

**WSR 15-15-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Developmental Disabilities Administration)  
 [Filed July 1, 2015, 12:35 p.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: The purpose for this filing is to allow DSHS to continue the implementation of our new individual and family services (IFS) waiver and start another new program called community first choice (CFC) where both require changes to some of the same sections in chapter 388-845 WAC.

The CR-103E filed as WSR 15-12-072 is the original CR-103E filed and related to the IFS waiver and that emergency filing contains the original emergency amendments while this adds additional amendments related to the CFC program. This emergency supersedes WSR 15-12-072.

Citation of Existing Rules Affected by this Order: Amending WAC 388-823-0010 Definitions, 388-825-020 Definitions, 388-825-057 Am I eligible to receive paid services from DDD?, 388-825-0571 What services am I eligible to receive from DDD if I am under the age of eighteen, have been determined to meet DDD eligibility requirements, and I am in a dependency guardianship or foster care with children's administration?, 388-825-059 How will I know which paid services I will receive?, 388-825-068 What medicaid state plan services may DDD authorize?, 388-825-071 What services am I eligible for if I am enrolled in a DDD home and community based services (HCBS) waiver?, 388-825-083 Is there a comprehensive list of waiver and state-only DDD services?, 388-825-305 What service providers are governed by the qualifications in these rules?, 388-825-310 What are the qualifications for providers?, 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CIIBS, or Core waivers, or attendant care services?, 388-825-330 What is required for agencies to provide care in the home of a person with developmental disabilities?, 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, or personal care services?, 388-828-1020 What definitions apply to this chapter?, 388-828-1060 What is the purpose of the DDD assessment?, 388-828-1500 When does DDD conduct a reassessment?, 388-828-1520 Where is the DDD assessment and reassessment administered?, 388-828-1540 Who participates in your DDD assessment?, 388-828-8000 What is the purpose of the individual support plan (ISP) module?, 388-831-0065 What if I refuse to participate in the risk assessment?, 388-831-0160 What services may I receive if I refuse placement in the community protection program?, 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0041 What is DDA's responsibility to provide my services under the DDA HCBS waivers administered by DDA?, 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be

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Statutory Authority for Adoption: SSB 6387 of the 63rd legislature, 2014 regular session for the IFS waiver and ESHB 2746 of the 63rd legislature [legislature], 2014 regular session for the CFC waiver.

Other Authority: RCW 71A.12.030, 71A.12.120.

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

Reasons for this Finding: Overall, this emergency filing is to allow DSHS to continue the implementation of our new IFS waiver and start another new program called CFC where both require changes to some of the same sections in chapter 388-845 WAC. The rule is that when one section of WAC is open and changes are being made to it, it cannot be opened again to make more changes until the initial changes [changes] have been adopted or rescinded. Therefore, we are

combining the above waiver and program changes into one emergency packet to accomplish what we have been tasked to do. This will require superseding the CR-102 filed as WSR 15-09-024, attachment 3, and holding another public comment hearing for the IFS waiver changes and an initial hearing for the CFC changes.

Related to the IFS Waiver: Once SSB 6387 of the 63rd legislature 2014 regular session was passed, DDA worked on the new required IFS waiver while we concurrently identified and programmed the enhancements needed to our statewide assessment tool "CARE" that would incorporate the waiver into our daily work process. Our intent was to be ready to file the emergency rules and implement the system changes to CARE upon the waiver approval date given to us by CMS. Our advanced preparation paid off and once CMS approved our IFS waiver we were able to file the CR-103E to make those changes to rule effective by emergency on June 1, 2015, which turned out to be a short period of time from when CMS approved the waiver and when the waiver would be effective. Although we had also filed the CR-102 and held a public comment hearing for those emergency rules we find ourselves not able to make those rules effective through the regular process prior to needing the additional changes to some sections in chapter 388-845 WAC by the CMS implementation date for the new CFC program.

Related to the CFC Program: ESHB 2746 requires DSHS to refinance personal care services and establish a 1915(k) CFC program per §1915(k) of the Social Security Act. To that end, DSHS has been working to develop a state plan amendment for implementation after CMS approval. This new program also needed modifications to our statewide assessment tool "CARE" and updates to rules of which some sections needing updates are the same sections within chapter 388-845 WAC that have been adopted by emergency but not yet have they completed the regular process to be adopted.

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 16, Amended 91, 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 16, Amended 91, Repealed 0.

Date Adopted: June 30, 2015.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

**WAC 388-823-0010 Definitions.** The following definitions apply to this chapter:

"ABAS-II" means adaptive behavior assessment system-second edition, which is a comprehensive, norm-referenced assessment of adaptive behavior and skills of individuals from birth through age 89.

"CAS" means the DAS-Naglieri cognitive assessment system, a clinical instrument for assessing intelligence based on a battery of cognitive tasks. The test is used for children ages five through seventeen years eleven months.

"Client" means a person with a developmental disability as defined in chapter 388-823 WAC who is currently eligible and active with the developmental disabilities administration (DDA).

"Community first choice (CFC) is a medicaid state plan program defined in chapter 388-106 WAC.

"C-TONI" means the comprehensive test of nonverbal intelligence, a battery of six subtests, designed to measure different aspects of nonverbal intellectual abilities from ages six to eighteen years eleven months.

"DAS" means differential ability scales, which is a cognitive abilities battery for children and adolescents at least age two years, six months but under age eighteen.

"DDA" means the developmental disabilities administration, an administration within department of social and health services.

"Department" means the department of social and health services.

"Documentation" means written information that provides support for certain claims, such as diagnoses, test scores, or residency for the purpose of establishing DDA eligibility.

"DSM-IV-TR" means the diagnostic and statistical manual of mental disorders, fourth edition, text revision.

"DSM-5" means the diagnostic and statistical manual of mental disorders, fifth edition.

"Eligible" means that DDA has determined that you have a condition that meets all of the requirements for a developmental disability as set forth in this chapter.

"ESIT" means early support for infants and toddlers, a program administered by the department of early learning.

"Expiration date" means a specific date that your eligibility as a client of DDA and all services paid by DDA will stop.

"FSIQ" means the full scale intelligence quotient which is a broad measure of intelligence achieved through one of the standardized intelligence tests included in these rules. Any standard error of measurement value will not be taken into consideration when making a determination for DDA eligibility.

"Functional limitation" means a reduced ability or lack of ability to perform an action or activity in the manner or within the range considered to be normal.

"ICAP" means the inventory for client and agency planning. This is a standardized assessment of functional ability. The adaptive behavior section of the ICAP assesses daily living skills and the applicant awareness of when to perform these skills. The goal is to get a snapshot of his/her ability.

"K-ABC" means Kaufman assessment battery for children, which is a clinical instrument for assessing intellectual development. It is an individually administered test of intelligence and achievement for children at least age two years, six

months but under age twelve years, six months. The K-ABC comprises four global scales, each yielding standard scores. A special nonverbal scale is provided for children at least age four years but under age twelve years, six months.

"Leiter-R" means Leiter international performance scale - revised, which is an untimed, individually administered test of nonverbal cognitive ability for individuals at least age two years but under age twenty-one years.

"Medicaid personal care (MPC)" ((means) is a medicaid ((personal care and is the provision of medically necessary personal care tasks)) state plan program as defined in chapter 388-106 WAC.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Nonverbal" means that you do not possess sufficient verbal skills to complete a standard intellectual test.

"NSA" means necessary supplemental accommodations, which are services provided to you if you have a mental, neurological, physical, or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

"Review" means DDA must determine that a current client of DDA still meets all of the requirements for a developmental disability as set forth in this chapter.

"RHC" means a residential habilitation center operated by the DDA.

"SIB-R" means the scale of independent behavior-revised which is an adaptive behavior assessment derived from quality standardization and norming. It can be administered as a questionnaire or as a carefully structured interview, with special materials to aid the interview process.

"SOLA" means a state operated living alternative residential service for adults operated by DDA.

"Stanford-Binet" is a battery of fifteen subtests measuring intelligence for individuals at least age two years but under age twenty-three years.

"Termination" means an action taken by DDA that stops your DDA eligibility and services paid by DDA. If your DDA eligibility is terminated your DDA authorized services will also be terminated. If you remain eligible for CFC or MPC and you are under the age of eighteen DDA will continue to authorize this service. If you are eighteen or older ~~((medicaid personal care))~~ CFC or MPC services will be authorized by the aging and long-term support administration.

"VABS" means Vineland adaptive behavior scales, which is an assessment to measure adaptive behavior in children from birth but under age eighteen years, nine months and in adults with low functioning in four separate domains: Communication, daily living skills, socialization, and motor skills.

"Wechsler" means the Wechsler intelligence scale, which is an individually administered measure of an individual's capacity for intelligent behavior. There are three

Wechsler intelligence scales, dependent upon the age of the individual:

- Wechsler preschool and primary scale of intelligence for children at least age three years but under age seven years;
- Wechsler intelligence scale for children at least age six years but under age sixteen years; and
- Wechsler adult intelligence scale for individuals at least age sixteen years but under age seventy-four years.

"WJ III(r)" means the Woodcock-Johnson(r) III, a test which is designed to provide a co-normed set of tests for measuring general intellectual ability, specific cognitive abilities, scholastic aptitude, oral language, and academic achievement. The WJ III(r) is used for ages two and up.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-020 Definitions. "Authorization"** means DDD approval of funding for a service as identified in the individual support plan or evidence of payment for a service.

**"Client or person"** means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

**"Community first choice (CFC)"** is a medicaid state plan program defined in chapter 388-106 WAC.

**"Department"** means the department of social and health services of the state of Washington.

**"Director"** means the director of the division of developmental disabilities.

**"Division or DDD"** means the division of developmental disabilities within the aging and disability services administration of the department of social and health services.

**"Enhanced respite services"** means respite care for DDD enrolled children and youth, who meet specific criteria, in a DDD contracted and licensed staffed residential setting.

**"Family"** means relatives who live in the same home with the eligible client. Relatives include spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

**"ICF/ID"** means a facility certified as an intermediate care facility for intellectually disabled by Title XIX to provide diagnosis, treatment and rehabilitation services to the individuals with intellectual disabilities or individuals with related conditions.

**"ICF/ID eligible"** for admission to an ICF/ID means a person is determined by DDD as needing active treatment as defined in C.F.R. 483.440. Active treatment requires:

- (1) Twenty-four hour supervision; and
- (2) Continuous training and physical assistance in order to function on a daily basis due to deficits in the following areas: Toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication.

**"Individual support plan (ISP)"** is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

**"Medicaid personal care (MPC)"** is ~~((the provision of medically necessary personal care tasks as))~~ a medicaid state plan program defined in chapter 388-106 WAC.

**"Residential habilitation center" or "RHC"** means a state-operated facility certified to provide ICF/ID and/or nursing facility level of care for persons with developmental disabilities.

**"Residential programs"** means provision of support for persons in community living situations. Residential programs include DDD certified community residential services and support, both facility-based such as licensed group homes, and nonfacility based, such as supported living and state-operated living alternatives (SOLA). Other residential programs include alternative living (as described in chapter 388-829A WAC, companion homes (as described in chapter 388-829C WAC), adult family homes, adult residential care services, children's foster homes, group care and staffed residential homes.

**"Respite care"** means short-term intermittent care for DDD clients in order to provide relief for persons who normally provide that care.

**"Secretary"** means the secretary of the department of social and health services or the secretary's designee.

**"State supplementary payment (SSP)"** is the state paid cash assistance program for certain DDD eligible SSI clients.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-057 Am I eligible to receive paid services from DDD?** You may be eligible to receive paid services from DDD if you are currently an eligible client of DDD per chapter 388-823 WAC and:

(1) You are under the age of three and meet the eligibility requirements contained in WAC 388-823-0800 through 388-823-0850; or

(2) You are a recipient of Washington ~~((state medicaid))~~ apple health under the categorically needy program (CNP) or the alternative benefit plan and meet the eligibility requirements contained in ~~((chapters 388-474, 388-475 and 388-513))~~ chapter 182-513 WAC; or

(3) You are enrolled in a DDD home and community based services waiver and meet the eligibility requirements contained in chapter 388-845 WAC; or

(4) You have been enrolled in the individual and family services program and meet the eligibility requirements contained in chapter 388-832 WAC; or

(5) You have been approved to receive a state-only funded service.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-0571 What services am I eligible to receive from DDD if I am under the age of eighteen, have been determined to meet DDD eligibility requirements, and I am in a dependency guardianship or foster care with children's administration?** Your services from DDD are limited to CFC or medicaid personal care services and related case management if you meet the programmatic eligi-

bility for ~~((medicaid personal care))~~ those programs defined in chapter 388-106 and 388-71 WAC ~~((governing medicaid personal care (MPC) using the current department approved assessment form, comprehensive assessment reporting evaluation (CARE),))~~ and:

- (1) You are under the age of eighteen;
- (2) You have been determined to meet DDD eligibility requirements; and
- (3) You are in a dependency guardianship or foster care with children's administration.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-059 How will I know which paid services I will receive?** Your person-centered service plan/individual support plan (ISP) identifies the services and the amount of service you can receive.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-068 What medicaid state plan services can DDD authorize?** DDD may authorize the following medicaid state plan services if you meet the eligibility criteria for the program:

- (1) Community first choice, per chapter 388-106 WAC;
- (2) Medicaid personal care, per chapter 388-106 WAC;
- ~~((2))~~ (3) Private duty nursing for adults age eighteen and older; per chapter 388-106 WAC;
- ~~((3))~~ (4) Private duty nursing for children under the age of eighteen, per WAC 182-551-3000;
- ~~((4) Adult day health for adults, per chapter 388-106 WAC; and)~~
- (5) ICF/ID services, per chapters 388-835 and 388-837 WAC;
- (6) Nursing facility services at residential habilitation centers (RHCs) per chapter 388-97 WAC.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-071 What services am I eligible for if I am enrolled in a DDD home and community based services (HCBS) waiver?** If you are enrolled in a DDD home and community based services waiver, you are eligible for the services identified in your assessment and authorized in your person-centered service plan/individual support plan.

- (1) Your waiver services are limited to the services available in your specific waiver based on an assessment of your health and welfare needs.
- (2) The services available through each of DDD's HCBS waivers are described in chapter 388-845 WAC.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

**WAC 388-825-083 Is there a comprehensive list of waiver and state-only DDD services?** For medicaid state plan services authorized by DDD, see WAC 388-825-068. The following is a list of waiver and state-only services that

DDD can authorize and those services that can be either a waiver or a state-only service:

(1) **Waiver personal care services that are not available with state-only funds include:**

- (a) In-home services;
- (b) Adult family home; and
- (c) Adult residential care.

(2) **Waiver services that can be funded as state-only services:**

- (a) Assistive technology;
- ~~((b))~~ (b) Behavior management and consultation;
- ~~((b))~~ (c) Community engagement;
- ~~((c))~~ (d) Community transition;
- ~~((e))~~ (e) Environmental accessibility adaptations;
- ~~((d))~~ (f) Medical equipment and supplies;
- ~~((e))~~ (g) Occupational therapy;
- ~~((f))~~ (h) Peer mentoring;
- ~~((g))~~ (i) Person-centered planning facilitation;
- ~~((h))~~ (j) Physical therapy;
- ~~((g))~~ (k) Respite care;
- ~~((h))~~ (l) Sexual deviancy evaluation;
- ~~((i))~~ (m) Skilled nursing;
- ~~((j))~~ (n) Specialized clothing;
- ~~((k))~~ (o) Specialized nutrition;
- ~~((l))~~ (p) Specialized medical equipment or supplies;
- ~~((k))~~ (q) Specialized psychiatric services;
- ~~((l))~~ (r) Speech, hearing and language therapy;
- ~~((m))~~ (s) Staff/family consultation and training;
- ~~((n))~~ (t) Supported parenting services;
- ~~((o))~~ (u) Therapeutic equipment and supplies;
- ~~((p))~~ (v) Transportation/mileage;
- ~~((q))~~ (w) Vehicle modification;
- ~~((r))~~ (x) Residential habilitation services (RHS), including:

- (i) Alternative living;
- (ii) Companion homes;
- (iii) Supported living;
- (iv) Group home;
- (v) Child foster care;
- (vi) Child group care;
- (vii) Staffed residential; and
- (viii) State operated living alternative (SOLA);
- ~~((p))~~ (y) Employment/day programs, including:
  - (i) Community access;
  - (ii) Community guide;
  - (iii) ~~((Person-to-person;~~
  - ~~((v))~~ (iv) Prevocational services; and
  - ~~((v))~~ (v) Supported employment;
  - ~~((q))~~ (z) ITEIP/County programs, including child development services;

~~((r))~~ (aa) Behavior ~~((Mental))~~ health stabilization services, including:

- (i) Behavior ~~((management))~~ support and consultation;
- (ii) ~~((Mental health crisis))~~ Behavior health crisis diversion bed services; and
- (iii) ~~((Skilled nursing; and~~
- ~~((s))~~ (s) Specialized psychiatric services.

(3) **State-only services that are not available as a waiver service:**

- (a) Adult day care;
- (b) Architectural and vehicle modification;

- (c) Attendant care;
- (d) Child care for foster children;
- (e) Chore services;
- (f) Community services grant;
- (g) Individual and family assistance;
- (h) Information/education;
- (i) Medical and dental services;
- (j) Medical insurance copays and costs exceeding other coverage;
- (k) Parent and sibling education;
- (l) Parent training and counseling;
- (m) Psychological counseling;
- (n) Recreational opportunities;
- (o) State supplementary payments;
- ~~((p) Specialized clothing;~~
- ~~(q) Specialized nutrition;~~
- ~~(r)) (p) Training of the client;~~
- ~~((s)) (q) Transportation - cost of escort service or travel time; and~~
- ~~((t)) (r) Reimbursement to families for the purchase of approved items or services.~~

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

**WAC 388-825-305 What service providers are governed by the qualifications in these rules?** These rules govern individuals and agencies contracted with to provide:

- (1) Respite care services;
- (2) Personal care services through the ~~((medicaid personal care program or DDD HCBS Basic)), Basic Plus~~~~((, or CORE))~~ waiver~~((s))~~; or
- (3) Community first choice services;
- (4) Medicaid personal care;
- (5) Attendant care services.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-310 What are the qualifications for respite care, community first choice, medicaid personal care, and attendant care service providers?** (1) ~~((Individuals and agencies providing medicaid personal care (chapters 388-71 and 388-106 WAC) and DDD HCBS waiver personal care (chapter 388-845 WAC)))~~ The providers of services in WAC 388-825-305 must meet the qualifications and training requirements in WAC 388-71-0500 through 388-71-05909.

(2) ~~((Individuals and agencies providing non-waiver DDD home and community based services (HCBS) in the client's residence or the provider's residence or other setting must meet the requirements in WAC 388-825-300 through 388-825-400))~~ In addition:

(a) For individuals and agencies providing state only individual and family services, providers must meet the additional qualifications in chapter 388-832 WAC for the specific service.

