaches the age of eighteen and continues to attend, but has not finished, high school or an equivalent educational program and has a need for continued rehabilitative treatment services, the department may continue payments until the date the youth completes the high school program or equivalent educational or vocational program. The department must not extend payments for a youth in care beyond age twenty.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0502 What is the purpose of the extended foster care program? The extended foster care program provides an opportunity for young adults in foster care at age eighteen to voluntarily agree to continue receiving foster care services, including placement services, while the youth completes a secondary or post-secondary academic or vocational program, or participating in a program or activity designed to promote employment or remove barriers to employment.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0504 What is extended foster care? Extended foster care is a program offered to young adults, age eighteen up to twenty-one, who turn eighteen while in foster care, to enable them to ~~((complete))~~:

- (1) Complete a high school diploma or ~~((general))~~ high school equivalency ~~((diploma))~~ certificate;
- (2) Complete a post-secondary academic or vocational ~~((education))~~ program;
- (3) Participate in a program or activity designed to promote employment or remove barriers to employment.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0506 Who is eligible for extended foster care? To be eligible for the extended foster care program a youth, on his or her eighteenth birthday, must:

- (1) Be dependent under chapter 13.34 RCW~~((;~~ ~~((2))~~) be placed in foster care (as defined in WAC 388-25-0508) by children's administration, and:
 - (a) Be enrolled (as described in WAC 388-25-0512) in a high school or secondary education equivalency program; or
 - (b) Be enrolled (as described in WAC 388-25-0512) in a post-secondary academic or vocational education program; or
 - (c) Have applied for and can demonstrate intent to timely enroll in a post-secondary academic or vocational education program (as described in WAC 388-25-0514); or

(d) Be participating in a program or activity designed to promote employment or remove barriers to employment.

(2) Have had their dependency dismissed on their eighteenth birthday as the youth did not meet any of the criteria found in WAC 388-25-0506 (1)(a) through (d) or did not agree to participate in the program and the youth has not reached the age of nineteen.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0508 When is a youth considered to be "in foster care"? For the purpose of determining initial eligibility for the extended foster care program, a youth is in foster care if the youth is under children's administration (CA) placement and care authority, is placed by CA in out of home care, in relative care, licensed foster home, licensed group care, or other suitable person placement. ~~((Provided))~~ A youth is considered to be in foster care:

- (1) ~~((A))~~ If the youth ~~((who))~~ is temporarily away from a foster care placement in:
 - (a) A hospital;
 - (b) A drug/alcohol treatment facility;
 - (c) A mental health treatment facility; or
 - (d) A county detention center for less than thirty days ~~((in a county detention center is considered to be in foster care))~~.
- (2) ~~((A))~~ If the youth ~~((who))~~ is temporarily away from his or her foster care placement without permission of the case worker or care giver, but who is expected to return to foster care within twenty days, is considered to be in foster care for purposes of determining initial eligibility.
- (3) ~~((A))~~ If the youth ~~((who))~~ is committed to juvenile justice and rehabilitation administration custody and ~~((who))~~ resides in a foster home, group home, or community facility, as defined in RCW 74.15.020 (1)(a).

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0510 When is a youth not "in foster care"? For the purposes of determining initial eligibility for the extended foster care program, a youth is not in foster care if the youth is:

- (1) Placed with a parent;
- (2) In a dependency guardianship or chapter 13.36 RCW;
- (3) Committed to and residing in a juvenile justice and rehabilitation administration ~~((JRA))~~ institution (as defined in RCW 13.30.020(12)) or to the department of corrections; or
- (4) Absent from his/her foster care placement without permission of the case worker or care giver for more than twenty consecutive days.

NEW SECTION

WAC 388-25-0515 How does a youth demonstrate participation in a program or activity designed to promote employment or remove barriers to employment? (1) Actively participate in a state, federal, tribal or community

program that addresses any barriers to employment that the youth may have and/or prepares or trains individuals for employment; or

(2) Involved in a self-directed program that will remove any barriers to employment and will prepare a youth for employment.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0516 What if an eligible youth does not want to participate in the extended foster care program ((at age eighteen))? ~~((Youth may elect to participate in the extended foster care program beginning on their eighteenth birthday. The law recognizes an eligible youth may need time beyond the eighteenth birthday to consider if they want continued foster care services. It provides a six-month grace period or a time for "trial independence", from date of youth's eighteenth birthday, to give the youth an opportunity to change their mind))~~ Participation in extended foster care is voluntary. A youth who does not agree to participate in extended foster may request the court to dismiss the dependency.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0528 How does a youth agree to participate in extended foster care program? (1) An eligible dependent youth can agree to participate by:

~~((1))~~ (a) Signing an extended foster care agreement; or
~~((2))~~ (b) For developmentally ~~((delayed))~~ disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age nineteen; or

(b) Establishing a nonminor dependency before reaching age nineteen.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0530 Where do youth obtain information about how to participate in the program? (1) The department must provide dependent youth between the age of seventeen and seventeen and a half:

(a) Written documentation explaining the availability of extended foster care services.

(b) Detailed instructions on how to access such services after he or she reached age eighteen.

(2) Youth can contact:

~~((1))~~ (a) Youth's attorney/CASA/GAL.

~~((2))~~ (b) Youth's social worker.

~~((3))~~ (c) Local children's administration office.

~~((4))~~ (d) www.independence.wa.gov.

~~((5))~~ (e) 1-866-END-HARM.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0532 Can ((a youth participating in the extended foster care program to complete a secondary education or equivalency program continue to receive extended foster care services to participate in a post-secondary education program)) an extended foster care participant continue in extended foster care under a different eligibility category? Yes ((, if at the time the secondary program is completed, the youth is enrolled in, or has applied to, and can demonstrate they intend to timely enroll in, a post-secondary academic or vocational program)). A youth may transition among the eligibility categories while under the same voluntary placement agreement or dependency order, so long as the youth remains eligible during the transition.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0534 ((Is there a trial independence period for a youth who completes his or her secondary education program while participating in extended foster care and before the youth enters a post-secondary program)) If an extended foster care participant loses his or her eligibility before he or she turns nineteen, can he or she reapply for extended foster care? ((No, if a youth completes a secondary education program while in extended foster care, the dependency will be dismissed and foster care services will end, unless the youth has enrolled in, or applied to and can demonstrate an intent to timely enroll in, a post-secondary academic or vocational program)) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as:

(1) The youth has not turned nineteen; and

(2) The youth meets one of the conditions for eligibility in WAC 388-148-2506; and

(3) The youth has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0536 What are CA's responsibilities to a youth who is participating in extended foster care? Children's administration (CA) is required to have placement and care authority over the youth and to provide foster care services, including transition planning and independent living services, medical assistance through medicaid, and case management. Case management includes findings or approving a foster care placement for the youth, convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the youth, caseworker visits, and court-related duties, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the youth is progressing toward independence within state and federal mandates. CA has responsibility to inform the court of the status of the child (including health, safety, welfare, education status and continuing eligi-

bility for extended foster care program). The department's placement and care authority over a youth receiving extended foster care services is solely for the purpose of providing services and does not create a legal responsibility for the actions of the youth receiving extended foster care services.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0540 How does CA determine a youth's continuing eligibility for extended foster care program? At least every six months, children's administration will determine if youth continues to:

- (1) Agree to participate in the extended foster care program.
- (2) Be enrolled in an education program, vocational program, or participating in a program or activity designed to promote employment or remove barriers to employment, or is transitioning from one status to another.
- (3) Continue to reside in approved placement.
- (4) Comply with youth's responsibilities in WAC 388-25-0546.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0544 What are the youth's rights in the extended foster care program? Youth have a right to:

- (1) An approved foster care placement.
- (2) Foster care services including medical assistance through medicaid.
- (3) Participate in the court process as a party to the case.
- (4) Have an attorney appointed for them upon filing a notice of intent to file a petition for dependency and in dependency proceedings.
- (5) End their participation in the program at any time.
- (6) Referrals to community resources as appropriate.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0546 What must the youth do to remain in the extended foster care program? Unless otherwise authorized by court order the youth must:

