

**WSR 16-02-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-450—Filed December 23, 2015, 2:16 p.m., effective December 31, 2015, 5:01 p.m.]

Effective Date of Rule: December 31, 2015, 5:01 p.m.

Purpose: Amend Puget Sound recreational crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000X; 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: An emergency rule is needed to extend the crab harvest in Marine Area 12 and a portion of Marine Area 9 as surveys indicate there are sufficient crabs to allow for two more months of crabbing. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 23, 2015.

J. W. Unsworth  
 Director

**NEW SECTION**

**WAC 220-56-33000X Crab—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-330, effective 5:01 p.m. December 31, 2015, through 5:00 p.m. February 28, 2016, it is permissible to fish for crab for personal use seven days a week in Marine Area 12 and that portion of Marine Area 9 north of the Hood Canal Bridge to the Foul-weather Bluff to Olele Point line

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 5:01 p.m. February 28, 2016:

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

**WSR 16-02-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-451—Filed December 23, 2015, 2:22 p.m., effective December 29, 2015, 6:00 p.m.]

Effective Date of Rule: December 29, 2015, 6:00 p.m.

Purpose: Amend Puget Sound commercial crab fishing rules.

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

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

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

Reasons for this Finding: The provisions of this rule will close the commercial harvest in Region 2 East, Region 2 West and Region 3-2 of Puget Sound. We will reach the agreed allocation in those regions at the date and times specified above. There is sufficient allocation in Region 1, Region 3-1 and Region 3-3 for them to remain open. These provisions are in conformity with agreed management plans and addendums 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 2, Amended 0, Repealed 2.

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

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

Date Adopted: December 23, 2015.

J. W. Unsworth  
Director

#### NEW SECTION

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

(1) Effective immediately, 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 Region 1 and Region 3-1. Region 1 includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B. Region 3-1 includes Marine Fish-Shellfish Catch Reporting Areas 23A and 23B.

(2) Effective immediately, until 6:00 p.m., December 31, 2015 it is unlawful for any person to fish for crabs for commercial purposes with more than 30 pots per license per buoy tag number in Crab Management Region 3-2. Region 3-2 includes Marine Fish-Shellfish Catch Reporting Areas 25E, 25A and 23D.

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

(4) Effective 6:00 p.m., December 29, 2015, and until further notice, Crab Management Region 2 East and Region 2 West are closed. Region 2 East includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East. Region 2 West includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25D, 25B and 26A West.

(5) Effective 6:00 p.m., December 31, 2015, until further notice, Crab Management Region 3-2 will be closed. Region 3-2 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25E, 25A and 23D.

(6) 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.

#### NEW SECTION

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

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

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

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

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

(2) Effective 6:00 p.m. December 29, 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.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

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

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

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

#### REPEALER

The following sections of the Washington Administrative code are repealed effective 6:00 p.m. December 29, 2015:

WAC 220-52-04000H Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (15-442)

WAC 220-52-04600Q Puget Sound crab fishery—Seasons and areas (15-442)

**WSR 16-02-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-452—Filed December 23, 2015, 3:12 p.m., effective December 25, 2015]

Effective Date of Rule: December 25, 2015.

Purpose: Amend recreational fishing rules for the Nooksack River and Whatcom Creek.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000T.

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 lift the restrictions which were put in place with emergency rule WSR 16-01-004 as the Kendall Creek Hatchery and Whatcom Creek Hatchery programs have met egg take needs. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: December 23, 2015.

J. W. Unsworth  
 Director

**REPEALER**

The following section of the Washington Administrative Code is repealed effective December 25, 2015:

WAC 220-310-19000T Freshwater exceptions to statewide rules—Puget Sound. (15-438)

**WSR 16-02-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF REVENUE**

[Filed December 28, 2015, 9:05 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: WAC 458-20-19404 (Rule 19404) explains how financial institutions must apportion gross income when they engage in business both within and outside the state. RCW 82.04.460(2) provides that the department adopt a rule for the apportionment of income of financial institutions that is consistent with the model adopted by the Multistate Tax Commission (MTC). Rule 19404 has been amended to remain consistent with the MTC's change in its model method of apportionment for financial institutions that becomes effective January 1, 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-19404 Financial institutions—Income apportionment.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, 82.01.060.