~~((3))~~ (b) For individuals and agencies providing HCBS waiver services, providers must meet the additional provider qualifications in chapter 388-845 WAC for the specific service.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

**WAC 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide community first choice services, medicaid personal care, respite care**~~((, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CHBS, or Core waivers,))~~ **or attendant care services?** (1) As a provider of community first choice services, medicaid personal care, respite care~~((, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CHBS, or Core waivers,))~~ or attendant care services, you must be able to:

- (a) Adequately maintain records of services performed and payments received;
  - (b) Read and understand the person's service plan. Translation services may be used if needed;
  - (c) Be kind and caring to the DSHS client for whom services are authorized;
  - (d) Identify problem situations and take the necessary action;
  - (e) Respond to emergencies without direct supervision;
  - (f) Understand the way your employer wants you to do things and carry out instructions;
  - (g) Work independently;
  - (h) Be dependable and responsible;
  - (i) Know when and how to contact the client's representative and the client's case resource manager;
  - (j) Participate in any quality assurance reviews required by DSHS;
- (2) If you are working with an adult client of DSHS as a provider of attendant care, you must also:
- (a) Be knowledgeable about the person's preferences regarding the care provided;
  - (b) Know the resources in the community the person prefers to use and enable the person to use them;
  - (c) Know who the person's friends are and enable the person to see those friends; and
  - (d) Enable the person to keep in touch with his/her family as preferred by the person.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

**WAC 388-825-330 What is required for agencies** ~~((wanting))~~ **to provide care in the home of a person with developmental disabilities?** (1) Agencies providing community first choice services, medicaid personal care or respite services must be licensed as a home care agency or a home health agency through the department of health per chapter 246-335 WAC.

(2) If a residential agency certified per chapter 388-101 WAC wishes to provide medicaid personal care or respite care in the client's home, the agency must have home care agency ~~((certification))~~ or a home health license.

(3) If a residential agency certified per chapter 388-101 WAC only wishes to provide skills acquisition under the community first choice program, the agency must be contracted with the department to provide the service.

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

**WAC 388-825-355 Are there any ((educational)) training requirements for individuals providing respite care, attendant care, community first choice, or personal care services? ((+))** If you are an individual providing personal care or community first choice services for adults, you must meet the training and certification requirements in chapter 388-71 WAC ((388-71-05665 through 388-71-05909.

~~(2) If you provide personal care for children, or provide respite care, there is no required training but DDD retains the authority to require training of any provider).~~

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-1020 What definitions apply to this chapter?** The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"ADSA" means the aging and disability services administration (ADSA), an administration within the department of social and health services, which includes the following divisions: Home and community services, residential care services, management services and division of developmental disabilities.

"ADSA contracted provider" means an individual or agency who is licensed, certified, and/or contracted by ADSA to provide services to DDD clients.

"Adult family home" or "AFH" means a residential home in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services (see RCW 70.12.-010).

"Agency provider" means a licensed and/or ADSA certified business who is contracted with ADSA or a county to provide DDD services (e.g., personal care, respite care, residential services, therapy, nursing, employment, etc.).

"Algorithm" means a numerical formula used by the DDD assessment for one or more of the following:

- (1) Calculation of assessed information to identify a client's relative level of need;
- (2) Determination regarding which assessment modules a client receives as part of his/her DDD assessment; and
- (3) Assignment of a service level to support a client's assessed need.

"Authorization" means DDD approval of funding for a service as identified in the individual support plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"Collateral contact" means a person or agency that is involved in the client's life (e.g., legal guardian, family member, care provider, friend, etc.).

"Companion home" is a DDD contracted residential service that provides twenty-four hour training, support, and supervision, to one adult living with a paid provider.

"DDD" means the division of developmental disabilities, a division with the aging and disability services administration (ADSA), department of social and health services (DSHS).

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

"Group home" or "GH" means a ADSA licensed adult family home or boarding home contracted and certified by ADSA to provide residential services and support to adults with developmental disabilities.

"ICF/MR" means a facility certified as an intermediate care facility for the mentally retarded to provide habilitation services to DDD clients.

"ICF/MR level of care" is a standardized assessment of a client's need for ICF/MR level of care per 42 C.F.R. 440 and 42 C.F.R. 483. In addition, ICF/MR level of care refers to one of the standards used by DDD to determine whether a client meets minimum eligibility criteria for one of the DDD HCBS waivers.

"Person-centered service plan/individual support plan" or "ISP" is a document that ((authorizes and)) identifies ((the DDD paid services to meet a client's assessed needs)) your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Legal guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of eighteen.

"LOC score" means a score for answers to questions in the support needs assessment for children that are used in determining if a client meets eligibility requirements for ICF/MR level of care.

"Modules" refers to three sections of the DDD assessment. They are: The support assessment, the service level assessment, and the person-centered service plan/individual support plan (ISP).

"Panel" refers to the visual user-interface in the DDD assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

"Plan of care" or "POC" refers to the paper-based assessment and service plan for clients receiving services on one of the DDD HCBS waivers prior to June 1, 2007.

"Raw score" means the numerical value when adding a person's "Frequency of support," "Daily support time," and "Type of support" scores for each activity in the support

needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

"Residential habilitation center" or "RHC" is a state-operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW.

"Respondent" means the adult client and/or another person familiar with the client who participates in the client's DDD assessment by answering questions and providing information. Respondents may include ADSA contracted providers.

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD). The SIS is in the support assessment module of the DDD assessment.

"Service provider" refers to an ADSA contracted agency or person who provides services to DDD clients. Also refers to state operated living alternative programs (SOLA).

"SOLA" means a state operated living alternative program for adults that is operated by DDD.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDD eligible Social Security income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by ADSA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

"Waiver personal care" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations per chapter 388-106 WAC to individuals who are authorized to receive services available in the ~~((Basic,))~~ Basic Plus ~~(, and Core)~~ waiver ~~((s))~~ per chapter 388-845 WAC.

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the Basic, Basic Plus, and Core waivers per chapter 388-845 WAC.

"You/Your" means the client.

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

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**AMENDATORY SECTION** (Amending WSR 08-12-037, filed 5/30/08, effective 7/1/08)

**WAC 388-828-1060 What is the purpose of the DDD assessment?** The purpose of the DDD assessment is to provide a comprehensive assessment process that:

(1) Collects a common set of assessment information for reporting purposes to the legislature and the department.

(2) Promotes consistency in evaluating client support needs for purposes of planning, budgeting, and resource management.

(3) Identifies a level of service and/or number of hours that is used to support the assessed needs of clients who have been authorized by DDD to receive:

(a) Medicaid personal care services or ~~((DDD- HCBS waiver personal care))~~ community first choice services per chapter 388-106 WAC;

(b) Waiver respite care services per chapter 388-845 WAC;

(c) Services in the voluntary placement program (VPP) per chapter 388-826 WAC;

(d) Supported living residential services per chapter 388-101 WAC;

(e) Group home residential services per chapter 388-101 WAC;

(f) Group training home residential services per chapter 388-101 WAC;

(g) Companion home residential services per chapter 388-829C WAC; ~~((ø))~~

(h) Individual and family services per chapter 388-832 WAC;

(i) Individual and family services waiver per chapter 388-845 WAC;

(j) State supplementary program per chapter 388-827 WAC.

(4) Records your service requests.

**AMENDATORY SECTION** (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-1500 When does DDD conduct a reassessment?** (1) A reassessment must occur:

~~((+))~~ (a) On an annual basis if you are receiving a paid service or SSP; or

~~((=))~~ (b) When a significant change is reported that may affect your need for support ~~((:))~~ (E.g., changes in your medical condition, caregiver status, behavior, living situation, employment status.); and

(c) Before the next ISP date of your current assessment.

(2) DDA will provide you with notice in advance of your next ISP date so you may schedule the assessment at a time that is convenient to you.

**AMENDATORY SECTION** (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-1520 Where is the DDD assessment and reassessment administered?** ~~((The DDD assessment and reassessment are administered in your place of residence))~~ (1) The DDD assessment and reassessment are administered in your home or place of residence or at another location that is convenient to you.

(2) If the DDA assessment is not administered in your home or place of residence, and if you receive a DDA paid service in your home, a follow up home visit will be conducted to ensure your person-centered service plan can be implemented in your living environment.

**AMENDATORY SECTION** (Amending WSR 08-12-037, filed 5/30/08, effective 7/1/08)

**WAC 388-828-1540 Who participates in your DDD assessment?** (1) ~~((All relevant persons who are involved in your life may participate in your DDD assessment, including your parent(s), legal representative/guardian, advocate(s),~~



~~and service provider(s))~~ You choose the people who participate in your assessment and person-centered service planning meeting.

(2) DDD requires that at a minimum: You, one of your respondents, and a DDD employee participate in your DDD assessment interview. In addition:

(a) If you are under the age of eighteen, your parent(s) or legal guardian(s) must participate in your DDD assessment interview.

(b) If you are age eighteen or older, your court appointed legal representative/guardian must be consulted if he/she does not attend your DDD assessment interview.

(c) If you are age eighteen and older and have no legal representative/guardian, DDD will assist you to identify a respondent.

(d) DDD may ~~((require additional respondents to participate in))~~ consult with other people who were not present at your DDD assessment interview, if needed, to obtain complete and accurate information.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-8000 What is the purpose of the person-centered service plan/individual support plan (ISP) module?** The purpose of the person-centered service plan/individual support plan module is to create a written plan that includes:

(1) Your goals and desired outcomes;

(2) The services and supports, both paid and unpaid, that will assist you to achieve your identified goals.

(3) Your acuity scores generated from the support assessment;

~~((2))~~ (4) Referral information;

~~((3))~~ (5) The SSP, if any, you are approved to receive in lieu of a DDD paid service; and

~~((4))~~ (6) DDD paid services you are authorized to receive:

(a) If you are enrolled in a DDD waiver, the ISP must address all the health and welfare needs identified in your ICF/MR level of care assessment and the supports used to meet your assessed needs; or

(b) If you are not enrolled in a DDD waiver, DDD is only required to address the DDD paid services you are approved to receive.

AMENDATORY SECTION (Amending WSR 08-20-118, filed 9/30/08, effective 10/31/08)

**WAC 388-831-0065 What if I refuse to participate in the risk assessment?** (1) If you refuse to participate in the risk assessment, the division cannot determine what your health and safety needs are, or whether you can be supported successfully in the community with reasonable safeguards. You will not be eligible for any division services except for case management and community first choice (CFC) or medicaid personal care (MPC) services (if eligible under chapter 388-106 WAC).

(2) Your name will be placed on the specialized client database. This database identifies individuals who may present a danger to their communities.

(3) If DDD determines it can provide only case management and ~~((personal care))~~ CFC or MPC services, you and your legal representative will receive a notice of the determination that explains the decision and your right to appeal that decision.

AMENDATORY SECTION (Amending WSR 08-20-118, filed 9/30/08, effective 10/31/08)

**WAC 388-831-0160 What services may I receive if I refuse placement in the community protection program?** If you are offered and refuse community protection program residential services, you may only receive case management services and community first choice or medicaid personal care services (if eligible under chapter 388-106 WAC).

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0001 Definitions.** "Aggregate services" means a combination of services subject to the dollar limitations in the Basic Plus waivers.

"Allocation" means the amount of IFS waiver funding available to the client for a maximum of twelve months.

"CARE" means comprehensive assessment and report evaluation.

"CIIBS" means children's intensive in-home behavioral support waiver.

"Client or person" means a person who has a developmental disability as defined in RCW ~~((71A.10.020(3)))~~ 71A.10.020(5) and has been determined eligible to receive services by the administration under chapter 71A.16 RCW.

"Community crisis stabilization services" or "CCSS" means a state operated program that provides short term supports to participants who meet specific criteria and who are in crisis and/or who are at risk of hospitalization or institutional placement.

"DDA" means the developmental disabilities administration, of the department of social and health services.

"DDA assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDA to measure the support needs of persons with developmental disabilities.

"Department" means the department of social and health services.

"EPSDT" means early and periodic screening, diagnosis, and treatment, medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one as defined in WAC 182-534-0100.

"Enhanced respite services" means respite care for DDA enrolled children and youth, who meet specific criteria, in a DDA contracted and licensed staffed residential setting.

"Evidence based treatment" means the use of physical, mental and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means the following relatives: ~~((who live in the same home with the eligible client. Relatives include))~~

spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relative(s) live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waivers" means home and community based services waivers.

"Home" means present or intended place of residence.

"ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.

"IFS waiver" means the individual and family services waiver.

~~("Individual support plan (ISP)" is a document that authorizes and identifies the DDA paid services and unpaid supports to meet a client's assessed needs.)~~

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Participant" means a client who is enrolled in a home and community based services waiver program.

"Person-centered service plan/individual support plan (ISP)" is a document that authorizes and identifies the DDA paid services and unpaid supports to meet a client's assessed needs.

"Primary caregiver" means the person who provides the majority of your care and supervision.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with DSHS to provide services to you.

"Respite assessment" means an algorithm within the DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic Plus, children's intensive in-home behavioral support, or Core waiver.

"SSI" means supplemental security income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment program, a state-paid cash assistance program for certain clients of the developmental disabilities administration.

"State funded services" means services that are funded entirely with state dollars.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?** DDA provides services through ~~((four))~~ five HCBS waivers:

- (1) Basic Plus waiver;
- (2) Core waiver;
- (3) Community protection (CP) waiver; ~~((and))~~
- (4) Children's intensive in-home behavioral support waiver (CIIBS); and
- (5) Individual and family services (IFS) waiver.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0020 When were the HCBS waivers effective?** Basic Plus, children's intensive in-home behavioral support, Core and community protection waivers were effective September 1, 2012.

Individual and family services waiver was effective June 1, 2015.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services?** You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

- (1) You have been determined eligible for DDA services per RCW 71A.10.020.
- (2) You have been determined to meet ICF/ID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC ~~((388-515-1510))~~ 182-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/ID facility.
- (6) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan/individual support plan.
- (7) You are not residing in hospital, jail, prison, nursing facility, ICF/ID, or other institution.
- (8) Additionally, for the children's intensive in-home behavioral support (CIIBS) waiver-funded services:
  - (a) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;
  - (b) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;
  - (c) You live with your family; and

(d) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

(9) Additionally, for the individual and family services waiver funded services:

- (a) You live in your family home; and
- (b) You are age three or older.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0041 What is DDA's responsibility to provide my services under the DDA HCBS waivers administered by DDA?** If you are enrolled in an HCBS waiver administered by ~~((DDA))~~ DDA.

(1) DDA will provide an annual comprehensive assessment to evaluate your health and welfare needs. Your person-centered service plan/individual support plan, as specified in WAC 388-845-3055, will document:

- (a) Your identified health and welfare needs; and
  - (b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.
- (2) You have access to DDA paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.
- (3) DDA will provide waiver services you need and qualify for within your waiver.
- (4) DDA will not deny or limit, based on lack of funding, the number of waiver services for which you are eligible.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?** When there is capacity on a waiver and available funding for new waiver participants, DDA may enroll people from the statewide data base in a waiver based on the following priority considerations:

- (1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.
- (2) DDA may also consider any of the following populations in any order:
  - (a) Priority populations as identified and funded by the legislature.
  - (b) Persons DDA has determined to be in immediate risk of ICF/ID admission due to unmet health and welfare needs.
  - (c) Persons identified as a risk to the safety of the community.
  - (d) Persons currently receiving services through state-only funds.
  - (e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.
  - (f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(i).
- (3) ~~((For the Basic Plus waiver only,))~~ DDA may consider persons who need the waiver services available in the

Basic Plus or IFS waivers to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different ~~((waiver))~~ DDA HCBS waiver?** (1) If you are already enrolled in a DDA HCBS waiver and you request to be enrolled in a different waiver DDA will do the following:

- (a) Assess your needs to determine whether your health and welfare needs can be met with services available on your current waiver or whether those needs can only be met through services offered on a different waiver.
- (b) If DDA determines your health and welfare needs can be met by services available on your current waiver your enrollment request will be denied.
- (c) If DDA determines your health and welfare needs can only be met by services available on a different waiver your service need will be reflected in your person-centered service plan/ISP.
- (d) If DDA determines there is capacity on the waiver that is determined to meet your needs, DDA will place you on that waiver.
- (2) You will be notified in writing of DDA's decision under subsection (1)(a) of this section and if your health and welfare needs cannot be met on your current waiver, DDA will notify you in writing whether there is capacity on the waiver that will meet your health and welfare needs and whether you will be enrolled on that waiver. If current capacity on that waiver does not exist, your eligibility for enrollment onto that different waiver will be tracked on a statewide data base.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0055 How do I remain eligible for the waiver?** Once you are enrolled in a DDA HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

- (1) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements; and
- (2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 182-513-1320 (3)~~((b))~~, or your health and welfare needs require monthly monitoring, which will be documented in your client record; and
- (3) You complete an in-person DDA assessment/reassessment interview ~~((administered in your home))~~ per WAC 388-828-1520.
- (4) In addition, for the children's intensive in-home behavioral supports waiver, you must:
  - (a) Be under age twenty-one;
  - (b) Live with your family; and
  - (c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

(5) In addition, for the individual and family services waiver, you must live in the family home.

**AMENDATORY SECTION** (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0060 Can my waiver enrollment be terminated?** DDA may terminate your waiver enrollment if DDA determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual person-centered service plan/individual support plan;

(c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program.

(e) You choose to disenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) You refuse to participate with DDA in:

(i) Service planning;

(ii) Required quality assurance and program monitoring activities; or

(iii) Accepting services agreed to in your person-centered service plan/individual support plan as necessary to meet your health and welfare needs.

(i) You are residing in a hospital, jail, prison, nursing facility, ICF/ID, or other institution and remain in residence at least one full calendar month, and are still in residence:

(i) At the end of that full calendar month, there is no immediate plan for you to return to the community; or

(ii) At the end of the twelfth month following the effective date of your current person-centered service plan/individual support plan, as described in WAC 388-845-3060; or

(iii) The end of the waiver fiscal year, whichever date occurs first.

(j) Your needs exceed the maximum funding level or scope of services under the Basic Plus waiver as specified in WAC 388-845-3080; or

(k) Your needs exceed what can be provided under WAC 388-845-3085; or

(2) Services offered on a different waiver can meet your health and welfare needs and DDA enrolls you on a different waiver.

**AMENDATORY SECTION** (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0100 What determines which waiver I am assigned to?** DDA will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDA assessment as described in chapter 388-828 WAC and the following criteria:

(1) For the individual and family services waiver, you:

(a) Are age three or older;

(b) Live in your family home;

(c) Are assessed to need a waiver service to remain in the family home.

(2) For the Basic Plus waiver your health and welfare needs require a waiver service to remain in the community.

~~((2))~~ (3) For the Core waiver:

(a) You are at immediate risk of out-of-home placement; and/or

(b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

~~((3))~~ (4) For the community protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.

~~((4))~~ (5) For the children's intensive in-home behavioral support waiver, you:

(a) Are age eight or older and under age eighteen;

(b) Live with your family;

(c) Are assessed at high or severe risk of out of home placement due to challenging behavior per chapter 388-828 WAC; and

(d) You have a signed participation agreement from your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

**AMENDATORY SECTION** (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0105 What criteria determine assignment to the community protection waiver?** DDA may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by DDA as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on cur-

rent behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent offense, as defined in RCW 9.94A.030.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

(a) Person-centered service plan/individual support plan;

(b) Individual instruction and support plan (IISP); and/or

(c) Treatment plan provided by DDA approved certified individuals and agencies.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

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

(1) A service must be ~~((offered))~~ available in your waiver.

(2) The need for a service must be identified and authorized in your person-centered service plan/individual support plan.

~~((2))~~ (3) Behavioral health stabilization services may be added to your person-centered service plan/individual support plan after the services are provided.

~~((3))~~ (4) Waiver services are limited to services required to prevent ICF/ID placement.

~~((4))~~ (5) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/ID.

~~((5))~~ (6) Waiver services cannot replace or duplicate other available paid or unpaid supports or services. Participants must first pursue benefits available to them through private insurance and the medicaid state plan.

~~((6))~~ (7) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

~~((7 The))~~ (8) For IFS and Basic Plus waivers, ~~((has))~~ services must not exceed the yearly limits ((on some)) specified in these programs for specific services and/or combinations of services. ((The combination of services is referred to as aggregate services.))

~~((8))~~ (9) Your choice of qualified providers and services is limited to the most cost effective option that meets your health and welfare needs.

~~((9))~~ (10) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations of not more than thirty consecutive days.