- (1) Agree to participate in the program as expressed in the written extended foster care agreement;
- (2) Maintain standard of eligibility as set by the youth's academic program or employment related program;
- (3) Participate in the case plan, including monthly health and safety visits;
- (4) Acknowledge that children's administration (CA) has responsibility for the youth's care and placement by authorizing CA to have access to records related to court-ordered medical, mental health, drug/alcohol treatment services, educational records needed to determine continuing eligibility for the program, and for additional necessary services; and
- (5) Remain in the approved foster care placement and follow placement rules. This means the youth will:
 - (a) Stay in placement identified by CA or approved by the court;

(b) Obtain approval from case worker and notify caregiver for extended absence from the placement of more than three days; and

(c) Comply with court orders and any specific rules developed in collaboration by the youth, caregiver and social worker.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0548 When is a youth no longer eligible for the extended foster care program? A youth is no longer eligible for the extended foster care program and the department will ask the court to dismiss the dependency when the youth:

- (1) Graduates from high school or equivalency program, and has not enrolled in, or applied for and demonstrated an intent to timely enroll in a post-secondary academic or vocational program;
- (2) Graduates from a post-secondary education or vocational program;
- (3) Reaches their twenty-first birthday;
- (4) Is no longer participating or enrolled in high school, equivalency program, post-secondary or vocational program, program promoting employment or removing barriers to employment;
- (5) No longer agrees to participate in foster care services;
- (6) Fails or refuses to comply with youth responsibilities outlined in WAC 388-25-0546; or
- (7) Is incarcerated in an adult detention facility on a criminal conviction.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-148-0010 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understand these rules:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Capacity" means the maximum number of children that a home or facility is licensed to care for at a given time.

"Care provider" means any licensed or certified person or organization or staff member of a licensed organization that provides twenty-four-hour care for children.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child. Case managers are responsible for implementing the child's case plan, assisting in achieving those goals, and assisting with day-to-day problem solving.

"Certification" means:

- (1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that it meets the minimum licensing requirements; or

(2) Department licensing of a child-placing agency to certify that a foster home meets licensing requirements.

"Children" or **"youth,"** for this chapter, means individuals who are:

(1) Under eighteen years old, including expectant mothers under eighteen years old; or

(2) Up to twenty-one years of age and pursuing a high school, equivalent course of study (GED), or vocational program or post-secondary academic or post-secondary vocational program, or program promoting employment or removing barriers to employment;

(3) Up to twenty-one years of age with developmental disabilities; or

(4) Up to twenty-one years of age if under the custody of the Washington state juvenile rehabilitation administration.

"Child-placing agency" means an agency licensed to place children for temporary care, continued care or adoption.

"Crisis residential center (CRC)" means an agency under contract with DSHS that provides temporary, protective care to children in a foster home, regular (semi-secure) or secure group setting.

"Compliance agreement" means a written licensing improvement plan to address deficiencies in specific skills, abilities or other issues of a fully licensed home or facility in order to maintain and/or increase the safety and well-being of children in their care.

"DCFS" means the division of children and family services.

"DDD" means division of developmental disabilities.

"Department" means the department of social and health services (DSHS).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources.

"Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.

"Foster-adopt" means placement of a child with a foster parent(s) who intends to adopt the child, if possible.

"Foster home or foster family home" means person(s) licensed to regularly provide care on a twenty-four-hour basis to one or more children in the person's home.

"Full licensure" means an entity meets the requirements established by the state for licensing or approved as meeting state minimum licensing requirements.

"Group care facility for children" means a location maintained and operated for a group of children on a twenty-four-hour basis.

"Group receiving center" or **"GRC"** means a facility providing the basic needs of food, shelter, and supervision for more than six children placed by the department, generally for thirty or fewer days. A group receiving center is considered a group care program and must comply with the group care facility licensing requirements.

"Hearing" means the administrative review process.

"I" refers to anyone who operates or owns a foster home, staffed residential home, and group facilities, includ-

ing group homes, child-placing agencies, maternity homes, day treatment centers, and crisis residential centers.

"Infant" means a child under one year of age.

"License" means a permit issued by the department affirming that a home or facility meets the minimum licensing requirements.

"Licensor" means:

(1) A division of licensed resources (DLR) employee at DSHS who:

(a) Approves licenses or certifications for foster homes, group facilities, and child-placing agencies; and

(b) Monitors homes and facilities to ensure that they continue to meet minimum health and safety requirements.

(2) An employee of a child-placing agency who:

(a) Attests that foster homes supervised by the child-placing agency meets licensing requirements; and

(b) Monitors those foster homes to ensure they continue to meet the minimum licensing standards.

"Maternity service" as defined in RCW 74.15.020.

"Medically fragile" means the condition of a child who has a chronic illness or severe medical disabilities requiring regular nursing visits, extraordinary medical monitoring, or on-going (other than routine) physician's care.

"Missing child" means:

(1) Any child up to eighteen years of age for whom Children's Administration (CA) has custody and control (not including children in dependency guardianship) and:

(a) The child's whereabouts are unknown; and/or

(b) The child has left care without the permission of the child's caregiver or CA.

(2) Children who are missing are categorized under one of the following definitions:

(a) **"Taken from placement"** means that a child's whereabouts are unknown, and it is believed that the child is being or has been concealed, detained or removed by another person from a court-ordered placement and the removal, concealment or detainment is in violation of the court order;

(b) **"Absence not authorized, whereabouts unknown"** means the child is not believed to have been taken from placement, did not have permission to leave the placement, and there has been no contact with the child and the whereabouts of the child is unknown; or

(c) **"Absence not authorized, whereabouts known"** means that a child has left his or her placement without permission and the social worker has some contact with the child or may periodically have information as to the whereabouts of the child.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk youth or children in need of services, and their parents.

"Nonambulatory" means not able to walk or traverse a normal path to safety without the physical assistance of another individual.

"Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Probationary license" means a license issued as part of a disciplinary action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies to minimum licensing requirements.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, antidepressants and anti-anxiety medications.

"Relative" means a person who is related to the child as defined in RCW 74.15.020 (4)(a)(i), (ii), (iii), and (iv) only.

"Respite" means brief, temporary relief care provided to a child and his or her parents, legal guardians, or foster parents with the respite provider fulfilling some or all of the functions of the care-taking responsibilities of the parent, legal guardian, or foster parent.

"Secure facilities" means a crisis residential center that has locking doors and windows, or secured perimeters intended to prevent children from leaving without permission.

"Service plan" means a description of the services to be provided or performed and who has responsibility to provide or perform the activities for a child or child's family.

"Severe developmental disabilities" means significant disabling, physical and/or mental condition(s) that cause a child to need external support for self-direction, self-support and social participation.

"Social service staff" means a clinician, program manager, case manager, consultant, or other staff person who is an employee of the agency or hired to develop and implement the child's individual service and treatment plans.

"Staffed residential home" means a licensed home providing twenty-four-hour care for six or fewer children or expectant mothers. The home may employ staff to care for children or expectant mothers. It may or may not be a family residence.

"Standard precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under standard precautions, blood or other potentially infectious materials of all people should always be considered potentially infectious for HIV and other pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood or other bodily fluids.

"Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings, which must be approved by the children's administration or the court.

"Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purpose of participating in the extended foster care program.

"Washington state patrol fire protection bureau" or **"WSP/FPB"** means the state fire marshal.

"We" or **"our"** refers to the department of social and health services, including DLR licensors and DCFS social workers.

"You" refers to anyone who operates a foster home, staffed residential home, and group facilities, including group homes, maternity programs, day treatment programs, crisis residential centers, group receiving centers, and child-placing agencies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-25-0518 What is the trial independence or grace period?
- WAC 388-25-0520 Does an eligible youth who elects to participate in extended foster care on his or her eighteenth birthday receive a trial independence period?
- WAC 388-25-0522 When does the six-month trial independence period end?
- WAC 388-25-0524 If a youth does not remain enrolled in school during the trial independence period may the youth still elect to participate in the program?
- WAC 388-25-0526 Does a youth have to agree to participate in extended foster care program?
- WAC 388-25-0538 What is the CA's responsibility for the youth during the six-month trial independence period?