Other Authority: RCW 34.05.350, 82.04.460(2).

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: Taxpayers engaging in business as a financial institution both within and outside the state are required to apportion their income. Consistent with the MTC requirements, the apportionment methodology for financial institutions will change on January 1, 2016. Taxpayers will need information and reporting instructions on how to properly apportion their income by the January 1, 2016, effective date.

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

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

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

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

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

Date Adopted: December 28, 2015.

Kevin Dixon  
 Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-04-004, filed 1/22/15, effective 2/22/15)

**WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.**

(a) Effective June 1, 2010, ~~((section 108, chapter 23, Laws of 2010 1st sp. sess. changed Washington's))~~ Washington changed its method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when

the financial institution engages in business both within and outside the state.

(b) RCW 82.04.460(2) requires the department, to the extent feasible, to adopt the multistate tax commission's recommended formula for apportionment and allocation of net income for financial institutions, with the exceptions that the definition of financial institution in the appendix to the recommended formula is advisory only and only the receipts factor will be used to apportion income.

(c) On July 29, 2015, the multistate tax commission approved amendments to its recommended formula for the apportionment and allocation of net income of financial institutions including amendments to how the receipts factor is calculated. The amendments are effective for tax years starting on or after January 1, 2016.

(d) This rule applies to the apportionment of income taxable under RCW 82.04.290 for periods beginning January 1, 2016.

(e) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401((;)) Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective after May 31, 2010.

(ii) WAC 458-20-19402((;)) Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective after May 31, 2010.

(iii) WAC 458-20-19403((;)) Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194((;)) Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

(v) WAC 458-20-14601((;)) Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

((;)) (f) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

**(2) Apportionment ~~(and allocation)~~.**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must attribute and apportion its service and other activities income as provided in this rule. ~~((Any other))~~ Apportionable income that is not taxable under RCW 82.04.290 must be apportioned pursuant to WAC 458-20-19402((;)) Single factor receipts apportionment—Generally or WAC 458-20-19403((;)) Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401((;)) Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this

state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not ~~(includable))~~ from apportionable activities must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) All ~~((apportionable income))~~ service and other activities income, regardless of where that income is attributed, shall be apportioned to this state by multiplying such income, less any deductions or exemptions authorized under chapter 82.04 RCW, by the apportionment~~((s))~~ percentage. The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. ~~((Persons should))~~ For further guidance on the requirements of each accounting method refer to WAC 458-20-197((;)) When tax liability arises and WAC 458-20-199((;)) Accounting methods ~~((for further guidance on the requirements of each accounting method)).~~

(d) Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

~~((;))~~ (e) Interest and penalties on reconciliations under ~~((;))~~ (d) of this subsection apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

~~((;))~~ (f) If the ~~((allocation and))~~ apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement (~~and~~) or bill relating to a customer's account is mailed.

(b) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) **"Card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(d) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

~~((e))~~ (e) **"Credit card"** means ~~((credit, travel or entertainment card.~~

~~((e))~~ (e) **"Credit card issuer's reimbursement fee"** means ~~the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.~~

~~((f))~~ (f) a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(f) **"Debit card"** means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

(g) **"Department"** means the department of revenue.

