

WSR 15-18-053
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
 [Filed August 27, 2015, 10:38 a.m., effective August 28, 2015]

Effective Date of Rule: August 28, 2015.

Purpose: The department is amending chapter 388-107 WAC in order to address concerns of the Center for Medicare/Medicaid Services (CMS) home and community based services (HCBS) and stakeholders with operationalization of the requirements stated therein.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-107-0930; and amending WAC 388-107-0001, 388-107-0020, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140, 388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240, 388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, 388-107-1000, and 388-107-1190.

Statutory Authority for Adoption: RCW 70.97.230.

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: After receiving input from stakeholders, DSHS's residential care services has revised chapter 388-107 WAC to operationalize the enhanced services facilities (ESF) program.

Immediate Adoption is Necessary for Public Safety and General Welfare: The Washington state operating budget directs the department to implement chapter 70.97 RCW, which requires the establishment of ESFs. ESFs are intended to relieve pressure on institutional mental health settings such as eastern and western state hospitals. If certain patients are relocated to ESFs, more beds will be available to those who need an institutional level of mental health care.

Due to shortage of beds at evaluation and treatment centers and western and eastern state hospitals, some patients have been kept in nonpsychiatric acute care hospital settings such as emergency rooms and medical surgical units. In the case known as *In re: the Detention of D.W., et al. v. Department of Social and Health Service*, the Washington state supreme court found these placements, known as "psychiatric boarding," to be unconstitutional. In order to comply with *D.W.*, DSHS needs to immediately develop alternatives to institutional mental health settings in order to reduce the need for psychiatric boarding. Therefore, adoption of these rules, which will allow ESFs to become licensed and begin operation, is an urgent and time-sensitive matter of public safety and general welfare.

Immediate Adoption is Necessary to Receive Federal Funds: In order to qualify for federal matching funds, the

ESF program must conform to federal CMS HCBS requirements. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that payments for ESF services will qualify for federal funding under the HCBS requirements, the proposed rule amendments need to be adopted immediately.

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 1, Amended 31, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 31, Repealed 1.

Date Adopted: August 20, 2015.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0001 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints except as described in section 388-107-0420;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual

contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrator" means an enhanced services facility administrator who must be in active administrative charge of the enhanced services facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care worker training and home care aide certification.

"Advance directive," as used in this chapter, means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

"Aggressive behavior" means actions by the individual that constitute a threat to the individual's health and safety or the health and safety of others in the environment.

"Antipsychotic medications" means that class of medications primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

"Applicant" means the individual or entity, as defined in this section, that has submitted, or is in the process of submitting, an application for an enhanced services facility license.

"Capacity" means the maximum amount an enhanced services facility can serve is sixteen residents.

"Caregiver" means the same as "long-term care worker" as defined in RCW 74.39A.009, as follows: "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed

by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

"Challenging behavior" means a persistent pattern of behaviors that inhibit the individual's functioning in public places, in the facility and integration within the community, or uncontrolled symptoms of a physical or mental condition. These behaviors may have been present for long periods of time or have manifested as an acute onset.

"Chemical dependency" means alcoholism, medication addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

"Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

"Deficiency" is an enhanced services facility's failed practice, action, or inaction that violates any or all of the requirements of chapters 70.97 RCW or the requirements of this chapter.

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

"Direct supervision" means oversight by a person on behalf of the enhanced services facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Enhanced services facility" means a facility that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

"Facility" means an enhanced services facility.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Holding technique" means using the least amount of force necessary to manually hold all or part of a person's body in a way that restricts the person's free movement; also includes any approved controlling maneuvers identified in the ((individual treatment)) person-centered service plan. Examples include holds taught in approved training for deescalation techniques and control of self-harm or aggressive behavior. This definition does not apply to briefly holding, without force, a person in order to calm the person, or holding a person's hand to escort the person safely from one area to another.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Inspection" means the process by which department staff evaluates the enhanced services facility licensee's compliance with applicable statutes and regulations.

"License suspension" is an action taken by the department to temporarily revoke an enhanced services facility license in accordance with RCW 70.97.120 and this chapter.

"Licensee" means the individual or entity, as defined in this chapter, to whom the department issues the enhanced services facility license.

"Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

"Likelihood of serious harm" means a substantial risk that:

(1) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(2) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(3) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

"Long-term care worker" as defined in RCW 74.39A.-009, has the same meaning as the term "caregiver."

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, Assisted living facility; chapter 18.51 RCW, Nursing homes; chapter 70.128 RCW, Adult family homes; chapter 72.36 RCW, Soldiers' homes; chapter 71A.20 RCW, Residential habilitation centers; chapter 70.97 RCW, Enhanced services facility or any other facility licensed by the department.

"Medically fragile" means a chronic and complex physical condition which results in prolonged dependency on specialized medical care that requires frequent daily skilled nursing interventions. If these medically necessary interventions are interrupted or denied, the resident may experience irreversible damage or death. Examples of specialized medical care and treatment for medically fragile residents include but are not limited to: IV therapies requiring monitoring of vital signs and dose titration dependent on lab values; wound care requiring external vacuum or other mechanical devices for debridement; complicated wound care requiring other specialized or extensive interventions and treatment; ventilator or other respiratory device dependence and monitoring;

dependence on licensed staff for complex respiratory support; and peritoneal or hemodialysis (on-site).

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication service" means any service provided either directly or indirectly by an enhanced services facility related to medication administration medication assistance, or resident self-administration of medication.

"Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

"Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, licensed mental health counselor, licensed mental health counselor-associate, licensed marriage and family therapist, licensed marriage and family therapist-associate, licensed independent clinical social worker, licensed independent clinical social worker-associate, licensed advanced social worker, or licensed advanced social worker-associate and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 5 years), after which it expires.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe medications.

"Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the enhanced services facility must:

(a) Not impose an admission criterion that excludes individuals unless the criterion is necessary for the provision of enhanced services facility services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the enhanced services facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

"Resident" means a person admitted to an enhanced services facility.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the enhanced services facility and to receive information from the enhanced services facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.-010 (1)(e).

"Secretary" means the secretary of the department or the secretary's designee.

"Significant change" means:

(1) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(2) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for discharge or for treatment in a less intensive or less secure setting.

"Significant medication error" includes any failure to administer or receive a medication according to an authorized health care provider's order, or according to the manufacturer's directions for nonprescription medications, that results in an error involving the wrong medication, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration.

"Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.-010.

"Staff" or "staff person" means any person who:

(1) Is employed or used by an enhanced services facility, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements of chapter 388-112 WAC.

"Stop placement" or "stop placement order" is an action taken by the department prohibiting enhanced services facility admissions, readmissions, and transfers of patients into the enhanced services facility from the outside.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was terminated following an initial hearing, or was terminated by stipulation of the parties in lieu of an initial hearing.

"Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, physical therapy, restorative nursing, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling.

"Violation" ~~((is an enhanced services facility failed practice, action or inaction that violates any or all of the following:~~

~~(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and~~

~~(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations))~~ means the same as **"deficiency"** as defined in this section.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any enhanced services facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(8) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0020 Department authority. (1) Chapter 70.97 RCW authorizes the department to develop rules to implement the chapter, and to license enhanced services facilities. At a minimum the rules are to be written to promote safe treatment and necessary care of individuals residing in each facility, to provide for safe and clean conditions and to establish licensee qualifications, licensing and enforcement standards, and license fees sufficient to cover the cost of licensing and enforcement.

(2) The department, in its sole discretion and after taking into consideration the circumstances of a particular facility such as size or location, may approve alternate staffing, administration, physical plant, or other arrangements that have been proposed in writing by an ESF applicant or licensee. An ESF's failure to comply with a department-approved alternate plan is a violation of this chapter and may result in enforcement actions under WAC 388-107-1430.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0080 Ongoing comprehensive assessments. The enhanced services facility must:

(1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;

(2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(b) When the resident's ~~((individual treatment))~~ person-centered service plan no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Review each resident's needs to evaluate discharge or transfer options when the resident:

(a) No longer needs the level of behavioral support provided by the facility; or

(b) Expresses the desire to move to a different type of community based setting.

(4) Ensure that the person-centered service planning team discusses all available placement options.

(5) Ensure the staff person performing the ongoing assessments is a qualified ~~((to perform them))~~ assessor.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0100 ~~((Enhanced services facility))~~ Person-centered service planning team. The facility ~~((will identify a team for each resident. The team will))~~ must develop and maintain a person-centered service planning team for each resident. The team must:

(1) Include the resident, the resident's representative when applicable, individuals chosen ~~((and any support persons identified))~~ by the resident, ~~((as well as))~~ a mental health professional, nursing staff, the medicaid client's department case manager, and other persons ~~((identified by the facility))~~ as needed;

(2) Provide the necessary information and support to ensure that the resident has an opportunity to identify team members, make informed choices and decisions regarding care and treatment, and direct the person-centered service planning process to the maximum extent possible;

(3) Ensure a coordinated approach to the development, implementation and evaluation of the ~~((individual treatment))~~ comprehensive person-centered service plan for the resident; and

~~((3))~~ (4) Meet at least monthly and more often as needed, at times and locations convenient to the resident, to review and modify the ~~((individual treatment))~~ comprehensive person-centered service plan as needed.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0110 ~~((individual treatment))~~ Initial ~~((individual treatment))~~ person-centered service plan. The ~~((enhanced services facility))~~ resident's person-centered service planning team must develop the initial ~~((individual treatment))~~ person-centered service plan prior to admission to the ESE, using information from the resident, the resident's representative if the resident has one, the comprehensive assessment reporting evaluation (CARE) assessment for medicaid clients, and the preadmission assessment, prior to admitting the resident to the facility. The ~~((enhanced services facility))~~ person-centered service planning team must ensure that each resident has an initial ~~((individual treatment))~~ person-centered service plan that includes:

(1) The resident's immediate specific ~~((problems and))~~ support needs (physical, mental and behavioral) identified in the preassessment;

(2) Direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences;

(3) The means ~~((for))~~ by which the resident chooses not to accept or refuses care or services;

(4) The resident's informed consent to the person-centered service plan;

(5) What the facility will do to ensure the resident's health and safety related to the refusal of any care or service;

~~((5))~~ (6) Resident defined goals and preferences;

~~((6))~~ (7) How the facility will provide behavioral support to prevent a crisis and maintain placement in the facility while respecting the resident's rights; ~~((and~~

~~((7))~~ (8) While in the community, what the facility will do to ensure resident and community safety; and

~~((8) Identifying)~~ (9) Identification of factors that ~~((will))~~ prevent the resident from accessing less restrictive community based services and ~~((developing))~~ development of a plan ~~((regarding))~~ that describes when and how the resident may be able to transfer or transition from the enhanced services facility to a more independent living situation in the community.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0120 Initial comprehensive ~~((individual treatment))~~ person-centered service plan. (1) ~~The~~ ~~((enhanced services facility))~~ person-centered service planning team must integrate the information obtained in the resident's preadmission assessment, medicaid client's CARE assessment information from the department's case manager, initial comprehensive assessment and initial ~~((individual treatment))~~ person-centered service plan to develop a written comprehensive ~~((individual treatment))~~ person-centered service plan.

(2) The enhanced services facility must:

(a) Complete the initial comprehensive person-centered service plan within fourteen days of the resident's move-in date.

(b) Provide the initial comprehensive person-centered service plan to the resident in a clear and understandable format that is accessible to residents, including those with disabilities and persons who have limited English proficiency.

(c) Ensure that the resident, or the resident's representative, when applicable, consents to the initial person-centered service plan in writing and that the plan is signed by all individuals on the person-centered service planning team.

(d) Distribute a copy of the initial comprehensive person-centered service plan to the resident and all others responsible for the implementation of the plan.

(3) ~~The~~ ~~((enhanced services facility))~~ person-centered service planning team must ensure each resident's initial comprehensive ~~((individual treatment))~~ person-centered service plan includes:

~~((1))~~ (a) A list of the care and services to be provided;

~~((2))~~ (b) Identification of who will provide the care and services;

~~((3))~~ (c) When and how the care and services will be provided;

(d) A method for the resident to request updates to the plan as needed;

(e) A list of services that the resident chooses to self-direct;

~~((4))~~ (f) How medications will be managed, including how the resident will receive medications when the resident is not in the facility;

~~((5))~~ (g) The resident's daily activities preferences, spiritual and/or cultural preferences, interests, strengths and needs and how the facility will meet those within the behavioral challenges of the resident;

~~((6))~~ (h) Other preferences and choices about issues important to the resident, including, but not limited to:

~~((a))~~ (i) The setting in which the resident resides;

(ii) Food;

~~((b))~~ (iii) Daily routine;

~~((c))~~ (iv) Grooming; and

~~((d))~~ (v) How the enhanced services facility will accommodate the preferences and choices.

(i) Identification of any communication barriers the resident may have and how the home will use behaviors and non-verbal gestures to communicate with the resident;

~~((7))~~ (j) A behavioral support plan to prevent crisis and maintain placement in the facility by:

~~((a))~~ (i) A crisis prevention and response protocol that outlines specific indicators which may signal a potential crisis for the resident;

~~((b))~~ (ii) Specific interventions and pre-crisis prevention strategies for each of the resident's indicators of a potential crisis;

~~((c))~~ (iii) A crisis prevention and response protocol that outlines steps to be taken if the prevention or intervention strategies are unsuccessful in diverting the crisis including the community crisis responder's coordination plan; and

~~((d) A plan on)~~ (iv) A description of how to respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal.

~~((8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;))~~

~~((9))~~ (k) A hospice care plan if the resident is receiving ~~((services for))~~ hospice care ~~((delivered by))~~ services from a licensed hospice agency.

~~((10))~~ (l) Advance directives, if the resident chooses, that are validly executed pursuant to chapters 70.122 and 71.32 RCW, as applicable;

~~((11))~~ (m) A plan ~~((regarding how the facility will work))~~ for working with the department of corrections (DOC) if the resident is under the supervision of DOC, collaborating to maximize treatment outcomes and reduce the likelihood of reoffense.