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

(b) The only recognized bordering cities per WAC 182-501-0175 are:

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

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

~~((10))~~ (11) Other out-of-state waiver services require an approved exception to rule before DDA can authorize payment.

~~((11))~~ (12) Waiver services do not cover co-pays, deductibles, dues, membership fees or subscriptions.

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

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

**WAC 388-845-0111 Are there limitations regarding who can provide services?** The following limitations apply to providers for waiver services:

(1) Your spouse must not be your paid provider for any waiver service.

(2) If you are under age eighteen, your natural, step, or adoptive parent must not be your paid provider for any waiver service.

(3) If you are age eighteen or older, your natural, step, or adoptive parent must not be your paid provider for any waiver service with the exception of:

(a) Personal care;

(b) Transportation to and from a waiver service;

(c) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or

(d) Respite care if you and the parent who provides the respite care live in separate homes.

(4) If you receive CIIBS waiver services, your legal representative or family member per WAC 388-845-0001 must not be your paid provider for any waiver service with the exception of:

(a) ~~((Personal care;~~

~~((b))~~ Transportation to and from a waiver service; and

~~((c))~~ (b) Respite per WAC 388-845-1605 through 388-845-1620.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0115 Does my waiver eligibility limit my access to DDA nonwaiver services?** If you are enrolled in a DDA HCBS waiver:

(1) You are not eligible for state-only funding for DDA services; and

(2) You ~~((are not))~~ may be eligible for medicaid personal care or community first choice services.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0200 What waiver services are available to me?** Each of the DDA HCBS waivers has a different scope of service and your person-centered service plan/individual support plan defines the waiver services available to you.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0210 What is the scope of services for the Basic Plus waiver ((services:))?**

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior support and consultation Community guide Environmental (( <del>accessibility</del> )) adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	EMPLOYMENT SERVICES: Prevocational services Supported employment Individual technical assistance	Limits are determined by DDA assessment and employment status
	Community access  Adult foster care (adult family home) (( <del>Adult residential care (assisted living facility)</del> ))	Limits are determined by DDA assessment  Determined per department rate structure
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavior support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	Personal care	Limits determined by the CARE tool used as part of the DDA assessment
	Respite care	Limits are determined by the DDA assessment
	Sexual deviancy evaluation	Limits are determined by DDA
	Emergency assistance is only for Basic Plus waiver aggregate services	\$6000 per year; preauthorization required

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0215 What is the scope of services for the CORE waiver ((services:))?**

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior support and consultation Community guide Community transition Environmental (( <del>accessibility</del> )) adaptations  Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the <u>person-centered service plan</u> /individual support plan, not to exceed the average cost of an ICF/ID for any combination of services
	Residential habilitation Community access	Limits are determined by DDA assessment

CORE WAIVER	SERVICES	YEARLY LIMIT
	Employment services  Prevocational services Supported employment Individualized technical assistance	Limits are determined by DDA assessment and employment status
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavior support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA
	((Personal care))  Respite care	((Limits determined by the CARE tool used as part of the DDA assessment))  Limits are determined by the DDA assessment

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation	Limits determined by DDA assessment and employment status
	Employment Services:  Prevocational services Supported employment Individual technical assistance	
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavioral support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0220 What is the scope of services for the community protection waiver ((services:))?**

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior support and consultation Community transition Environmental ((accessibility)) adaptations Occupational therapy Physical therapy  Sexual deviancy evaluation Skilled nursing	Determined by the <u>person-centered service plan</u> /individual support plan, not to exceed the average cost of an ICF/ID for any combination of services

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0225 What is the scope of services for the children's intensive in-home behavioral support (CIIBS) waiver ((services:))?**

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> <li>Behavior support and consultation</li> <li>Staff/family consultation and training</li> <li>Environmental ((accessibility)) adaptations</li> <li>Occupational therapy</li> <li>Physical therapy</li> <li>Sexual deviancy evaluation</li> </ul>	Determined by the <u>person-centered service plan</u> /individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> <li>• Nurse delegation</li> <li>• Specialized medical equipment/supplies</li> <li>• Specialized psychiatric services</li> <li>• Speech, hearing and language services</li> <li>• Transportation</li> <li>• Assistive technology</li> <li>• Therapeutic equipment and supplies</li> <li>• Specialized nutrition and clothing</li> <li>• Vehicle modifications</li> </ul>	
	<del>((Personal care))</del>	<del>((Limits determined by the DDA assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.))</del>
	Respite care	Limits determined by the DDA assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Behavioral health Stabilization services: Behavioral support and consultation Crisis diversion bed services Specialized psychiatric services	Limits determined by behavioral health specialist

- (e) Environmental adaptations;
  - (f) Nurse delegation;
  - (g) Occupational therapy;
  - (h) Person-centered plan facilitation;
  - (i) Peer mentoring;
  - (j) Physical therapy;
  - (k) Speech, hearing and language services;
  - (l) Respite Care;
  - (m) Psychosexual evaluation (paid for outside of annual allocation);
  - (n) Skilled nursing;
  - (o) Specialized clothing;
  - (p) Specialized medical equipment and supplies;
  - (q) Specialized nutrition;
  - (r) Supported parenting services;
  - (s) Staff/Family consultation and training;
  - (t) Therapeutic equipment and supplies;
  - (u) Transportation; and
  - (v) Vehicle modification.
- (2) Your IFS waiver services annual allocation is based upon the DDA assessment described in chapter 388-828 WAC. The DDA assessment determines your service level & annual allocation based on your assessed need. Annual allocations are:
- (a) Level 1 = one thousand two hundred dollars;
  - (b) Level 2 = one thousand eight hundred dollars;
  - (c) Level 3 = two thousand four hundred dollars;
  - (d) Level 4 = three thousand six hundred dollars.

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

**WAC 388-845-0415 What is assistive technology?**

Assistive technology consists of items, equipment, or product systems used to increase, maintain, or improve functional capabilities of waiver participants, as well as services to directly assist the participant and caregivers to select, acquire, and use the technology. Assistive technology is available in the CIIBS and IFS waivers, and includes the following:

- (1) The evaluation of the needs of the waiver participant, including a functional evaluation of the ~~((child))~~ participant in the ~~((child's))~~ participant's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for the participant and/or if appropriate, the ~~((child's))~~ participant's family; and
- (6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of ~~((children))~~ individuals with disabilities.

**NEW SECTION**

**WAC 388-845-0230 What is the scope of services for the individual and family services waiver?** (1) IFS waiver services include:

- (a) Assistive technology;
- (b) Behavioral health stabilization services (paid for outside of annual allocation):
  - (i) Behavioral support and consultation; and
  - (ii) Specialized psychiatric service.
- (c) Behavioral support and consultation;
- (d) Community engagement;



AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0420 Who is a qualified provider of assistive technology?** The provider of assistive technology must be an ~~((assistive technology vendor))~~ entity contracted with DDA to provide assistive technology, or one of the following professionals contracted with DDA and duly licensed, registered or certified to provide this service:

- (1) Occupational therapist;
- (2) Physical therapist;
- (3) Speech and language pathologist;
- (4) Certified music therapist;
- (5) ~~((Certified recreation therapist))~~ Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation;
- (6) Audiologist; ~~((or))~~
- (7) Behavior specialist~~((:))~~; or
- (8) Rehabilitation counselor.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0425 Are there limits to the assistive technology I can receive?** (1) ~~((Providers of assistive technology services must be certified, registered or licensed therapists as required by law and contracted with DDA for the therapy they are providing.))~~ Clinical and support needs for assistive technology are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) ~~((Vendors of assistive technology must maintain a business license required by law and be contracted with DDA to provide this service.~~

~~((3))~~ Assistive technology may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the technology is not covered by medicaid or private insurance.

~~((4))~~ (3) The department does not pay for experimental technology.

~~((5))~~ (4) The department requires your treating professional's written recommendation regarding your need for the technology over \$500. This recommendation must take into account that:

(a) The treating professional has personal knowledge of and experience with the requested and ~~((alternative))~~ assistive technology; and

(b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

~~((6))~~ (5) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection ~~((5))~~ (4) above.

(6) The dollar amounts for the waiver participant's IFS waiver annual allocation limit the amount of assistive technology you are authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0505 Who is a qualified provider of behavior support and consultation?** Under the Basic Plus, Core, ~~((and community protection))~~ CP and IFS waivers, the provider of behavior support and consultation must be one of the following professionals contracted with DDA and duly licensed, registered or certified to provide this service:

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

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0510 Are there limits to the behavior support and consultation I can receive?** ~~((The following limits apply to your receipt of))~~ (1) Clinical and support needs for behavior support and consultation~~((:))~~ are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

~~((1))~~ (2) DDA and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection ~~((2))~~ (3) below.

~~((2))~~ (3) The dollar ~~((limitations))~~ amounts for aggregate services in your Basic Plus waiver or the dollar amounts in the annual allocation for the IFS waiver limit the amount of service unless provided as a behavioral health stabilization service.

~~((3))~~ (4) DDA reserves the right to require a second opinion from a department-selected provider.

~~((4))~~ Behavior support and consultation not provided as a behavioral health stabilization service requires prior approval by the DDA regional administrator or designee.

#### NEW SECTION

**WAC 388-845-0650 What are community engagement services?** (1) Community engagement services are services designed to increase a waiver participant's connection to and engagement in formal and informal community supports.

(2) Services are designed to develop creative, flexible and supportive community resources and relationships for individuals with developmental disabilities.

(3) Waiver participants are introduced to the community resources and supports that are available in their area.

(4) Participants are supported to develop skills that will facilitate integration into their community.

(5) Outcomes for this service include skill development, positive relationships, valued community roles and involvement in community activities/organizations/groups/projects/other resources.

(6) This service is available in IFS waiver.

#### NEW SECTION

**WAC 388-845-0655 Who is a qualified provider of community engagement service?** Any individual or agency contracted with DDA as a "community engagement service provider" is qualified to provide this service as evidenced by:

(1) Two years of community engagement experience with the community in which the participant lives; and

(2) Organizations that provide peer support to individuals with developmental disabilities or families that have a member with a developmental disability and are contracted with DDA to provide this service.

#### NEW SECTION

**WAC 388-845-0660 Are there limitations to the community engagement services I can receive?** (1) Support needs for community engagement services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) The dollar amounts in the annual allocation for the IFS waiver limit the amount of service you can receive.

(3) Community engagement services do not pay for the following costs:

(a) Membership fees or dues; and/or

(b) Equipment related to activities; and/or

(c) The cost of any activities.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

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

(1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service plan/individual support plan to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current ~~((plan of care or))~~ person-centered service plan/individual support plan;

(3) Emergency assistance services are limited to the Basic Plus waiver aggregate services;

(4) Emergency assistance may be used for interim services until:

(a) The emergency situation has been resolved; or

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0900 What are environmental ((accessibility)) adaptations?** (1) Environmental ((accessibility)) adaptations are available in all of the DDA HCBS waivers. Environmental adaptations ((and)) provide ((the)) physical adaptations within the physical structure of the home, or outside the home to provide access to the home. The need must be identified by the DDA assessment and the participant's person-centered service plan/ ((required by the individual's)) individual support plan. ((needed to)) The following criteria must be met:

(a) Ensure the health, welfare and safety of the individual and/or caregiver; or

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental ((accessibility)) adaptations may include the purchase and installation of ((ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.)) the following:

(a) Portable and fixed ramps;

(b) Grab bars and handrails;

(c) Widening of doorways, addition of pocket doors, or removal of nonweight bearing walls for accessibility;

(d) Prefabricated roll-in showers and bathtubs;

(e) Automatic touchless or other adaptive faucets and switches;

(f) Automatic turn-on and shut-off adaptations for appliances in the home;

(g) Adaptive toilets, bidets, and sinks;

(h) Specialized electrical and/or plumbing systems necessary for the approved modification or medical equipment and supplies that are necessary for the welfare of the individual and/or safety of the caregiver;

(i) Repairs to environmental adaptations due to wear and tear if necessary for client safety and more cost-effective than replacement of the adaptation;

(j) Debris removal necessary due to hoarding behavior addressed in the participant's positive behavior support plan (PBSP);

(k) Lowering or raising of counters, sinks, cabinets, or other modifications for accessibility;

(l) Reinforcement of walls and replacement of hollow doors with solid core doors;

(m) Replacement of windows with non-breakable glass;

(n) Adaptive hardware and switches;

(o) Ceiling mounted lift systems or portable lift systems; and

(p) Other adaptations that meet identified needs.

(3) For the CIIBS and IFS waivers only, adaptations ~~((include repairs))~~ to the home necessary ((due to)) to prevent

property destruction caused by the participant's behavior, as addressed in the participant's positive behavior support plan.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0905 Who is a qualified provider for ~~(building these)~~ environmental ~~((accessibility))~~ adaptations?** (1) For adaptations that do not require installation, qualified providers are retail vendors with a valid business license contracted with DDA to provide this service.

(2) For adaptations requiring installation, qualified ~~((The))~~ providers ~~((making these environmental accessibility adaptations))~~ must be a registered contractor per chapter 18.27 RCW and contracted with DDA. The contractor or sub-contractor must be licensed and bonded to perform the specific type of work they are providing.

(3) For debris removal, qualified providers must be contracted with DDA.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0910 What limitations apply to environmental ~~((accessibility))~~ adaptations?** The following service limitations apply to environmental ~~((accessibility))~~ adaptations:

(1) Clinical and support needs for environmental adaptations are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan;

(2) Environmental ~~((accessibility))~~ adaptations that involve installation require prior approval by the DDA regional administrator or designee~~((:))~~ supported by written bids from licensed contractors:

(a) One bid is required for adaptations costing one thousand five hundred dollars or less;

(b) Two bids are required for adaptations costing more than one thousand five hundred dollars and equal to or less than five thousand dollars;

(c) Three bids are required for adaptations costing more than five thousand dollars;

(d) All bids must include the cost of all required permits and sales tax;

(e) Bids must be itemized and clearly outline the scope of work.

(3) DDA may require an occupational therapist, physical therapist or construction consultant to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(4) Environmental adaptations that do not involve installation require prior approval by the DDA regional administrator or designee unless they cost five hundred dollars or less per waiver plan year.

~~((2 With the exception of damage repairs under the CHBS waiver, e))~~ (5) Environmental ~~((accessibility))~~ adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

(6) Environmental adaptations must meet all local and state building codes and evidence of any required completed inspections must be submitted to DDA prior to authorizing payment for work.

(7) Deteriorated condition of the dwelling or other remodeling projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA.

(8) Location of the dwelling in a flood plain, landslide zone or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

(9) Written consent from the dwelling landlord is required prior to any environmental adaptations being started for a rental property. The landlord shall not require that the environmental adaptations be removed at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

~~((3))~~ (10) Environmental ~~((accessibility))~~ adaptations cannot add to the total square footage of the home.

~~((4))~~ (11) The dollar ~~((limitations))~~ amounts for aggregate services in your Basic Plus waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

~~((5))~~ (12) Damage repairs under the CHBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original condition~~((:))~~ ;

(b) Limited to the dollar amounts of the IFS waiver participant's annual allocation;

(c) Behaviors of waiver participants that resulted in damage to the dwelling must be addressed in a positive behavior support plan prior to the repair of damages;

~~((b))~~ (d) Repairs to personal property such as furniture and appliances and normal wear and tear are excluded.

(13) The following adaptations are not included in this service:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement.

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

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1015 Are there limits to the extended state plan services I can receive?** (1) Clinical and support needs for extended state plan services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

~~((+))~~ (2) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan;

~~((2))~~ (3) The department does not pay for treatment determined by DSHS to be experimental;

~~((3))~~ (4) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department may require a second opinion from a department selected provider.

(b) The department will require evidence that you have accessed your full benefits through medicaid before authorizing this waiver service.

~~((4))~~ (5) The dollar ~~((limitations))~~ amount for Basic Plus waiver aggregate services limit the amount of service you may receive.

(6) The dollar amount for your annual allocation on the IFS waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1040 Are there limits to the individualized technical assistance services I can receive?** (1) Individualized technical assistance service cannot exceed three months in an individual's plan year.

(2) These services are available on the Basic Plus, Core and ~~((community protection))~~ CP waivers.

(3) Individual must be receiving supported employment or prevocational services.

(4) Services are limited to additional hours per WAC 388-828-9355 and 388-828-9360.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1110 What are the limits of behavioral health crisis diversion bed services?** (1) Clinical and support needs for behavioral health crisis diversion bed services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

~~((4))~~ (2) Behavioral health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a behavioral health professional and/or DDA.

~~((2))~~ (3) These services are available in the CIIBS, Basic Plus, Core~~((:))~~ and community protection waivers administered by DDA as behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

~~((3))~~ (4) The costs of behavioral health crisis diversion bed services do not count toward the dollar ~~((limits))~~ amounts for aggregate services in the Basic Plus waiver.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1150 What are behavioral health stabilization services?** Behavioral health stabilization services assist persons who are experiencing a behavioral health crisis or meet criteria for enhanced respite or community crisis stabilization services. These services are available in the Basic Plus, Core, CIIBS, IFS and community protection waivers to individuals determined by behavioral health professionals or DDA to be at risk of institutionalization or hospitalization who need one or more of the following services:

- (1) Behavior support and consultation;
- (2) Specialized psychiatric services; or

- (3) Behavioral health crisis diversion bed services.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?**

(1) Clinical and support needs for behavioral health stabilization services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Behavioral health stabilization services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a behavioral health professional and/or DDA.

~~((2))~~ (3) The costs of behavioral health stabilization services do not count toward the dollar ~~((limitations))~~ amounts for aggregate services in the Basic Plus waiver or the annual allocation in the IFS waiver.

~~((3))~~ (4) Behavioral health stabilization services require prior approval by DDA or its designee.

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

**WAC 388-845-1170 What is nurse delegation?** (1) Nurse delegation services are services in compliance with WAC 246-840-910 through 246-840-970 by a registered nurse to provide training and nursing management for nursing assistants who perform delegated nursing tasks.

(2) Delegated nursing tasks include, but are not limited to, administration of noninjectable medications except for insulin, blood glucose testing, and tube feedings.

(3) Services include the initial visit, care planning, competency testing of the nursing assistant, consent of the client, additional instruction and supervisory visits.

(4) Clients who receive nurse delegation services must be considered "stable and predictable" by the delegated nurse.

(5) Nurse delegation services are available on all DDA HCBS waivers.

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

**WAC 388-845-1180 Are there limitations to the nurse delegation services that I receive?** The following limitations apply to receipt of nurse delegation services:

(1) Clinical and support needs for nurse delegation are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) The department requires the delegating nurse's written recommendation regarding your need for the service. This recommendation must take into account that the nurse has recently examined you, reviewed your medical records, and conducted a nursing assessment.

~~((2))~~ (3) The department may require a written second opinion from a department selected nurse delegator that meets the same criteria in subsection ~~((4))~~ (2) of this section.

((3)) (4) The following tasks must not be delegated:

- (a) Injections, other than insulin;
- (b) Central lines;
- (c) Sterile procedures; and
- (d) Tasks that require nursing judgment.

(5) The dollar amounts for aggregate services in your Basic Plus waiver or the dollar amounts for your annual allocation in your IFS waiver limit the amount of nurse delegation service you are authorized to receive.

#### NEW SECTION

**WAC 388-845-1190 What is peer mentoring?** (1) Peer mentoring is a form of mentorship that takes place between a person who is living through the experience of having a developmental disability or being the family member of a person who has a developmental disability (peer mentor) and a person who is new to that experience (the peer mentee).

(2) Peer mentors utilize their personal experiences to provide support and guidance to a waiver participant and family members of a waiver participant.

(3) Peer mentors may orient a waiver participant to local community services, programs and resources and provide answers to participants' questions or suggest other sources of support.