WSR 14-01-014 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 13-296—Filed December 6, 2013, 1:37 p.m., effective December 8, 2013]

Effective Date of Rule: Decemer [December] 8, 2013.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: The allowable take (mortality) of Endangered Species Act listed natural origin steelhead due to angling effects is approaching the maximum limit for the waters listed. The 2013-2014 steelhead run is much lower

than in recent years and has a relatively high proportion of natural origin fish. 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.

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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: December 6, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Columbia, Methow, Okanogan, Similkameen, Wenatchee and Icicle rivers. Notwithstanding the provisions of WAC 232-28-619, the following provisions are in effect December 8, 2013, one hour after official sunset. Unless otherwise amended, all permanent rules remain in effect:

(1) It is permissible to fish for steelhead in the following waters:

(a) Mainstem Columbia River: From Wells Dam upstream to 400 feet below Chief Joseph Dam.

(b) Methow River: From the mouth upstream to the confluence with the Chewuch River in Winthrop.

(c) Okanogan River: From the mouth upstream to the Highway 97 Bridge in Oroville.

(d) Similkameen River: From the mouth upstream to 400 feet below Enloe Dam.

(2) Mandatory retention of adipose fin clipped steelhead, daily limit two (2) hatchery steelhead, 20 inch minimum size. Hatchery steelhead are identified by a missing adipose fin with a healed scar in its location. Release all steelhead with a floy (anchor) tag attached and/or one or more round 1/4 inch diameter holes punched in the caudal (tail) fin.

(3) Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

(4) Night closure and selective gear rules remain in effect, except bait is allowed on the mainstem Columbia River from Wells Dam upstream to 400 feet below Chief Joseph Dam.

(5) It is unlawful to fish for whitefish and steelhead in waters of the Wenatchee River from the mouth upstream to the Icicle River Road Bridge.

(6) It is unlawful to fish for steelhead in the following waters:

(a) Mainstem Columbia River: From Rock Island Dam upstream to 400 feet below Wells Dam.

(b) Icicle River: From the mouth upstream to 500 feet below the Leavenworth National Fish Hatchery Barrier Dam.

REPEALER

The following section of the Washington Administrative code is repealed effective December 8, 2013, one hour after official sunset:

WAC 232-28-61900J Exceptions to statewide rules—Columbia, Methow, Okanogan, Similkameen, Wenatchee and Icicle rivers. (13-268)

WSR 14-01-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-297—Filed December 9, 2013, 4:40 p.m., effective December 14, 2013, 12:01 p.m.]

Effective Date of Rule: December 14, 2013, 12:01 p.m.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: Survey results show that adequate razor clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches are 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: December 9, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-56-36000E 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 in this section:

(1) Effective 12:01 p.m. December 14 through 11:59 p.m. December 16, 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. December 14 through 11:59 p.m. December 18, 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. December 14 through 11:59 p.m. December 14, 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. December 14 through 11:59 p.m. December 16, 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 as defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 19, 2013:

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

**WSR 14-01-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-298—Filed December 10, 2013, 1:50 p.m., effective December 10, 2013, 1:50 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

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

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

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

Reasons for this Finding: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates con-

tained herein. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area. 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 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: December 10, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04000C 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, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean until further notice, from any vessel, unless:

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until further notice and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from December 15, 2013, to January 15, 2014, are only valid for the area south of 46°28.00 N. Lat.

(2) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery to:

(a) Deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(c) Fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

(3) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47°00.00 N. Lat., provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and allows a vessel-hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator must call 360-581-3337, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

NEW SECTION

WAC 220-52-04600S 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) Open area: The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay.

(2) 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.

(3) Crab gear may be set beginning at 8:00 a.m., December 13, 2013.

(4) It is permissible to pull crab gear beginning at 12:01 a.m., December 16, 2013.

(5) Licenses and vessels designated to those licenses that participate 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 10 days have elapsed from the time that the area north of Klipsan Beach opens.

b. Fishing in the area between Oysterville (46°33.00) and the U.S. Canadian border until 35 days have elapsed from the time that the area north of Oysterville opens

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04600D Coastal crab seasons. (13-294)

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-52-04600D is probably intended to be WAC 220-52-04600D.

WSR 14-01-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-299—Filed December 12, 2013, 2:42 p.m., effective December 15, 2013, 5:00 p.m.]

Effective Date of Rule: December 15, 2013, 5:00 p.m.

Purpose: Amend commercial fishing rules.

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

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

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

Reasons for this Finding: This rule implements the annual closure of the Region 2 East, Everett Flats area on December 15, 2013, at 5:00 p.m. This rule also maintains the closure of Region 1 that was implemented on December 4, 2013, at 5:00 p.m. All remaining commercial harvest areas in Puget Sound will remain open. There is sufficient allocation available in these additional commercial regions to remain open. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: December 12, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04600T 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) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall. (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

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

(f) 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.

(g) 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) The following areas are closed to commercial crab fishing:

(a) Effective immediately, until further notice, Crab Management Region 1. This region includes Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B.

(b) Effective 5:00 p.m., Sunday, December 15, 2013, until further notice, the Everett Flats portion of Region 2 East will be closed. This area is defined as follows:

- 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.

(c) Effective immediately, until further notice, 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.

(d) Effective immediately, until further notice, 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.

(e) Effective immediately, until further notice, 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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:00 p.m. December 15, 2013:

WAC 220-52-04600R Puget Sound crab fishery—Seasons and areas (13-295)

WSR 14-01-057

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed December 12, 2013, 3:43 p.m., effective December 12, 2013, 3:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amending WAC 388-823-1010, 388-832-0085, 388-827-0145 and 388-828-9140, the purpose for these emergency rules is to allow the developmental disabilities administration (DDA) to continue enrollment of individuals onto the individual and family services (IFS) program, who have been waiting for services and supports. These changes have enabled families to continue caring for their family members in their own homes and help stabilize families and individuals who are experiencing increased caregiving stress and crisis by providing respite from their caregiving duties. The department filed the CR-101 on August 26, 2013, and is in the process of filing the CR-102 to make these changes permanent.

Citation of Existing Rules Affected by this Order: Amending WAC 388-823-1010, 388-832-0085, 388-827-0115, 388-827-0145, and 388-828-9140.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Washington state budget (3ESSB 5034, section 205(d)).

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

Reasons for this Finding: There are approximately 2,500 individuals who do not receive any paid services from DDA who have asked for help and have been put on a waitlist until funding becomes available to provide them with services and supports. These changes will provide immediate funding and eligibility to enable families to continue caring for family members in their own homes and help stabilize families who are experiencing increased caregiving stress and crisis by providing respite and support for families and individuals. The legislature has directed DDA to use historical data about award amounts and utilization to determine new award amounts for each service priority level so that DDA can help more individuals and families with the funds allocated in the budget.

In 3ESSB 5034, section 205(d): \$6,244,000 of the general fund—state appropriation for fiscal year 2014 and \$6,244,000 of the general fund—state appropriation for fiscal year 2015 are appropriated solely for the individual and family support program. Within these amounts, the department shall expand the current number of clients receiving services and focus on extending services to individuals with developmental disabilities who are not otherwise receiving paid services from the department.

Budget notes in SC3 IFS Expansion describe legislative intent on how DDA is to implement 3ESSB 5034, section 205(d): In order to increase the number of clients served by the IFS program, DDA must utilize past experience about award utilization to guide the number of authorized awards, and must change the maximum dollar amount awarded to each service priority level. Clients who are not receiving paid services from DDA may be added to the IFS program during the 2013-2015 biennium. Corresponding changes must be made to the state supplementary payment (SSP) program to ensure that award levels are consistent for clients in the IFS program and clients receiving SSP in lieu of IFS.