~~((12))~~ (n) A plan which maximizes the opportunities for independence, maintaining health and safety, recovery, employment, the resident's participation in treatment decisions, collaboration with peer-supported services, and care and treatment provided in the least restrictive manner appropriate to the resident and to any relevant court orders with which the resident must comply.

(o) Strategies for solving conflict or disagreement within the process of the development of the initial comprehensive individual treatment plan, including clear conflict-of-interest guidelines for all planning participants.

~~((13))~~ (p) A discharge plan that addresses factors and barriers that prevent a resident from being placed in a less restrictive community placement and assist the resident in the transition. This plan will include an assessment of all current medications and the resident's ability to self-medicate in a more independent living situation.

~~((14) The enhanced services facility must complete the comprehensive individual treatment plan within fourteen days of the resident's move-in date;))~~

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 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0130 Ongoing comprehensive ((~~individual treatment~~)) person-centered service plan. (1) The ((~~enhanced services facility~~)) person-centered service planning team will review and update each resident's comprehensive ((~~individual treatment~~)) person-centered service plan, as follows:

(a) Within a reasonable time consistent with the needs of the resident following any significant change in the resident's physical, mental, emotional or behavioral functioning; ((~~and~~))

(b) Upon request by the resident;

(c) Whenever the comprehensive ((~~individual treatment~~)) person-centered service plan no longer adequately addresses the resident's current assessed needs and preferences; ((~~and~~))

((~~(e)~~)) (d) Following every full comprehensive assessment and medicaid client's full CARE assessment; and

(e) At least once every one hundred and eighty days.

(2) ((~~The process of developing and updating the comprehensive individual treatment plan will include the following:~~

(a) The resident;

(b) The resident's representative to the extent he or she is willing and capable, if the resident has one;

(c) Other individuals the resident wants included;

(d) The medicaid client's department case manager; and

(e) Staff designated by the enhanced services facility.

((~~3~~)) The ((~~enhanced services facility~~)) person-centered service planning team ((~~will~~)) must ensure:

(a) Individuals participating in developing the resident's comprehensive ((~~individual treatment~~)) person-centered service plan:

(i) Discuss the resident's assessed needs, capabilities, and preferences; ((~~and~~))

(ii) Negotiate((~~, if possible and feasible,~~)) an agreed-upon comprehensive ((~~individual treatment~~)) person-centered service plan ((~~which would~~)) that will support the resident; and

((~~iii~~)) Prevent the provision of unnecessary or inappropriate services and supports.

(b) The agreed plan for services is documented in the resident's record.

((~~(b) Staff persons document in the resident's record the agreed upon plan for services.~~))

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 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0140 Implementation of the ((~~individual treatment~~)) person-centered service plan. (1) The ((~~enhanced services facility~~)) person-centered service planning team must provide the care and services as agreed upon

or outlined in the initial and comprehensive ((~~individualized treatment~~)) person-centered service plan to each resident unless a deviation from the plan is mutually agreed upon between the ((~~enhanced services facility~~)) person-centered service planning team, the medicaid client's department case manager, and the resident and/or the resident's representative at the time the care or services are scheduled.

(2) The details of any deviation from the plan must be clearly documented in the resident record.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0150 Comprehensive ((~~individual treatment~~)) person-centered service plan sent to the state. When a resident's services are paid for by the department, the enhanced services facility must give the department case manager a copy of the comprehensive ((~~individual treatment~~)) person-centered service plan each time it is completed or updated and after it has been signed and dated. The department's case manager will:

(1) Review the ((~~individual treatment~~)) person-centered service plan;

(2) Sign, date, and return the ((~~individual treatment~~)) person-centered service plan to the facility;

(3) Document the review in the resident record, indicating it was signed and approved; and

(4) Schedule a department reassessment.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0160 Behavioral support plan. The ((~~enhanced services facility~~)) person-centered service planning team will ensure that each resident's ((~~individual treatment~~)) person-centered service plan has interventions for behavioral support that are used first when a resident's behavior is escalating at home or in the community, including but not limited to the following:

(1) Strengths the individual ((~~holds~~)) has that support strategies for prevention and intervention.

(2) Specific indicators which may signal a potential crisis for the individual or that left unaddressed in the past has led to a behavioral crisis. Examples include but are not limited to typical challenging behaviors the individual displays when escalating, actions the resident may typically take before a behavioral outburst, or words or phrases the individual has been known to express during a time of escalation.

(3) Specific interventions and pre-crisis prevention strategies for each of the indicators identified above.

(4) Steps to be taken by each of the facility ((~~team members~~)) staff if the prevention or intervention strategies are unsuccessful in diverting the individual from a behavior or action that leads to crisis.

((~~5~~)) (5) A description of the types of holding techniques that are safe and effective for the individual.

((~~6~~)) (6) A plan to ensure coordination with community crisis responders in regard to each resident's ((~~treatment~~)) person-centered service plan as part of a regular, routine protocol for crisis prevention and intervention.

~~((6))~~ (7) A resident may not be secluded or isolated as part of the behavior support plan.

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 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0180 Self-determination and participation. Except when the health or safety of the individual or other residents or members of the community would be endangered and consistent with the ~~((individual treatment))~~ person-centered service plan, each resident has the right to:

- (1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and ~~((individual treatment))~~ person-centered service plan;
- (2) Interact with members of the community both inside and outside the enhanced services facility;
- (3) Make choices about aspects of his or her life in the facility that are significant to the resident; and
- (4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the enhanced services facility.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0190 Rights of residents. (1) Each resident of an enhanced services facility is entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and must retain all rights not denied him or her under these chapters.

(2) The enhanced services facility will only consider a resident's competence as determined or withdrawn under the provisions of chapters 10.77 or 11.88 RCW.

(3) The facility must give each resident, at the time of his or her ~~((treatment))~~ person-centered service planning meeting, a written statement setting forth the substance of this section.

(4) Every resident of an enhanced services facility has the right to ~~((adequate))~~ appropriate care and individualized treatment, interventions, and support that will not harm the resident.

(5) The provisions of this chapter must not be construed to deny to any resident treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(6) Each resident of an enhanced services facility must have, in addition to other rights not specifically withheld by law, the rights enumerated in subsections ~~((6))~~ (6)(a) through ~~((m))~~ (o) ~~((below))~~ in this section, unless exercise of these rights creates a danger to the resident or to others. The facility must prominently post a list of these rights in a place accessible to residents and must make this list available to residents without need of request. The resident has the right:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation

of same is essential to protect the safety of the resident or other persons;

(b) To have access to fluids and snacks of choice at any time;

(c) To ~~((keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases))~~ control his or her personal finances;

(d) To have access to individual locked storage space for his or her private use;

(e) To have visitors at ~~((reasonable))~~ convenient to the resident and in accordance with the person-centered service plan;

(f) To have ~~((reasonable))~~ twenty-four hour access to a telephone, both to make and receive confidential calls ~~((consistent with an effective treatment program))~~;

(g) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(h) To discuss and actively participate in ~~((treatment))~~ the development of person-centered service plans and decisions with professional persons;

(i) To a clean, comfortable, ~~((and))~~ home (like) environment;

(j) To furnish and decorate the sleeping room in accordance with the person-centered service plan.

~~((k))~~ Not to have psychosurgery performed on him or her under any circumstances;

~~((l))~~ To refuse antipsychotic medication consistent with RCW 70.97.050;

~~((k))~~ (m) To dispose of property and sign contracts unless the resident has been adjudicated ~~((as))~~ as incompetent in a court proceeding directed to that particular issue; and

~~((H))~~ (n) To complain about rights violations or conditions and request the assistance of ~~((a mental health))~~ an ombuds or representative of Disability Rights Washington ~~((protection and advocacy))~~. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

~~((m))~~ (o) To receive a minimum of thirty days' written notice if there are any changes to the scope of services identified in the ~~((individual treatment))~~ person-centered service plan.

(7) Any modification of the resident rights requirements outlined in 42 C.F.R. § 441.301 (c)(4)(vi)(A) through (D) must be supported by a specific assessed need and justified in the person-centered service plan. When making said modifications, the person-centered service planning team must document:

(a) The specific individualized assessed need;

(b) The positive interventions and supports used prior to any modification;

(c) Less intrusive methods of meeting the needs that have been tried but did not work;

(d) A clear description of the condition that is directly related to the specific assessed need;

(e) Regular collection and review of data to measure the ongoing effectiveness of the modification;

(f) Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(g) Informed consent of the resident and/or resident's representative;

(h) An assurance that interventions and supports will cause no harm to the resident.

~~((7))~~ (8) Nothing contained in this chapter ~~((must))~~ may prohibit a resident and/or resident's representative from petitioning by writ of habeas corpus for release.

~~((8))~~ (9) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

~~((9))~~ (10) A resident has a right to refuse placement in an enhanced services facility. No person ~~((must))~~ may be denied other department services solely on the grounds that he or she has made such a refusal.

~~((10))~~ (11) A resident has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and must be given notice of the right to appeal in a format that is accessible to the resident with instructions regarding what to do if the resident wants to appeal.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0200 Quality of care. (1) Consistent with resident rights, the enhanced services facility must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, self-care and independence in accordance with his or her comprehensive assessment and ~~((individual treatment))~~ person-centered service plan.

(2) Based on the comprehensive assessment of a resident, the enhanced services facility must ensure that:

(a) A resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable. This includes the resident's ability to:

- (i) Bathe, dress, and groom;
- (ii) Transfer and ambulate;
- (iii) Toilet;
- (iv) Eat; and
- (v) Use speech, language, or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The enhanced services facility must ensure that the appropriate care and services are provided to the resident in a minimum of the following areas, as applicable in accordance with the resident's individualized assessments and ~~((individual treatment))~~ person-centered service plan:

- (a) Mental health treatment;
- (b) Chemical dependency treatment;
- (c) Vision and hearing;
- (d) Skin;

(e) Continence;

(f) Range of motion;

(g) Mental and psychosocial functioning and adjustment;

(h) Nutrition;

(i) Hydration;

(j) Special needs, including but not limited to:

(i) Injections;

(ii) Parenteral and enteral fluids;

(iii) Colostomy, urostomy, or ileostomy care;

(iv) Tracheostomy care and/or tracheal suctioning;

(v) Respiratory care;

(vi) Dental care;

(vii) Foot care; and

(viii) Prostheses.

(k) Medications, including freedom from:

(i) Unnecessary medications; and

(ii) Significant medication errors; and

(l) Independent living skills.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0210 Care and services. The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:

(1) The care and services identified in the ~~((individualized treatment))~~ person-centered service plan.

(2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.

(3) The care and services in a manner and in an environment that:

(a) Actively supports, maintains or improves each resident's quality of life;

(b) Actively supports the safety of each resident; and

(c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual, another resident, or a member of the community; and(-)

(4) Services by the appropriate professionals based upon the resident's assessment and ~~((individualized treatment))~~ person-centered service plan.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0240 Staffing (~~((ratios))~~) levels. (1) The enhanced services facility must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services consistent with residents' ~~((negotiated service agreements))~~ person-centered service plan safely under routine conditions, as well as during fire, emergency, and disaster situations; and

(b) At least two staff are awake and on duty in the facility at all times if there are any residents in the facility.

(2) A ~~((licensed))~~ registered nurse must be ~~((on duty in the facility at all times.))~~ available to meet the needs of the residents as follows:

(a) On duty in the facility at least twenty hours per week; and

(b) Available on call, when not present, to respond within thirty minutes by phone or in person.

~~((a))~~ (3) A ~~(registered)~~ licensed nurse must be on duty in the facility ~~(at least eight hours per day; and)~~ whenever a registered nurse is not on site.

~~((b))~~ A registered nurse must be on call during any shift that a licensed practical nurse is on duty in the facility.)

~~((3))~~ (4) A mental health professional must be ~~(on-site)~~ available to meet the needs of the residents as follows:

(a) On site in the facility at least ~~(sixteen)~~ eight hours per day; and

(b) Available on call, when not present to respond within thirty minutes by phone or in person.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0280 Transfer and discharge. (1) ~~((Upon completion of the annual reassessment and/or significant change assessment by both case management and enhanced services facility staff, the enhanced services team will review each resident for possible discharge. The team will determine if the resident:~~

~~(a) No longer needs the level of behavioral support provided by the enhanced services facility;~~

~~(b) Behaviors are now mitigated by changed medical or personal care needs;~~

~~(c) Expresses the desire to move to a different type of community-based setting and has demonstrated the ability or capacity to be successful; or~~

~~(d) Is a good candidate for relocation and recommends other community-based programs to the resident.~~

~~(2))~~ The enhanced services facility, with input from the person-centered service planning team, will meet with case management staff to identify residents ~~(with potential for discharge or)~~ who want to discharge from this residential setting or who could transfer to a less restrictive ~~(program; and will participate in)~~ residential setting. Once these residents are identified, discharge planning meetings will be held for each resident who ~~(meets the above criteria for potential discharge)~~ is planning to be discharged or transferred from the facility.

~~((3))~~ The enhanced services facility must provide a thirty day notice before discharging a resident unless the situation is emergent and the case manager is involved in the decision.)

(2) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility, unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The safety of the individuals in the facility is endangered;

(c) The health of individuals in the facility would otherwise be endangered;

(d) The resident has failed to make the required payment for his or her stay; or

(e) The facility ceases to operate.

(3) Before transferring or discharging a resident, the facility must:

(a) First attempt through reasonable accommodation to avoid transfer or discharge, unless agreed to by the resident;

(b) Notify the resident or resident's representative and make a reasonable effort to notify, if known, an interested family member, of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (6) of this section.

(4) Except when specified in subsection (5), the notice of transfer or discharge required under subsection (3) of this section, the facility must give the resident at least thirty days' notice before the resident is transferred or discharged.

(5) Discharge notice may be made as soon as practicable before transfer or discharge when:

(a) The safety of individuals in the facility would be endangered;

(b) The health of individuals in the facility would be endangered;

(c) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) The resident has not resided in the facility for thirty days.

(6) The written notice specified in subsection (3) of this section must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombuds;

(e) For residents with development disabilities and/or mental illness, the mailing address and telephone number of Disability Rights Washington, the protection and advocacy system for individuals with developmental disabilities.