(4) Peer mentoring is available in the IFS waiver.

#### NEW SECTION

**WAC 388-845-1191 Who are qualified providers of peer mentoring?** Qualified providers include organizations who:

- (1) Provide peer mentoring support and training to individuals with developmental disabilities or to families with a member with a developmental disability; and
- (2) Are contracted with DDA to provide this service.

#### NEW SECTION

**WAC 388-845-1192 What limitations are there for peer mentoring?** (1) Support needs for peer mentoring are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Peer mentors cannot mentor their own family members.

(3) The dollar amounts for the waiver participant's annual allocation in the IFS waiver limit the amount of peer mentoring service that the participant is authorized to receive.

#### NEW SECTION

**WAC 388-845-1195 What is person-centered planning facilitation?** (1) Person-centered planning facilitation is an approach to forming life plans that is centered on the individual. It is used as a life planning process to enable individuals with disabilities to increase personal self-determination. Person-centered planning facilitation is available in the IFS waiver.

(2) Person-centered planning facilitation typically includes:

- (a) Identifying and developing a potential circle of people who know and care about the individual;
- (b) Exploring what matters to the waiver participant by listening to and learning from the person;
- (c) Developing a vision for a meaningful life, as defined by the waiver participant, which may include goals for education, employment, housing, relationships and recreation;
- (d) Discovering capacities and assets of the waiver participant and her or his family, neighborhood, and support network;
- (e) Generating an action plan; and
- (f) Facilitating follow-up meetings to track progress towards goals.

#### NEW SECTION

**WAC 388-845-1196 Who are qualified providers of person-centered planning facilitation?** Qualified providers include organizations and individuals who:

- (1) Provide person-centered planning facilitation to individuals with developmental disabilities; and
- (2) Are contracted with DDA to provide this service.

#### NEW SECTION

**WAC 388-845-1197 What limitations are there for person-centered planning facilitation?** (1) Support needs for person-centered planning facilitation are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Person-centered planning facilitation may include follow up contacts with the waiver participant and his or her family to consult on plan implementation.

(3) The dollar amounts for the waiver participants' annual allocation in the IFS waiver limit the amount of person-centered planning facilitation service the individual is authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1300 What are personal care services?** Personal care services as defined in WAC 388-106-0010 are the provision of assistance with personal care tasks. These services are available in the Basic Plus(~~CHBS and Core~~) waiver(~~(s)~~) if:

- (1) You do not meet the programmatic eligibility requirements for community first choice services in chapter 388-106 WAC; and
- (2) You meet the programmatic eligibility requirements for medicaid personal care in chapter 388-106 WAC.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1310 Are there limits to the personal care services I can receive?** (1) Clinical and support needs for personal care services are identified in the waiver partici-

parent's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) You must meet the programmatic eligibility for medicaid personal care in chapter 388-106 WAC governing medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE).

((2)) (3) The maximum hours of personal care you may receive are determined by the CARE tool used as part of the DDA assessment.

(a) Provider rates are limited to the department established hourly rates for in-home medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with DSHS.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

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

(1) Clinical and support needs for prevocational services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

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

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

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

(a) Compensation at more than fifty percent of the prevailing wage;

(b) Significant progress made toward your defined goals;

(c) Recommendation by your individual support plan team.

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

((5)) (6) Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1600 What is respite care?** Respite care is short-term intermittent relief for persons who:

(1) ~~(normally provide care for and)~~ Live with you and are your primary care providers; and

(2) Are either:

(a) Your family members (paid or unpaid care providers); or

(b) Nonfamily members who are not paid to provide care for you; or

(3) You live with a caregiver who is paid by DDA to provide supports as:

(a) A contracted companion home provider; or

(b) A licensed children's foster home provider.

This service is available in the Basic Plus, CIIBS, ~~((and))~~ Core and IFS waivers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1605 Who is eligible to receive respite care?** You are eligible to receive respite care if you are in the Basic Plus, CIIBS, ~~((or))~~ Core or IFS waiver and ~~((=))~~ meet the criteria in WAC 388-845-1600.

~~((1))~~ You live in a private home and no person living with you is contracted by [DSHS] to provide you with a service; or

~~(2)~~ You are age eighteen or older and:

~~(a)~~ You live with your natural, step or adoptive parent(s) who is also contracted by [DSHS] to provide you with a service; and

~~(b)~~ No one else living with you is contracted by DSHS to provide you with a service; or

~~(3)~~ You are under the age of eighteen and:

~~(a)~~ You live with your natural, step or adoptive parent(s); and

~~(b)~~ There is a person living with you who is contracted by DSHS to provide you with a service; or

~~(4)~~ You live with a caregiver who is paid by DDA to provide supports as:

~~(a)~~ A contracted companion home provider; or

~~(b)~~ A licensed children's foster home provider.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1607 Can someone who lives with me be my respite provider?** Someone who lives with you may be your respite provider as long as he or she is not ~~((the person who normally provides care for you))~~ your primary care provider and is not contracted to provide any other DSHS paid service to you. The limitations listed in WAC 388-845-0111 also apply.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1620 Are there limits to the respite care I can receive?** The following limitations apply to the respite care you can receive:

(1) For Basic Plus, core and CIIBS waivers, the DDA assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) For the IFS waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.

((2)) (3) Respite cannot replace ~~((=))~~ daycare while your parent or guardian is at work.

~~((a) Day care while your parent or guardian is at work, and/or~~

~~(b) Personal care hours available to you. When determining your unmet need, DDA will first consider the personal care hours available to you.)~~

~~((3)) (4) Respite providers have the following limitations and requirements:~~

~~(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;~~

~~(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and~~

~~(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.~~

~~((4)) (5) Your ~~(caregiver)~~ individual respite provider may not provide:~~

~~(a) Other DDA services for you ~~(or other persons)~~ during your respite care hours~~(-); or~~~~

~~(b) DDA paid services to other persons during your respite care hours.~~

~~((5) If your personal care provider is your parent, your parent provider will not be paid to provide respite services to any client in the same month that you receive respite services.)~~

~~(6) If your personal care provider is your parent and you live in your parent's adult family home you may not receive respite.~~

~~(7) DDA may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.~~

~~(8) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the IFS or Basic Plus waiver, skilled nursing services are limited to the dollar ~~(limits)~~ amounts of your basic plus aggregate services or IFS annual allocation per WAC 388-845-0210 and 388-845-0230.~~

~~(9) Respite cannot be accessed for more than fourteen days in a given month.~~

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive?** (1) Clinical and support needs for sexual deviancy evaluations are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan. Sexual deviancy evaluations must meet the standards contained in WAC 246-930-320.

(2) Sexual deviancy evaluations require prior approval by the DDA regional administrator or designee.

(3) The costs of sexual deviancy evaluations do not count toward the dollar limits for aggregate services in the Basic Plus waivers or the annual allocation in the IFS waiver.

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

**WAC 388-845-1700 What is skilled nursing?** (1) Skilled nursing is continuous, intermittent, or part time nursing services. These services are available in the Basic Plus, Core, IFS and ~~((Community Protection))~~ CP waivers.

(2) Services include nurse delegation services, per WAC 388-845-1170, provided by a registered nurse, including the initial visit, follow-up instruction, and/or supervisory visits.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive?** The following limitations apply to your receipt of skilled nursing services:

(1) Clinical and support needs for skilled nursing services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

~~((1))~~ (2) Skilled nursing services with the exception of nurse delegation and nursing evaluations require prior approval by the DDA regional administrator or designee.

~~((2))~~ (3) DDA and the treating professional determine the need for and amount of service.

~~((3))~~ (4) DDA reserves the right to require a second opinion by a department-selected provider.

~~((4))~~ (5) The dollar ~~(limitation)~~ amount for aggregate services in your Basic Plus waiver or the dollar amount of your annual allocation in your IFS waiver limits the amount of skilled nursing services you may receive.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1800 What are specialized medical equipment and supplies?** (1) Specialized medical equipment and supplies are durable and nondurable medical equipment not available through medicaid or the state plan (or are in excess of what is available through your medicaid state plan benefit) which enables individuals to:

(a) Increase their abilities to perform their activities of daily living; or

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500 respectively.

(3) Also included are items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies include the maintenance and repair of specialized medical equipment not covered through the medicaid state plan.

(5) Specialized medical equipment and supplies are available in all DDA HCBS waivers.

(6) Specialized medical equipment and supplies costing less than \$500 per waiver plan year do not require prior approval, such as:

- (a) Diapers and briefs;
- (b) Gloves and wipes;
- (c) Shower or bath chair or bench;
- (d) Commode; and
- (e) Hand-held showerhead.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies?** The following limitations apply to your receipt of specialized medical equipment and supplies:

(1) Clinical and support needs for specialized medical equipment and supplies are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

((+)) (2) Specialized medical equipment and supplies not listed in WAC 388-845-1800(6) require prior approval by the DDA regional administrator or designee for each authorization.

((2)) (3) DDA ((reserves the right to)) may require a second opinion by a department-selected provider.

((3)) (4) Items ((reimbursed)) purchased with waiver funds shall be in addition to any medical equipment and supplies furnished under the medicaid state plan.

((4)) (5) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

((5)) (6) Medications, prescribed or nonprescribed, and vitamins are excluded.

((6)) (7) The dollar ((limitations)) amounts for aggregate services in your Basic Plus waiver limit the amount of service you may receive.

((7)) (8) The dollar amounts for your annual allocation in your IFS waiver limit the amount of service you may receive.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

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

**WAC 388-845-1840 What is specialized nutrition ((and specialized clothing))?** ((+)) Specialized nutrition is available to you in the CIIBS and IFS waivers and is defined as:

((a)) (1) Assessment, intervention, and monitoring services from a certified dietitian; and/or

((b)) (2) Specially prepared food, or purchase of particular types of food, needed to sustain you in the family home. Specialized nutrition is in addition to meals a parent would provide and specific to your medical condition or diagnosis.

((2) Specialized clothing is available to you in the CIIBS waiver and defined as nonrestrictive clothing adapted to the participant's individual needs and related to his/her disability. Specialized clothing can include weighted clothing, clothing designed for tactile defensiveness, specialized footwear, or reinforced clothing.))

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1845 Who are qualified providers of specialized nutrition ((and specialized clothing))?** ((+)) Providers of specialized nutrition are:

((a)) (1) Certified dietitians contracted with DDA to provide this service or employed by an agency contracted with DDA to provide this service; and

((b)) (2) Specialized nutrition vendors contracted with DDA to provide this service.

((2) Providers of specialized clothing are specialized clothing vendors contracted with DDA to provide this service.))

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1850 Are there limitations to my receipt of specialized nutrition ((and specialized clothing))?** (1) The following limitations apply to your receipt of specialized nutrition services:

(a) Clinical and support needs for specialized nutrition are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(b) Specialized nutrition may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available;

((b)) (c) Services must be safe, effective, and individualized;

((e)) (d) Services must be ordered by a physician licensed to practice in the state of Washington;

((d)) (e) Specialized diets must be periodically monitored by a certified dietitian;

((e)) (f) Specialized nutrition products will not constitute a full nutritional regime unless an enteral diet is the primary source of nutrition;

((f)) (g) Department coverage of specialized nutrition products is limited to costs that are over and above inherent family food costs;

((g)) (h) DDA ((reserves the right to)) may require a second opinion by a department selected provider; and

((h)) (i) Prior approval by regional administrator or designee is required for participants on the CIIBS waiver.

(2) The ((following limitations apply to your receipt of specialized clothing.)) dollar amounts for your annual allocation in your IFS waiver limit the amount of service you may receive.



~~((a) Specialized clothing may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available.~~

~~(b) The department requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.~~

~~(c) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (b) of this section.~~

~~(d) Prior approval by regional administrator or designee is required.))~~

#### NEW SECTION

##### **WAC 388-845-1855 What is specialized clothing?**

Specialized clothing is available to you in the CIIBS and IFS waivers and is defined as nonrestrictive clothing adapted to the participant's individual needs and related to his/her disability, such as weighted clothing, clothing designed for tactile defensiveness, specialized footwear, or reinforced clothing.

#### NEW SECTION

**WAC 388-845-1860 Who are qualified providers of specialized clothing?** Providers of specialized clothing are specialized clothing vendors contracted with DDA to provide this service.

#### NEW SECTION

**WAC 388-845-1865 Are there limitations to my receipt of specialized clothing?** (1) The following limitations apply to your receipt of specialized clothing:

(a) Clinical and support needs for specialized clothing are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(b) Specialized clothing may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available.

(c) The department requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.

(d) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (1)(c) of this section.

(2) For IFS waiver participants, the dollar amounts for your annual allocation in your IFS waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?** (1) Clinical and support needs for specialized psychiatric services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Specialized psychiatric services are excluded if they are available through other medicaid programs.

(3) DDA and the treating professional will determine the need and amount of service you will receive in the IFS, Basic Plus, Core, CIIBS and CP waivers, subject to the limitations in subsection (4) of this section.

~~((2))~~ (4) The dollar ((limitations)) amounts for aggregate service in your Basic Plus waiver or the dollar amount of your annual allocation in your IFS waiver limit the amount of specialized psychiatric services you are authorized to receive, unless provided as a behavioral health stabilization service.

~~((3))~~ (5) Specialized psychiatric services require prior approval by the DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-2000 What is staff/family consultation and training?** (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all DDA HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the ~~((individuals))~~ person-centered service plan/individual support plan, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support;
- (e) Augmentative communication systems;
- (f) Diet and nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;
- (i) Environmental consultation; and
- (j) For the IFS and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training?** To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDA:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;

- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only); ((~~or~~))
- (19) Psychiatrist; or
- (20) Professional advocacy organization.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-2010 Are there limitations to the staff/family consultation and training I can receive?** (1) Clinical and support needs for staff/family consultation and training are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

~~((2))~~ (3) ~~((Staff/family consultation and training require prior approval by the DDA regional administrator or designee.))~~ The dollar amounts for aggregate service in your Basic Plus waiver or the dollar amount of the annual allocation in your IFS waiver limit the amount of staff/family consultation and training you may receive.

~~((3) The dollar limitations for aggregate services in your Basic Plus waiver limit the amount of service you may receive.))~~

NEW SECTION

**WAC 388-845-2130 What are supported parenting services?** (1) Supported parenting services are professional services offered to participants who are parents or expectant parents.

(2) Services may include teaching, parent coaching and other supportive strategies in areas critical to parenting, including child development, nutrition and health, safety, childcare, money management, time and household management and housing.

(3) Supported parenting services are designed to build parental skills around the child's developmental domains of cognition, language, motor, social-emotional and self-help.

(4) Supported parenting services are offered in the IFS waiver.

NEW SECTION

**WAC 388-845-2135 Who are qualified providers of supported parenting services?** Qualified providers of supported parenting services must have an understanding of the manner in which persons with intellectual/developmental disabilities best learn in addition to skills in child development and family dynamics and be one of the following licensed, registered or certified professionals and be contracted with DDA:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse or licensed practical nurse;
- (8) Speech/language pathologist;
- (9) Social worker;
- (10) Psychologist;
- (11) Certified American Sign Language instructor;
- (12) Nutritionist;
- (13) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (14) Certified dietician;
- (15) Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation;
- (16) Psychiatrist; or
- (17) Professional advocacy organization.

NEW SECTION

**WAC 388-845-2140 Are there any limitations on my receipt of supported parenting services?** The following limitations apply to your receipt of supported parenting services:

(1) Clinical and support needs for supported parenting services are identified in your DDA assessment and documented in your person-centered service plan/individual support plan;

(2) The dollar amount of your annual allocation in your IFS waiver limit the amount of supported parenting service you are authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-2160 What is therapeutic equipment and supplies?** (1) Therapeutic equipment and supplies are only available in the CIIBS and IFS waivers.

(2) Therapeutic equipment and supplies are equipment and supplies that are necessary to implement a behavioral support plan or other therapeutic plan, designed by an appropriate professional, such as a sensory integration or communication therapy plan, and necessary in order to fully implement the therapy or intervention.

(3) Included are items such as a weighted blanket, supplies that assist to calm or redirect the ~~((child))~~ individual to a constructive activity, or a vestibular swing.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

**WAC 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies?** The following limitations apply to your receipt of therapeutic equipment and supplies under the CIIBS and IFS waivers:

(1) Therapeutic equipment and supplies may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available.

(2) The department does not pay for experimental equipment and supplies.

(3) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(4) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (3) of this section.

(5) The dollar amount of your annual allocation in your IFS waiver limits the amount of therapeutic equipment and supplies you are authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

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

(1) Support needs for transportation services are identified in your DDA assessment and documented in your person-centered service plan/individual support plan.

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

~~((2))~~ (3) Transportation is offered in addition to medical transportation but cannot replace medicaid transportation services.

~~((3))~~ (4) Transportation is limited to travel to and from a waiver service. When the waiver service is supported employment, transportation is limited to days when the participant receives employment support services.

~~((4))~~ (5) Transportation does not include the purchase of a bus pass.

~~((5))~~ (6) Reimbursement for provider mileage requires prior approval by DDA and is paid according to contract.

~~((6))~~ (7) This service does not cover the purchase or lease of vehicles.

~~((7))~~ (8) Reimbursement for provider travel time is not included in this service.

~~((8))~~ (9) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

~~((9))~~ (10) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

~~((10))~~ (11) The dollar limitations for aggregate services in your Basic Plus waiver or the dollar amount of your annual allocation in the IFS waiver limit the amount of service you may receive.

~~((11) Transportation services require prior approval by the DDA regional administrator or designee.)~~

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

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

**WAC 388-845-2260 What are vehicle modifications?** ~~((This service is only available in the CIIBS waiver.))~~ Vehicle modifications are adaptations or alterations to a vehicle required in order to accommodate the unique needs of the individual, enable full integration into the community, and ensure the health, welfare, and safety of the ~~((individual))~~ participant and/or ~~((family members))~~ caregivers.

(1) The following vehicle modifications do not require a prior approval:

(a) Manual hitch-mounted carrier and hitch for all wheelchair types;

(b) Wheelchair cover;

(c) Wheelchair strap-downs;

(d) Portable wheelchair ramp;

(e) Accessible running boards and steps;

(f) Assist poles and/or grab handles.

(2) The following vehicle modifications require prior approval by the DDA regional administrator or designee:

(a) Power activated carrier for all wheelchair types;

(b) Permanently installed wheelchair ramps;

(c) Repairs and maintenance to vehicular modifications as needed for client safety;

(d) Other access modifications.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-2270 Are there limitations to my receipt of vehicle modification services?** Vehicle modification services are only available to you if you live in your family home and you are on the CIIBS or IFS waiver. The following limitations apply ~~((to your receipt of vehicle modifications under the CIIBS waiver))~~:

(1) ~~((Prior approval by the regional administrator or designee is required.))~~ Clinical and support needs for vehicle modification services are identified in the participant's DDA assessment and documented in the person-centered service plan/individual support plan.

(2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to the ~~((individual))~~ participant or caregiver.

(3) Participants who are enrolled with division of vocational rehabilitation (DVR) must pursue this benefit through DVR first.

(4) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by DDA.

~~((4))~~ (5) Modifications will only be approved for a vehicle that serves as the participant's primary means of transportation and is owned by the participant and/or family.

~~((5))~~ (6) For modifications requiring prior approvals, the department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

~~((6))~~ (7) The department may require a second opinion from a department selected provider that meets the same criteria as subsection ~~((5))~~ (6) of this section.

(8) The dollar amounts for aggregate services in your Basic Plus waiver or the dollar amount for your annual allocation in your IFS waiver limit the amount of vehicle modification service you are authorized to receive.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3000 What is the process for determining the services I need?** Your service needs are determined through the DDA assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ~~((ISP))~~ person-centered service plan/individual support plan.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) You meet the eligibility requirements for ICF/ID level of care.