~~((g))~~ (h) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

~~((h))~~ (i) **"Financial institution"** means:

~~((i))~~ (i) Any corporation or other business entity ~~((chartered))~~ authorized under ((Title 30)) Title 30A, 31, 32, or 33 RCW((; or)) to engage in business in Washington, provided that persons authorized to act as a loan servicer pursuant to chapter 31.04 RCW or as a check casher or check seller pursuant to chapter 31.45 RCW shall not be considered a financial institution solely on that basis; or

~~((ii))~~ (ii) Registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

~~((iii))~~ (iii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

~~((iv))~~ (iv) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

~~((v))~~ (v) Any bank or thrift institution incorporated or organized under the laws of any state;

~~((vi))~~ (vi) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

~~((vii))~~ (vii) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

~~((viii))~~ (viii) ~~Any credit union, other than a state or federal credit union exempt under state or federal law;~~

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

~~((ix))~~ (j) **"Gross income of the business," "gross income," or "income":**

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose ~~((of (3)(i)))~~ of this subsection, affiliated means the affiliated person and the financial institution are under common control. Control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

~~((x))~~ (k) **"Interest, fees, and penalties"** means any fees related to a loan, credit card, or other extension of credit

and includes any fees charged a prospective borrower prior to funding of a loan regardless of whether the loan is eventually funded.

**(l) "Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

**(m) "Loan secured by real property"** means that more than fifty percent ~~(or more)~~ of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

**(n) "Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any card holder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its card holder.

**(o) "Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

**(p) "Person"** has the meaning given in RCW 82.04.030.

**(q) "Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

**(r) "Service and other activities income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state ~~(less the exemptions and deductions allowable under chapter 82.04 RCW).~~

**(s) "State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

**(t) "Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

**(u) "Taxable in another state"** means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state ~~(has)~~ would have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401.

(iii) For purposes of ~~((s) of)~~ this subsection **(3)(u)**, "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

**(v) "Taxable period"** means the calendar year during which tax liability is incurred.

**(4) Receipts factor.**

(a) General. The receipts factor is a fraction, the numerator of which is the ~~(apportionable)~~ service and other activities income of the taxpayer in this state during the taxable period and the denominator of which is the ~~(apportionable)~~ service and other activities income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) Interest ~~(from)~~, fees, and penalties imposed in connection with loans secured by real property.

(i) The numerator of the receipts factor includes interest ~~(and)~~, fees ~~(in the nature of interest from)~~ and penalties imposed in connection with loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection **(4)(b)(i)** is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection **(4)(b)(i)** must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest ~~(from)~~, fees, and penalties imposed in connection with loans not secured by real property. The numerator of the receipts factor includes interest ~~(and)~~, fees ~~(in the nature of interest from)~~ and penalties imposed in connection with loans not secured by real property if the borrower is located in this state.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties ~~((in the nature of interest from))~~ imposed in connection with loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection ~~((4))~~ and the denominator of which is the total amount of interest and fees or penalties ~~((in the nature of interest from))~~ imposed in connection with loans not secured by real property.

(e) Receipts from ~~((credit card receivables))~~ fees, interest, and penalties charged to card holders. The numerator of the receipts factor includes fees, interest, and ((fees or)) penalties ((in the nature of interest from credit card receivables and income from fees)) charged to card holders ~~((, such as))~~ including, but not limited to, annual fees and overdraft fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest ~~((and fees or penalties in the nature of interest from credit card receivables and fees)),~~ fees, and penalties charged to credit card holders.

(g) ~~((Credit))~~ Card issuer's reimbursement fees. The numerator of the receipts factor includes:

(i) All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and ((fees or)) penalties ((in the nature of interest from credit card receivables and fees)) charged to credit card holders.

(ii) All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders.

(iii) All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(h) Receipts from merchant discount.

(i) If the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numera-

tor of the receipts factor includes receipts from merchant discount ((if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

~~((i))~~ (ii) If the taxpayer cannot readily determine the location of the merchant, the numerator of the receipts factor includes such receipts from the merchant discount multiplied by a fraction:

(A) In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders; and

(B) In the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders; and

(C) In the case of a merchant discount related to the use of all other types of cards, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(ii) The taxpayer's method for sourcing each receipt from a merchant discount must be consistently applied to such receipt in all states that have adopted sourcing methods substantially similar to (h)(i) and (ii) of this subsection and must be used on all subsequent returns for sourcing receipts from such merchant unless the department permits or requires application of the alternative method.