Fulfilling the intent of the legislative [legislature]: DDD is fulfilling the legislative intent by making these changes:

1. Reducing IFS award amounts to sixty percent of the current (old) amount in rule:
 - o The department's analysis has determined that DDA returned approximately \$4 million dollars in unspent IFS funds for the 2011-2013 biennium. This money would have been expended if clients used one hundred percent of their annual award.

Number of clients and the percentage of the award they used in plan year

IFS Level	# of clients	Current Award	0%	1% to 20%	21% to 40%	41% to 60%	61% to 80%	81% to 100%
Level 1	141	2000	76	24	12	10	6	13
Level 2	319	3000	144	60	42	32	18	23
Level 3	485	4000	176	108	74	65	28	34
Level 4	203	6000	74	39	28	24	20	18
Total:	1148		470	231	156	131	72	88

IFS Level	Old Award	New Award
Level 1	\$2,000	\$1,200
Level 2	\$3,000	\$1,800
Level 3	\$4,000	\$2,400
Level 4	\$6,000	\$3,600

Number of clients enrolled in the IFS program or receiving emergency IFS funds by plan year and award level.	2009	2010	2011	2012
Level 1 (\$2,000)	485	375	249	150
Level 2 (\$3,000)	608	556	440	298
Level 3 (\$4,000)	643	603	573	431
Level 4 (\$6,000)	210	174	226	186
Total Number of Clients	1946	1708	1488	1065

2. Expand the current number of clients receiving IFS or SSP in lieu of IFS:

- o The unspent portion will now be used to increase the number of individuals and families served by the IFS program.
- o By reducing the award amounts to what is actually being spent, at all levels, those unspent dollars will be used to provide help to some of those who are not now receiving any paid assistance from DDA.
 - It is anticipated an additional 1,500 individuals could be enrolled in the IFS or SSP in lieu of IFS programs who are not now receiving any DDA paid services.
- o The chart below illustrates the number of clients/families receiving the amount of awards in the plan year prior to April 2013. Only fifty-five percent of IFS expenditures were for respite.

3. Provide support as expediently as possible:

- o To permit DDA to provide more immediate assistance to individuals age eighteen or older we are adjusting the eligibility determination criteria in WAC 388-823-1010 (3)(a). This will eliminate the need to complete an eligibility review for individuals who had an eligibility determination after May 31, 2005.
 - Without this change DDA case managers would be required to conduct a new eligibility determination assessment for hundreds of individuals before they could be considered for an IFS award amount. The process would result in months of delays before DDA could help support individuals and families.

4. State supplementary payment amounts:

- o Corresponding changes to the SSP program WAC are also being made to ensure that award levels are consistent for clients in the IFS program and clients receiving SSP in lieu of IFS.

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

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

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

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

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

Date Adopted: December 12, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1010 When will DDD review my eligibility to determine if I continue to have a developmental disability? (1) Your eligibility can be reviewed at any time if your eligibility effective date is prior to July 2005 and you are age ten or older and were eligible under a condition of developmental delay or Down syndrome.

(2) Your eligibility will be reviewed at age seventeen with termination occurring no sooner than your eighteenth birthday if your most current eligibility determination was at sixteen or younger under mental retardation, cerebral palsy, epilepsy, autism, another neurological condition, or other condition similar to mental retardation.

(3) DDD will review your eligibility prior to the initial authorization of any paid service from DDD when you are not currently receiving paid services and:

(a) You are age eighteen or older and your most current eligibility determination (~~(is more than twenty-four months old)~~) was made prior to June 1, 2005; or

(b) You are age four but under age eighteen and your eligibility was established under the eligible conditions of developmental delay or Down syndrome and your eligibility effective date is prior to July 2005.

(4) DDD will review your eligibility if DDD discovers:

(a) The evidence used to make your most recent eligibility determination completed in 1992 or later appears to be insufficient, in error, or fraudulent; or

(b) New diagnostic information becomes available that does not support your current eligibility and you are under the age of eighteen.

AMENDATORY SECTION (Amending WSR 11-17-068, filed 8/16/11, effective 9/16/11)

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

- (i) Adult family home,
- (ii) Adult residential care facility,
- (iii) Alternative living,
- (iv) Group home,
- (v) Supported living,
- (vi) Agency attendant care,
- (vii) Supported living or other residential service allowance,
- (viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, 2013 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

(a) Alternative living;

(b) Supported living; or

(c) Companion homes.

(9) ~~((As of December 31, 2010, you met))~~ You meet the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS)~~((you had an IFS service level of three or four, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to January 1, 2011, or you received))~~ and you are currently receiving SSI payments or you would receive SSI payments if you did not receive Social Security Title II benefits as a disabled adult child ((prior to January 1, 2011 and would have been eligible for SSI if you did not receive these benefits)).

(10) As of March 31, 2011, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service level of one or two, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to April 1, 2011, or you received social security title II benefits as a disabled adult child prior to April 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

AMENDATORY SECTION (Amending WSR 06-24-074, filed 12/4/06, effective 1/4/07)

WAC 388-827-0145 How much money will I receive?

The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.

(1) For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state-only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

(2) ~~((For family support services, refer to WAC 388-825-200 through 388-825-256-))~~ If you receive SSP in lieu of individual and family services you will receive the following amounts based on your DDA assessment:

<u>If your individual and family services score is:</u>	<u>The award level will be</u>	<u>The amount of your award will be</u>
<u>0 - 60</u>	<u>Not eligible</u>	<u>Not eligible</u>
<u>61-240</u>	<u>Level 1</u>	<u>\$1,200</u>
<u>241-336</u>	<u>Level 2</u>	<u>\$1,800</u>
<u>337-527</u>	<u>Level 3</u>	<u>\$2,400</u>
<u>528 or more</u>	<u>Level 4</u>	<u>\$3,600</u>

(a) If you are on the home and community based services (HCBS) waiver administered by DDD:

(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.

(ii) The remainder up to the maximum yearly award for traditional family support or family support opportunities may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.

(b) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the traditional family support program between March 1, 2001 and June 30, 2003 the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP unless your need changes.

(i) Need is based on your service need level and whether you receive medicaid personal care as specified in WAC 388-825-254.

(ii) If your need changes, the amount of your SSP will be adjusted accordingly.

(c) If you are not on the HCBS waiver administered by DDD, and you received state-only funding for the family support opportunity program between March 1, 2001 and June 30, 2003 the amount of your SSP will be fifteen hundred dollars per year.

(d) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.

(3) If you are eligible for SSP because you meet the criteria in WAC 388-827-0115(5), you will receive one hundred dollars per month.

(4) DDD may authorize additional payments to certain individuals if the SSP budget has sufficient funds to allow this payment.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-828-9140 How does DDD determine the amount of your individual and family service award? DDD uses the following table to determine the amount of your individual and family services award:

If your individual and family services score is:	<u>The award level will be</u>	((Then)) <u>The amount of your award is up to:</u>
0 to 60	<u>Not eligible</u>	No Award
61 to 240	<u>Level 1</u>	\$(2000) <u>1,200</u>
241 to 336	<u>Level 2</u>	\$(3000) <u>1,800</u>
337 to 527	<u>Level 3</u>	\$(4000) <u>2,400</u>
528 or more	<u>Level 4</u>	\$(6000) <u>3,600</u>

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0085 When there is state funding available to enroll additional clients ~~((in))~~ on the IFS program, how will DDD select from the clients on the IFS program request list? When there is state funding available for additional IFS participants, DDD ~~((may))~~ will enroll participants based on ~~((the following considerations:~~

~~(1) Clients who have requested residential habilitation center (RHC) respite, emergency services, or residential placement, prior to June 30, 2007.~~

~~(2) Clients with the highest scores in caregiver and behavior status on the mini assessment.~~

~~(3) Clients who have been on the IFS program request list the longest))~~ priorities established by the legislature or from the date the client was placed on the IFS request list.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0130 What is the amount of the IFS program allocation my family is going to receive? The DDD assessment, described in chapter 388-828 WAC, will determine your level of need. The IFS program annual allocations are ~~((as follows:~~

~~(1) Level 1 - Up to \$2,000;~~

~~(2) Level 2 - Up to \$3,000;~~

~~(3) Level 3 - Up to \$4,000; and~~

~~(4) Level 4 - Up to \$6,000))~~ identified in 388-828-9140.