(7) The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(8) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of appropriate space in the facility.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0370 Treatment services. The enhanced services facility must:

(1) Provide for diagnostic and therapeutic services prescribed by the attending clinical staff that meet all of the resident needs identified in the ~~((individual treatment))~~ person-centered service plan, to include mental health and chemical dependency treatment;

(2) Ensure that each resident's ~~((individual treatment))~~ person-centered service plan has interventions for behavioral support in accordance with WAC 388-107-0160;

(3) Ensure that all services are provided by specific program professionals, such as mental health professionals and chemical dependency professionals.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0390 Use of routine psychopharmacologic medications. When the resident is using a ~~((psycho-pharmacological))~~ psychopharmacologic medication on a routine basis, the facility must ensure that ~~((the))~~:

(1) Medication is prescribed by a physician or health care professional with prescriptive authority;

(2) Resident's ~~((individual treatment))~~ person-centered service plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) Changes in medication only occur when the prescriber decides it is medically necessary;

(4) The resident's record includes documentation about the specific symptom or behavior that caused the physician to order the medication and what the resident needs to be able to do or stop doing in order to discontinue the medication~~((:))~~;

(5) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the psychopharmacologic medication~~((:))~~; and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and 70.97.050.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0400 Use of as needed psychopharmacologic medications. If the physician has ordered an as-needed psychopharmacologic medication for a resident, the facility must ensure that ~~((the))~~:

(1) ~~((Order))~~ The order details the circumstances under which the medication may be used and the medication is given only as specifically ordered;

(2) Resident's ~~((individual treatment))~~ person-centered service plan includes behavioral intervention strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) ~~((Documentation))~~ There is documentation in the resident record ~~((is done on))~~ about the specific symptom or behavior that caused the need for the medication and ~~((what))~~ the results of the medication use ~~((is))~~; ~~((and))~~

(4) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the medication~~((:))~~;

(5) The resident, guardian, or legal representative has given informed consent for the medication; and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and 70.97.050.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0410 Management of escalating behaviors. (1) An enhanced services facility must have a specific procedure for deescalating, preventing and redirect-

ing aggressive and challenging behavior. This protocol must always be the first approach and strategy in resolving behavioral issues. The protocol must include:

(a) Training on prevention of escalation of behavior before it reaches the stage of physical assault;

(b) Techniques for staff to use in response to challenging client behaviors;

(c) Evaluation of the safety of the physical environment;

(d) Issues of respect and dignity of the resident; and

(e) Use of the least restrictive physical and behavioral interventions depending upon the situation;

(2) If the facility uses holding techniques ~~((as a last resort))~~ to physically restrain residents in emergency situations and as part of behavioral intervention protocols, the facility must:

(a) Ensure that all staff authorized to use holding techniques receive department-approved training on specific techniques prior to using them;

(b) Describe the types of holding techniques that are safe and effective for the individual in the resident's person-centered service plan;

(c) Use other established resident-specific behavioral interventions first to attempt to deescalate the situation;

~~((b))~~ (d) Limit the holding technique to specific emergent situations where behavioral interventions have not been successful in deescalating a situation and the resident is at imminent risk of harm to self or others due to aggressive behavior;

~~((e))~~ (e) Limit the time used to only until the arrival of emergency personnel and/or the emergency ceases;

~~((f))~~ (f) Release residents from the holding technique as soon as possible;

~~((g))~~ (g) Instruct observers on how to ~~((support))~~ recognize signs of:

(i) Distress by the client; and

(ii) Fatigue by the staff.

~~((h))~~ (h) Document:

(i) The reason for use of the holding technique;

(ii) Other behavioral interventions attempted prior to the use of the holding technique;

(iii) The duration of the use of the holding technique; ~~((and))~~

(iv) Assessment by a qualified assessor; and

(v) The condition of the resident at the time of release from the holding technique.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0420 Physical restraints for medical purposes only. (1) For the purposes of this section, "physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, required to treat the resident's medical symptoms. The enhanced services facility must ensure:

(2) Each resident has the right to be free from physical and chemical restraints used for discipline, behavioral intervention, or staff convenience;

(3) That physical restraints are used only during infrequent and episodic occurrences for the protection of the individual during delivery of medical care or treatment.

(4) That before using the physical restraint, the least restrictive alternatives have been tried and documented, and such restraint is deemed required to temporarily protect the resident from harming themselves or others during the medical care or treatment;

(5) That before physical restraints are used, the resident or resident representative has been assessed as needing the restraint to treat the emergent medical symptoms or provide the medical care, and to prevent the resident from self-harm; and

(a) The resident has given informed consent for the use of physical restraints for medical purposes.

(b) The ((treatment)) person-centered service team has been consulted and evaluated the resistance to medical care; and

~~((b))~~ (c) The ((documentation has been updated to include)) use of positive interventions and supports ((used)) has been documented.

(6) That if physical restraints are used, the restraints are episodic and infrequently applied and immediately supervised on-site by a:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician; and

(d) For the purposes of this subsection, immediately supervised means that the licensed person is in the facility, quickly and easily available;

(7) When any physical restraint is used ~~((per (3) above))~~ in accordance with this section:

(a) A staff person ~~((is))~~ must be in the presence of the resident at all times when the restraint is in use;

(i) The staff person must be either a licensed or registered nurse, a mental health professional, a certified nursing assistant, or a certified home care aid.

(b) A physician's order ~~((is))~~ must be obtained within one hour;

(c) The order must include~~((s))~~ treatments to assist in resolving the emergency situation and eliminating the need for the restraint;

(d) Behavioral consultation ~~((is))~~ must be obtained within two hours;

(e) Resident ~~((is))~~ must be released immediately upon the cessation of the behavior that preceded the need for restraint.

(f) The restraint ~~((is))~~ must be removed immediately at the conclusion of the medical emergency, treatment or procedure;

(g) The enhanced services facility must immediately self-report~~((s within twenty-four hours the use of the physical restraint for medical purposes to the complaint resolution unit; and))~~ the use of the physical restraint for medical purposes to the complaint resolution unit (CRU). For the purposes of this regulation "immediately" means there should be no delay between staff awareness of the occurrence and reporting to the CRU unless the situation is unstable in which case reporting should occur as soon as the safety of all residents is assured.

(h) The use of the physical restraint ~~((is))~~ must be documented. Documentation must:

(i) ~~((On))~~ Describe the specific medical issue that caused the need for restraint and what the resident needs to do or stop doing in order to discontinue the use of the restraint; and

(ii) ~~((That))~~ Demonstrate that the resident, guardian or legal representative, if any, was informed of the need for restraint;

(i) ~~((treatment))~~ person-centered service planning team will consult within ~~((twenty-four))~~ seventy-two hours to determine less intrusive methods to meet the resident's needs for future care.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0430 Food services. The enhanced services facility must provide or contract out food services for residents. If the facility chooses to contract out the food service, the contracted services must meet all of the applicable food codes and requirements.

(1) The enhanced services facility must:

(a) Provide a minimum of three meals a day;

(b) Provide snacks;

(i) Between meals and in the evening at regular intervals; and

(ii) With no more than fourteen hours between the evening meal and breakfast, unless the enhanced services facility provides a nutritious snack after the evening meal and before breakfast.

(c) Provide access to fluids and snacks at all times;

(d) Provide sufficient time and staff support for residents to consume meals;

(e) Ensure all menus:

(i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (h) of this subsection;

(ii) Indicate the date, day of week, month and year;

(iii) Include all food and snacks served that contribute to nutritional requirements;

(iv) Are kept at least six months;

(v) Provide a variety of foods;

(vi) Provide foods at safe and appropriate temperatures; and

(vii) Are not repeated for at least three weeks, except that breakfast menus in enhanced services facilities that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.

(f) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC regarding food service;

(g) Serve nourishing, palatable and attractively presented meals adjusted for:

(i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

(h) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, and record changes on the original menu;

(i) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The enhanced services facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(j) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(k) Maintain a dining area or areas approved by the department with a seating capacity for seventy-five percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The enhanced services facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The enhanced services facility must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The enhanced services facility may provide to a resident at his or her request and as agreed upon in the resident's comprehensive ~~((individual treatment))~~ person-centered service plan, nonprescribed:

(a) Modified or therapeutic diets; and

(b) Nutritional concentrates or supplements.

(4) The enhanced services facility must have a means for those residents whose ~~((individual treatment))~~ person-centered service plan indicates they have the ability to make or select their own snacks and beverages an opportunity to do so without having to ask a staff member for assistance.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0560 Resident records—Clinical records. (1) The enhanced services facility must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

(i) Transfer to another health care institution;

(ii) Law; or

(iii) The resident.

(2) The enhanced services facility must ensure the clinical record of each resident includes at least the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

(b) Medical information;

(c) Physician's orders;

(d) Assessments;

(e) ~~((Individual treatment))~~ Person-centered service plans;

(f) Services provided;

(g) Progress notes;

(h) Medications administered;

(i) Consents, authorizations, releases;

(j) Allergic responses;

(k) Laboratory, X ray, and other findings; and

(l) Other records as appropriate.

(3) Maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.96A RCW.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0770 Environment of care. The facility must ensure that:

(1) The facility is designed to provide ~~((the level of))~~ safety and security appropriate for the specific type of service or program provided as well as the age level, acuity, and risk of the residents served (e.g., geriatric, acute psychiatric, or forensic).

(2) ~~((Facility spaces accessible to residents must be designed to minimize locations where residents are out of the line of sight of staff.~~

~~((3))~~ All rooms with lockable doors, including but not limited to resident sleeping rooms and bathrooms, have a readily accessible means of rapid access for ~~((a))~~ appropriate staff.

(3) The facility must be physically accessible to all residents.

~~((4) Perimeter security addresses elopement prevention, prevention of contraband smuggling, visitor access control, and exit process and procedures.~~

~~((5) Openings in the perimeter security system (e.g., windows, doors, and gates) are controlled by locks (manual, electric, or magnetic) when required by the functional program.)~~

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0810 Resident room. The facility must ensure that each resident sleeping room:

(1) Meets the following standards:

(a) Maximum capacity of one resident.

(b) May be locked by the resident:

(i) Unless otherwise indicated by an identified need in the ~~((individual treatment))~~ person-centered service plan; and

(ii) ~~((A))~~ Appropriate staff have a readily accessible means of unlocking the room when the door is locked.

(c) Minimum clear floor area of ~~((400))~~ eighty square feet and meets the needs of the resident.

(d) Has one or more outside windows that:

(i) If used for ventilation, are easily opened;

(ii) Have ~~((break-away))~~ adjustable shades, blinds, or equivalent installed for visual privacy and are designed to meet the safety needs of the resident; and

(2) Is adjacent to bathing and toilet facilities;

(3) Is designed to offer visual privacy from casual observation by other residents and visitors. The design for privacy must not restrict resident access to the entrance, handwashing station, or toilet.

(4) Is accessible, clean, and well-maintained with sufficient space, light, and comfortable furnishings for sleeping and personal activities including, but not limited to:

(a) A minimum of a three-foot clear access aisle from the entry door, along at least one side of the bed, and in front of all storage equipment;

(b) Enough room for medical equipment and for a resident to move about freely with mobility aides, such as wheelchairs, if applicable as assessed by resident need; and

(c) Direct access to a hallway, living room, lounge, the outside, or other common use area without going through a laundry or utility area, a bath or toilet room, or another resident's bedroom.

(5) Is equipped with:

(a) One or more waste containers;

(b) Furniture appropriate for the age and physical condition of each resident, including but not necessarily limited to:

(i) A chair, which may be used in either the bedroom or a group room interchangeably;

(ii) A bed of appropriate length and size that is thirty-six or more inches wide with a mattress that fits the bed frame, is in good condition, and is at least four inches thick unless otherwise requested or necessary for resident health or safety; and

(iii) A lockable storage space accessible to each resident for storage of small personal items, upon request.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0830 Resident bathing facilities. The facility must provide access to a bathtub or shower for every resident. The facility will ensure that bathing facilities are designed and located for resident convenience and privacy. The facility must ensure:

(1) At least one bathing unit for every four residents, or fraction thereof, who are located in a resident room without an adjoining bathroom;

(2) Access to at least one bathing device for immersion;

(3) Access to at least one roll-in shower or equivalent on each resident care unit:

(a) Designed and equipped for unobstructed ease of shower chair entry and use;

(b) With a spray attachment equipped with a backflow prevention device;

(c) ~~((One))~~ With one-half inch or less threshold that may be a collapsible rubber water barrier; and

(d) ~~((A))~~ With a minimum nominal (rough-framed) size of thirty-six inches by forty-eight.

(4) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.

(5) In each bathing unit containing more than one bathing facility:

(a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;

(b) The entry wall may be a ~~((break-away))~~ "shower" type curtain or equivalent that is designed to meet the safety needs of the resident;

(c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;

(d) All shower and tub surfaces are slip-resistant; and

(e) All bathing areas are constructed of materials that are impervious to water and cleanable.

(6) Common bathing facilities must comply with the state building code requirements for accessible bathing facilities.

(7) Grab bar(s) must be installed to prevent fall and injury in bathing facilities in nonaccessible resident rooms.

(8) Grab bar(s) in accessible bathing rooms must be installed according to the state building code requirements for accessible bathing rooms.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0890 Outdoor recreation space and walkways. (1) A facility must provide a safe, protected outdoor area for resident use.

(2) The facility must ensure the outdoor area:

(a) Has areas protected from direct sunshine and rain throughout the day;

(b) Is easily accessible ~~((from the floor or story))~~ to the resident ~~((resides on))~~ and has walking surfaces which are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between the sidewalk and adjoining landscape areas;

(c) Has sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;

(d) Contains nonpoisonous shrubs, natural foliage, and trees;

(e) Is surrounded by walls or fences at least seventy-two inches high; and

(f) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0940 Resident safety ~~((and suicide prevention))~~. The enhanced services facility must be designed to prevent injury and ~~((suicide prevention, with special design considerations to details, finishes, and equipment. The facility must ensure:))~~ promote resident safety.