(i) Receipts from ATM fees. The receipts factor includes all ATM fees that are not forwarded directly to another bank.

(i) The numerator of the receipts factor includes fees charged to a card holder for the use at an ATM of a card issued by the taxpayer if the card holder's billing address is in this state.

(ii) The numerator of the receipts factor includes fees charged to a card holder, other than the taxpayer's card holder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in this state.

(j) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest ((and fees or penalties in the nature of interest from)), fees, and penalties imposed in connection with loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property

multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties ~~((in the nature of interest from))~~ imposed in connection with loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

~~((j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.))~~

(k) Receipts from the financial institution's investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities that are reported on the taxpayer's financial statements, call reports, or similar reports are included in the receipts factor. Investment assets and activities and trading assets and activities include, but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from both investment assets and activities and from trading assets and activities described in (k)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in ~~((the))~~ each investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of

business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(i)(A) and (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of (k)(ii) of this subsection, the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the



arbitrage book and foreign currency transactions (but excluding amounts described in (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an ~~((investment))~~ asset or ~~((activity or trading asset or))~~ activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an ~~((investment))~~ asset or ~~((activity or trading asset or))~~ activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) All other receipts. The numerator of the receipts factor includes all other receipts from engaging in activities subject to tax under RCW 82.04.290 pursuant to the rules set forth in WAC 458-20-19402 Single factor receipts apportionment—Generally.

(m) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after ~~((June 1, 2014))~~ January 1, 2016.

**WSR 16-02-011**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed December 28, 2015, 10:51 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department received notice on October 26, 2015, that the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) has approved Washington state's waiver request for able-bodied adults without dependents

(ABAWD) work requirements and time limits for eligibility for the supplemental nutrition assistance program (SNAP).

Purpose: The amendments under this filing incorporate the annual update to Washington's SNAP state plan concerning ABAWD time limits, work requirements, and waivers for certain geographic areas. The current ABAWD waiver is due to expire December 31, 2015. This rule filing is needed to reflect the new partial-state waiver in state code. Rules will also be amended to add clarification and remove unnecessary information.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0030.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120; 7 U.S.C. § 2015(o).

Other Authority: 7 C.F.R. 273.24.

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: USDA, FNS enforces the provisions of the federal SNAP as enacted in the 2008 Food and Nutrition Act and codified in the Code of Federal Regulations. The department will develop amendments to ABAWD rules that are consistent with the act, federal regulations, FNS administrative notices and interim guidance.

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

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

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

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

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

Date Adopted: December 23, 2015.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-18-042, filed 8/26/15, effective 9/26/15)

**WAC 388-444-0030 What additional work requirements and time limits is an able-bodied adult without dependents (ABAWD) subject to in order to be eligible for Basic Food?** (1) An able-bodied adult without dependents (ABAWD) is a person who:

(a) Is required to register for work under WAC 388-444-0005; and

(b) Is age eighteen through forty-nine; and

(c) Does not ~~((live with any minor children))~~ receive food assistance in an assistance unit that includes a minor child.

(2) If you are an ABAWD, you must participate in employment and training activities under subsection (4) unless you are exempt from ABAWD requirements under WAC 388-444-0035.

(3) ~~Nonexempt ABAWDs who ((fail to participate)) do not live in King county, Snohomish county or Pierce county, and nonexempt ABAWDs who live in the city of Tacoma or the city of Lakewood, may continue to receive food assistance until December 31, ((2015)) 2016, even if the ABAWD fails to participate.~~

(4) Beginning January 1, 2016, a nonexempt ABAWD is not eligible to receive food assistance for more than three full months in a thirty-six month period, unless ~~((that person participates in at least twenty hours a week averaged monthly in any of the following))~~ the ABAWD:

(a) ~~((Paid work))~~ Works at least twenty hours per week, averaged monthly (eighty hours per month); or

(b) ~~((On the job training (OJT), which may include paid work and classroom training time;~~

(c) ~~An unpaid work program as provided in WAC 388-444-0040; or~~

~~((d))~~ Participates in one of the following work programs and is meeting the requirements of that work program:

(i) The Workforce Innovation and Opportunity Act of 2014;

(ii) Section 236 of the Trade Act of 1974; ~~((or))~~

(iii) A state-approved employment and training program; or

(iv) An unpaid work program as provided in WAC 388-444-0040.