(b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the Basic Plus, CIIBS, or Core waiver, the DDA assessment will determine the amount of respite care available to you.

(2) From the assessment, DDA develops your waiver person-centered service plan/individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3055 What is a waiver person-centered service plan/individual support plan (ISP)?** (1) The person-centered service plan/individual support plan (ISP) is the primary tool DDA uses to determine and document your needs and to identify the services to meet those needs.

(2) Your person-centered service plan/ISP must include:

(a) Your identified health and welfare needs;

(b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and

(c) How often you will receive each waiver service; how long you will need it; and who will provide it.

(3) For ~~((an initial))~~ any person-centered service plan/ISP, you or your legal representative must sign ~~((or give verbal consent to))~~ the plan indicating your agreement to the receipt of services.

~~((4))~~ ~~((For a reassessment or review of your ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.~~

~~((5))~~ You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3056 What if I need assistance to understand my person-centered service plan/individual support plan?** If you are unable to understand your person-centered service plan/individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, DDA will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your individual support plan.

(2) Continue your current waiver services.

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDA will continue to try to provide necessary supplemental accommodations in order to help you understand your person-centered service plan/individual support plan.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3060 When is my person-centered service plan/individual support plan effective?** Your person-centered service plan/individual support plan is effective the last day of the month in which DDA signs it after a signature ~~((or consent))~~ is obtained.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3061 Can a change in my person-centered service plan/individual support plan be effective before I sign it?** If you verbally request a change in service to occur immediately, DDA can sign the person-centered service plan/individual support plan and approve it prior to receiving your signature.

(1) Your person-centered service plan/individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the person-centered service plan/individual support plan.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3062 Who is required to sign ~~((or give verbal consent to))~~ the person-centered service plan/individual support plan?** (1) If you do not have a legal representative, you must sign ~~((or give verbal consent to))~~ the person-centered service plan/individual support plan.

(2) If you have a legal representative, your legal representative must sign ~~((or give verbal consent to))~~ the person-centered service plan/individual support plan.

(3) If you need assistance to understand your person-centered service plan/individual support plan, DDA will follow the steps outlined in WAC 388-845-3056 (1) and (3).

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3063 Can my person-centered service plan/individual support plan be effective before the end of the month?** You may request to DDA to have your person-centered service plan/individual support plan effective prior to the end of the month. The effective date will be the date DDA signs it after receiving your signature ~~((or verbal consent))~~.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-3065 How long is my plan effective?** Your person-centered service plan/individual support plan is effective through the last day of the twelfth month following the effective date or until another ISP is completed, whichever occurs sooner.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3070 What happens if I do not sign ~~((or verbally consent to))~~ my person-centered service plan/individual support plan (ISP)?** If DDA is unable to obtain the necessary signature ~~((or verbal consent))~~ for an initial, reassessment or review of your person-centered service plan/individual support plan (ISP), DDA will take one or more of the following actions:

(1) If this person-centered service plan/individual support plan is an initial plan, DDA will be unable to provide waiver services. DDA will not assume consent for an initial plan and will follow the steps described in WAC 388-845-3056 (1) and (3).

(2) If this person-centered service plan/individual support plan is a reassessment or review and you are able to understand your ISP:

(a) DDA will continue providing services as identified in your most current ISP until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, ~~((unless you file an appeal,))~~ DDA will ~~((assume consent and))~~ implement the new ISP without the required signature. If no signature is received, DDA will send notification of ter-

mination of services ~~((or verbal consent))~~ as defined in WAC 388-845-3062 above.

(3) If this person-centered service plan/individual support plan is a reassessment or review and you are not able to understand your ISP, DDA will continue your existing services and take the steps described in WAC 388-845-3056.

(4) You will be provided written notification and appeal rights to this action to implement the new ISP.

(5) Your appeal rights are in WAC 388-845-4000 and 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3075 What if my needs change?** You may request a review of your person-centered service plan/individual support plan at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDA must reassess your person-centered service plan/individual support plan with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual person-centered service plan/individual support plan.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3085 What if my needs exceed what can be provided under the IFS, CIIBS, Core or Community Protection waiver?** (1) If you are on the IFS, CIIBS, Core or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDA will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the IFS, CIIBS, Core or Community Protection waiver other than natural supports;

(c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;

(d) Offer you placement in an ICF/ID.

(2) If none of the above options is successful in meeting your health and welfare needs, DDA may terminate your waiver eligibility.

(3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDA services but access to state-only funded DDA services is limited by availability of funding.

## WSR 15-17-002

### EMERGENCY RULES

### DEPARTMENT OF

### FISH AND WILDLIFE

[Order 15-237—Filed August 5, 2015, 2:37 p.m., effective August 6, 2015]

Effective Date of Rule: August 6, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100P and 232-28-62100R; and amending WAC 232-28-621.

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

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

Reasons for this Finding: Closing salmon fishing in this area is necessary to protect mid-Hood Canal Chinook per state-tribal management plans agreed to during the North of Falcon preseason process. 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 2.

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

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

Date Adopted: August 5, 2015.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 232-28-62100R Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, effective August 6 through August 15, 2015, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

##### **Catch Record Card Area 9:**

(1) Fishing for salmon is closed south and west of a line from Foulweather Bluff to Olele Point to the Hood Canal Bridge within Marine Catch Area 9, except angling for salmon from shore is permissible from the Hood Canal Bridge to the northern boundary of Salsbury Point Park.

(2) Shore angling for salmon is permissible from the Hood Canal Bridge to the northern boundary of Salsbury Point Park so long as anglers adhere to the following: Daily limit is 2 salmon plus 2 additional pink salmon. Release chinook and chum.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective August 6, 2015:

WAC 232-28-62100P Puget Sound salmon—Saltwater seasons and daily limits. (15-222)

The following section of the Washington Administrative code is repealed effective August 16, 2015:

WAC 232-28-62100R Puget Sound salmon—Saltwater seasons and daily limits.

#### **WSR 15-17-004**

##### **EMERGENCY RULES**

##### **DEPARTMENT OF LICENSING**

[Filed August 6, 2015, 10:04 a.m., effective August 6, 2015, 10:04 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend chapter 308-330 WAC to update the model traffic ordinance (MTO) to include reference to new sections of traffic law created by recent legislation, update statutory citations, and make editing corrections.

Citation of Existing Rules Affected by this Order: Amending WAC 308-330-197, 308-330-200, 308-330-305, 308-330-309, 308-330-316, 308-330-330, 308-330-360, 308-330-415, 308-330-425, 308-330-462, 308-330-464, and 308-330-700.

Statutory Authority for Adoption: RCW 46.90.010.

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: Avoiding the delay resulting from permanent rule adoption will enable local law enforcement to hold drivers accountable for new statutory requirements by enabling them to cite the MTO which has been adopted by many local authorities, rather than state statute, since many are accustomed to cite the MTO. The proposal for a permanent rule, with an opportunity for comment, is forthcoming.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 12, 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: August 6, 2015.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-21-026, filed 10/8/13, effective 11/8/13)

**WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles.** The following sections of the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.09.310, 46.09.330, 46.09.350, 46.09.360, 46.09.420, 46.09.440, 46.09.442, 46.09.444, 46.09.450, 46.09.455, 46.09.457, 46.09.460, 46.09.470, 46.09.480, 46.09.485, and 46.09.490~~((, 2013 e 23 s [§] 4, 2013 e 23 s [§] 5, 2013 e 23 s [§] 6, 2013 e 23 s [§] 7, and 2013 e 23 s [§] 9))~~.

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

**WAC 308-330-200 RCW sections adopted—Snowmobiles.** The following sections of the Revised Code of Washington (RCW) pertaining to snowmobiles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.10.300, 46.10.310, 46.10.330, 46.10.460, 46.10.470, 46.10.480, 46.10.490, 46.10.495, ~~((and 46.10.500 [46.10.500]))~~ 46.10.500.

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

**WAC 308-330-305 RCW sections adopted—Vehicle licenses.** The following sections of the Revised Code of Washington (RCW) pertaining to vehicle licenses as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.695, 46.16A.030, 46.16A.-140, 46.16A.160, 46.16A.175, 46.16A.180, 46.16A.200, 46.16A.320, 46.16A.350, 46.16A.405, 46.16A.420, 46.16A.425, 46.16A.450, 46.16A.500, 46.16A.520, 46.16A.530, 46.16A.540, 46.16A.545, 2015 c 200 § 1, 46.18.200, 46.18.205, 46.18.215, 46.18.220, 46.18.235, 46.18.275, 46.18.277, 46.18.285, 46.19.050, and 46.19.070.

AMENDATORY SECTION (Amending WSR 13-21-027, filed 10/8/13, effective 7/8/14)

**WAC 308-330-309 RCW sections adopted—Uniform Commercial Driver's License Act.** The following sections of the Revised Code of Washington (RCW) pertaining to the Uniform Commercial Driver's License Act as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.25.010, 46.25.020, 46.25.030, 46.25.-040, 46.25.050, 46.25.052, 46.25.055, 46.25.057, 46.25.110, 46.25.120, and 46.25.170~~((, and 2013 e 224 s 5))~~.

AMENDATORY SECTION (Amending WSR 13-21-026, filed 10/8/13, effective 11/8/13)

**WAC 308-330-316 RCW sections adopted—Vehicle lighting and other equipment.** The following sections of the Revised Code of Washington (RCW) pertaining to vehicle lighting and other equipment as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.-050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.395, 46.37.400, 46.37.410, 46.37.420, 46.37.4215, 46.37.4216, 46.37.423, 46.37.424, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.465, 46.37.467, 46.37.470, 46.37.480, 46.37.490, 46.37.495, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.518, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.37.620, 46.37.630, 46.37.640, 46.37.650, 46.37.660, 46.37.670, 46.37.671, 46.37.672, 46.37.673, 46.37.674, 46.37.675, 46.37.680, ~~((and 2013 e 135 s [§] 1))~~ 46.37.685.

AMENDATORY SECTION (Amending WSR 95-23-042, filed 11/13/95, effective 12/14/95)

**WAC 308-330-330 RCW sections adopted—Motor vehicle wreckers.** The following ~~((section[s]))~~ sections of the Revised Code of Washington (RCW) pertaining to motor vehicle wreckers as now or hereafter amended ~~((is [are]))~~ are hereby adopted by reference as a part of this chapter in all respects as though such ~~((section[s]))~~ sections were set forth herein in full: RCW 46.80.010 and 46.80.060.

AMENDATORY SECTION (Amending WSR 94-01-082, filed 12/13/93, effective 7/1/94)

**WAC 308-330-360 Owner of record presumed liable for costs when vehicle abandoned—Exception.** (1) The abandonment of any vehicle or automobile hulk shall constitute a prima facie presumption that the last owner of record is responsible for such abandonment and thus liable for any costs incurred in removing, storing, and disposing of any abandoned vehicle.

(2) A registered owner transferring a vehicle shall be relieved from personal liability under this section if ~~((within five days of the transfer he/she))~~ he or she transmits to the department a seller's report of sale ~~((on a form prescribed by the director\*))~~ as provided by RCW 46.12.650.

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

**WAC 308-330-415 RCW sections adopted—Right of way.** The following sections of the Revised Code of Washington (RCW) pertaining to vehicles and pedestrians use of roadways, right of way, rights and duties as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.100, 46.61.105, 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, 46.61.135, 46.61.140, 46.61.145, 46.61.150, 46.61.155, 46.61.160, 46.61.165, 46.61.180, 46.61.183, 46.61.184, 46.61.185, 46.61.190, 46.61.195, 46.61.200, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.230, 46.61.235, 46.61.240, 46.61.245, 46.61.250, 46.61.255, 46.61.260, 46.61.261, 46.61.264, 46.61.266, and 46.61.269.

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

**WAC 308-330-425 RCW sections adopted—Reckless driving, negligent driving, vehicular homicide and assault.** The following sections of the Revised Code of Washington (RCW) pertaining to reckless driving, negligent driving, driving while under the influence of intoxicating liquor or any drug, vehicular homicide and assault as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.500, 46.61.502, 46.61.503, 46.61.504, 46.61.5054, 46.61.5055, 46.61.50571, 46.61.5058, 46.61.506, 46.61.513, 46.61.517, 46.61.519, 46.61.5191, 46.61.5195, 46.61.5249, 46.61.525, 46.61.526, 46.61.527, 46.61.530, 46.61.535, ((~~2011 e 372 s [§] 1~~),) 2015 2nd ex.s. c 3 § 8, and 46.61.540.

AMENDATORY SECTION (Amending WSR 13-21-026, filed 10/8/13, effective 11/8/13)

**WAC 308-330-462 RCW sections adopted—Stopping, standing, and parking.** The following sections of the Revised Code of Washington (RCW) pertaining to vehicle stopping, standing, and parking as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: ((~~2013 e 60 s [§] 1~~),) RCW 46.08.185, 46.61.560, 46.61.570, 46.61.575, 46.61.581, 46.61.582, 46.61.583, 46.61.585, 46.61.587, and 46.61.590.

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

**WAC 308-330-464 RCW sections adopted—Operation and restrictions.** The following sections of the Revised Code of Washington (RCW) pertaining to the operation of vehicles and the restriction of certain acts and practices of vehicle operators and passengers as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615,

46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, 46.61.667, 46.61.668, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, 46.61.690, 46.61.700, 46.61.705, 46.61.710, 46.61.720, 46.61.723, 46.61.725, 46.61.730, 46.61.735, ((~~2011 e 121 s [§] 2~~, ~~2011 e 121 s 4~~),) and 46.61.740.

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

**WAC 308-330-700 RCW sections adopted—Disposition of traffic infractions.** The following sections of the Revised Code of Washington (RCW) pertaining to the disposition of traffic infractions as now or hereafter amended are hereby adopted by such reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.63.010, 46.63.020, 46.63.030, 46.63.040, 46.63.060, 46.63.070, 46.63.073, 46.63.075, 46.63.080, 46.63.090, 46.63.100, 46.63.110, 46.63.120, 46.63.130, 46.63.140, 46.63.151, 46.63.160, ((~~2011 e 375 s [§] 2~~, and) 46.63.170, and 46.63.180.

**WSR 15-17-008  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 15-243—Filed August 6, 2015, 3:24 p.m., effective August 6, 2015, 3:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial salmon troll fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000Z [220-24-04000Y]; and amending WAC 220-24-040.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. For protection of Grays Harbor Chinook stocks the Grays Harbor Control Zone is being implemented. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing 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: August 6, 2015.

J. W. Unsworth  
Director

## NEW SECTION

**WAC 220-24-0400Z All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

August 7 through August 11, 2015;  
August 14 through August 18, 2015;  
August 21 through August 25, 2015;  
August 28 through September 1, 2015;  
September 4 through September 8, 2015;  
September 11 through September 15, 2015;  
September 18 through September 22, 2015.

(2) Landing and possession limits:

(a) 75 Chinook and 50 marked coho per boat per each entire open period for the entire Catch Areas 1 and 2.

(b) 60 Chinook and 50 marked coho per boat per each entire open period for the entire Catch Areas 3 and 4.

(c) No vessel may possess, land or deliver more than 75 chinook and 50 marked coho during any open period. The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed. Beginning August 10 the Grays Harbor Control Zone is closed.

(3) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon.

(4) Lawful troll gear is restricted to all legal troll gear with single-point, single-shank barbless hooks.

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at [Douglas.Milward@dfw.wa.gov](mailto:Douglas.Milward@dfw.wa.gov) with area fished,

total Chinook and halibut catch on board, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at [Douglas.Milward@dfw.wa.gov](mailto:Douglas.Milward@dfw.wa.gov) with Area fished, total Chinook and halibut catch on board, and destination.

(6) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(7) Columbia Control Zone - This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(8) Mandatory Yelloweye Rockfish Conservation Area - This is defined as the area in Salmon Management and Catch Reporting Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(9) Grays Harbor Control Zone - The area defined by a line drawn from the Westport Lighthouse (46°53.18' N latitude, 124°07.01' W longitude) to Buoy #2 (46°52.42' N latitude, 124°12.42' W longitude) to Buoy #3 (46°55.00' N latitude, 124°14.48' W longitude) to the Grays Harbor north jetty (46°55.36' N latitude, 124°10.51' W longitude).

It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to [trollfishtickets@dfw.wa.gov](mailto:trollfishtickets@dfw.wa.gov). Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000Y All-citizen commercial salmon troll.  
(15-202)

**WSR 15-17-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-244—Filed August 6, 2015, 3:27 p.m., effective August 6, 2015, 3:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

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

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

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

Reasons for this Finding: This emergency rule change is necessary to implement the Grays Harbor Control Zone to protect Grays Harbor origin Chinook. 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: August 6, 2015.

J. W. Unsworth  
Director

### [NEW SECTION]

**WAC 232-28-62000M Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 2:** Beginning August 10 the Grays Harbor Control Zone is closed. Grays Harbor Control Zone - The area defined by a line drawn from the Westport Lighthouse (46°53.18' N latitude, 124°07.01' W longitude) to Buoy #2 (46°52.42' N latitude, 124°12.42' W longitude) to Buoy #3 (46°55.00' N latitude, 124°14.48' W longitude) to the Grays Harbor north jetty (46°55.36' N latitude, 124°10.51' W longitude).

(2) **Catch Record Card Area 3:** Open through September 30: Daily limit of 2 salmon of which not more than one may be a Chinook salmon, plus two additional pink salmon; release wild coho.

(3) **Catch Record Card Area 4:**

(a) Effective immediately until further notice, the waters south of a line from Kydaka Point to Shipwreck Point are closed.

(b) Open from August 2 through September 30: Daily limit of 2 salmon release Chinook salmon, plus two additional pink salmon; release wild coho.

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

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000L Coastal salmon—Saltwater seasons and daily limits. (15-231)

**WSR 15-17-017**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-248—Filed August 7, 2015, 4:19 p.m., effective August 8, 2015, 5:00 a.m.]

Effective Date of Rule: August 8, 2015, 5:00 a.m.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-47-50100Q.

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

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7

and 7A targeting the United States share of Fraser River sockeye salmon. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: August 7, 2015.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-47-50100Q Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of Chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

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

Hours	Dates
5:00 AM - 9:00 PM	August 8, 2015

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

(b) Purse seine are required to brail and fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

**Areas 7 and 7A:**

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed below:

Hours	Dates
8:00 AM -11:59 PM	August 8, 2015

(a) It is unlawful to retain rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

**Areas 7 and 7A:**

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed below:

Hours	Dates
5:00 AM - 9:00 PM	August 8, 2015

(a) It is unlawful to retain unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the log book in accordance with requirements of WAC 220-47-401.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **"Quick Reporting Fisheries"** All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" pursuant to WAC 220-47-001.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 9, 2015:

WAC 220-47-50100Q Puget Sound all-citizen commercial salmon fishery—Open periods

**WSR 15-17-018  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 15-249—Filed August 7, 2015, 4:19 p.m., effective August 9, 2015, 7:00 p.m.]

Effective Date of Rule: August 9, 2015, 7:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100N and 220-47-41100H; and amending WAC 220-47-311 and 220-47-411.

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: Harvest nontreaty share of Nooksack and Samish Chinook as agreed to with the tribal comanagers are available in Puget Sound Salmon Management and Catch Reporting Areas 7B and 7C for commercial gillnet and purse seine openings. 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: August 7, 2015.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-47-31100N Purse seine—Open periods.**

Notwithstanding the provisions of Chapter 220-47-411 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Open Areas	Open Periods
7B, 7C	6 AM - 9 PM 8/12 6 AM - 8 PM 8/19, 8/26, and 9/2, 2015

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

**NEW SECTION**

**WAC 220-47-41100H Gillnet—Open periods.**

Notwithstanding the provisions of Chapter 220-47-411 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch

Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Open Areas	Open Periods
7B, 7C	7 PM - 8 AM nightly 8/9, 8/11, 8/12, 8/16, 8/17, 8/18, 8/19, 8/23, 8/24, 8/25, and 8/26; 7 PM 8/30 through 7 AM 9/4, 2015

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

**REPEALER**

The following sections of the Washington Administrative Code are repealed effective 7:01 AM September 4, 2015:

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

WAC 220-47-41100H Gillnet—Open periods.