(1) ~~((Ceilings))~~ The facility must ensure that:

(a) ~~((In resident bathrooms are secured to prevent resident access. Ceiling systems of a nonsecured (nonclipped down) lay-in ceiling tile design are not permitted.~~

(b) ~~In resident bedrooms and bathrooms, are designed to eliminate tie-off point(s) or at nine feet in height to prevent resident access.~~

~~(2) Doors and door hardware:))~~

~~((a))~~ Doorways are at least 36" wide;

(b) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access(-);

(i) Door closers will not be used unless required by the building code. If required on the resident room door, the closer will be mounted on the public side of the door rather than the private resident's side of the door((-);

~~((3) Door hinges:~~

~~((a) Are designed to minimize points for hanging (i.e., cut hinge type); and~~

~~(b) Are consistent with the level of care for the resident.~~

(4) Door lever handles are specifically designed antiligature hardware.

~~(5) All hardware has tamper-resistant fasteners:))~~

~~((6) Windows:~~

~~((a) Located in areas accessible to residents are designed to limit the opportunities for breakage;~~

~~All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equal;~~

~~(c) Use of tempered glass for interior windows is permitted.~~

~~(d) Break away window coverings for visual privacy; and~~

~~(e) The anchorage of windows and window assemblies, including frames, is designed to resist impact loads applied from the inside and must be tested in accordance with American National Standards Institute (ANSI) Z97.1. Where operable windows are used, the hinges and locking devices must also be tested;~~

~~(7) Bathroom hardware and accessories:~~

~~((a))~~ (b) Special design considerations for resident safety and injury ((and suicide)) prevention ((must be)) are given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders((-); and

~~((b))~~ (c) Grab bars((-;

~~(i) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other nonpublic space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.~~

(8) An overall design for antiligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.

(9) Towel bars and shower curtain rods are not permitted.

(10) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.

(11) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type.)), where provided, must be securely fastened to withstand a minimum three hundred pound force.

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

NEW SECTION

WAC 388-107-0945 Resident suicide and self-harm prevention. When an enhanced services facility's functional program states that it plans to admit a resident, or the licensee or applicant identifies a current resident who is at risk of suicide and/or self-harm, the licensee or applicant must submit a risk assessment to the department of health construction review services, identifying the risks in the physical environment. The licensee or applicant must ensure that the facility is equipped with all or part of the following, as determined by the department of health's review of the risk assessment:

(1) Ceilings:

(a) In resident bathrooms are secured to prevent resident access. Ceiling systems of a non-secured (non-clipped down) lay-in ceiling tile design are not permitted.

(b) In resident bedrooms and bathrooms are designed to eliminate tie-off point(s) or are at least nine feet in height.

(2) Doors and door hardware:

(a) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access.

(b) Door closers will not be used unless required by the building code. If required on the resident room door, the closer will be mounted on the public side of the door rather than the private resident's side of the door.

(c) Door hinges are designed to minimize points for hanging (e.g. cut hinge type) and are consistent with the level of care for the resident.

(d) Door lever handles are specifically designed anti-ligature hardware.

(e) All hardware has tamper-resistant fasteners.

(3) Windows:

(a) Windows located in areas accessible to residents are designed to limit the opportunities for breakage.

(b) All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equivalent.

(c) Use of tempered glass for interior windows is permitted.

(d) Break-away window coverings are used for visual privacy.

(4) Bathroom hardware and accessories:

(a) Special design considerations for injury and suicide prevention must be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders.

(b) Towel bars and shower curtain rods are not permitted.

(5) Grab bars:

(a) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other nonpublic space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.

(6) Anti-ligature design:

(a) The facility must include an overall design for antiligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.

(b) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.

(c) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type.

(d) Call system shall not use cords.

(e) All hardware fixtures that are fastened with exposed fasteners shall use tamper resistant screws.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0960 Plumbing—Water supply. The facility must:

(1) Provide:

(a) Water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(b) Hot and cold water under adequate pressure readily available throughout the enhanced services facility;

(c) Labels or color codes for nonpotable water supplies as "unsafe for domestic use."

(2) Provide faucet controls in lavatories and sinks with:

(a) ~~((Either antiligature fixtures or fixtures))~~ Fixtures with at least four-inch wrist blades or single-levers based on a risk assessment made by the facility;

(b) Sufficient space for full open and closed operation; and

(c) Color-coding and labels to indicate "hot" and "cold."

(3) Ensure that all lavatories and sinks have gooseneck spouts, without aerators in areas requiring infection control. ~~((Locations determined by the facility's risk assessment must be permitted to have antiligature devices.))~~

(4) Provide shower heads that are of the flash-mounted type.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-1000 Mechanical—Ventilation systems. The facility must ensure:

(1) Ventilation of all rooms is designed to prevent objectionable odors, condensation, and direct drafts on the residents;

(2) All habitable space is mechanically ventilated including air supply and air exhaust systems;

~~(3) ((Installation of air handling duct systems according to the requirements of the International Mechanical Code and))~~ All heating, ventilation, and air conditioning equipment complies with the requirements of the state building code, chapter 51-52 WAC;

~~(4) ((Installation of supply registers and return air grilles at least three inches above the floor;~~

~~(5) Installation of exhaust grilles on or near the ceiling; and~~

~~(6))~~ Outdoor air intakes are located a minimum of twenty-five feet from the exhaust from any ventilating system, combustion equipment, or areas which may collect vehicular exhaust and other noxious fumes, and a minimum of ten feet from plumbing vents. The facility must locate the bottom of outdoor air intakes serving central systems a minimum of three feet above the adjoining grade level or, if installed through the roof, three feet above the highest adjoining roof level.

~~((7) Minimum ventilation requirements meet the pressure relationship and ventilation rates per the following table:~~

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas ^{1,2}	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
RESIDENT CARE				
Resident room (holding room)	±			
Resident corridor	±			
Toilet room	N			
Resident gathering (dining, activity)	±	2	4	Optional
DIAGNOSTIC AND TREATMENT		Optional	2	Optional
Examination room	±	Optional	10	Yes
Physical therapy ³	N	2	4	Optional
Occupational therapy ³	N			
Soiled workroom or soiled holding	N	2	6	Optional
Clean workroom or clean holding	P	2	6	Optional
STERILIZING AND SUPPLY		2	6	Optional

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas ^{1,2}	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
Sterilizer exhaust room	N	2	10	Yes
Linen and trash chute room	N	2	4	Optional
Laundry, general ³	±			
Soiled linen sorting and storage	N	Optional	10	Yes
Clean linen storage	P	Optional	10	Yes
SERVICE		2	10	Yes
Food preparation center ³	±	Optional	10	Yes
Warewashing room ³	N	Optional	2	Yes
Dietary day storage	±			
Janitor closet	N	2	10	Yes
Bathroom	N	Optional	10	Yes
Personal services (barber/salon)	N	Optional	2	Yes

¹P=Positive N=Negative ± = Continuous directional control not required.

²Whether positive or negative, pressure must be a minimum of seventy cubic feet per minute (CFM).

³The volume of air may be reduced up to fifty percent in these areas during periods of nonuse. The soiled holding area of the general laundry must maintain its full ventilation capacity at all times.)

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-1190 Administrator responsibilities.
The licensee must ensure the administrator:

- (1) Directs and supervises the overall twenty-four hour per day operation of the enhanced services facility;
- (2) Ensures residents receive the care and services identified in their ((individual treatment)) person-centered service plans and assessments;
- (3) Is readily accessible to meet with residents;
- (4) Complies with the enhanced services facility's policies;
- (5) When not available on the premises, either:
 - (a) Is available by telephone or electronic pager; or
 - (b) Designates a person approved by the licensee to act in place of the administrator. The designee must be:
 - (i) Qualified by experience to assume designated duties; and
 - (ii) Authorized to make necessary decisions and direct operations of the enhanced services facility during the administrator's absence.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-107-0930 Nursing and nutrition station.

WSR 15-20-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-358—Filed September 23, 2015, 3:02 p.m., effective September 23, 2015, 3:02 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100K; 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 wild-

life commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Sets a 3.5 day fishing period for 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. Over three hundred fifty thousand adult fall Chinook are available to the treaty tribes for harvest based on the inseason forecast of one million one hundred sixty-five thousand six hundred fish. Steelhead harvest is expected to remain within the guideline based on the inseason forecast of twenty thousand 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, August 12 and September 10 and 23, 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: September 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100L 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) Immediately until 6:00 PM Friday, Sept 25, 2015; and
(ii) 6:00 a.m. September 28 until 6:00 p.m. October 1, 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, except the Spring Creek Hatchery sanctuary will be reduced to a 150 foot radius around the hatchery ladder.

(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:

WAC 220-32-05100K Columbia River salmon seasons above Bonneville Dam. (15-349)

WSR 15-20-003 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-359—Filed September 23, 2015, 3:02 p.m., effective September 23, 2015, 3:02 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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: Sets an additional mainstem commercial fishing period during the late fall season. Select area sites remain open. Chinook remain available for commercial harvest. Harvest estimates are within ESA limits and sharing guidelines. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement and the fall Chinook allocation agreement developed through the North of Falcon process. The rule is consistent with compact action of July 29 and September 23, 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 ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: September 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

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

(1) Mainstem Columbia River

(a) SEASON: 8:00 PM September 27 to 6:00 AM September 28, 2015

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

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

(d) SANCTUARIES: Washougal and Sandy Rivers. The lower end of the Washougal sanctuary is **extended** and defined as: a line originating at USCG green marker #1 near the Washington shore due south to the downstream Fisher Quarry Channel range light on the western end of Ackerman Island then from the upstream tip of Ackerman Island (Sand Island) across to the downstream (western) tip of Lady Island.

(2) Deep River Select Area.

(a) SEASON: Open hours 6:00 PM to 9:00 AM.

(i) Monday, Tuesday, Wednesday, Thursday and Friday nights effective immediately through September 26, 2015

(ii) Monday, Tuesday, Wednesday, and Thursday nights September 28 through October 16, 2015

(iii) 6:00 PM Monday October 19 to 9:00 AM Tuesday October 20, 2015

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

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

(3) Tongue Point/South Channel Select Area.

(a) SEASON: Open hours 4:00 PM to 10:00 AM. Open days are Sunday, Monday, Tuesday, Wednesday, and Thursday nights from immediately through October 30, 2015.

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

(c) GEAR: Gillnet; 6-inch maximum mesh. Net length: 250 fathoms maximum.

(i) Tongue Point fishing area: weight not to exceed two pounds in any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel.

(ii) South Channel area: no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed

(4) Blind Slough/Knappa Slough Select Area.

(a) SEASON: Open hours are: 6:00 PM to 10:00 AM. Open days are: Sunday, Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2015.

(b) AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big

Creek is in effect. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

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

(5) Additional requirements for all commercial fisheries:

(a) ALLOWABLE POSSESSION: Chinook, coho, pink and sockeye salmon and shad.

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

(c) Quick Reporting: 24-hour quick reporting is required for Washington wholesale dealers for all seasons in this section, as provided in WAC 220-69-240. Columbia River reports must be submitted within 24 hours of the closure of each fishing period.

(d) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Y Columbia River season below Bonneville. (15-350)

**WSR 15-20-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-353—Filed September 23, 2015, 3:02 p.m., effective September 30, 2015, 9:00 p.m.]

Effective Date of Rule: September 30, 2015, 9:00 p.m.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100K and 220-52-05100L; 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 the trawl fishery in Shrimp Management Area 3 as per the management plan; and (2) closes the remaining pot and trawl fisheries in all areas for the 2015 season on October 16. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: September 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-52-05100L 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 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) All waters of Shrimp Management Areas 2W, 3 and 6 are closed to the harvest of spot shrimp.

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

(2) Shrimp beam trawl gear: 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 9:00 p.m. September 30, 2015:

WAC 220-52-05100K Puget Sound shrimp pot and beam trawl fishery—Season. (15-322)

The following section of the Washington Administrative Code is repealed effective October 16, 2015:

WAC 220-52-05100L Puget Sound shrimp pot and beam trawl fishery—Season.

WSR 15-20-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-357—Filed September 23, 2015, 3:59 p.m., effective September 23, 2015, 3:59 p.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: Repealing WAC 220-660-29000G; and amending WAC 220-660-290.

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 filing removes certain closures of streams in western Washington due to relief of drought conditions.

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

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

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

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

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

Date Adopted: September 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-660-29000H 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:

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.

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.

King County

Raging River from the mouth upstream: 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.

Okanogan County

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.

Snohomish County

Wallace River from the mouth upstream including all tributaries: Closed to all aquatic plant removal activities except hand pulling.

Stevens County

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.

Whatcom County

South Fork Nooksack River from the mouth to Skookum Creek: Closed to all aquatic plant removal activities except hand pulling through September 30, 2015.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-660-29000G Aquatic plant removal and control.
(15-351)

WSR 15-20-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-356—Filed September 23, 2015, 4:00 p.m., effective September 23, 2015, 4:00 p.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: Repealing WAC 220-660-30000G; and amending WAC 220-660-300.

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 filing removes certain closures of streams in western Washington due to relief of drought conditions.

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

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

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

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

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

Date Adopted: September 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-660-30000H 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:

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.

Grays Harbor County

Black River (Grays Harbor and Thurston Counties) from the mouth upstream to Black Lake: Closed to suction dredging.

King County

Raging River from the mouth upstream: Closed to suction dredging.

Lewis County

Newaukum River and all tributaries: Closed to suction dredging.

Okanogan County

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.

Snohomish County

Wallace River from the mouth upstream including all tributaries: Closed to suction dredging.

Stevens County

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.

Whatcom County

South Fork Nooksack River from the mouth to Skookum Creek: Closed to suction dredging through September 30, 2015.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-660-30000G Mineral prospecting. (15-352)

WSR 15-20-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-355—Filed September 23, 2015, 4:49 p.m., effective September 23, 2015, 4:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-40-02700B; and amending WAC 220-40-027.

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: Catch of Willapa Bay natural-origin Chinook is significantly higher than anticipated and a modification of the commercial fishery is necessary to help ensure that conservation objectives are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-40-02700B Willapa Bay salmon—Fall fishery. Notwithstanding the provisions of WAC 220-40-027, effective immediately through 6:30 p.m. September 26, 2015, it is unlawful to fish for salmon for commercial purposes in waters of Willapa Bay.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:31 p.m. September 26, 2015:

WAC 220-40-02700B Willapa Bay salmon—Fall fishery.