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

## WSR 16-02-015

### EMERGENCY RULES

### DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed December 28, 2015, 11:44 a.m., effective December 28, 2015, 11:44 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-869-105 Continuity of care refills in proclaimed emergencies, adopting a new rule allowing pharmacists to provide a temporary prescription refill for patients when the pharmacy access is disrupted during event[s] that result in a governor's emergency proclamation.

Statutory Authority for Adoption: RCW 18.64.005.

Other Authority: RCW 18.64.005.

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: Governor Inslee on June 25, 2015, issued State of Emergency Proclamation 15-11 for all thirty-nine counties of the state. The proclamation notes that

the wildfire conditions anticipated to continue into autumn 2015 pose "the threat to life and property from wildfires (that) is significant and may cause extensive damage to homes, businesses, public facilities, resources, infrastructure and utilities, impacting the life and health of our citizens throughout the state; this threat may affect life, health, property, or the public peace, and is a public disaster demanding immediate action ...."

On August 18, 2015, there were one thousand two hundred active wildfires in Washington state, causing entire towns to be evacuated. Wildfires have destroyed homes and businesses in several Washington state counties, causing residents to live in emergency shelters or other temporary arrangements, sometimes leaving prescription medications or prescription records behind. In some cases the patient's prescriber or community pharmacy became inaccessible due to wildfire evacuations or property destruction.

Although the 2015 wildfire season has ended, the emergency rule must remain in effect while the pharmacy quality assurance commission completes permanent rule making in case the state experiences another major disaster or event that threatens patients' access to their prescription medications.

The rule allows a licensed pharmacist to legally provide a temporary prescription refill during a governor-proclaimed emergency when the patient's pharmacy access is disrupted.

Immediate adoption of the rule is necessary for the preservation of the public health, safety or welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

The commission filed a notice of intent to adopt the emergency rule as a permanent rule on December 2015.

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 1, Amended 0, Repealed 0.

Date Adopted: December 23, 2014 [2015].

Albert Linggi, R.Ph.  
Chair

### NEW SECTION

**WAC 246-869-105 Continuity of care refills in proclaimed emergencies.** Notwithstanding WAC 246-869-100 (2)(f), when the governor issues an emergency proclamation for an event which prevents continuity of health care for persons and animals because their prescribed medications are no longer available to them due to the emergency event, pharma-

cists and pharmacies may provide emergency prescription supplies for medications during the period of the proclaimed emergency as provided below:

(1) An initial supply of up to thirty days of current prescriptions for legend drug (noncontrolled) medications or seven-day supply of current prescriptions for controlled substance medications in Schedules III, IV, and V may be provided to patients under the following conditions:

(a) Presentation of a valid prescription container complete with legible label indicating there are remaining refills, or confirmation of the prescribed medication and available refills by review of the patient's current medical records or pharmacy records; or

(b) If the prescription is expired and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a seventy-two hour supply of the prescribed medication as described in WAC 246-869-100 (2)(f).

(2) For each medication dispensed under this section, a pharmacist shall:

(a) Document the dispensing as a prescription, noting where the information from subsection (1)(a) of this section was obtained, whether from the prescription container, the patient's prescriber or from the pharmacy records;

(b) Inform the patient's provider and the pharmacy at which the patient obtains his or her medications of the dispensing within seven business days of the emergency dispensing;

(c) Mark the face of the prescription as an "emergency" prescription.

(3) Nothing in this rule modifies insurers' requirements for coverage and payment for prescribed medications.