**WSR 15-17-019**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 15-250—Filed August 7, 2015, 4:20 p.m., effective August 10, 2015]

Effective Date of Rule: August 10, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-180.

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: Low water flows and higher than normal water temperatures this summer is creating conditions that can stress fish stocks by limiting their movements and making them more susceptible to diseases and fishing pressure. These areas are closing to fishing until river conditions improve. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 7, 2015.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-18000Y Freshwater exceptions to statewide rules—Coastal.** Notwithstanding the provisions of WAC 220-310-180, effective August 10, 2015, until further notice the following waters are closed to all fishing:

- (1) Clearwater River and all tributaries.
- (2) Tributaries of the Queets River (Matheny Creek and the Salmon River outside Olympic National Park and the Quinault Reservation).

**WSR 15-17-020  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 15-247—Filed August 7, 2015, 4:31 p.m., effective August 12, 2015]

Effective Date of Rule: August 12, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-180.

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: Closing the Black River by emergency rule is necessary since low stream flows, increased water temperatures, and higher potential encounter rates subject these fish to stress, injury, or death. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 7, 2015.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-18000X Freshwater exceptions to statewide rules—Coastal.** Notwithstanding the provisions of WAC 220-310-180, effective August 12, 2015, until further notice, it is unlawful to fish in the waters of Black River from the mouth upstream to Black Lake.

**WSR 15-17-029  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 15-246—Filed August 10, 2015, 4:59 p.m., effective August 11, 2015]

Effective Date of Rule: August 11, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending 220-310-180.

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: Low waters are reducing the available holding habitat for spring Chinook and concentrating them into fewer and smaller pools. This makes them more vulnerable to fishing pressure. Spring Chinook will be holding in the north and south forks of the Newaukum River until September when spawning begins. Increased water temperatures and higher potential encounter rates subject these fish to stress, injury, or death. There is insufficient time to adopt permanent rules.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 10, 2015.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-18000W Freshwater exceptions to statewide rules—Coastal** Notwithstanding the provisions of WAC 220-310-180, effective August 11, 2015, until further notice the following waters are closed to all fishing:

- (1) The Newaukum River
- (2) The Newaukum River, South Fork,
- (3) The Newaukum River, North Fork,
- (4) The Newaukum River, Middle Fork,
- (5) Lucas Creek,
- (6) Mitchell Creek.

**WSR 15-17-030**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-242—Filed August 11, 2015, 11:00 a.m., effective August 16, 2015]

Effective Date of Rule: August 16, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-180.

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: Flows in the Big Quilcene River are at less than half of average, water temperatures are elevated, and a large return of Endangered Species Act listed summer chum is forecast to enter the river beginning in August. These conditions are not conducive to an orderly in-river coho fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 11, 2015.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-18000V Freshwater exceptions to statewide rules—Coastal.** Notwithstanding the provisions of WAC 220-310-180, effective August 16, 2015, until further notice, it is unlawful to fish for salmon in the waters of the Big Quilcene River.

**WSR 15-17-031**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 11, 2015, 11:47 a.m., effective August 11, 2015, 11:47 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Under WAC 392-502-030, online providers - including public schools providing online courses and programs - must assure the office of superintendent of public instruction (OSPI) that their online programs are accredited through a designated accrediting organization. Requiring third party accreditation of online school programs imposes costs on public school districts, can be redundant, and is not consistent with OSPI's adoption of new online provider performance targets. The purpose of this amendment is for OSPI to exempt online school programs, single-district providers, and affiliate providers from the rule's accreditation requirement.

Citation of Existing Rules Affected by this Order: Amending WAC 392-502-030.

Statutory Authority for Adoption: RCW 34.05.220, 28A.150.290, 28A.250.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: In preparing for the upcoming 2015-16 school year, school districts are developing bell schedules, implementing online school programs, and procuring online coursework from accredited multidistrict online course providers. Some districts are not offering online coursework to students solely because of the financial and administrative costs imposed by WAC 392-502-030 accreditation mandate. It is therefore necessary to immediately amend WAC 392-502-030 to ensure that districts can provide online courses and programs to students starting in

September without incurring these costs. Observing the time requirements of notice and comment would delay the adoption of the rule, denying students access to high quality online programs.

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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: August 11, 2015.

Randy Dorn  
State Superintendent  
of Public Instruction

**AMENDATORY SECTION** (Amending WSR 15-14-126, filed 7/1/15, effective 8/1/15)

**WAC 392-502-030 Approval assurances, criteria, and performance targets.** (1) This section sets forth the assurances, criteria, and performance targets that online providers must meet to be approved under this chapter.

(a) To be approved, online providers must provide the following assurances to the superintendent of public instruction:

(i) The online provider is accredited through an accrediting body as defined in WAC 392-502-010 and agrees to maintain accredited status for the duration of the approval period. Online providers may be candidates for accreditation at the time of application for approval provided that the provider earns full accreditation on the standard timeline. Online school programs, single-district providers, and affiliate providers are exempt from (a)(i) of this subsection.

(ii) Each course and program the online provider offers is aligned with at least eighty percent of the current applicable grade/subject area of Washington state standards. For courses with content that is not included in state standards, the online provider's courses are aligned with at least eighty percent of nationally accepted content standards set for the relevant subjects. Online providers must submit information to the superintendent regarding the standards alignment and the standards aligned.

(iii) All instruction delivered to Washington state students is delivered by Washington state certificated teachers who:

(A) Are assigned to instruct courses in a manner which meets the "highly qualified" definition under the No Child Left Behind Act and in a manner which meets the requirements set forth in chapter 181-82 WAC; and

(B) Are evaluated annually using the revised evaluative criteria and four-level rating system established in RCW 28A.405.100.

(iv) For online providers that offer high school courses, the courses offered by the online provider must be eligible for high school credit pursuant to WAC 180-51-050.

(v) All of the online provider's current and future courses in the applicable areas meet the credit/content requirements in chapter 392-410 WAC.

(vi) All advanced placement courses offered by the online provider have been approved in accordance with the college board advanced placement course audit. For advanced placement courses not yet offered at the time of application, the online provider must assure that those courses will be approved by the college board prior to offering those courses to students.

(vii) The online provider's data management systems ensure all student information remains confidential, as required by the Family Educational Rights and Privacy Act of 1974, as amended.

(viii) The online provider's web systems and content meet accessibility conformance levels specified in the list of approved provider assurances on the office of superintendent of public instruction's web site.

(ix) The online provider provides all information as directed or as requested by the office of superintendent of public instruction, the secretary for the department of education, and other federal officials for audit, program evaluation compliance, monitoring, and other purposes and to maintain all records for the current year and three previous years.

(x) The online provider informs the office of superintendent of public instruction in writing of any significant changes to the program including, but not limited to, changes in assurances, program description, fiscal status, or ownership.

(xi) The online provider upholds any pertinent federal or state laws, rules or regulations, in the delivery of the online courses or programs.

(xii) The online provider retains responsibility for the quality of courses, web systems, and content offered, regardless of any third-party contractual arrangements, partnerships or consortia, contributing to the content or delivery of the online courses or programs.

(xiii) The online school program complies with the state assessment requirements including, but not limited to, the requirements of chapter 28A.655 RCW and WAC 392-121-182, as applicable.

(xiv) All of the provider's current and future career and technical education (CTE) courses are aligned to Washington state CTE program standards and have been approved by the office of superintendent of public instruction's CTE office. CTE courses must be taught by a Washington certificated teacher who is also CTE-certificated in the subject area of the course.

(xv) The online provider agrees to abide by any additional assurances required by the superintendent of public instruction.

(xvi) The online school program agrees that all programs delivered as alternative learning experiences comply with the requirements of WAC 392-121-182. The online course pro-

vider agrees to disclose to OSPI the manner in which it supports the requirements of WAC 392-121-182 for online courses delivered outside of an online school program.

(xvii) Instructional materials used by online school programs in online courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(b) Multidistrict online providers must meet the following initial approval criteria by a preponderance of evidence submitted with the online provider's application:

(i) Course content and instructional design incorporating course goals and outcomes, materials and content organization, and student engagement.

(ii) Classroom management incorporating grading and privacy policies, internet etiquette, and expectations for communications.

(iii) Student assessment incorporating various types, frequent feedback, and appropriateness for the online learning environment.

(iv) Course evaluation and management incorporating strategies for obtaining feedback about the courses/programs and processes for quality assurance and updating content.

(v) Student support incorporating policies and systems to enhance the students' learning experience and their success.

(vi) School-based support incorporating strategies and systems to allow school-based staff to support student success.

(vii) Technology elements, requirements and support including descriptions and ease of navigation.

(viii) Staff development and support including training and online instructor performance reviews conducted on a planned and regularly scheduled basis.

(ix) Program management including timeliness and quality of teachers' responses to students, handling of fees, prompt distribution of materials and processing of enrollments, and handling fees and payments.

(x) The superintendent may require additional approval criteria pursuant to WAC 392-502-080.

(c) Beginning September 1, 2015, the online school program's course success rate must be greater than seventy percent. Programs with fewer than twenty online enrollments are not subject to this performance target.

(d) Beginning September 1, 2016, online school programs must meet or exceed each of the following annual performance targets:

(i) The online school program's percentage of students taking online math courses who meet standard on the state math assessments must be greater than forty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and taken the state math assessment.

(ii) The online school program's percentage of students taking online English language arts courses who meet standard on the state English language arts assessments must be greater than fifty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and taken the state English language arts assessment.

(iii) The online school program's median math student growth percentile for students taking an online math course

must be greater than the thirtieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and have a math student growth percentile.

(iv) The online school program's median English language arts student growth percentile for students taking an online English language arts course must be greater than the fortieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and have an English language arts student growth percentile.

(e) Beginning September 1, 2015, online course providers' course success rate must be greater than seventy percent. Online providers must supply OSPI with student-level enrollment and performance information. Online course providers must also supply OSPI with a list of each district in the state that they served. An online course provider is not subject to this performance target if they have fewer than twenty online course enrollments.

(2) After review by the online learning advisory committee, the approval criteria with explanations and suggested supporting evidence will be posted on the superintendent of public instruction web site on or before the date the application is made available.

(3) Online provider's application will be reviewed by reviewers selected by the superintendent of public instruction for their experience and expertise. The reviewers will be provided orientations and training to review and score the online provider applications using the approval criteria and scoring protocols.

(4) Single-district provider online programs must incorporate the approval criteria developed by the superintendent of public instruction into the program design.

**WSR 15-17-032  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 15-252—Filed August 11, 2015, 1:15 p.m., effective August 12, 2015]

Effective Date of Rule: August 12, 2015.

Purpose: Amend commercial fishing rules for Puget Sound commercial shrimp.

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

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

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

Reasons for this Finding: The 2015 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes Catch



Area 25A to spot shrimp fishing, as the quota will be reached; and (2) closes Shrimp Management Area 1A effective August 18 as the quota will be reached; and (3) implements a spot shrimp weekly limit of 800 pounds in all areas with the exception of Shrimp Management Area 1A where a 350 pound weekly limit is implemented; and (4) closes Catch Area 1B-20B to trawl fishing, as the quota will be reached. 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: August 11, 2015.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

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

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, 2W, 3 and 6 are open to the harvest of all shrimp species, except:

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

(ii) Effective immediately, until 11:59 p.m. August 18, 2015, all waters of Shrimp Management Area 1A are closed to the harvest of all species other than spot shrimp.

(iii) Effective 11:59 p.m. August 18, 2015, until further notice, all waters of Shrimp Management 1A are closed.

(iv) All waters of Shrimp Management Areas 2W, 6 and Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 25A are closed to the harvest of spot shrimp.

(v) All waters of Shrimp Management Area 1C is closed to the harvest of all species other than spot shrimp.

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

(c) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 800 pounds per week, except it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the

fisher's alternate operator to exceed 350 pounds per week in Shrimp Management Area 1A.

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

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

(2) Shrimp beam trawl gear:

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

(b) Those portions of Catch Areas 21A and 22A within Shrimp Management Area 1B are open.

(c) Effective immediately, until 6:00 p.m. August 22, 2015, that portion of Catch Area 20B within Shrimp Management Area 1B is open.

(d) All waters of Catch Area 20A are open.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. August 11, 2015:

WAC 220-52-05100F Puget Sound shrimp pot and beam trawl fishery—Season. (15-234)

#### **WSR 15-17-036**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 15-256—Filed August 11, 2015, 5:00 p.m., effective August 11, 2015, 5:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-40-021.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the commercial fishing plans agreed-to with resource

comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: August 11, 2015.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-40-02100A Willapa Bay salmon—Summer fishery.** Notwithstanding the provisions of WAC 220-40-021, effective immediately until further notice it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes.

**WSR 15-17-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-253—Filed August 12, 2015, 1:23 p.m., effective August 16, 2015]

Effective Date of Rule: August 16, 2015.

Purpose: Amend recreational fishing rules for the Wenatchee River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500D.

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: Endangered Species Act (ESA) listed spring Chinook destined for the spawning grounds in the tributaries of the upper Wenatchee River are seeking refuge in the colder waters of Lake Wenatchee. While sufficient numbers of harvestable sockeye remain in the lake, the number of endangered spring Chinook currently

being incidentally caught and released is nearing the ESA take limit specific to the Lake Wenatchee sockeye fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 12, 2015.

J. W. Unsworth  
Director

#### REPEALER

The following section of the Washington Administrative Code is repealed effective August 16, 2015, one hour after official sunset:

WAC 220-310-19500D Freshwater exceptions to statewide rules—Lake Wenatchee. (15-225)

**WSR 15-17-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-259—Filed August 13, 2015, 11:34 a.m., effective August 13, 2015, 11:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for coastal salmon.

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

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

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

Reasons for this Finding: This emergency rule change is necessary to allow harvest of remaining Chinook available under catch guidelines in Marine Areas 2 and 4 while also providing additional angling opportunity. 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: August 13, 2015.

J. W. Unsworth  
Director

[NEW SECTION]

**WAC 232-28-62000N Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

**(1) Catch Record Card Area 2:**

(a) Effective immediately the Grays Harbor Control Zone is closed. Grays Harbor Control Zone - The area defined by a line drawn from the Westport Lighthouse (46°53.18' N latitude, 124°07.01' W longitude) to Buoy #2 (46°52.42' N latitude, 124°12.42' W longitude) to Buoy #3 (46°55.00' N latitude, 124°14.48' W longitude) to the Grays Harbor north jetty (46°55.36' N latitude, 124°10.51' W longitude).

(b) Beginning August 15 through September 30:

- i. Daily limit of 2 salmon, both of which may be a Chinook salmon.
- ii. Release wild coho.

(2) **Catch Record Card Area 3:** Open through September 30: Daily limit of 2 salmon of which not more than one may be a Chinook salmon, plus two additional pink salmon; release wild coho.

**(3) Catch Record Card Area 4:**

(a) Effective immediately until further notice, the waters south of a line from Kydaka Point to Shipwreck Point are closed.

(b) Open immediately through September 30: Daily limit of 2 salmon release Chinook salmon, plus two additional pink salmon; release chum and wild coho, except August 14-15, 1 Chinook salmon may be retained as part of the daily limit.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000M Coastal salmon—Saltwater seasons and daily limits. (15-244)

**WSR 15-17-050  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 15-260—Filed August 13, 2015, 1:14 p.m., effective August 13, 2015, 1:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial salmon troll fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000Z; and amending WAC 220-24-040.

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

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

Reasons for this Finding: A small amount of Chinook quota remains for the troll fishery, requiring a reduction in weekly vessel Chinook limits. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing 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: August 13, 2015.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-24-04000A All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040,

effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

August 14 through August 18, 2015;

August 21 through August 25, 2015;

August 28 through September 1, 2015;

September 4 through September 8, 2015;

September 11 through September 15, 2015;

September 18 through September 22, 2015.

(2) Landing and possession limits:

(a) 50 Chinook and 50 marked coho per boat per each entire open period for Catch Areas 1, 2, 3 and 4.

(b) No vessel may possess, land or deliver more than 50 chinook and 50 marked coho during any open period. The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed. Beginning August 10 the Grays Harbor Control Zone is closed.

(3) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon.

(4) Lawful troll gear is restricted to all legal troll gear with single-point, single-shank barbless hooks.

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at [Douglas.Milward@dfw.wa.gov](mailto:Douglas.Milward@dfw.wa.gov) with area fished, total Chinook and halibut catch on board, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at [Douglas.Milward@dfw.wa.gov](mailto:Douglas.Milward@dfw.wa.gov) with Area fished, total Chinook and halibut catch on board, and destination.

(6) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(7) Columbia Control Zone - This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09' N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07"

W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(8) Mandatory Yelloweye Rockfish Conservation Area - This is defined as the area in Salmon Management and Catch Reporting Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(9) Grays Harbor Control Zone - The area defined by a line drawn from the Westport Lighthouse (46°53.18' N latitude, 124°07.01' W longitude) to Buoy #2 (46°52.42' N latitude, 124°12.42' W longitude) to Buoy #3 (46°55.00' N latitude, 124°14.48' W longitude) to the Grays Harbor north jetty (46°55.36' N latitude, 124°10.51' W longitude).

It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to [trollfishtickets@dfw.wa.gov](mailto:trollfishtickets@dfw.wa.gov). Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

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

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000Z All-citizen commercial salmon troll.  
(15-243)

**WSR 15-17-052**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-257—Filed August 13, 2015, 1:55 p.m., effective August 17, 2015, 6:00 a.m.]

Effective Date of Rule: August 17, 2015, 6:00 a.m.

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

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

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

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

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

Reasons for this Finding: Allows the sale of fish caught during the first four weeks of the 2015 treaty commercial gillnet fall season. Continues to allow the sale of platform and hook and line caught fish from mainstem tribal fisheries in Zone 6. Sales of fish landed in the area downstream of Bonneville Dam (consistent with tribal MOU/MOAs) may also occur if the area is lawfully open for sales under tribal regulations. Similarly, the sale of fish caught in Yakama Nation tributary fisheries are allowed when open under Yakama Nation regulations. Nearly 300,000 adult fall Chinook are available to the treaty tribes for harvest based on the inseason forecast of 925,300 fish. Steelhead harvest is expected to remain within the guideline based on the preseason forecast of 41,100 Group B fish. The quick-reporting rule continues to be modified to require quick reporting within twenty-four hours of completing the fish ticket, which is intended to allow harvest to be tracked as the season progresses. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on July 29 and August 12, 2015. Conforms state rules with tribal rules. There is insufficient time to adopt permanent rules.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 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: August 13, 2015.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-32-05100I Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, and Drano Lake. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

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

(a) Season:

(i) 6:00 AM Monday Aug. 17 to 6:00 PM Friday, Aug. 21, 2015.

(ii) 6:00 AM Monday Aug. 24 to 6:00 PM Friday, Aug. 28, 2015.

(iii) 6:00 AM Monday Aug. 31 to 6:00 PM Saturday, Sept. 5, 2015.

(iv) 6:00 AM Tuesday Sept. 8 to 6:00 PM Saturday Sept. 12, 2015.

(b) Gear: Gillnets only; 8-inch minimum mesh restriction.

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

(d) Standard sanctuaries for this gear type are in effect.

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

(a) Season: Immediately until further notice.

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

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

(d) All sanctuaries for these gear types are in effect.