WSR 15-20-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-361—Filed September 25, 2015, 2:51 p.m., effective September 25, 2015, 2:51 p.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: Repealing WAC 220-660-30000H; and amending WAC 220-660-300.

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 filing restores closures on rivers in Kittitas and Yakima counties that were mistakenly removed due to administrative error. There is insufficient time to promulgate permanent rules.

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. As water temperatures and streamflows improve due to changing weather patterns, emergency rule changes for mineral prospecting will be modified to return to permanent rule requirements.

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 1.

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

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

Date Adopted: September 25, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-660-30000I 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:

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.

Grays Harbor County

Black River (Grays Harbor and Thurston Counties) from the mouth upstream to Black Lake: Closed to suction dredging.

King County

Raging River from the mouth upstream: Closed to suction dredging.

Kittitas County

Little Naches River: Closed to suction dredging.

Teaway River, including West, Middle and North Forks: Closed to suction dredging.

Lewis County

Newaukum River and all tributaries: Closed to suction dredging.

Okanogan County

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.

Snohomish County

Wallace River from the mouth upstream including all tributaries: Closed to suction dredging.

Stevens County

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.

Whatcom County

South Fork Nooksack River from the mouth to Skookum Creek: Closed to suction dredging through September 30, 2015.

Yakima County

Ahtanum Creek, including North and Middle Forks: Closed to suction dredging.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-660-30000H Mineral prospecting. (15-356)

WSR 15-20-024

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-362—Filed September 25, 2015, 2:52 p.m., effective September 25, 2015, 2:52 p.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: Repealing WAC 220-660-29000H; and amending WAC 220-660-290.

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 filing restores closures on rivers in Kittitas and Yakima counties that were mistakenly removed due to administrative error. There is insufficient time to promulgate permanent rules.

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. As water temperatures and streamflows improve due to changing weather patterns, emergency rule changes for aquatic plant removal

activities will be modified to return to permanent rule requirements.

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 1.

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

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

Date Adopted: September 25, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-660-29000I 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:

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.

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.

King County

Raging River from the mouth upstream: Closed to all aquatic plant removal activities except hand pulling.

Kittitas County

Little Naches River: Closed to suction dredging.

Teanaway River, including West, Middle and North Forks: 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.

Okanogan County

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.

Snohomish County

Wallace River from the mouth upstream including all tributaries: Closed to all aquatic plant removal activities except hand pulling.

Stevens County

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.

Whatcom County

South Fork Nooksack River from the mouth to Skookum Creek: Closed to all aquatic plant removal activities except hand pulling through September 30, 2015.

Yakima County

Ahtanum Creek, including North and Middle Forks: Closed to all aquatic plant removal activities except hand pulling.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-660-29000H Aquatic plant removal and control.
(15-357)

WSR 15-20-026 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-360—Filed September 25, 2015, 4:15 p.m., effective October 1, 2015]

Effective Date of Rule: October 1, 2015.

Purpose: Amend Puget Sound recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000Q and 220-56-33000U; and amending WAC 220-56-330.

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: These rules reopen the recreational crab fishery in the specified marine areas and adjust the open days per week to allow for inclement winter weather. Available harvest shares allow the areas to be opened in this rule. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: September 25, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-33000U Crab—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-330, effective 8:00 a.m. October 1 through 5:00 p.m. December 31, 2015, it is permissible to fish for crab for personal use seven days a week in Marine Areas 4 east of the Bonilla Tatoosh Line, 5, 6, 7, 8-1, 8-2, 9, 11, 12 and 13.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2015:

WAC 220-56-33000Q Crab—Areas and seasons. (15-161)

The following section of the Washington Administrative Code is repealed effective January 1, 2016:

WAC 220-56-33000U Crab—Areas and seasons.

WSR 15-20-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-363—Filed September 25, 2015, 4:36 p.m., effective September 25, 2015, 4:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the coastal crab fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000T.

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: Testing by the Washington department of health show that crab in this area are now safe for human consumption. The emergency rule currently in place closing this fishery is no longer needed and should, therefore, be repealed.

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

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

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

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

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

Date Adopted: September 25, 2015.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-33000T Crab—Areas and seasons. (15-294)

WSR 15-20-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-364—Filed September 28, 2015, 2:33 p.m., effective September 28, 2015, 2:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-42800P; and amending WAC 220-47-428.

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: There is remaining harvestable surplus of coho available for commercial harvest in Salmon Management and Catch Reporting Area 12A. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 28, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-47-42800P Beach seine—Open periods.

Notwithstanding the provisions of WAC 220-47-428, 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
12A	7 AM - 7 PM daily Immediately through October 2

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. October 2, 2015:

WAC 220-47-42800P Beach seine—Open periods.

WSR 15-20-040
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 29, 2015, 9:09 a.m., effective October 1, 2015]

Effective Date of Rule: October 1, 2015.

Purpose: In order to implement annual adjustments to standards for the Washington Basic Food program, the department is amending WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?, 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits?, and 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?

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

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

Other Authority: These amendments support the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), per supplemental nutrition assistance program (SNAP) Administrative Notice 15-28: SNAP - Fiscal Year (FY) 2016 Cost-of-Living Adjustments (COLAs) dated August 11, 2015; update Basic Food standards for federal FY 2016; update the Basic Food standard utility allowance (SUA) and limited utility allowance (LUA) used when determining Basic Food benefits; and update the Basic Food SUA and LUA used when determining Basic Food benefits per SNAP 10-6-WA-SUA dated August 18, 2015.

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, 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 4, Repealed 0.

Date Adopted: September 2, 2015.

Katherine I. Vasquez
Rules Coordinator

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

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

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

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

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

Eligible AU members	Standard deduction
1	\$155
2	\$155
3	\$155
4	\$ (165) 168
5	\$ (193) 197
6 or more	\$ (221) 226

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

- (a) Keep work, look for work, or accept work;
- (b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

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

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

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

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (4) from your AU's gross income. The result is your AU's countable income.

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

(a) Up to a maximum of ~~((four))~~ five hundred ~~((ninety))~~ four dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over ~~((four))~~ five hundred ~~((ninety))~~ four dollars.

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

WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASH-CAP benefits?

(1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or

(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) For Basic Food, "utilities" include the following:

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

(3) We use the amounts below if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs **or** receives more than twenty dollars in Low Income Home Energy Assistance Act (LIHEAA) benefits each year, you get a standard utility allowance (SUA) of four hundred ~~((fifteen))~~ twenty dollars.

(b) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (2) of this section, you get a limited utility allowance (LUA) of three hundred ~~((thirty-six))~~ forty dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of sixty-five dollars.

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

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

EFFECTIVE (10/1/2014) <u>10/1/2015</u>				
Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$(1,265) <u>1,276</u>	\$(973) <u>981</u>	\$194	\$(1,605) <u>1,619</u>
2	((1,705)) <u>1,726</u>	((1,311)) <u>1,328</u>	357	((2,163)) <u>2,191</u>
3	((2,144)) <u>2,177</u>	((1,650)) <u>1,675</u>	511	((2,722)) <u>2,763</u>
4	((2,584)) <u>2,628</u>	((1,988)) <u>2,021</u>	649	((3,280)) <u>3,335</u>
5	((3,024)) <u>3,078</u>	((2,326)) <u>2,368</u>	771	((3,838)) <u>3,907</u>
6	((3,464)) <u>3,529</u>	((2,665)) <u>2,715</u>	925	((4,396)) <u>4,479</u>
7	((3,904)) <u>3,980</u>	((3,003)) <u>3,061</u>	1,022	((4,955)) <u>5,051</u>
8	((4,344)) <u>4,430</u>	((3,341)) <u>3,408</u>	1,169	((5,513)) <u>5,623</u>
9	((4,784)) <u>4,881</u>	((3,680)) <u>3,755</u>	1,315	((6,072)) <u>6,195</u>
10	((5,224)) <u>5,332</u>	((4,019)) <u>4,102</u>	1,461	((6,631)) <u>6,767</u>
Each Additional Member	+((440)) <u>451</u>	+((339)) <u>347</u>	+146	+((559)) <u>572</u>

Exceptions:

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

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

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

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

**WSR 15-20-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-365—Filed September 29, 2015, 2:36 p.m., effective October 1, 2015]

Effective Date of Rule: October 1, 2015.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040, 220-52-046, and 220-69-240.

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

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

Number of Sections Adopted at 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 0.

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

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

Date Adopted: September 29, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-0400F Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) It is permissible to deploy Dungeness crab pots for commercial purposes starting at 8:00 a.m. October 1, 2015 until 7:00 p.m. October 2, 2015, in Region 1, Region 3-1, Region 3-2 and Region 3-3 from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and prior notice has been given as provided below. Crab pots may only be deployed during daylight hours.

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

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

- (a) Name and license number of licensed owner.
- (b) Name of designated primary operator if different from licensed owner.
- (c) Name of alternate operator if used to deploy pots from a non-designated vessel.
- (d) Buoy brand number and number of pots to be deployed from a non-designated vessel.

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

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

(5) Effective 8:00 a.m. October 1, 2015, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1, Region 3-1 or Region 3-2. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23D, 25A and 25E.

(6) Region 2 West opens 8:00 a.m. October 1, 2015, and closes at 6:00 p.m. October 7, 2015. During this opening it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 2 West. Region 2 West includes 25B, 25D and 26A-W.

(7) Region 2 East opens 8:00 a.m. October 1, 2015, and closes at 6:00 p.m. October 10, 2015. During this opening it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 2 East. Region 2 East includes 24A, 24B, 24C, 24D and 26A-E.

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

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.

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

(1) Effective 8:00 a.m. October 1, 2015, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

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

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

(2) Effective 8:00 a.m. October 1, 2015, until 6:00 p.m. October 7, 2015, it is permissible to fish for Dungeness crab for commercial purposes in the following areas: Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(3) Effective 8:00 a.m. October 1, 2015, until 6:00 p.m. October 10, 2015, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

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

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

(4) Effective 8:00 a.m. October 1, 2015, until further notice, the following areas are closed to commercial crab fishing:

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

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

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

NEW SECTION

WAC 220-69-24000N Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective 8:00 am, October 1, 2015, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Man-

agement Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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

WSR 15-20-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-366—Filed September 29, 2015, 2:39 p.m., effective September 29, 2015, 2:39 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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: Sets three coho-directed mainstem commercial fishing periods using tanglenet gear. Select area sites remain open. Chinook and coho remain available for commercial harvest. Coho are available for commercial harvest, and harvest estimates are within ESA limits and sharing guidelines. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement and the fall Chinook allocation agreement developed through the North of Falcon process. The rule is consistent with compact action of July 29 and September 28, 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 ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: September 29, 2015.

J. W. Unsworth
Director

NEW SECTION

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

(1) Mainstem Columbia River

(a) SEASON: Open October 1, October 5, and October 7, 2015. Open hours are 6:00 AM to 6:00 PM.

(b) AREA: SMCRA 1A, 1B and 1C. The deadline at the upper end of SMCRA 1C is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon

shore easterly through the green navigation Buoy #1 and continuing to the Washington shore.

(c) SANCTUARIES: Elokomin-A, Cowlitz, Kalama-A and Lewis-A.

(d) GEAR: Drift nets only. Maximum mesh size is 3-3/4 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms.

(i) A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25 fathom intervals must be in color contrast to the corks used in the remainder of the net.

(ii) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(iii) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact

(e) ALLOWABLE POSSESSION: Adipose fin-clipped Coho salmon, Chinook, Sockeye, and Pink salmon and shad. It is unlawful to possess or sell white sturgeon and chum salmon.

(f) ADDITIONAL REGULATIONS: Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

(i) Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water and must not exceed 30 minutes.

(ii) Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

(iv) Live Capture workshop: Licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(2) Deep River Select Area.

(a) SEASON: Open hours 6:00 PM to 9:00 AM.

(i) Monday, Tuesday, Wednesday, Thursday and Friday nights effective immediately through October 16, 2015

(ii) 6:00 PM Monday October 19, to 9:00 AM Tuesday October 20, 2015

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

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

(3) Tongue Point/South Channel Select Area.

(a) SEASON: Open hours 4:00 PM to 10:00 AM. Open days are Sunday, Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2015.

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

(c) GEAR: Gillnet; 6-inch maximum mesh. Net length: 250 fathoms maximum.

(i) Tongue Point fishing area: weight not to exceed two pounds in any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel.

(ii) South Channel area: no weight restriction on lead-line. Use of additional weights and/or anchors attached directly to the leadline is allowed

(4) Blind Slough/Knappa Slough Select Area.

(a) SEASON: Open hours are: 6:00 PM to 10:00 AM. Open days are: Sunday, Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2015.

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

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

(5) ALLOWABLE POSSESSION for Select Areas: Chinook, Coho, pink and sockeye salmon and shad.

(6) ADDITIONAL REQUIREMENTS:

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

(b) Quick Reporting: 24-hour quick reporting is required for Washington wholesale dealers for all seasons in this section, as provided in WAC 220-69-240. Columbia River reports must be submitted within 24 hours of the closure of each fishing period.

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

(d) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Z Columbia River season below Bonnevillle. (15-359)

WSR 15-20-046

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-368—Filed September 29, 2015, 4:24 p.m., effective September 29, 2015, 7:00 p.m.]

Effective Date of Rule: September 29, 2015, 7:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-40-02700C; and amending WAC 220-40-027.

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: Catch of Willapa Bay natural-origin Chinook is significantly higher than anticipated and a modification of the commercial fishery is necessary to help ensure that conservation objectives are met. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 29, 2015.

Joe Stohr
for J. W. Unsworth
Director

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 30, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-40-02700C Willapa Bay salmon—Fall fishery. Notwithstanding the provisions of WAC 220-40-027, effective 7:00 p.m. September 29 through 7:00 p.m. October 3, 2015, it is unlawful to fish for salmon for commercial purposes in waters of Willapa Bay.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. October 3, 2015:

WAC 220-40-02700C Willapa Bay salmon—Fall fishery.