## WSR 16-02-022

### EMERGENCY RULES

#### HEALTH CARE AUTHORITY

[Filed December 29, 2015, 10:30 a.m., effective December 29, 2015, 10:30 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To comply with the ending of the TAKE CHARGE program, the agency is amending this rule to limit a client's TAKE CHARGE coverage to no longer than the duration of the waiver.

Citation of Existing Rules Affected by this Order: Amending WAC 182-532-720.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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: Effective January 1, 2017, the health care authority's TAKE CHARGE program will end. To comply with the orderly closeout of the program, the Centers for Medicare and Medicaid Services granted an extension through December 31, 2016. This emergency rule is necessary to assure that newly enrolled clients in the TAKE CHARGE

program understand that coverage under this program is only for the duration of the program.

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

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

Date Adopted: December 29, 2015.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-02-056, filed 1/5/15, effective 2/5/15)

**WAC 182-532-720 TAKE CHARGE program—Eligibility.** (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in WAC 182-503-0530, and give proof of citizenship or qualified alien status and identity upon request from the medicaid agency;

(b) Provide a valid Social Security number (SSN);

(c) Be a resident of the state of Washington as described in WAC 182-503-0520;

(d) Have an income at or below two hundred sixty percent of the federal poverty level as described in WAC 182-505-0100;

(e) Need family planning services;

(f) Have applied for categorically needy coverage, unless the applicant:

(i) Is a domestic violence victim who is covered under the alleged perpetrator's health insurance;

(ii) Is under eighteen years of age and is seeking confidential services; or

(iii) Has an income between one hundred fifty percent and two hundred sixty percent (inclusive) of the federal poverty level.

(g) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(h) Not be covered currently through another Washington apple health program for family planning. If categorically needy coverage is approved for a TAKE CHARGE recipient, the individual will be enrolled in the categorically needy program.

(2) An applicant who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) An applicant who has concurrent coverage under a creditable health insurance policy as defined in WAC 182-

12-109 is not eligible for TAKE CHARGE unless the applicant is seeking confidential services and is either under nineteen years old or is a domestic violence victim who is covered under the perpetrator's insurance.

(4) A client is authorized for TAKE CHARGE coverage for one year from the date the medicaid agency determines eligibility, or for the duration of the waiver, whichever is shorter. Upon reapplication for TAKE CHARGE by the client, the medicaid agency may renew the coverage for an additional period of up to one year, or for the duration of the waiver, whichever is shorter.

**WSR 16-02-027**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-453—Filed December 29, 2015, 2:33 p.m., effective December 29, 2015, 2:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial crab fishing rules.

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

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 maintain the closure date and time for the commercial harvest in Region 2 East and Region 2 West. Landings in Region 3-2 were higher than anticipated, resulting in the need to update the closure date in that region. We will reach the agreed allocation in all of these regions at the date and times specified in this emergency rule. There is sufficient allocation in Region 1, Region 3-1 and Region 3-3 for them to remain open. These provisions are in conformity with agreed management plans and addendums with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 29, 2015.

J. W. Unsworth  
Director

NEW SECTION

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

(1) Effective immediately, 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 Region 1 and Region 3-1. Region 1 includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B. Region 3-1 includes Marine Fish-Shellfish Catch Reporting Areas 23A and 23B.

(2) Effective immediately, until 6:00 p.m., December 30, 2015 it is unlawful for any person to fish for crabs for commercial purposes with more than 30 pots per license per buoy tag number in Crab Management Region 3-2. Region 3-2 includes Marine Fish-Shellfish Catch Reporting Areas 25E, 25A and 23D.

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

(4) Effective 6:00 p.m., December 29, 2015, and until further notice, Crab Management Region 2 East and Region 2 West are closed. Region 2 East includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East. Region 2 West includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25D, 25B and 26A West.

(5) Effective 6:00 p.m., December 30, 2015, until further notice, Crab Management Region 3-2 will be closed. Region 3-2 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25E, 25A and 23D.

(6) 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.