(3) Columbia River Tributaries upstream of Bonneville Dam:

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

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

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

(d) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

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

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of

Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

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

(b) Season: Immediately until further notice. Open only during those days and hours when open under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

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

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

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. August 16, 2015:

WAC 220-32-05100H Columbia River salmon seasons above Bonneville Dam. (15-232)

### **WSR 15-17-059**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 15-258—Filed August 14, 2015, 10:19 a.m., effective August 14, 2015, 10:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-195.

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: Low water flows and higher than normal water temperatures this summer are creating poor water quality conditions for fish stocks, particularly

later in the day. These areas are closed to fishing daily from 2:00 p.m. to midnight until water quality conditions improve. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 14, 2015.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19500H Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, effective immediately until further notice, the following waters are closed to fishing daily from 2:00 p.m. to midnight:

**Peshastin Creek (Chelan Co.)** and all tributaries.

#### **WSR 15-17-060**

##### **EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 15-264—Filed August 14, 2015, 10:47 a.m., effective August 14, 2015, 10:47 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-195.

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: Low water flows and higher than normal water temperatures this summer are creating poor conditions for fish stocks. This area is closed [to] fishing daily from 2:00 p.m. to midnight until water conditions improve. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: August 14, 2015.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19500I Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-190, effective immediately until further notice, the following waters are closed to fishing daily from 2:00 p.m. to midnight:

**Mill Creek (Walla Walla Co.)** from Bennington Dam to State Line

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

#### **WSR 15-17-061**

##### **EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 15-251—Filed August 14, 2015, 10:49 a.m., effective August 14, 2015, 10:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500B; and amending WAC 220-310-195.

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: Afternoon water temperatures in Yakima Basin rivers and creeks are approaching the upper limit for survival of trout and salmon. Most of the above waters do not benefit from cold water releases from the Bureau of Reclamation storage reservoirs. These select waters receive significant summer fishing effort that will sub-

ject hooked fish to handling stress, injury or death directly related to elevated water temperature combined with record low instream flow conditions. 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: August 14, 2015.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19500G Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, effective immediately until further notice, currently open fisheries for game fish in the Yakima River basin are modified as follows:

- (1) Ahtanum Creek, including North and Middle Forks: Closed
- (2) Naches River from Tieton River to Bumping River/Little Naches River: Closed from 2:00 p.m. until 12:00 midnight
- (3) Rattlesnake Creek: Closed from 2:00 p.m. until 12:00 midnight
- (4) Little Naches River: Closed
- (5) Teanaway River, including West, Middle and North Forks: Closed
- (6) Yakima River from the Interstate 82 Bridge at Union Gap to the South Cle Elum Bridge: Closed from 2:00 p.m. until 12:00 midnight.
- (7) Swauk Creek and all tributaries downstream of Williams Creek: Closed from 2:00 p.m. until 12:00 midnight
- (8) Williams Creek and all tributaries: Closed
- (9) Swauk Creek and all tributaries upstream of Williams Creek: Closed
- (10) American River from: a) mouth to Hwy. 410 Bridge downstream of the USFS Hell's Crossing Campground (river mile 5.4), and b) upstream of the Mesatchee Creek Trail crossing at river mile 15.8: Closed

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19500B Freshwater exceptions to statewide rules—Eastside. (15-204)

**WSR 15-17-062  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 15-263—Filed August 14, 2015, 10:50 a.m., effective August 20, 2015]

Effective Date of Rule: August 20, 2015.

Purpose: Amend recreational fishing rules for the Nisqually River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-190.

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: An emergency rule is necessary to close a portion of the Nisqually River to angling from 2:00 p.m. to one hour before official sunrise on those days the Nisqually River is open to fishing. Unusually high water temperatures could result in higher than anticipated sport fishing mortality on released unmarked Chinook. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 14, 2015.

Joe Stohr  
for J. W. Unsworth  
Director



NEW SECTION

**WAC 220-310-19000D Freshwater exceptions to statewide rules—Nisqually River.** Notwithstanding the provisions of WAC 220-310-190, effective August 20, 2015, until further notice, on days open to fishing the following waters are closed from 2:00 p.m. to one hour before official sunrise.

**Nisqually River (Thurston Co.)** from the mouth to Military Tank Crossing Bridge.

**WSR 15-17-063**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-261—Filed August 14, 2015, 11:27 a.m., effective August 14, 2015, 11:27 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend work times in the Aquatic Plants and Fish Pamphlet for all aquatic plant removal activities except hand pulling.

Citation of Existing Rules Affected by this Order: Amending WAC 220-660-290.

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: A lack of snowpack from an unusually warm winter has resulted in drought conditions throughout much of Washington. A healthy snowpack slowly provides water to rivers and streams, helping to sustain fish through the drier summer months. But, with little or no snowpack, flows in many rivers have dropped significantly and water temperatures have increased - conditions that are lethal to fish. In response, the Washington department of fish and wildlife (WDFW) has placed drought-related fishing closures and restrictions on nearly sixty rivers and streams.

Low water and higher than normal water temperatures are limiting fish movement and making them more susceptible to diseases. In addition, stream flows have fallen low enough to concentrate fish into small areas of refugia where they are highly susceptible to additional stress from disturbance caused by aquatic plant removal. To protect fish life, WDFW is aligning the work times for all aquatic plant removal activities except hand pulling with the drought-related fishing closures or restrictions now in effect. There is insufficient time to adopt permanent rules.

The daily closures are intended to reduce additional stress to fish from aquatic plant removal activities during periods of the day when fish are stressed from elevated temperatures. In addition, some streams are closed to aquatic plant removal activities except hand pulling because of record low flows due to lack of winter snowpack and rainfall. Stream flows have fallen low enough to concentrate fish into

small areas of refugia where they are highly susceptible to additional stress from disturbance at these temperatures [which] further reduces survival.

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

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

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

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

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

Date Adopted: August 13, 2015.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-660-29000A Aquatic plant removal and control** Notwithstanding the provisions of WAC 220-660-290, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

**Asotin County**

Asotin Creek and tributaries from mouth to headwaters: Closed to all aquatic plant removal activities except hand pulling.

**Chelan County**

Wenatchee River from mouth to the Icicle River Road Bridge: Closed to all aquatic plant removal activities except hand pulling.

Icicle River from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam: Closed to all aquatic plant removal activities except hand pulling.

Peshastin Creek and all tributaries: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

**Clallam County**

Quillayute River from the confluence of the Sol Duc and Bogachiel Rivers downstream 475 yards: Closed to all aquatic plant removal activities except hand pulling.

Sol Duc River including all tributaries: Closed to all aquatic plant removal activities except hand pulling.

Bogachiel River including all tributaries: Closed to all aquatic plant removal activities except hand pulling.

Calawah River including all tributaries: Closed to all aquatic plant removal activities except hand pulling.

Dickey River including all tributaries: Closed to all aquatic plant removal activities except hand pulling.

**Clark County**

East Fork Lewis River from mouth upstream to top boat ramp at Lewisville Park: Closed to all aquatic plant removal activities except hand pulling.

East Fork Lewis River from top boat ramp at Lewisville Park upstream to 400 feet below Horseshoe Falls: Closed daily to all aquatic plant removal activities from 2 PM to one hour before official sunrise except hand pulling.

Washougal River from mouth upstream to Mt. Norway Bridge: Closed to all aquatic plant removal activities except hand pulling.

Washougal River from Mt. Norway Bridge upstream to the Salmon Falls Bridge: Closed daily to all aquatic plant removal activities from 2 PM to one hour before official sunrise except hand pulling.

**Columbia County**

Tucannon River (Columbia/Garfield Co.) From Highway 12 Bridge to Cow Camp Bridge: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Touchet River (Columbia/Walla Walla Co.) from mouth to the confluence of the North and South forks: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

(a) North Fork Touchet River from mouth to Spangler Creek: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

(b) North Fork Touchet River upstream from the confluence of Spangler Creek: Closed to all aquatic plant removal activities except hand pulling.

(c) South Fork Touchet River from mouth to Griffen Fork and above Griffen fork: Closed to all aquatic plant removal activities except hand pulling.

(d) Wolf Fork Touchet River from mouth to Coates Creek and Robinson Fork: Closed to all aquatic plant removal activities except hand pulling.

**Ferry County**

Kettle River and all tributaries from Barstow Bridge to headwaters, all portions contained within the United States: Closed to all aquatic plant removal activities except hand pulling.

**Garfield County**

Tucannon River (Columbia/Garfield Co.) From Highway 12 Bridge to Cow Camp Bridge: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

**Grays Harbor County**

Black River (Grays Harbor and Thurston Counties) from the mouth upstream to Black Lake: Closed to all aquatic plant removal activities except hand pulling.

**Jefferson County**

Clearwater River and its tributaries: Closed to all aquatic plant removal activities except hand pulling.

Queets River and its tributaries including Matheny Creek and the Salmon River outside Olympic National Park and the Quinault Reservation: Closed to all aquatic plant removal activities except hand pulling.

Big Quilcene mainstem: Closed to all aquatic plant removal activities except hand pulling.

**King County**

Raging River from the mouth upstream: Closed to all aquatic plant removal activities except hand pulling.

South Fork Skykomish River (Snohomish/King Co.) from Sunset Falls upstream and all tributaries, including the Beckler, Foss, Miller and Rapid Rivers and their tributaries: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

**Kittitas County**

Little Naches River: Closed to all aquatic plant removal activities except hand pulling.

Teanaway River, including West, Middle and North Forks: Closed to all aquatic plant removal activities except hand pulling.

Swauk Creek and all tributaries except Williams Creek: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling. Williams Creek is closed to all aquatic plant removal activities except hand pulling.

**Lewis County**

Newaukum River and all tributaries: Closed to all aquatic plant removal activities except hand pulling.

**Lincoln County**

Spokane River (Spokane/Lincoln Co.) from upstream Boundary at Plese Flats Day Use Area to Idaho State Boundary: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

**Okanogan County**

Methow River from County Road 1535 Bridge (lower Burma Rd.) upstream to Weeman Bridge (8 miles upstream of Winthrop): Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Okanogan River from the Hwy 97 Bridge immediately upstream of the mouth to Zosel Dam: Closed to all aquatic plant removal activities except hand pulling.

Similkameen River from the mouth upstream to Enloe Dam: Closed to all aquatic plant removal activities except hand pulling.

**Pend Oreille County**

Sullivan Creek and all tributaries from mouth to headwaters: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Spokane River tributaries, including Little Spokane River and tributaries (Spokane/Pend Oreille/Stevens Co.) from State Route 25 Bridge upstream to Monroe Street Dam: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

**Skagit County**

Sauk River (Skagit/Snohomish Co.) From the confluence with the Suiattle River upstream including North Fork to the falls and South Fork to headwaters: Closed daily to aquatic plant removal activities except hand pulling from 2 PM to midnight.

Suiattle River Tributaries Buck, Downey and Sulpher Creeks: Closed to all aquatic plant removal activities except hand pulling.

Samish River from I-5 to headwaters and Friday Creek from the mouth upstream: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Stillaguamish River (Skagit/Snohomish Co.) from Marine Drive upstream including the North and South Forks and all tributaries: Closed to all aquatic plant removal activities except hand pulling.

#### **Snohomish County**

Skykomish River from mouth upstream: Closed to aquatic plant removal activities except hand pulling with exception of the section around Reiter Ponds remains open from the Gold Bar/Big Eddy Access (Hwy. 2 Bridge) upstream to the confluence of the North and South Forks.

North Fork Skykomish River from mouth upstream including all tributaries: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

South Fork Skykomish River(Snohomish/King Co.) from Sunset Falls upstream and all tributaries, including the Beckler, Foss, Miller and Rapid Rivers and their tributaries: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Wallace River from the mouth upstream including all tributaries: Closed to all aquatic plant removal activities except hand pulling.

Stillaguamish River(Skagit/Snohomish Co.) from Marine Drive upstream including the North and South Forks and all tributaries: Closed to all aquatic plant removal activities except hand pulling.

Sauk River (Skagit/Snohomish Co.) From the confluence with the Suiattle River upstream including North Fork to the falls and South Fork to headwaters: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

#### **Spokane County**

Spokane River (Spokane/Lincoln Co.) from upstream Boundary at Plese Flats Day Use Area to Idaho State Boundary: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Spokane River tributaries, including Little Spokane River and tributaries (Spokane/Pend Oreille/Stevens Co.) from State Route 25 Bridge upstream to Monroe Street Dam: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

#### **Stevens County**

Spokane River tributaries, including Little Spokane River and tributaries (Spokane/Pend Oreille/Stevens Co.) from State Route 25 Bridge upstream to Monroe Street Dam: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Colville River and all tributaries from mouth to headwaters: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

#### **Thurston County**

Black River (Grays Harbor and Thurston Counties) from the mouth upstream to Black Lake: Closed to all aquatic plant removal activities except hand pulling.

Nisqually River (Thurston Co.) from the mouth to the military tank crossing bridge: Closed daily to all aquatic plant removal activities from 2 PM to one hour before official sunrise except hand pulling.

#### **Walla Walla County**

Walla Walla River from McDonald Road Bridge to Oregon State Boundary: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Mill Creek from Bennington Dam to State Line: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

#### **Whatcom County**

South Fork Nooksack from the mouth to Skookum Creek and from Wanlick Creek to headwaters including Wanlick and all tributaries: Closed to all aquatic plant removal activities except hand pulling.

#### **Yakima County**

Ahtanum Creek, including North and Middle Forks: Closed to all aquatic plant removal activities except hand pulling.

American River: Closed to all aquatic plant removal activities except hand pulling.

Yakima River from Interstate 82 Bridge at Union Gap to South Cle Elum Bridge: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Naches River from Tieton River to Bumping River/Little Naches River: Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

Rattlesnake Creek (mainstem): Closed daily to all aquatic plant removal activities from 2 PM to midnight except hand pulling.

### **WSR 15-17-064**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 15-262—Filed August 14, 2015, 11:27 a.m., effective August 14, 2015, 11:27 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend authorized work times for suction dredging in the gold and fish rules for mineral prospecting and placer mining.

Citation of Existing Rules Affected by this Order: Amending WAC 220-660-300.

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: A lack of snowpack from an unusually warm winter has resulted in drought conditions throughout much of Washington. A healthy snowpack slowly provides water to rivers and streams, helping to sustain fish through the drier summer months. But, with little or no snowpack, flows in many rivers have dropped significantly and water temperatures have increased - conditions that are lethal to fish. In response, the Washington department of fish and

wildlife (WDFW) has placed drought-related fishing closures and restrictions on over sixty rivers and streams.

Low water and higher than normal water temperatures are limiting fish movement and making them more susceptible to diseases. In addition, stream flows have fallen low enough to concentrate fish into small areas of refugia where they are highly susceptible to additional stress from disturbance caused by suction dredging. To protect fish life, WDFW is aligning the authorized work times for suction dredging in the gold and fish rules for mineral prospecting and placer mining with drought-related fishing closures or restrictions now in effect. There is insufficient time to adopt permanent rules.

Per permanent rule, work in the wetted perimeter or frequent scour zone is authorized from one-half hour before sunrise to one-half hour after sunset. The daily closures from 2 p.m. to one-half hour after sunset are intended to reduce additional stress to fish from suction dredging during periods of the day when fish are stressed from elevated temperatures. In addition, some streams are closed to suction dredging because of record low flows due to lack of winter snowpack and rainfall. Stream flows have fallen low enough to concentrate fish into small areas of refugia where they are highly susceptible to additional stress from disturbance at these temperatures [which] further reduces survival.

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

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

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

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

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

Date Adopted: August 13, 2015.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-660-30000A Mineral prospecting** Notwithstanding the provisions of WAC 220-660-300, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

You may leave excavation sites unfilled but you must level all tailing piles before moving to another excavation site or abandoning the exaction site. Tailing piles must not extend more than twelve inches above the surrounding bed.

#### **Asotin County**

Asotin Creek and tributaries from mouth to headwaters: Closed to suction dredging.

#### **Chelan County**

Wenatchee River from mouth to the Icicle River Road Bridge: Closed to suction dredging.

Icicle River from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam: Closed to suction dredging.

Peshastin Creek and all tributaries: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

#### **Clallam County**

Quillayute River from the confluence of the Sol Duc and Bogachiel Rivers downstream 475 yards: Closed to suction dredging.

Sol Duc River including all tributaries: Closed to suction dredging.

Bogachiel River including all tributaries: Closed to suction dredging.

Calawah River including all tributaries: Closed to suction dredging.

Dickey River including all tributaries: Closed to suction dredging.

#### **Clark County**

East Fork Lewis River from mouth upstream to top boat ramp at Lewisville Park: Closed to suction dredging.

East Fork Lewis River from top boat ramp at Lewisville Park upstream to 400 feet below Horseshoe Falls: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

Washougal River from mouth upstream to Mt. Norway Bridge: Closed to suction dredging.

Washougal River from Mt. Norway Bridge upstream to the Salmon Falls Bridge: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

#### **Columbia County**

Tucannon River (Columbia/Garfield Co.) From Highway 12 Bridge to Cow Camp Bridge: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

Touchet River (Columbia/Walla Walla Co.) from mouth to the confluence of the North and South forks: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

(a) North Fork Touchet River from mouth to Spangler Creek: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

(b) North Fork Touchet River upstream from the confluence of Spangler Creek: Closed to suction dredging.

(c) South Fork Touchet River from mouth to Griffen Fork and above Griffen fork: Closed to suction dredging.

(d) Wolf Fork Touchet River from mouth to Coates Creek and Robinson Fork: Closed to suction dredging.

#### **Ferry County**

Kettle River and all tributaries from Barstow Bridge to headwaters, all portions contained within the United States: Closed to suction dredging.

#### **Garfield County**

Tucannon River (Columbia/Garfield Co.) From Highway 12 Bridge to Cow Camp Bridge: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

**Grays Harbor County**

Black River (Grays Harbor and Thurston Counties) from the mouth upstream to Black Lake: Closed to suction dredging.

**Jefferson County**

Clearwater River and its tributaries: Closed to suction dredging.

Queets River and its tributaries including Matheny Creek and the Salmon River outside Olympic National Park and the Quinault Reservation: Closed to suction dredging.

Big Quilcene mainstem: Closed to suction dredging.

**King County**

Raging River from the mouth upstream: Closed to suction dredging.

South Fork Skykomish River (Snohomish/King Co.) from Sunset Falls upstream and all tributaries, including the Beckler, Foss, Miller and Rapid Rivers and their tributaries: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

**Kittitas County**

Little Naches River: Closed to suction dredging.

Teanaway River, including West, Middle and North Forks: Closed to suction dredging.

Swauk Creek and all tributaries downstream from the confluence of Williams Creek: Closed daily to suction dredging from 2 PM to until one-half hour after official sunset. Williams Creek and all tributaries and Swauk Creek and all tributaries upstream from the confluence of Williams Creek: Closed to suction dredging.

**Lewis County**

Newaukum River and all tributaries: Closed to suction dredging.

**Lincoln County**

Spokane River (Spokane/Lincoln Co.) from upstream Boundary at Plese Flats Day Use Area to Idaho State Boundary: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

**Okanogan County**

Methow River from County Road 1535 Bridge (lower Burma Rd.) upstream to Weeman Bridge (8 miles upstream of Winthrop): Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

Okanogan River from the Hwy 97 Bridge immediately upstream of the mouth to Zosel Dam: Closed to suction dredging.

Similkameen River from the mouth upstream to Enloe Dam: Closed to suction dredging.

**Pend Oreille County**

Sullivan Creek and all tributaries from mouth to headwaters: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

Spokane River tributaries, including Little Spokane River and tributaries (Spokane/Pend Oreille/Stevens Co.) from State Route 25 Bridge upstream to Monroe Street Dam: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

**Skagit County**

Sauk River (Skagit/Snohomish Co.) From the confluence with the Suiattle River upstream including North Fork to the falls and South Fork to headwaters: Closed daily to

suction dredging from 2 PM to one-half hour after official sunset.