**WSR 14-01-064
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed December 13, 2013, 9:56 a.m., effective December 19, 2013]

Effective Date of Rule: December 19, 2013.

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 chapter 49, Laws of 2012 (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 is a subsequent request to the previous emergency filed as WSR 13-17-122 on August 21, 2013.

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, 34.05.350 (1)(c).

Other Authority: Chapter 49, Laws of 2012.

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

Reasons for this Finding: The passing of chapter 49, Laws of 2012, required a tremendous amount [of] coordination and timing with CMS to agree on waiver language before we could develop new WAC language. Secondary, implementation of related programming changes to CARE (our statewide computer system) and aligning the language in these changes with those related sections of chapter 388-828 WAC. This emergency filing also adds dental as a waiver service. These changes were adopted by emergency on September 1, 2012, to be in compliance with what CMS had set for the changes to the waiver. The permanent rule was filed on November 26, 2013, as WSR 13-24-045 and will be effective on January 1, 2014.

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 12, 2013.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-02 issue of the Register.

WSR 14-01-065

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 13-10—Filed December 13, 2013, 10:13 a.m., effective December 13, 2013, 10:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making will update the definition of plan holder to include all persons listed in RCW 88.46.060 and update the definition of "umbrella plan" to ensure the term is used only when referring to nonprofit corporations. It will also ensure that owner/operators, if operating under a plan that covers multiple parties, are not required to comply with provisions of the rule that apply specifically to "plan holders."

Citation of Existing Rules Affected by this Order: Amending chapter 173-182 WAC.

Statutory Authority for Adoption: RCW 88.46.060, 90.46.050.

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 exclusion of for-profit entities in the regulatory definition of plan holder and the broad definition of umbrella plan (should be limited to non-profits) should all be addressed to clarify the rule's requirements for the different multiple vessel plans. Without clarification, there is uncertainty about what regulatory requirements apply to what multiple vessel plans, leaving ecology's approval of the plans vulnerable to legal challenge. If the plans are challenged, it could interfere with covered vessels' ability to rely on the plan (if the plan approval is invalidated). A vessel operating without the important services and regulatory safeguards that a plan provides creates a threat to public health, safety and general welfare because it creates uncertainty as to who and what resources will be used to respond if there is a spill. Ecology will file the preproposal statement of inquiry immediately to begin the permanent rule-making process.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, 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: December 13, 2013.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-015 Applicability. (1) This chapter applies to owners and operators of onshore ~~((and))~~ facilities, offshore facilities, and covered vessels required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

(2) This chapter applies to ~~((nonprofit corporations, their enrolled members, and agents that submit and implement plans on behalf of onshore and offshore facilities and covered vessels))~~ any person submitting a contingency plan on behalf of a covered vessel, multiple covered vessels, onshore facilities and offshore facilities, or any combination thereof.

(3) This chapter applies to response contractors that must be approved by ecology before they may serve as primary response contractors for a contingency plan.

(4) This chapter does not apply to public vessels as defined by this chapter, mobile facilities or to spill response vessels that are exclusively dedicated to spill response activities when operating on the waters of this state.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-030 Definitions. (1) "Aerial oil spill spotter" (spotter) means personnel trained to:

- Direct vessels to the heaviest concentrations of oil;
- Direct dispersant resources;
- Direct in situ burn resources; and
- Observe document and report the effectiveness of response operations.

(2) "Aerial observer" means a trained observer that monitors, records and reports the spill characteristics including the shoreline impacts, area oiled, color, and thickness of the oil. Observers also provide data to the command post through the development of detailed maps of the area oiled and the resources in the field as well as other photographs, videos, or documents developed to support planning.

(3) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. Ecology's determination of best achievable protection shall be guided by the critical need

to protect the state's natural resources and waters, while considering:

- (a) The additional protection provided by the measures;
 - (b) The technological achievability of the measures; and
 - (c) The cost of the measures.
- (4) "Best achievable technology" means the technology that provides the greatest degree of protection. Ecology's determination of best achievable technology will take into consideration:
- (a) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development;
 - (b) Processes that are currently in use; and
 - (c) In determining what is best achievable technology, ecology shall consider the effectiveness, engineering feasibility, and the commercial availability of the technology.
- (5) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F 625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.
- (6) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.
- (7) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.
- (8) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.
- (9) "Contract or letter summarizing contract terms" means:
- (a) A written contract between a plan holder and a primary response contractor or other provider or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or
 - (b) A letter that: Identifies personnel, equipment and services capable of being provided by the primary response contractor or other provider within stipulated planning standard times; acknowledges that the primary response contractor or other provider commits the identified resources in the event of an oil spill.
- (10) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter.
- (11) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

(12) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

(13) "Director" means the director of the state of Washington department of ecology.

(14) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(15) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

(16) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

(17) "Ecology" means the state of Washington department of ecology.

(18) "Emergency response towing vessel" means a towing vessel stationed at Neah Bay that is available to respond to vessel emergencies upon call out under the contingency plan. The emergency response towing vessel shall be available to the owner or operator of the covered vessel transiting to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks Light, Vancouver Island, Canada.

(19) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(20) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

(21) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

(22) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

(23) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

(24) "Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

(25) "Lower Columbia River" means the Columbia River waters west of Bonneville Dam.

(26) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

(27) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(28) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(29) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

(30) "Nonpersistent or group 1 oil" means:

(a) A petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(i) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(ii) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(b) A nonpetroleum oil with a specific gravity less than 0.8.

(31) "Nonpetroleum oil" means oil of any kind that is not petroleum-based, including but not limited to: Biological oils such as fats and greases of animals and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

(32) "*Northwest Area Contingency Plan (NWACP)*" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

(33) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(34) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and pressure and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(35) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(36) "Onshore facility" means any facility, as defined in subsection (14) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(37) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

(38) "Operational period" means the period of time scheduled for execution of a given set of operational actions as specified in the incident action plan. The operational period coincides with the completion of one planning cycle.

(39) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility;

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(40) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(41) "Passive recovery" means a tactic that uses absorbent material to mitigate impacts to shorelines.

(42) "Persistent oil" means:

(a) Petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(i) Group 2 - Specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(ii) Group 3 - Specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(iii) Group 4 - Specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(iv) Group 5 - Specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(b) A nonpetroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(i) Group 2 - Specific gravity equal to or greater than 0.8 and less than 0.85;

(ii) Group 3 - Specific gravity equal to or greater than 0.85 and less than 0.95;

(iii) Group 4 - Specific gravity equal to or greater than 0.95 and less than 1.0; or

(iv) Group 5 - Specific gravity equal to or greater than 1.0.

(43) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

(44) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

(45) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

(46) "Plan holder" means ~~((all covered facility owner/operators required to submit contingency plans, all covered vessel owner/operators required to submit contingency plans or enroll under a vessel umbrella plan and the umbrella plan holders that submit contingency plans on behalf of multiple covered vessels owner/operators or facility owner/operators))~~ a person who submits and implements a contingency plan consistent with RCW 88.46.060 and 90.56.210 on the person's own behalf or on behalf of one or more persons. Where a plan is submitted on behalf of multiple persons, those covered under that plan are not considered plan holders for purposes of this chapter.

(47) "Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

(48) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(49) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(50) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

(51) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessel of opportunity response system to respond when needed and available.

(52) "Resident" means the spill response resources are staged at a location within the described planning area.

(53) "Responsible party" means a person liable under RCW 90.56.370.

(54) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(55) "Spill" means an unauthorized discharge of oil which enters waters of the state.