NEW SECTION

WAC 220-310-18000C Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180 and WAC 232-12-825, effective October 1, 2015, until further notice, it is permissible for anglers with lower extremity disabilities who must permanently use a medically prescribed assistive device every time for mobility and who have been issued a designated harvester companion card to fish within the designated ADA Access Area from the adult weir at Forks Creek Hatchery upstream 500 feet to the fishing boundary sign.

WSR 15-20-048

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-342—Filed September 30, 2015, 9:40 a.m., effective October 1, 2015]

Effective Date of Rule: October 1, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-310-180.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Surplus coho, hatchery Chinook, and hatchery steelhead exist to provide expanded angling opportunities for the American[s] [with] Disabilities Act (ADA) access only sport fisheries at the Forks Creek Hatchery. 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:

WSR 15-20-051

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-367—Filed September 30, 2015, 3:02 p.m., effective September 30, 2015, 3:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-19000M.

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 needed to reopen the Raging and Wallace rivers as the conservation concern no longer applies. Hatchery Chinook egg take goals are close to being met at the Wallace River Hatchery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 30, 2015.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19000M Freshwater exceptions to statewide rules—Puget Sound. (15-354)

Date Adopted: October 1, 2015.

Joe Stohr
for J. W. Unsworth
Director

REPEALER [REPEALER]

The following section of the Washington Administrative Code is repealed effective October 2, 2015:

WAC 220-310-18000X Freshwater exceptions to statewide rules—Coast. (15-247)

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

WSR 15-20-060 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-370—Filed October 1, 2015, 3:20 p.m., effective October 2, 2015]

Effective Date of Rule: October 2, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000X.

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 waters closed in emergency rule WAC 220-310-18000X were closed to protect fish during unusually low water conditions. Recent rains and cooling temperatures have increased water levels, allowing fish to move more freely upriver and alleviating the need for additional protection. As such, WAC 220-310-18000X is no longer needed and should be repealed.

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 [0], Amended 0, Repealed 0 [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.

WSR 15-20-061 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-369—Filed October 1, 2015, 3:24 p.m., effective October 1, 2015, 3:24 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: This regulation corrects an error that incorrectly listed Friday as an open day in the Deep River fishery. Coho-directed mainstem commercial fishing periods using tanglenet gear remain in place. Select area sites remain open. Chinook and coho remain available for commercial harvest. Coho are available for commercial harvest, and harvest estimates are within ESA limits and sharing guidelines. The seasons are consistent with the *U.S. v. Oregon* 2008-2017 Interim Management Agreement and the fall

Chinook allocation agreement developed through the North of Falcon process. The rule is consistent with compact action of July 29 and September 28, 2015. There is insufficient time to adopt permanent rules.

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: October 1, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-33-0100B Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, it is unlawful for a person to take or possess salmon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in this section.

(1) Mainstem Columbia River

(a) SEASON: Open October 1, October 5, and October 7, 2015. Open hours are 6:00 AM to 6:00 PM.

(b) AREA: SMCRA 1A, 1B and 1C. The deadline at the upper end of SMCRA 1C is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore.

(c) SANCTUARIES: Elokomin-A, Cowlitz, Kalama-A and Lewis-A.

(d) GEAR: Drift nets only. Maximum mesh size is 3-3/4 inches. Unslackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms.

(i) A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25 fathom intervals must be in color contrast to the corks used in the remainder of the net.

(ii) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(iii) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot

of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact

(e) ALLOWABLE POSSESSION: Adipose fin-clipped Coho salmon, Chinook, Sockeye, and Pink salmon and shad. It is unlawful to possess or sell white sturgeon and chum salmon.

(f) ADDITIONAL REGULATIONS: Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

(i) Soak times, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water and must not exceed 30 minutes.

(ii) Recovery Box: Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

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

(iv) Live Capture workshop: Licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(2) Deep River Select Area.

(a) SEASON: Open hours 6:00 PM to 9:00 AM.

(i) Monday, Tuesday, Wednesday, and Thursday nights effective immediately through October 16, 2015

(ii) 6:00 PM Monday October 19, to 9:00 AM Tuesday October 20, 2015

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

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

(3) Tongue Point/South Channel Select Area.

(a) SEASON: Open hours 4:00 PM to 10:00 AM. Open days are Sunday, Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2015.

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

(c) GEAR: Gillnet; 6-inch maximum mesh. Net length: 250 fathoms maximum.

(i) Tongue Point fishing area: weight not to exceed two pounds in any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard the vessel.

(ii) South Channel area: no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed

(4) Blind Slough/Knappa Slough Select Area.

(a) SEASON: Open hours are: 6:00 PM to 10:00 AM. Open days are: Sunday, Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2015.

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

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

(5) ALLOWABLE POSSESSION for Select Areas: Chinook, Coho, pink and sockeye salmon and shad.

(6) ADDITIONAL REQUIREMENTS:

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

(b) Quick Reporting: 24-hour quick reporting is required for Washington wholesale dealers for all seasons in this section, as provided in WAC 220-69-240. Columbia River reports must be submitted within 24 hours of the closure of each fishing period.

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

(d) Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000A Columbia River season below Bonneville. (15-366)

WSR 15-20-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-372—Filed October 1, 2015, 4:24 p.m., effective October 1, 2015, 4:24 p.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: Repealing WAC 220-660-29000I; and amending WAC 220-660-290.

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: [T]his filing removes closures on the Raging River, Wallace River, and South Fork Nooksack River due to improved conditions. There is insufficient time to promulgate permanent rules.

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, 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. As water temperatures and streamflows improve due to changing weather patterns, emergency rule changes for aquatic plant removal activities will be modified to return to permanent rule requirements.

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 1.

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

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

Date Adopted: October 1, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-660-29000J 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:

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.

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 until October 2, 2015.

Kittitas County

Little Naches River: Closed to all aquatic plant removal activities except hand pulling.

Teaway River, including West, Middle and North Forks: 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.

Okanogan County

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.

Stevens County

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 until October 2, 2015.

Yakima County

Ahtanum Creek, including North and Middle Forks: Closed to all aquatic plant removal activities except hand pulling.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-660-29000I Aquatic plant removal and control.
(15-362)

WSR 15-20-064

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-371—Filed October 1, 2015, 4:26 p.m., effective October 1, 2015, 4:26 p.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: Repealing WAC 220-660-30000I; and amending WAC 220-660-300.

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 filing removes closures on the Raging River, Wallace River, and South Fork Nooksack River due to improved conditions. There is insufficient time to promulgate permanent rules.

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, 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

ble 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. As water temperatures and streamflows improve due to changing weather patterns, emergency rule changes for mineral prospecting will be modified to return to permanent rule requirements.

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 1.

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

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

Date Adopted: October 1, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-660-30000J 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:

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.

Grays Harbor County

Black River (Grays Harbor and Thurston Counties) from the mouth upstream to Black Lake: Closed to suction dredging until October 1, 2015.

Kittitas County

Little Naches River: Closed to suction dredging.

Teaway River, including West, Middle and North Forks: Closed to suction dredging.

Lewis County

Newaukum River and all tributaries: Closed to suction dredging.

Okanogan County

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.

Stevens County

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 until October 2, 2015.

Yakima County

Ahtanum Creek, including North and Middle Forks: Closed to suction dredging.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-660-30000I Mineral prospecting. (15-361)

**WSR 15-20-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-373—Filed October 1, 2015, 4:32 p.m., effective October 1, 2015, 4:32 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100L; 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: Sets an additional fishing day to the season already in place for the 2015 treaty commercial gillnet fall season. Catch this week to date was less than expected and harvestable fish remain available to the treaty fisheries. 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 [is] allowed when open under Yakama Nation regulations. Over three hundred fifty thousand adult fall Chinook are available to the treaty tribes for harvest based on the inseason forecast of one million one hundred sixty-five thousand six hundred fish. Steelhead harvest is expected to remain within the guideline based on the inseason forecast of 20,000 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, August 12, September 10, and October 1, 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: October 1, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100M 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: Immediately until 6:00 p.m. October 2, 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, except the Spring Creek Hatchery sanctuary will be reduced to a 150 foot radius around the hatchery ladder.

(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:

WAC 220-32-05100L Columbia River salmon seasons above Bonneville Dam. (15-358)

WSR 15-20-069 EMERGENCY RULES DEPARTMENT OF EARLY LEARNING

[Filed October 2, 2015, 10:48 a.m., effective October 9, 2015]

Effective Date of Rule: October 9, 2015.

Purpose: To remove the term "nonsectarian" from WAC 170-100-030 and 170-100-040 and to elaborate on the types of organizations that can participate in the early childhood education and assistance program (ECEAP) so long as the organization's program is free from religious instruction, activities or symbolism. Additionally, revising these rules keeps them aligned with statutory changes made to RCW 43.215.415 and 43.215.430 by the Early Start Act.

Citation of Existing Rules Affected by this Order: Amending WAC 170-100-030 and 170-100-040.

Statutory Authority for Adoption: RCW 43.215.070, chapter 43.215 RCW.

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

Reasons for this Finding: Emergency rules are necessary for the preservation of the public health, safety, and general welfare because the Early Start Act (passed during the 2015 legislative session) made statutory changes to the ECEAP program. Specifically, the word "nonsectarian" was removed to allow all organizations to participate in the ECEAP program. The Early Start Act becomes effective on October 9, 2015, and requires rule changes to the ECEAP rules chapter in order to align with the statutes. Observing the time requirements of notice and opportunity to comment on the adoption of permanent rules would be contrary to the public interest as a conflict would develop between the statute and rule and create confusion among the public.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: October 2, 2015.

Ross Hunter
Director

AMENDATORY SECTION (Amending WSR 07-20-034, filed 9/25/07, effective 10/26/07)

WAC 170-100-030 Definitions. (1) "Contractor" means a ((nonsectarian)) public or private organization that contracts with the department of early learning to provide local early childhood education and assistance services.

(2) "Department" means the department of early learning.

(3) "Director" means the director of the department of early learning.

AMENDATORY SECTION (Amending WSR 06-18-085, filed 9/5/06, effective 9/5/06)

WAC 170-100-040 Process for allocating or awarding funds. (1) Public or private ((nonsectarian)) organizations are eligible to apply for funding as early childhood education and assistance programs. These organizations may include, but are not limited to, school districts, educational service districts, community and technical colleges, local governments, nonprofit organizations, for-profit organizations, and sectarian organizations providing that the early childhood education and assistance program is free from religious instruction, activities, or symbolism.

(2) Funds shall be awarded on a competitive basis or allocated by the department, consistent with the amount allocated by the legislature.

(3) An applicant must use the application procedures established by the department.

(4) Successful applicants will be awarded a contract with the department. This contract must be signed by an official with authority to bind the recipient.

WSR 15-20-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-374—Filed October 2, 2015, 4:07 p.m., effective October 5, 2015, 7:30 a.m.]

Effective Date of Rule: October 5, 2015, 7:30 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-40-027.

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: Catch of Willapa Bay natural-origin Chinook is significantly higher than anticipated and a modification of the commercial fishery is necessary to help ensure that conservation objectives are met. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: October 2, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-40-02700D Willapa Bay salmon—Fall fishery. Notwithstanding the provisions of WAC 220-40-027:

(1) Effective 7:30 a.m. through 7:30 p.m. October 5, 2015 and October 6, 2015, it is permissible to fish for salmon for commercial purposes in waters of Willapa Bay Catch Area 2T.

(2) Effective 7:30 a.m. through 7:30 p.m. October 5, 2015, it is unlawful to fish for salmon for commercial purposes in waters of Willapa Bay Catch Area 2U.

(3) Effective 7:31 p.m. October 6, 2015, until further notice, it is unlawful to fish for salmon in waters of Willapa Bay for commercial purposes.

WSR 15-20-084
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed October 5, 2015, 11:39 a.m., effective October 5, 2015, 11:39 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-70 WAC, creating a new chapter to establish rules required by 2SSB 5052 (chapter 70, Laws of 2015 regular session) and 2E2SHB 2136 (chapter 4, Laws of 2015 2nd sp. sess.) regarding marijuana products beneficial for medical use by qualifying patients, quality assurance testing (pesticide, mycotoxin, heavy metal, terpenes), product labeling, and safe handling standards.

Statutory Authority for Adoption: Section 10 of 2SSB 5052 (chapter 70, Laws of 2015, regular session).

Other Authority: Section 207 of 2E2SHB 2136 (chapter 4, Laws of 2015 2nd sp. sess.).

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 of health must enact emergency rules in order to ensure that a safe, reliable supply of products is available by July 1, 2016, in licensed retail stores with a medical marijuana endorsement. The deadline of July 1, 2016, is established in statute. July 1, 2016, is also the date in statute by which all existing collective gardens must obtain a state license or cease operations. In October 2015, the liquor and cannabis board intends to begin accepting applications for new retail stores and medical marijuana endorsements from currently licensed retail stores. These applicants must stipulate to selling the medical marijuana products identified in this rule, which they cannot do if they do not know what products are medical marijuana products. In addition, licensed producers must know what to plant for medical grade products, as well as the requirements for allowable trace levels of heavy metals and pesticides, so they properly use fertilizers and pesticides in a manner that protects the safety and health of the qualifying patients. They also must have adequate time to grow the specific strains necessary to meet patient needs and licensed processors [processors] must have adequate time to convert the harvested plants into products meeting the specifications in the rule. Finally, the certified third-party testing labs must have enough notice of the requirements in these rules to have adequate equipment and training in place sufficiently in advance to have an adequate supply of tested medical grade product on the shelves for qualifying patients on July 1, 2016. Simultaneous with the filing of this emergency rule, the department is filing a notice of permanent rule adoption and will consider and modify these rules based on public comment received during the regular rule-making process; however, these emergency rules are needed to protect the public health, safety, and welfare, specifically to better assure that qualifying patients continue to have access to safe, reliable supplies of products on and after July 1, 2016.

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 8, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 0.

Date Adopted: October 5, 2015.