Suiattle River Tributaries Buck, Downey and Sulpher Creeks: Closed to suction dredging.

Samish River from I-5 to headwaters and Friday Creek from the mouth upstream: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

Stillaguamish River (Skagit/Snohomish Co.) from Marine Drive upstream including the North and South Forks and all tributaries: Closed to suction dredging.

**Snohomish County**

Skykomish River from mouth upstream: Closed to suction dredging except the section around Reiter Ponds remains open from the Gold Bar/Big Eddy Access (Hwy. 2 Bridge) upstream to the confluence of the North and South Forks.

North Fork Skykomish River from mouth upstream including all tributaries: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

South Fork Skykomish River (Snohomish/King Co.) from Sunset Falls upstream and all tributaries, including the Beckler, Foss, Miller and Rapid Rivers and their tributaries: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

Wallace River from the mouth upstream including all tributaries: Closed to suction dredging.

Stillaguamish River (Skagit/Snohomish Co.) from Marine Drive upstream including the North and South Forks and all tributaries: Closed to all suction dredging.

Sauk River (Skagit/Snohomish Co.) From the confluence with the Suiattle River upstream including North Fork to the falls and South Fork to headwaters: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

**Spokane County**

Spokane River (Spokane/Lincoln Co.) from upstream Boundary at Plese Flats Day Use Area to Idaho State Boundary: Closed daily to suction dredging 2 PM to one-half hour after official sunset.

Spokane River tributaries, including Little Spokane River and tributaries (Spokane/Pend Oreille/Stevens Co.) from State Route 25 Bridge upstream to Monroe Street Dam: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

**Stevens County**

Spokane River tributaries, including Little Spokane River and tributaries (Spokane/Pend Oreille/Stevens Co.) from State Route 25 Bridge upstream to Monroe Street Dam: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

Colville River and all tributaries from mouth to headwaters: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

**Thurston County**

Black River (Grays Harbor and Thurston Counties) from the mouth upstream to Black Lake: Closed to suction dredging.

Nisqually River (Thurston Co.) from the mouth to the military tank crossing bridge: Closed daily to suction dredging from 2 PM to one-half hour before official sunrise.

**Walla Walla County**

Walla Walla River from McDonald Road Bridge to Oregon State Boundary: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

Mill Creek from Bennington Dam to State Line: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

**Whatcom County**

South Fork Nooksack from the mouth to Skookum Creek and from Wanlick Creek to headwaters including Wanlick and all tributaries: Closed to suction dredging.

**Yakima County**

Ahtanum Creek, including North and Middle Forks: Closed to suction dredging.

American River: Closed to suction dredging.

Yakima River from Interstate 82 Bridge at Union Gap to South Cle Elum Bridge: Closed daily to suction dredging from 2 PM to one-half hour after official sunset.

Naches River from Tieton River to Bumping River/Little Naches River: Closed daily to suction dredging from 2 PM until one-half hour after official sunset.

Rattlesnake Creek (mainstem): Closed daily to suction dredging from 2 PM until one-half hour after official sunset.

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

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: August 14, 2015.

David Giglio  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-47-41100I Gillnet—Open periods.** Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below and with the minimum mesh size indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods	Mesh Size
9A	7 AM August 16 - 7 AM September 13, 2015	Minimum 5 inch

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 AM September 13, 2015:

WAC 220-47-41100I Gillnet—Open periods.

**WSR 15-17-071  
EMERGENCY RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed August 17, 2015, 11:43 a.m., effective August 17, 2015, 11:43 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Immediate rule adoption is required to allow work based learning provided by a state-approved skill center program to be claimed for enhanced skill center vocational funding.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-124.

Statutory Authority for Adoption: RCW 28A.150.305.

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

**WSR 15-17-067**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 15-265—Filed August 14, 2015, 4:53 p.m., effective August 16, 2015, 7:00 a.m.]

Effective Date of Rule: August 16, 2015, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100I; and amending WAC 220-47-411.

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

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

Reasons for this Finding: The department has adopted permanent rules necessary to implement the commercial fishing plans developed through the North of Falcon season setting process. These rules are interim until permanent rules take effect.

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

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

Reasons for this Finding: For the 2015-16 school year, skill center programs will be offering work based learning opportunities for their students. With this rule adoption, skill centers will be able to report the student's enrollment for enhanced skill center vocational funding and will not be required to have interdistrict agreements in place to report nonresident students. Nonresident students will be covered by the skill center cooperative agreements with their local districts.

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

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

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

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

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

Date Adopted: July 7, 2015.

Randy Dorn  
State Superintendent

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-124 Full-time equivalent enrollment for work based learning.** For work based learning provided pursuant to WAC 392-410-315, a student's full-time equivalent shall be determined as follows:

(1) For cooperative work based learning experience, in accordance with WAC 392-410-315 (1)(g), divide the student's hours of work experience for the month by two hundred; for example: Forty hours of cooperative work experience equals two tenths of a full-time equivalent ( $40 \div 200 = 0.20$ ). For instructional work based learning experience, in accordance with WAC 392-410-315 (1)(f) and 296-125-043 (4), divide the student's enrolled hours of work experience for the month by one hundred; for example: Twenty hours of instructional work experience equals two tenths of a full-time equivalent ( $20 \div 100 = 0.20$ ). Enrollment exclusions in WAC 392-121-108 apply to instructional work based learning enrolled hours.

(2) Estimated or scheduled hours of cooperative work based learning experience may be used in determining a student's full-time equivalent on an enrollment count date: Provided, That the combined monthly hours reported for the school year shall not exceed the student's actual hours of cooperative work based learning experience documented on the student's work records and maintained by the school district for audit purposes.

(3) Work based learning provided as part of a state-approved vocational education program qualifies for enhanced vocational funding and may be included in determining a student's vocational full-time equivalent enrollment.

(4) Work based learning provided as part of a state-approved skill center program qualifies for enhanced skill center vocational funding and may be included in determining a student's skill center vocational full-time equivalent enrollment.

(5) No more than three hundred sixty hours of cooperative work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript. No more than one hundred eighty hours of instructional work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript.

~~((5))~~ (6) Funding may be claimed only for work based learning hours that occur after the work based learning plan, work based agreement, program orientation and new employee orientation, as defined in WAC 392-410-315, are completed.

**WSR 15-17-081  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 15-255—Filed August 17, 2015, 3:35 p.m., effective August 24, 2015]

Effective Date of Rule: August 24, 2015.

Purpose: Columbia River seine fishery emerging commercial fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-88-05000B, 220-88-06000B, 220-88-07000E, and 220-88-08000B.

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

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

Reasons for this Finding: This rule establishes an emerging commercial fishery with limited participants using beach or purse seine gear in the Columbia River. This limited entry fishery is established consistent with RCW 77.70.160 and is implemented based on Policy C-3620 which includes guiding principles and a progressive series of actions to improve the management of salmon in the Columbia River basin. The fisheries outlined here are part of a series of actions meant to be progressively implemented in 2013-2016 during the transitional period of the policy. This is the second year that a fishery allowing seine gear in the Columbia River has occurred, and is meant to inform fishery managers in how best to implement such fisheries. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement, commission guidance and the fall Chinook allocation agreement developed through the North of Falcon pro-

cess. The regulation is consistent with compact action of August 11, 2015. There is insufficient time to adopt permanent rules.

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

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 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 4, Amended 0, Repealed 4.

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: August 17, 2015.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-88-05000C Designation of Columbia River seine fishery as an emerging commercial fishery.** (1) The director designates the Columbia River seine salmon fishery

as an emerging commercial fishery for which use of a vessel is required. The director has determined a need to limit the number of participants in this fishery.

(2) It is unlawful to fish for, possess, or deliver salmon taken for commercial purposes using beach or purse seine unless the fisher possesses a valid emerging commercial fishery license and a salmon experimental fishery permit for either beach seine or purse seine gear. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

#### NEW SECTION

**WAC 220-88-06000C Columbia River seine emerging commercial fishery—Qualifications—Issuance of experimental fishery permits—License fee—Permit conditions.** (1) Individuals interested in participating in this fishery must apply for an emerging fishery license.

(a) The first round of experimental fishery permits were drawn randomly from a pool of emerging fishery license applications for Columbia River seine fisheries. Applications were pooled by gear type (i.e. beach seine pool and purse seine pool).

(b) Drawings continued until the number of permits needed is filled for each gear type and zone as determined by the agencies.

(c) Once drawn, the emerging fishery license and experimental fishery permit will be awarded so long as the applicant meets the qualifications for the license and permit as provided in subsection (2) of this section. Random drawings will continue from this pool of applicants until all permits are filled or the pool of qualified applicants is exhausted.

(d) The department may perform a second round of random drawings if the total number of permits needed is not filled from the applications received from the first round of applicants. Applications for any remaining permits will be accepted until filled.

(e) Alternate permits for each gear type may be drawn. Alternate permits for each gear type may be awarded if needed at the Department's discretion.

(f) For the second round, applicants drawn for an emerging fishery license and experimental fishery permit are asked to respond within seven (7) business days of being notified by the department to accept the permit and purchase the emerging fishery license. At that time the emerging fishery license fee will be due, and the license and permit will be issued by WDFW upon receipt of payment. The department will not issue the emerging fishery license or the experimental fishery permit until payment is received. If an applicant is drawn for the license and permit and fails to purchase the license and permit within the 7-day period, the department may issue the license and permit to another selected applicant.

(g) The emerging fishery license and experimental fishery permit remains in effect until further notice.

(2) Qualifications: An experimental fishery permit will only be issued to a natural person who has a valid emerging commercial fishery license and who:

(a) Possesses a commercial gillnet salmon license/permit issued by Washington or Oregon for the Columbia River, Columbia River/Willapa Bay or Columbia River/Grays Har-



bor and can demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River Select Areas within the past two calendar years (2013 and 2014) under that license; or

(b) Can demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River Select Areas by the applicant under a commercial salmon license issued for the Columbia River, Columbia River/Willapa Bay or Columbia River/Grays Harbor within the past two calendar years (2013 and 2014).

(3) Nothing in this section gives preference to 2015 permit holders for issuance of potential future permits.

(4) Experimental fishery permits are not transferable between persons. The permit holder must be present and in possession of a valid experimental fishery permit during seine fishing operations. A violation of this subsection is punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(5) It is unlawful to violate the conditions of the experimental fishery permit for the Columbia River seine emerging commercial fishery. A violation of this subsection is punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(6) Experimental fishery permits may be revoked at the discretion of the Director and future permits denied for failure to comply with conditions specified in the permit or violations of other commercial fishing regulations.

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

#### NEW SECTION

**WAC 220-88-07000F Columbia River seine emerging commercial fishery—Season, area, and gear requirements.** It is unlawful to fish for salmon for commercial purposes with beach or purse seine gear except as provided in this section:

(1) Season:

(a) Open hours are 6:00 a.m. to 8:00 p.m. through September 11; and 6:30 a.m. to 7:30 p.m. thereafter:

(b) Open days are:

(i) Monday August 24 and Wednesday August 26, 2015

(ii) Monday, Tuesday, Wednesday, and Thursday August 31 - September 3, 2015

(iii) Tuesday, Wednesday, and Thursday September 8-10, 2015

(iv) Monday September 14 and Wednesday September 16, 2015

(v) Monday September 21 and Wednesday September 23, 2015

(vi) Monday September 28 and Wednesday September 30, 2015

(2) Open area: SMCRA 1B and 1C through August 26 and SMCRA 1B, 1C and upper area of SMCRA 1D thereafter. Lower boundary for seine fishing in Zone 4 (SMCRA 1D) is described as a line from USCG light #10 "Red" on the Oregon shore at Henrici Landing across to a wing jetty on the Washington shore at river mile 90.25).

(3) Gear type: Beach seines or purse seines only. Only one seine net per primary vessel.

(a) Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure).

(b) Net material to consist of 3-strand nylon; twine size  $\geq$ #12.

(c) Seines may include a bunt of 1.0-2.0 inch knotless mesh.

(d) Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet)

(e) Seine and lead lines may not be connected. Lead nets must be retrieved daily.

(f) No restrictions on corkline, leadline or use of stringers and slackers.

(g) A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline.

(h) Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net.

(i) Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size  $\geq$ #12,  $\leq$ 3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size  $\geq$ 14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

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

#### NEW SECTION

**WAC 220-88-08000C Columbia River seine emerging commercial fishery—Allowable possession and sales—Catch handling requirements.** (1) Allowable possession and sales: Adipose or left ventral fin-clipped Chinook, adipose-clipped coho, pink and sockeye salmon and shad. Subject to IFQs as defined on individual permits and fishery regulations, all legally-caught salmon must be landed and sold.

(2) Handling of catch: Hand sorting or use of a knotless dip net for sorting is required. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

(3) Sort time not to exceed 75 minutes.

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.

(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(4) Observer Program - Agency observers must be present during all fishing operations

(5) 24-hour quick-report required pursuant to WAC 220-69-240.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 220-88-05000B Designation of Columbia River seine fishery as an emerging commercial fishery. (15-137)

WAC 220-88-06000B Columbia River seine emerging commercial fishery—Qualifications—Issuance of experimental fishery permits—License fee—Permit conditions. (15-137)

WAC 220-88-07000E Columbia River seine emerging commercial fishery—Season, area, and gear requirements. (15-137)

WAC 220-88-08000B Columbia River seine emerging commercial fishery—Allowable possession and sales—Catch handling requirements. (15-137)

**WSR 15-17-082  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 15-266—Filed August 17, 2015, 4:06 p.m., effective August 18, 2015, 5:00 a.m.]

Effective Date of Rule: August 18, 2015, 5:00 a.m.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100P and 220-47-41100J; and amending WAC 220-47-311, 220-47-411, and 220-47-500.

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

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

Reasons for this Finding: The department has adopted permanent rules necessary to implement the commercial fishing plans developed through the North of Falcon season setting process. These rules are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 2.

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

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

Date Adopted: August 17, 2015.

Joe Stohr  
for J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-47-31100P Purse seine—Open periods.** Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the areas and open periods indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods
8A	7 AM - 7 PM daily 8/18, 8/26, 9/1
10 - limited participation 5 boats only	7 AM - 7 PM daily 8/19, 8/25, 8/27, 8/31, 9/2

**NEW SECTION**

**WAC 220-47-41100J Gillnet—Open periods.** Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below and with the minimum mesh size indicated below. Unless otherwise amended, all permanent rules remain in effect.

Open Areas	Open Periods	Mesh Size
8A	5 AM - 11 PM daily 8/19, 8/25, 9/2	Minimum 5 inch
10 - limited participation 5 boats only	7 PM - 7 AM daily 8/18, 8/24, 8/26, 9/1, 9/3	4 1/2" minimum and 5 1/2" maximum mesh

**NEW SECTION**

**WAC 220-47-50000A Limited participation salmon net fisheries.** Notwithstanding the provisions of WAC 220-47-500, in area 10 limited participation pink fisheries, fishers must participate in all openings to be eligible to participate in the fishery and must pay a fee of \$250 per day to cover the

cost of observers. Unless otherwise amended, all permanent rules remain in effect.

### REPEALER

The following sections of the Washington Administrative Code are repealed effective 7:01 AM September 4, 2015:

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

WAC 220-47-41100J Gillnet—Open periods.

**WSR 15-17-085**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-267—Filed August 18, 2015, 8:53 a.m., effective August 19, 2015]

Effective Date of Rule: August 19, 2015.

Purpose: Amend commercial fishing rules for Puget Sound commercial shrimp.

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

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

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

Reasons for this Finding: The 2015 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) implements a spot shrimp weekly limit of four hundred pounds in Catch Area 23A-E; and (2) closes Catch Area 23A-E effective August 25 as the quota will be reached. 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: August 18, 2015.

Joe Stohr  
for J. W. Unsworth  
Director

### NEW SECTION

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

- (1) Shrimp pot gear:
  - (a) All waters of Shrimp Management Areas 1C, 2W, 3 and 6 are open to the harvest of all shrimp species, except:
    - (i) All waters of the Discovery Bay Shrimp District are closed.
    - (ii) Effective 11:59 p.m. August 25, 2015, until further notice, all waters of Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-E are closed to the harvest of spot shrimp.
    - (iii) All waters of Shrimp Management Areas 2W, 6 and Catch Area 25A are closed to the harvest of spot shrimp.
    - (iv) All waters of Shrimp Management Area 1C are closed to the harvest of all species other than spot shrimp.
  - (b) The spot shrimp catch accounting week is Wednesday through Tuesday.
  - (c) It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 800 pounds per week, except it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 400 pounds per week in Catch Area 23A-E.
  - (d) It is unlawful to pull shellfish pots in more than one catch area per day.
  - (e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.
- (2) Shrimp beam trawl gear:
  - (a) Shrimp Management Area 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.
  - (b) Those portions of Catch Areas 21A and 22A within Shrimp Management Area 1B are open.
  - (c) Effective immediately, until 6:00 p.m. August 22, 2015, that portion of Catch Area 20B within Shrimp Management Area 1B is open.
  - (d) All waters of Catch Area 20A are open.
  - (3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. August 18, 2015:

WAC 220-52-05100G Puget Sound shrimp pot and beam trawl fishery—Season. (15-252)

**WSR 15-17-088**  
**EMERGENCY RULES**  
**HEALTH CARE AUTHORITY**  
 (Washington Apple Health)

[Filed August 18, 2015, 9:51 a.m., effective August 18, 2015, 9:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Adding a new section (WAC 182-531-1730) for coverage of telemedicine.

Statutory Authority for Adoption: RCW 41.05.021.

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: This emergency rule is necessary to continue the current emergency rule adopted under WSR 15-09-113 to allow for the coverage of telemedicine services while the agency continues to finalize the permanent rule-making process. The agency has completed the internal and external review processes and is filing the CR-102 Proposed rule making for public hearing in early October.

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 1, Amended 0, Repealed 0.

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

Date Adopted: August 18, 2015.

Wendy Barcus  
 Rules Coordinator

NEW SECTION

**WAC 182-531-1730 Telemedicine.** (1) Telemedicine is when a health care practitioner uses HIPAA-compliant, interactive, real-time audio and video telecommunications

(including web-based applications) to deliver covered services that are within his or her scope of practice to a client at a site other than the site where the provider is located. Using telemedicine enables health care practitioners and the client to interact in real-time communication as if they were having a face-to-face session. Telemedicine allows clients, particularly those in medically underserved areas of the state, improved access to health care services that may not otherwise be available without traveling long distances.

(2) The medicaid agency does not cover the following services as telemedicine:

(a) E-mail, audio only telephone, and facsimile transmissions;

(b) Installation or maintenance of any telecommunication devices or systems; and

(c) Purchase, rental, or repair of telemedicine equipment.

(3) **Originating site.** An originating site is the physical location of the client at the time the health care service is provided. Approved originating sites are:

(a) Clinics;

(b) Community mental health/chemical dependency settings;

(c) Dental offices;

(d) Federally qualified health centers;

(e) Home or natural setting, for applied behavior analysis benefit only;

(f) Hospitals - Inpatient and outpatient;

(g) Offices;

(h) Rural health clinics;

(i) Schools; and

(j) Skilled nursing facilities.

(4) **Distant site.** A distant site is the physical location of the health care professional providing the health care service.

(5) The agency pays a technical administration fee to either the originating site or the distant site, as specified in the agency's program-specific billing instructions.

(6) If a health care professional performs a separately identifiable service for the client on the same day as the telemedicine service, documentation for both services must be clearly and separately identified in the client's medical record.

(7) Billing procedures for telemedicine can be found in the agency's program-specific billing instructions.