(56) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

(57) "Systems approach" means the infrastructure and support resources necessary to mobilize, transport, deploy, sustain, and support the equipment to meet the planning standards, including mobilization time, trained personnel, per-

sonnel call out mechanisms, vehicles, trailers, response vessels, cranes, boom, pumps, storage devices, etc.

(58) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(59) "Technical manual" means a manual intended to be used as a planning document to support the evaluation of best achievable protection systems for potential response capability of plan holder owned and PRC dedicated and nondedicated equipment.

(60) "Transmission pipeline" means a pipeline whether interstate or intrastate, subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(61) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

(62) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

(63) "Umbrella plan" means a single plan submitted on behalf of multiple covered vessels that is prepared by a ~~((plan holder to cover multiple vessels))~~ nonprofit corporation.

(64) "Vessels of opportunity response system" means nondedicated vessels and operating personnel, including fishing and other vessels, available to assist in spill response when necessary. The vessels of opportunity are under contract with and equipped by contingency plan holders to assist with oil spill response activities including, but not limited to, on-water oil recovery in the near shore environment, the placement of oil spill containment booms to protect sensitive habitats, and providing support of logistical or other tactical actions.

(65) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(66) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(67) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, or volume of the largest breakout tank. The largest volume determined from three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks without a single secondary containment system. Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume.

(68) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-110 Authority to submit contingency plan. (1) For tank vessels, a plan may be submitted by any of the following:

(a) The owner or operator of the tank vessel; or

(b) The owner or operator of the facilities at which the tank vessel will be unloading its cargo; or

(c) A nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the tank vessel owner or operator is a member; or

(d) A ~~((PRC contractually obligated to provide containment and cleanup services to the tank vessel company))~~ person who has contracted with the tank vessel to provide containment and clean-up services and who has been approved by ecology.

(2) For covered vessels other than tank vessels, a plan may be submitted by any of the following:

(a) The owner or operator of the ~~((covered))~~ vessel; or

(b) The agent for the ~~((covered))~~ vessel provided that the agent resides in this state; or

(c) A nonprofit corporation established for the purpose of oil spill response and contingency plan coverage ~~((and))~~ of which the covered vessel owner or operator is a member; or

(d) A ~~((PRC contractually obligated to provide containment and cleanup services to the covered vessel company))~~ person who has contracted with the vessel to provide containment and clean-up services and who has been approved by ecology.

(3) For facilities, a plan may be submitted by any of the following:

(a) The owner or operator of the facility; or

(b) A ~~((PRC contractually obligated to provide containment and cleanup services to the facility))~~ person who has contracted with the facility to provide containment and clean-up services and who has been approved by ecology.

~~((4) One plan, or one umbrella plan, may be submitted for multiple covered vessels, and/or for multiple facilities, provided that the plan contents meet the requirements in this chapter for each covered vessel or facility.))~~

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-130 Phase in language. (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans, and response contractors with approved applications. Each update must contain all necessary content and meet the requirements of this chapter.

(2) For existing approved facility plan holders within six months after the effective date of this chapter, all facility plan holders must update their plans to comply with the following sections as applicable to the facility:

(a) Binding agreement (WAC 173-182-220).

(b) Contingency plan general content (WAC 173-182-230~~((7))~~ (8)), claims procedures.

(c) Contingency plan general content (WAC 173-182-230 (4)(c)(i) through (v)), products handled.

(d) Facility spills to ground notifications (WAC 173-182-264).

(e) Planning standards for dispersants (WAC 173-182-325).

(f) Planning standard for Group 5 Oils (WAC 173-182-324).

(g) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(3) For existing approved tank vessel plan holders and vessel umbrella plan holders, the following is required, as applicable to the plan holder:

(a) Within six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Binding agreement (WAC 173-182-220).

(ii) Contingency plan general content (WAC 173-182-230 (3)(b)(ii)).

(iii) Contingency plan general content (WAC 173-182-230 (5)(f) and (g)).

(iv) Contingency plan general content (WAC 173-182-230 (6)(a)(i) through (vii) and (7)).

(v) Contingency plan general content (WAC 173-182-230~~((7))~~ (8)), claims procedures.

(vi) Aerial surveillance planning standard (WAC 173-182-321(2)), Additional surveillance assets.

(vii) Planning standard for dispersants (WAC 173-182-325).

(viii) Planning standard for Group 5 Oils (WAC 173-182-324).

(ix) Requirements for vessel umbrella plan holders maintaining additional agreements for supplemental resources (WAC 173-182-232).

(x) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(b) Within eighteen months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 1 - Cape Flattery/Strait of Juan De Fuca.

(ii) Aerial surveillance planning standard (WAC 173-182-321(1)), Helicopter/fixed wing.

(iii) Dedicated on-water storage (WAC 173-182-335), at least twenty-five percent of the total worst case discharge requirement.

(iv) San Juan County planning standard (WAC 173-182-370), four hour planning standard.

(v) Neah Bay staging area (WAC 173-182-395), four hour planning standard.

(vi) Covered vessel planning standard for shoreline cleanup (WAC 173-182-522).

(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(c) Within thirty-six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 2 - San Juan Islands/North Puget Sound.

(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 4 - Lower Columbia River.

(iii) Provide proposal for ecology review of the aerial surveillance planning standard (WAC 173-182-321(3)), Helicopter/fixed wing with forward looking infrared. Plan holder shall have an additional twelve months to have this asset staged and all plan updates finalized as applicable.

(iv) Covered vessel plan holder's technical manual requirement (WAC 173-182-349).

(v) Commencement Bay Quartermaster Harbor planning standard (WAC 173-182-380), four hour planning standard.

(vi) Cathlamet staging area (WAC 173-182-415), four hour planning standard.

(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(d) Within forty-eight months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 6 - Grays Harbor.

(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 3 - South Puget Sound and Central Puget Sound.

(iii) Vessels of opportunity planning standard (WAC 173-182-317), Region 5 - Admiralty Inlet, Hood Canal and North Puget Sound.

(iv) Grays Harbor planning standard (WAC 173-182-450), four hour planning standard.

(v) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(4) Within eighteen months after the effective date of this chapter, all primary response contractors must update their applications to comply with the following section: Primary response contractor application content, submittal and review (WAC 173-182-810).

(5) Each plan update will be given a thirty day public review and comment period. Ecology will approve, disap-

prove, or conditionally approve the plan update no later than sixty-five days from the update submittal date.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-145 Plan implementation procedures. Every plan holder, including each person (~~whose vessel enrolls~~) enrolled in (~~coverage under an umbrella~~) a plan covering multiple persons, is required to implement the Washington approved plan in any response to a spill and drill. A decision to use a different plan must first be approved by the state and federal on-scene coordinators.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-220 Binding agreement. (1) Each plan shall contain a written statement binding the plan holder to its use. Form number ECY 070-217 may be used. The binding agreement shall be signed by each of the following: (a) The plan holder, (b) the owner or operator, or a designee with authority to bind the owners and operators of the (~~facility~~) facilities or vessels covered by the plan. (~~In the case of an umbrella plan, the umbrella plan holder that submitted the umbrella plan on behalf of enrolled vessels must sign the binding agreement.~~) The agreement is submitted with the plan and will include the name, address, phone number, and if appropriate the e-mail address, and web site of the submitting party.

(2) In the statement, the signator will:

(a) Verify acceptance of the plan and commit to a safe and immediate response to spills and to substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural and economic resources;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;

(d) Verify authority and capability of the plan holder to make necessary and appropriate expenditures in order to implement plan provisions; and

(e) Commit to working in unified command within the incident command system to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-230 Contingency plan general content. (1) Contingency plans must include all of the content and meet all the requirements in this section.

(2) In Washington state, the NWACP serves as the state-wide master oil and hazardous substance contingency plan required by RCW 90.56.060. Plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

(a) Each plan shall state the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill.

(i) For transmission pipelines, more than one worst case spill volume for different line sections on the entire pipeline may be submitted to ecology for consideration.