John Wiesman, DrPH, MPH
 Secretary

Chapter 246-70 WAC

MARIJUANA PRODUCT COMPLIANCE

NEW SECTION

WAC 246-70-010 Findings. Anecdotal and limited scientific evidence indicates that the use of marijuana may be beneficial to alleviate the symptoms of certain physical and mental conditions. However, due to the current federal classification of marijuana as a schedule 1 controlled substance, scientific research has not been performed that would allow for standardized indications of particular strains, which can vary radically in cannabinoid composition; standard, reproducible formula or dosage; or accepted standards for drug purity, potency and quality for the various conditions for which the medical use of marijuana may be authorized. At this time, the decision of what marijuana products may be beneficial is best made by patients in consultation with their health care practitioners. For this reason, the department will not limit the types of products available to qualifying patients. Instead, the department intends to create standards for products that any consumer can rely upon to be reasonably safe and meet quality assurance measures.

NEW SECTION

WAC 246-70-020 Applicability of WSLCB rules. The requirements in this chapter are in addition to all WSLCB requirements in chapter 314-55 WAC. They are intended to build upon all other requirements for licensed marijuana producers, processors and retailers, and certified third-party labs.

NEW SECTION

WAC 246-70-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved pesticide" means a pesticide registered by the Washington state department of agriculture under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "CBD concentration" means the percent of cannabidiol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

(4) "Certified third-party testing lab" means a lab certified by the WSLCB or its vendor under WAC 314-55-102.

(5) "Data base" means the medical marijuana authorization data base created pursuant to section 21, chapter 70, Laws of 2015.

(6) "Department" means the Washington state department of health.

(7) "Designated provider" has the same meaning as RCW 69.51A.010(1).

(8) "Harvest" means the marijuana plant material derived from plants of the same strain that were brought into cultivation at the same time, grown in the same manner and physical space, and gathered at the same time.

(9) "Lot" means either of the following:

(a) The flowers from one or more marijuana plant(s) of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plant(s). A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(10) "Marijuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(11) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than sixty percent.

(12) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration greater than 0.3 percent and no greater than sixty percent. The term "marijuana-infused products" does not include either usable marijuana or marijuana concentrates.

(13) "Marijuana processor" means a person licensed by the WSLCB under RCW 69.50.325 to process marijuana into marijuana concentrates, usable marijuana and marijuana-infused products, package and label marijuana concentrates, usable marijuana and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, usable marijuana and marijuana-infused products at wholesale to marijuana retailers.

(14) "Marijuana producer" means a person licensed by the WSLCB under RCW 69.50.325 to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(15) "Marijuana product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products as defined in this section.

(16) "Medical use of marijuana" has the same meaning as RCW 69.51A.010(3).

(17) "Plant" means a marijuana plant.

(18) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of marijuana.

(19) "Qualifying patient" or "patient" has the same meaning as RCW 69.51A.010(4).

(20) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

(21) "Recognition card" means a card issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana data base.

(22) "Retail outlet" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of usable marijuana and marijuana-infused products.

(23) "Retail outlet with a medical marijuana endorsement" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of marijuana products to the public and, under section 10, chapter 70, Laws of 2015, to qualifying patients and designated providers for medical use.

(24) "Secretary" means the secretary of the department of health or the secretary's designee.

(25) "THC concentration" means the percent of Delta 9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of Delta 9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(26) "Tincture" means a solution containing marijuana extract. A single unit of tincture cannot exceed two fluid ounces.

(27) "Topical product" means a product intended for use only as an application to human body surfaces, does not cross the blood-brain barrier, and is not meant to be ingested by humans or animals.

(28) "Unit" means an individually packaged marijuana product containing up to ten servings or applications.

(29) "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(30) "WSLCB" means the Washington state liquor and cannabis board.

NEW SECTION

WAC 246-70-040 Marijuana products compliant with this chapter. To be classified as a compliant marijuana product, the product must meet all requirements of this chapter. Compliant marijuana products must fall into one of the following classifications:

(1) General use.

(a) "General use compliant product" means any marijuana product approved by the WSLCB, including edibles, and meeting the requirements of this chapter.

(b) General use compliant products may be packaged in servings or applications containing up to ten milligrams of active THC. A unit must not contain more than ten servings or applications and must not exceed one hundred total milligrams of active THC.

(c) General use compliant products must be labeled "Chapter 246-70 WAC, Compliant—General Use" and must use the logo developed and approved by the department to indicate compliance with this chapter.

(d) General use compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

(2) High THC.

(a) "High THC compliant product" means a marijuana product containing more than ten but no more than fifty milligrams of THC per serving or application and meeting the requirements of this chapter.

(b) The following is an exclusive list of marijuana products that may qualify for classification as a high THC compliant product:

- (i) Capsules;
- (ii) Tinctures;
- (iii) Transdermal patches; and
- (iv) Suppositories.

(c) No other marijuana products can be classified as a high THC compliant product or contain more than ten milligrams of active THC per serving or application.

(d) High THC compliant products may be packaged in servings or applications containing up to fifty milligrams of active THC. A unit must not contain more than ten servings or applications and must not exceed five hundred total milligrams of active THC.

(e) High THC compliant products must be labeled "Chapter 246-70 WAC Compliant - High THC" and must use the logo developed and approved by the department to indicate compliance with this chapter.

(f) High THC compliant products may be purchased only by qualifying patients age eighteen and older and designated providers who are entered into the data base and hold a valid recognition card.

(3) High CBD.

(a) "High CBD compliant product" means any marijuana product, except usable marijuana or other plant material intended for smoking, approved by the WSLCB, including edibles, meeting the requirements of this chapter and containing the following ratios:

(i) Marijuana concentrates containing not more than two percent THC concentration and at least twenty-five times more CBD concentration by weight.

(ii) Marijuana-infused edible products containing not more than two milligrams of active THC and at least five times more CBD per serving by weight for solids or volume for liquids.

(ii) Marijuana-infused topical products containing at least five times more CBD concentration than THC concentration.

(b) High CBD compliant products must be labeled "Chapter 246-70 WAC Compliant - High CBD" and must use the logo developed and approved by the department to indicate compliance with this chapter.

(c) High CBD compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

NEW SECTION

WAC 246-70-050 Quality assurance testing. (1) Testing. In addition to the tests required under WAC 314-55-102, the following tests shall be performed at the intervals indicated by a third-party testing lab certified by the WSLCB:

(a) Pesticide screening and heavy metal screening are required at the time of harvest for all marijuana flowers, trim, leaves, or other plant matter.

(i) Minimum sample size is three grams for every three pounds of harvested product.

(ii) Harvest amounts will be rounded up to the next three-pound interval. For example, a harvest of less than three pounds requires at least three grams for testing; a harvest of three or more pounds but less than six pounds requires at least six grams for testing.

(b) Mycotoxin screening is required whenever microbial testing for any marijuana product is required by the WSLCB.

(c) In addition to the pesticide screening required in subsection (1)(a) of this section, additional pesticide screening is required for each batch of finished concentrates and extracts. The minimum sample size for finished concentrates and extracts is two grams.

(d) Licensed marijuana producers, licensed marijuana processors, and certified third-party labs must follow the sampling protocols in chapter 314-55 WAC.

(2) Pesticide screening.

(a) Only approved pesticides are allowed for use in the production, processing, and handling of marijuana. Pesticide use must be consistent with the manufacturer's label requirements.

(b) Certified third-party labs must screen for unapproved pesticides designated as having the potential for misuse on a list created, maintained, and periodically updated by the department in consultation with the Washington state department of agriculture and the WSLCB. Certified third-party labs must also screen for pyrethrins and piperonyl butoxide (PBO) in samples of concentrates and extracts.

(c) For purposes of the pesticide screening:

(i) A sample of any marijuana product shall be deemed to have failed if any measurable and positively verified amount of an unapproved pesticide is detected.

(ii) A sample of concentrate or extract shall be deemed to have failed if more than 1.0 ppm of pyrethrins or 2.0 ppm of piperonyl butoxide (PBO) is detected.

(d) A harvest or batch deemed to have failed pesticide screening must be destroyed. Marijuana flowers, trim, leaves,

or other plant matter deemed to have failed pesticide screening must not be used to create extracts or concentrates.

(e) Pesticides containing pyrethrins or piperonyl butoxide (PBO) may not be applied less than seven days prior to harvest.

(f) All individuals applying pesticides shall adhere to the agricultural use requirements on the label. Pesticide applications that do not follow the pesticide product label may pose risks to public health and safety and are a violation of chapter 15.58 RCW.

(3) Heavy metal screening.

(a) For the purposes of heavy metal screening, a sample shall be deemed to have passed if it meets the following standards:

Metal	Limit, µg/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(b) A harvest deemed to have failed heavy metal screening must be destroyed. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed heavy metal screening must not be used to create extracts or concentrates.

(4) For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	<20 µgG/kg of substance
Ochratoxin A	<20 µg/kg of substance

(5) Terpenes.

(a) Terpene analysis is not required. If terpene content is listed on product packaging or label, a terpene analysis from a certified third-party lab must be available for review by the consumer upon request.

(b) The addition of synthetic or artificial terpenes to a marijuana product is prohibited. Only terpenes naturally occurring in marijuana may be added to a marijuana product.

NEW SECTION

WAC 246-70-060 Compliant product labeling. (1)

Products meeting the requirements of this chapter must be readily identifiable to the consumer by placement on the product's label of the logo developed and approved by the department.

(2) Labels for compliant products must not:

(a) Use any word(s), symbol, or image commonly used in or by medical or pharmaceutical professions including, but not limited to: Depiction of a caduceus, staff of Asclepius, bowl of Hygieia, or mortar and pestle; or use of the word "prescription" or letters "RX";

(b) State or imply any specific medical or therapeutic benefit; or

(c) Mimic a brand of over-the-counter or legend drug.

(3) The label must prominently display the following statement: "This product is not approved by the FDA to treat, cure, or prevent any disease."

NEW SECTION

WAC 246-70-070 Compliant product safe handling.

(1) Marijuana processors shall ensure all processing facilities that create or handle marijuana-infused products are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(2) Marijuana processors that do not create or handle marijuana-infused products and all marijuana producers shall adopt and enforce policies and procedures to ensure that operations involving the growing, receiving, inspecting, transporting, segregating, preparing, production, packaging, and storing of marijuana or marijuana products are conducted in accordance with adequate sanitation principles including:

(a) Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with marijuana, marijuana plants, or marijuana products shall be excluded from any operations that may be expected to result in microbial contamination until the condition is corrected.

(b) Hand-washing facilities must be available and furnished with running water. Hand-washing facilities shall be located in the permitted premises and where good sanitary practices require employees to wash or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.

(c) All persons working in direct contact with marijuana, marijuana plants, or marijuana products must conform to hygienic practices while on duty including, but not limited to:

(i) Maintaining personal cleanliness;

(ii) Washing hands thoroughly in hand-washing areas before starting work and at any other time when the hands may have become soiled or contaminated;

(iii) Refraining from having direct contact with marijuana, marijuana plants, or marijuana products if the person has or may have an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.

(d) Litter and waste are properly removed and the operating systems for waste disposal are maintained in a manner so that they do not constitute a source of contamination in areas where marijuana, marijuana plants, or marijuana products may be exposed.

(e) Floors, walls and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.

(f) There is adequate lighting in all areas where marijuana, marijuana plants, or marijuana products are stored and where equipment or utensils are cleaned.

(g) There is adequate screening or other protection against the entry of pests. Rubbish must be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests.

(h) Any buildings, fixtures, and other facilities are maintained in a sanitary condition.

(i) Toxic cleaning compounds, sanitizing agents, and solvents used in the production of marijuana concentrates must be identified, held and stored in a manner that protects against contamination of marijuana, marijuana plants, and marijuana products, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation, or ordinance.

(j) All contact surfaces, including utensils and equipment used for the preparation of marijuana, marijuana plants, or marijuana products must be cleaned and sanitized regularly to protect against contamination. Equipment and utensils must be designed and be of such material and workmanship as to be adequately cleanable, and must be properly maintained. Sanitizing agents must be used in accordance with labeled instructions.

(k) The water supply must be sufficient for the operations and capable of providing a safe, potable, and adequate supply of water to meet the facility's needs. Each facility must provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair.

NEW SECTION

WAC 246-70-080 Employee training. (1) Marijuana producers, processors and retailers that create, handle, or sell compliant marijuana products shall adopt and enforce policies and procedures to ensure employees and volunteers receive training about the requirements of this chapter.

(2) Marijuana retailers holding a medical marijuana endorsement shall also adopt and enforce policies and procedures to ensure employees and volunteers receive training about:

(a) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical marijuana authorization data base;

(b) Identification of valid recognition cards;

(c) Adherence to confidentiality requirements; and

(d) Science-based information about cannabinoids, strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of marijuana concentrates, usable marijuana, and marijuana-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

(3) Nothing in subsection (2) of this section allows any owner, employee, or volunteer to:

(a) Perform the duties of a medical marijuana consultant or represent themselves as a medical marijuana consultant unless the person holds a valid certificate issued by the secretary under chapter 246-72 WAC;

(b) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or

other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality; or

(c) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana or marijuana products.

WSR 15-20-114

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-375—Filed October 6, 2015, 2:55 p.m., effective October 6, 2015, 2:55 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To repeal WAC 232-13-05000B, 232-13-07000D, and 232-13-15000C.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-13-05000B, 232-13-07000D, and 232-13-15000C.

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

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

Reasons for this Finding: The recent changes in weather with forecasted precipitation, lower temperatures and higher humidity levels, have abated high fire hazard conditions for the foreseeable future. As such, previously adopted emergency rules are no longer necessary and should be repealed.

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 3.

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

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

Date Adopted: October 6, 2015.

J. W. Unsworth
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 232-13-05000B Operating chainsaws, welding, or operating an acetylene or other torch with open flame.
- WAC 232-13-07000D Fires, campfires and smoking.
- WAC 232-13-15000C Operating a motor vehicle off developed roadways.