(ii) For vessel umbrella plans that enroll both tank vessels and nontank covered vessels and that rely on supplemental resources for approval, specify the worst case discharge volume and product type for both tank and nontank covered vessels for each port covered by the contingency plan.

(iii) For multiple facilities using a single ((~~umbrella~~)) plan, separate worst case spill volumes are required for each facility.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.

(d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall have the PRC's name, address, phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan.

(ii) If the entire contract is not submitted, that document shall be available for inspection, if requested by the department.

(iii) For mutual aid agreements that a plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(iv) If a plan holder relies on a PRC or other contractor to staff ICS positions for the spill management team, then the commitment must be specified in writing.

(v) If the entire contract for additional spill management team support is not included in the plan, that document shall be made available for inspection, if requested by ecology.

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

(4) Additional facility plan content.

Facility plans shall include:

(a) The name, location, type and address of the facility;

(b) Starting date of operations;

(c) Description of the operations covered by the plan:

(i) List the oil handling operations that occur at the facility location.

(ii) Inventory all tanks and list the tank capacity(±).

(iii) All oil(s) or product(s) handled by name and include; density, gravity, API, oil group number, and sulfur content (sweet/sour).

(iv) Include a written description and map indicating site topography, storm water and other drainage systems, moor-

ing areas, pipelines, tanks, and other oil processing, storage, and transfer sites and operations.

(v) A description of the geographic area that could be impacted from a spill at the location based on a forty-eight hour worst case spill trajectory analysis.

(5) Additional vessel plan content. Except as provided in subsections (6) and (7) of this section, vessel plans shall also include:

(a) Name of each vessel covered under the plan;

(b) The name, location, and address of the owner or operator;

(c) Official identification code or call sign;

(d) Country of registry;

(e) All ports of call or areas of expected operation in Washington waters;

(f) List all oil(s) or product(s) by name and include; density, gravity, API, oil group number, sulfur content (sweet/sour) and general ship capacity for amounts carried as cargo or fuel;

(g) Description of the operations covered by the plan; and

(h) A diagram indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations.

(6) ~~((Special exemptions for vessel umbrella))~~ Plans covering multiple vessels with different owners shall ~~((at a minimum,))~~ also include the following:

(a) In lieu of providing vessels names, call signs and country of registry, ~~((vessel umbrella))~~ plan holders shall maintain accurate enrollment or member lists with vessel specific information provided by covered vessels and shall provide ecology twenty-four hour access to the enrolled vessels list via the internet in a format acceptable to ecology. The list shall be updated daily, or at a minimum every three days. The list must at a minimum include the following:

(i) Vessel name;

(ii) Vessel type;

(iii) Worst case discharge oil type and quantity;

(iv) The name and API gravity of the densest oil being handled on the enrolled vessels;

(v) Qualified individual/spill management team;

(vi) Agent; and

(vii) ~~((PRC/supplemental resources provider; and~~

~~((viii)))~~ Protection and indemnity (P&I) club.

(b) ~~((Umbrella))~~ Plans ~~((for))~~ covering multiple vessels shall include a list of the types of vessels and the typical oil types by group and volumes. In addition, vessel diagrams indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations shall be available for inspection by ecology. The procedure for the plan holder to acquire vessel diagrams needs to be documented in the plan.

(7) Umbrella plans shall list the name of the entities that provide supplemental equipment.

(8) Plans shall include concise procedures to establish a process to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-240 Field document. (1) Each plan shall contain a field document which lists time critical information for the initial emergency phase of a spill and a substantial threat of a spill. The owner or operator of the covered vessel or facility shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations at facilities, docks, on vessels and in the plan. The locations where field documents are kept must be listed in the plan, provided that ~~((vessel umbrella))~~ plan holders covering multiple persons shall not be subject to enforcement if the owner or operator of an enrolled vessel fails to keep the field documents in the location specified in the plan.

~~((Umbrella vessel))~~ Plans covering multiple persons shall include procedures to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters. This can include by electronic means.

(2) At a minimum, the field document shall contain:

- (a) A list of the procedures to detect, assess and document the presence and size of a spill;
- (b) Spill notification procedures and a call out list that meets the requirements in WAC 173-182-260 and 173-182-262 or 173-182-264 as applicable; and
- (c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-262 Vessel notification requirements for a discharge or substantial threat of a discharge. (1) The owner or operator of a covered vessel must notify the state through the Washington emergency management division of a discharge or substantial threat of a discharge. Notification must be made within one hour of the discharge or substantial threat of a discharge, or as soon as is feasible without further endangering the vessel or personnel.

(2) Vessel discharge notifications are in addition and made subsequent to notifications that the owner or operator of a covered vessel must provide to the United States Coast Guard. Vessels enrolled in ~~((umbrella))~~ plans covering multiple vessels must notify the ~~((umbrella))~~ plan holder in addition to the state, unless the state has already been notified by the ~~((umbrella))~~ plan holder on behalf of the vessel owner or operator.

(3) Notification of the discharge or substantial threat of a discharge initiates activation of the plan. Upon notification the vessel owner/operator will coordinate as appropriate with:

- (a) The state of Washington and the United States Coast Guard to take any necessary actions to protect the public health, welfare, and natural resources of the state; and
- (b) The ~~((umbrella))~~ plan holder for plan implementation as described in the plan.
- (4) Notification procedures must be included in the plan.
- (5) The substantial threat of a discharge may be determined or affected by the following conditions:

- (a) Ship location and proximity to land or other navigational hazards;
- (b) Weather;
- (c) Tidal currents;
- (d) Sea state;
- (e) Traffic density;
- (f) Condition of vessel; and
- (g) Timing or likelihood of vessel repairs.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-280 Spill management teams. (1) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response. To meet the requirement, the plan shall include:

- (a) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.
- (b) For the purpose of ensuring depth of the spill management team, an organization list of one primary and one alternate person to lead each ICS spill management position down to the section chief and command staff level as depicted in the NWACP standard ICS organizational chart. In lieu of being placed in the plan, this list may be maintained at the plan holder's office and be made available to ecology upon request. If a response contractor is used to fill positions, they must agree in writing to staff the positions. The capacity and depth of spill management teams will be evaluated in drills and spills.
- (c) A job description for each spill management position; except if the plan holder follows without deviation the job descriptions contained in the NWACP. If the job descriptions are consistent with the NWACP, then the plan holder may reference the NWACP rather than repeat the information.

(d) A detailed description of the planning process which will be used to manage a spill. If the process is consistent with the NWACP then the plan holder may reference the NWACP rather than repeat the information.

(2) The plan shall address the type and frequency of training that each individual listed in subsection (1)(b) of this section receives. The training program at a minimum shall include as applicable ICS, NWACP policies, use and location of GRPs, the contents of the plan and worker health and safety. The training program shall include participation in periodic announced and unannounced exercises and participation should approximate the actual roles and responsibilities of the individual specified in the plan. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(3) ~~((Covered vessel))~~ The plan ~~((holders))~~ shall identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out-of-state, a primary and alternate incident commander that could arrive at the initial command post within six hours. The plan shall include estimated time frames for arrival of the remainder of the spill management

team to the spill site, or at the incident command post as appropriate.

(4) The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes.

(5) ~~((Covered vessel umbrella))~~ Plans covering multiple vessels must maintain a list of the spill management team(s) for each vessel enrolled under the plan, and must describe the transition process from ~~((umbrella))~~ plan personnel to the incoming vessel owner or operator's team. The plan must include checklists and documentation to facilitate an effective transition.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-630 Process for plan approval. (1) Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the plan holder shall be notified of any deficiencies within five business days. The public review and comment period does not begin until a complete plan is received.

(2) Once a plan has been determined to be complete, ecology shall notify interested parties, including local and tribal governments and make the plan available for public review and comment.

Ecology will accept comments on the plan no later than thirty days after the plan has been made publicly available. No later than sixty-five days from the date of public notice of availability, ecology will make a written determination that the plan is disapproved, approved, or conditionally approved. The written determination will be provided in the form of an order and subject to appeal as specified in chapter 43.21B RCW.

(a) If the plan is approved, the plan holder receives a certificate of plan approval and plan expiration dates. Approved plans shall be valid for five years.

(b) If a plan is conditionally approved, ecology may require a plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. In the conditional approval ecology will describe:

(i) Each specific restriction and the duration for which they apply;

(ii) Each required item to bring the plan into compliance; and

(iii) The schedule for plan holders to submit required updates, including a reference to the regulatory standard in question.

(iv) Restrictions may include, but are not limited to, additional information for the plan, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours. Restrictions may also include additional requirements to ensure availability of response equipment.

(v) Conditional approval expires no later than eighteen months from date of issue before the plan holder must request an extension which is subject to public review.

(vi) Ecology shall revoke its conditional approval prior to the expiration date of a plan holder who fails to meet the terms of the conditional approval. The revocation will be in the form of an appealable order.

(c) If plan approval is disapproved, the plan holder shall receive an explanation of the factors.

(3) The owner or operator or plan holder shall not engage in oil storage, transport, transfer, or other operations without an approved or conditionally approved plan. ~~((Umbrella))~~ Plan holders shall not enroll any ~~((vessels))~~ persons in a plan that has not been approved or conditionally approved, by ecology.

(4) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

(5) Public notice will be given of any plan approval, conditional approval, or disapproval of a plan.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-710 Type and frequency of drills. The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - One in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - Done two per year	These drills shall include, GRP deployments, testing of each type of equipment to demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance. Except the tank vessel multiplan holder deployment drill which must be scheduled at least 60 days in advance.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.
ERTV Deployment Drill for covered vessels transiting the Strait of Juan de Fuca	1 - One in each three year cycle, this is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.	This drill may involve notifications and tug call out, communications safety, tug demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel and holding position within one hundred feet of another vessel.	Scheduled at least 30 days in advance.
Wildlife Deployment Drill	1 - One in each three year cycle. This is an additional drill unless it is incorporated into a large multiobjective deployment drill.	This drill will be a deployment of wildlife equipment and wildlife handlers.	Scheduled at least 30 days in advance.
Tank vessel multiplan holder deployment drill	1 - One in each three year cycle.	This drill may involve dedicated and nondedicated equipment, vessels of opportunity, multiple simultaneous tactics, and the verification of operational readiness over multiple operational periods.	Scheduled at least 60 days in advance.

(1) Tabletop drills: ~~((a))~~ Tabletop drills are intended to demonstrate a plan holder's capability to manage a spill using the incident command system (ICS). Role playing shall be required in this drill. During all required tabletop drills plan holders must provide a master list of equipment and personnel identified to fill both command post and field operations roles. The master resources list must include:

~~((b))~~ (a) Western regional response list identification numbers for all response resources; and

~~((c))~~ (b) Personnel names, affiliation, home base and command post or field role.

(2) Once during each three year cycle, the plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in state for a drill. However, at ecology's discretion, team members that are out-of-state may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and provided that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every six years.

(3) ~~((Umbrella))~~ Plan holders covering multiple vessels and ecology shall together design a systematic approach to, over time, involve all spill management teams identified in WAC 173-182-230 (6)(a) in tabletop and deployment drills as a best practice to demonstrate the preparedness of enrolled

vessel members. These drills will be scheduled by the plan holder or unannounced to be conducted by ecology, at the discretion of ecology. These drills may test any plan components but at a minimum will include notification to the enrolled vessel qualified individual, coordination of supplemental resources under WAC 173-182-232 and the transition from the ~~((umbrella))~~ plan holder spill management team to the enrolled vessel company spill management team.

(4) Equipment deployment drills: Plan holders shall use deployment drills to demonstrate the actions they would take in a spill, including: Notifications, safety actions, environmental assessment, and response equipment deployment.

(a) During the triennial cycle, deployment drills shall include a combination of plan holder owned assets, contracted PRC assets, nondedicated assets, and vessels of opportunity.

(b) Plan holders should ensure that each type of dedicated equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Plan holders must design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility and the suitability of the system for the operating environment. Drills shall be conducted in all operating environments that the plan holder could impact from spills.

(c) At least twice during a triennial cycle, plan holders shall deploy a geographic response plan (GRP) strategy iden-

tified within the plan. If no GRPs exist for the operating area, plan holders will consult with ecology to determine alternative sensitive areas to protect.

(d) Plan holders may request credit for the prebooming of an oil transfer provided the transfer is scheduled as a deployment on the drill calendar. Such credit may only be requested once per triennial cycle.

(5) Plan holders may receive credit for deployment drills conducted by PRCs if:

(a) The PRC is listed in the plan; and

(b) The plan holder operates in the area, schedules on the drill calendar, and participates in or observes the drill.

(6) Additional large-scale multiple tank vessel plan holder equipment deployment drill requirement. Once every three years all tank vessel plan holders, including (~~vessel umbrella~~) plan holders that enroll multiple tank vessels, must participate in a multiple plan holder deployment exercise. At least one plan holder shall be the drill planning lead, participate in all the planning meetings and observe the drill. This deployment may include the following objectives:

(a) Demonstration of dedicated and nondedicated equipment and trained contracted personnel;

(b) Demonstration of contracted vessel of opportunity response systems and crew performing operations appropriate to the vessel capabilities;

(c) Demonstration of multiple simultaneous tactics including:

(i) On-water recovery task forces made up of complete systems which demonstrate storage, recovery, and enhanced skimming;

(ii) Protection task forces which deploy multiple GRPs;

(iii) Vessel and personnel decontamination and disposal;

(iv) Deployment of contracted aerial assessment assets and aerial observers to direct skimming operations; and

(v) Personnel and equipment identified for night operations.

(d) Verification of the operational readiness during both the first six hours of a spill and over multiple operational periods.

(7) Additional deployment requirement for vessel plan holders with contracted access to the ERTV. Once every three years plan holders with contracted access to the ERTV must cosponsor a drill that includes deployment of the ERTV, unless ERTV drill credit has already been received under WAC 173-182-242 (1)(e). This drill must be scheduled on the area exercise calendar. The drill shall include at a minimum:

(a) Notifications and tug call out;

(b) Safety and environmental assessment;

(c) Demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel;

(d) Demonstration of the capability to hold position within one hundred feet of another vessel; and

(e) Communications.

(8) Additional deployment requirement for all plan holders. Once every three years plan holders must deploy regional mobile wildlife rehabilitation equipment and personnel necessary to set up the wildlife rehabilitation system found in the plan. This is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.

(9) For all plan holders, ecology may initiate scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unannounced drill program to survey, assess, verify, inspect or deploy response equipment listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be called when specific problems are noted with individual plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced notification drills are designed to test the ability to follow the notification and call-out process in the plan.

(d) Immediately prior to the start of an unannounced deployment or tabletop drill, plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the plan holder is excused, ecology will conduct an unannounced drill at a future time.

WSR 14-01-068

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-300—Filed December 13, 2013, 3:17 p.m., effective December 13, 2013, 3:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: Establishes the winter-period white sturgeon retention season in Bonneville Reservoir. Fishery managers determined that closing the fishery to sturgeon retention January 20 will reserve enough fish for a summer retention season. Regulation is consistent with joint Washington-Oregon action of September 12 and December 11, 2013. Conforms Washington state rules with Oregon state rules. 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: December 13, 2013.

Philip Anderson
Director

NEW SECTION

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

(1) Effective immediately through December 31, 2013: It is unlawful to retain white sturgeon caught in those waters of the Columbia River and the adjacent tributaries from the Wauna powerline crossing at river mile 40 near Cathlamet upstream to the sturgeon deadline at Bonneville Dam. Catch and release is allowed.

(2) Effective January 1 through January 19, 2014, it is permissible to retain white sturgeon 38-inches minimum and 54-inches maximum fork length caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam.

(3) Effective 12:01 a.m. January 20, 2014, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Catch and release is allowed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900S Exceptions to statewide rules—
Columbia River sturgeon. (13-281)