WSR 15-20-121**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Behavioral Health and Service Integration Administration)

[Filed October 7, 2015, 10:03 a.m., effective October 7, 2015, 10:03 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is adopting a new chapter 388-865 WAC in order to implement the court decision in *Trueblood v. DSHS* which orders DSHS, by January 2, 2016, to admit persons ordered to receive competency evaluation or restoration services into a state hospital within seven days of the signing of a court order. The emergency rule also complies with 2E2SSB 5177 (chapter 7, Laws of 2015 1st sp. sess.) which requires the department to begin providing competency restoration treatment services in the community on a phased-in basis. Affected individuals are pretrial detainees who have been charged with having committed a crime, but there is a question as to their competency to stand trial, or they have been determined to not be competent and have been ordered to undergo competency restoration. Because competency evaluation and restoration services are currently available only at the state hospitals, many of the individuals who are currently waiting for services wait in jail for evaluation or restoration treatment. The emergency rule will relieve pressure on the state hospitals to admit persons within seven days of the signing of a court order by ensuring a residential treatment facility, a general hospital, a private psychiatric hospital, or an inpatient evaluation and treatment facility can contract with DSHS to provide these services using one set of standards. In addition, the emergency rule will ensure that affected individuals receive needed services instead of waiting for these services while in jail.

Statutory Authority for Adoption: Chapter 10.77 RCW; 2E2SSB 5177 (section 11, chapter 7, Laws of 2015 1st sp. sess.).

Other Authority: 2E2SSB 5177 (chapter 7, Laws of 2015 1st sp. sess.); *Trueblood et. al. v. DSHS et. al.*, Case No. C14-1178 MJP, U.S. District Court, Western District of Washington at Seattle.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In order to implement 2E2SSB 5177 and *Trueblood v. DSHS*, the department is creating a rule that provides notice of the required minimum standards to gain and maintain certification to provide competency evaluation and restoration services, and requires a residential treatment facility, a general hospital, a private psychiatric hospital, or an inpatient evaluation and treatment facility to use the same set of standards. The emergency rule will relieve pressure on state hospitals to admit pretrial detainees within seven days of the signing of a court order for competency evaluation or restoration services, and will ensure that these individuals are not awaiting these services in jail. A CR-101 has been filed to begin the regular rule-making process for the permanent rule.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 0.

Date Adopted: October 5, 2015.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-865-0900 Competency evaluation and restoration treatment services—General. (1) WAC 388-865-0900 through 388-865-0970 contains rules for agencies to gain and maintain certification to provide competency evaluation and restoration treatment services. When used in these rules, "agency" means:

- (a) A residential treatment facility (RTF);
- (b) A general hospital;
- (c) A private psychiatric hospital; or
- (d) An inpatient evaluation and treatment facility.

(2) Competency evaluation and restoration treatment services may be provided to an individual by an agency when the agency meets:

- (a) The certification and fee requirements in WAC 388-865-0910;
- (b) The administrative policy and procedure requirements in WAC 388-865-0920;
- (c) The agency staff requirements in WAC 388-865-0930;
- (d) The individual participant rights requirements in WAC 388-865-0940;

(e) The admission and initial assessment requirements in WAC 388-865-0950;

(f) The individual service plan requirements in WAC 388-865-0960;

(g) The seclusion and restraint requirements in WAC 388-865-0970; and

(h) All applicable federal, state, tribal, and local codes and ordinances.

(3) WAC 388-865-0900 through 388-865-0970 does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW, to facilities owned or operated by the department of veterans affairs, or to other agencies of the United States government.

NEW SECTION

WAC 388-865-0910 Competency evaluation and restoration treatment services—Certification and fee requirements. (1) An agency described in WAC 388-865-0900(1) may provide competency evaluation and restoration treatment services to individuals under chapter 10.77 RCW when the department's division of behavioral health and recovery (DBHR) certifies the services. To obtain certification for these services, the agency must:

(a) Be licensed by the department of health as:

(i) A residential treatment facility consistent with chapter 246-337 WAC;

(ii) A general hospital consistent with chapter 246-320 WAC;

(iii) A private psychiatric hospital consistent with chapter 246-322 WAC; or

(iv) An inpatient evaluation and treatment facility as provided in WAC 388-865-0511(1) and consistent with chapter 246-337 WAC.

(b) Demonstrate to DBHR at the minimum requirements in WAC 388-865-0900 through 388-865-0970 have been met;

(c) Successfully complete a provisional and annual on-site review conducted by DBHR staff that determines the agency is in compliance with the minimum standards of WAC 388-865-0900 through 388-865-0970 and chapter 10.77 RCW; and

(d) Pay the required certification fees:

(i) Ninety dollars, per bed, due at the time of initial application; and

(ii) Ninety dollars, per bed, due twelve months after the date of the initial application approval and annually thereafter.

(2) The agency must include the fees specified in subsection (1)(d) of this section with the initial application or a twelve month renewal application, as applicable.

(a) Payment of fees must be made by check, bank draft, electronic transfer, or money order, payable to the department of social and health services, and mailed to the department at the address listed on the applicable application packet or form.

(b) The department may refund one-half of the initial application fee or renewal application fee if an application is withdrawn before certification.

(c) The department will not refund fees when certification is denied, revoked, or suspended.

(3) For behavioral health agency licensure fees, program-specific certification fees, and other fees charged by the department, see WAC 388-877-0365.

NEW SECTION

WAC 388-865-0920 Competency evaluation and restoration treatment services—Administrative policies and procedures. (1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must develop, implement, and maintain administrative policies and procedures that:

(a) Are in accordance with chapter 10.77 RCW;

(b) Meet any applicable court orders; and

(c) Meet the minimum requirements of WAC 388-865-0900 through 388-865-0970.

(2) The administrative policies and procedures must include at least the following:

(a) A description of the competency evaluation and restoration treatment services to be provided, ages of individuals to be served, and length of stay criteria.

(b) An organizational structure that includes clear lines of authority for management and clinical supervision.

(c) Designation of a psychiatrist as the professional person in charge of clinical services at the agency.

(d) A quality management plan to monitor, collect data, and develop improvements to meet the requirements of WAC 388-865-0900 through 388-865-0970.

(e) A policy management structure that establishes:

(i) Procedures for maintaining and protecting an individual's clinical record consistent with chapter 70.02 RCW, "Medical Records Health Care Information Access and Disclosure Act" and the Health Insurance Portability and Accountability Act (HIPAA);

(ii) Procedures for maintaining adequate fiscal accounting records consistent with generally accepted accounting principles (GAAP);

(iii) Procedures for management of human resources to ensure that an individual receives individualized treatment or care by adequate numbers of staff members who are qualified and competent to carry out their assigned responsibilities;

(iv) Procedures for admitting an individual needing competency evaluation and restoration treatment services twenty-four hours a day, seven days a week;

(v) Procedures to assure access to necessary medical treatment, emergency life-sustaining treatment, and medication;

(vi) Procedures to assure the protection of individual participant rights as described in WAC 388-865-0940;

(vii) Procedures to inventory and safeguard the personal property of the individual;

(viii) Procedures to assure that a mental health professional and licensed physician are available for consultation and communication with both the individual and the direct patient care staff twenty-four hours a day, seven days a week;

(ix) Procedures to provide warning to an identified person and law enforcement when an adult has made a threat against an identified victim;

(x) Procedures to provide notification to the appropriate prosecutor and law enforcement in the event of unauthorized leave; and

(xi) Procedures to assure the rights of each individual to make mental health advance directives, and agency protocols for responding to individual and agent requests consistent with RCW 71.32.150.

NEW SECTION

WAC 388-865-0930 Competency evaluation and restoration treatment services—Agency staff requirements.

(1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must ensure the clinical supervisor and other staff members employed by the agency are qualified for the position they hold and have the education, experience, and skills to perform the job requirements. Each staff member providing services must:

- (a) Have a current job description.
 - (b) Have a current credential issued by the department of health for their scope of practice.
 - (c) Pass a Washington state patrol background check consistent with RCW 43.43.830 if the position requires contact with individuals receiving competency evaluation and restoration treatment services;
 - (d) Have an annual performance evaluation;
 - (e) Have an individualized annual training plan that includes at a minimum:
 - (i) The skills needed for the job description and the population served;
 - (ii) Methods of resident care;
 - (iii) Management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and/or restraint procedures; and
 - (iv) Meeting the protocols developed by the department in WAC 388-865-0900 through 388-865-0970 and other applicable requirements in state and federal law.
- (2) If the agency contracts a staff member(s) to provide direct competency evaluation and restoration treatment services to individuals, the agency and the contracted staff member must meet all the conditions in subsection (1) of this section.

NEW SECTION

WAC 388-865-0940 Competency evaluation and restoration treatment services—Individual participant rights.

(1) An agency described in WAC 388-865-0900(1) that meets the department's requirements to provide competency evaluation and restoration treatment services must develop a statement of individual participant rights to ensure an individual's rights are protected. The statement must incorporate at a minimum the following. You have the right to:

- (a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;
- (b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the

treatment services and, as an individual participant, the right to refuse participation in any religious practice;

(c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited English proficiency, and/or cultural differences;

(d) Be treated with respect, dignity and privacy, except that agency staff members may conduct reasonable searches to detect and prevent possession or use of contraband on the premises.

- (e) Be free of any sexual harassment;
- (f) Be free of exploitation, including physical and financial exploitation;
- (g) Have all clinical and personal information treated in accord with state and federal confidentiality rules and laws;
- (h) Review your clinical record in the presence of the administrator or the administrator's designee and be given an opportunity to request amendments or corrections;
- (i) Receive a copy of the agency complaint and grievance procedures upon request and to lodge a complaint or grievance with the agency if you believe your rights have been violated; and
- (j) File a complaint with the department when you feel the agency has violated a Washington Administrative Code (WAC) requirement that regulates facilities.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

- (a) Provided in writing to each individual on or before admission;
 - (b) Posted in public areas;
 - (c) Available in alternative formats for an individual who is blind;
 - (d) Translated to a primary or preferred language identified by an individual who does not speak English as the primary language, and who has a limited ability to read, speak, write, or understand English; and
 - (e) Available to any individual upon request.
- (3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency enrolled as a medicare and/or medicaid provider must ensure an individual seeking or participating in competency evaluation and/or restoration treatment services, or the person legally responsible for the individual is informed of the medicaid rights listed in WAC 388-877A-0460 at time of admission and in a manner that is understandable to the individual or legally responsible person.

NEW SECTION

WAC 388-865-0950 Competency evaluation and restoration treatment services—Admission and initial assessment.

(1) In order to provide competency evaluation and restoration treatment services, an agency described in WAC 388-865-0900(1) must ensure that for each individual admitted for treatment, the agency obtains and includes in the individual's clinical record:

(a) A copy of the court order and the charging documents. If the order is for competency restoration treatment and the competency evaluation was provided by a qualified expert or professional person who was not designated by the secretary, a copy of all previous court orders related to the competency or criminal insanity and a copy of any evaluation reports must be included.

(b) A copy of the discovery packet, including a statement of the individual's criminal history.

(c) A copy of the individual's medical clearance information.

(2) The agency is responsible for the individual's initial assessment. The initial assessment must be:

(a) Conducted in person; and

(b) Completed by a professional appropriately credentialed or qualified to provide mental health services as determined by state law.

(3) The initial assessment must include and document:

(a) The individual's:

(i) Identifying information;

(ii) Presenting issues;

(iii) Medical provider's name or medical providers' names;

(iv) Medical concerns;

(v) Medications currently taken;

(vi) Brief mental health history; and

(vii) Brief substance use history, including tobacco use.

(b) The identification of any risk of harm to self and others, including suicide and/or homicide.

(c) Treatment recommendations or recommendations for additional program-specific assessment.

(4) To determine the nature of the disorder and the treatment necessary, the agency must ensure that the individual receives the following assessments in a timely manner and document in the client's record the date each was provided:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) An examination and medical evaluation within twenty-four hours by a physician, advanced registered nurse practitioner, or physician assistant;

(c) A psychosocial evaluation by a mental health professional; and

(d) A competency to stand trial evaluation conducted by a licensed psychologist, or a copy of a competency to stand trial evaluation if an evaluation has already been conducted.

(5) The agency must also ensure the development of an individual service plan as described in WAC 388-865-0960.

NEW SECTION

WAC 388-865-0960 Competency evaluation and restoration treatment services—Individual service plan. An agency described in WAC 388-865-0900(1) that meets the department's requirements to provide competency evaluation and restoration treatment services must ensure each individual admitted to the agency for restoration treatment services has an individual service plan. The individual's clinical record must contain copies of or documentation of the following:

(1) All diagnostic and therapeutic services prescribed by the attending clinical staff members;

(2) The individualized plan for treatment.

(3) Participation of a multidisciplinary team that includes at a minimum:

(i) A physician;

(ii) A nurse; and

(iii) A social worker.

(4) Participation of other multidisciplinary team members, which may include a psychologist and chemical dependency professional.

NEW SECTION

WAC 388-865-0970 Competency evaluation and restoration treatment services—Seclusion and restraint. (1) An individual receiving competency evaluation and/or restoration treatment services from an agency described in WAC 388-865-0900(1) has the right to be free from seclusion and restraint, including chemical restraint. The agency must:

(a) Develop, implement, and maintain policies and procedures to ensure that seclusion and restraint procedures are used only to the extent necessary to ensure the safety of an individual, and in accordance with WAC 246-322-180 and 246-337-110.

(b) Ensure that the use of seclusion or restraint occurs only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the individual or other from harm and the reasons for the determination are clearly documented in the individual's clinical record.

(c) Ensure staff members notify and receive authorization by a physician within one hour of initiating an individual's seclusion or restraint.

(d) Ensure the individual is informed of the reasons for use of seclusion or restraint and the specific behaviors which must be exhibited in order to gain release from a seclusion or restraint procedure.

(e) Ensure that an appropriate clinical staff member(s) observes the individual at least every fifteen minutes and the observation is recorded in the individual's clinical record.

(f) If the use of seclusion or restraint exceeds twenty-four hours, ensure that a physician has assessed the individual and has written a new order if the intervention will be continued. This procedure must be repeated for each twenty-four hour period that seclusion or restraint is used.

(2) The agency must ensure all assessments and justification for the use of seclusion and/or restraint are documented in the individual's clinical record.