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-52-04000J Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (15-451)

**WSR 16-02-035****EMERGENCY RULES  
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed December 30, 2015, 10:02 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: The developmental disabilities administration (DDA) is amending WAC 388-832-0015 and repealing WAC 388-832-0085 due to the 2014 operating supplemental budget directing DDA to move the state funded individual and family services (IFS) program into a 1915(C) home and community-based services (HCBS) waiver. These changes reflect that the IFS program is closed to new entrants.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-832-0085; and amending WAC 388-832-0015.

Statutory Authority for Adoption: SSB 6387 of the 63rd legislature, 2014 regular session.

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

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

Reasons for this Finding: Based on the passage of SSB 6387 of the 63rd legislature 2014 regular session, DDA implemented a new IFS waiver on June 1, 2015. CMS approved the IFS waiver on May 27 with an effective date of June 1, 2015.

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

Date Adopted: December 29, 2015.

Katherine I. Vasquez  
Rules Coordinator

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

**WAC 388-832-0015 Am I eligible for the IFS program?** (1) The IFS program and SSP in lieu of IFS is not open to new enrollment.

(2) If you were enrolled in the IFS program before June 1, 2015 you are eligible to ((be considered for)) remain on the IFS program if you meet the following criteria:

(a) You are currently an eligible client of DDD;

(b) You live in your family home;

(c) You are not eligible to enroll((ed)) in a DDD home and community based services waiver defined in chapter 388-845 WAC;

(d) You are currently enrolled in ((traditional family support, family support opportunity or the family support pilot or funding has been approved for you to receive IFS program services)) the IFS program;

(e) You are age three or older;

(f) You have been assessed as having a need for IFS program services as listed in WAC 388-832-0140; and

(g) You are not receiving a DDD adult or child residential service or licensed foster care.

((2)) (3) If you are a parent who is a client of DDD, you are eligible to ((receive)) remain on the IFS program ((services)) in order to promote the integrity of the family unit until your next assessment, provided:

(a) You meet the criteria in subsections ((4)) (2)(a) through (f) ((above)) of this section; and

(b) Your minor child who lives in your home is at risk of being placed up for adoption or into foster care.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-832-0085 When there is state funding available to enroll additional clients on the IFS program, how will DDD select from the clients on the IFS program request list?

**WSR 16-02-043****EMERGENCY RULES  
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed December 30, 2015, 3:06 p.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: The department amended WAC 388-97-0001 Definitions and WAC 388-97-1080 Nursing services, to comply with and be consistent with newly passed state laws SB [SSB] 5600 (vulnerable adults) and SHB 1274 (nursing home staffing). The department also added WAC 388-97-1090 Direct care hours to chapter 388-97 WAC due to SHB 1274.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-97-0001 and 388-97-1080.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 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; 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: Section 7 (2)(b) of SHB 1274 states "The department shall establish in rule by January 1, 2016, a system of financial penalties for facilities out of compliance with minimum staffing standards." A CR-101 was filed on July 16, 2015, to start the rule-making process. However, by legislative mandate, a stakeholder group was conveyed to provide opportunity to discuss the bill and rule language and this delayed the development of the 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 1, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: December 29, 2015.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-027, filed 6/24/14, effective 7/25/14)

**WAC 388-97-0001 Definitions. "Abandonment"** means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual 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 of a vulnerable adult. In instances of abuse of a vulnerable adult 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 personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult 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,))~~ a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, 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, or prodding~~((, or restraints including chemical restraints, unless the restraint is consistent with licensing requirements))~~.

(3) **"Sexual abuse"** means any form of nonconsensual sexual ~~((contact))~~ conduct, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual ~~((contact))~~ conduct 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))~~ conduct between a staff person and a resident, whether or not it is consensual.

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

(5) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

**"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.

**"Administrative law judge (ALJ)"** means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

**"Administrator"** means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

**"Advanced registered nurse practitioner (ARNP)"** means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

**"Applicant"** means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

**"ASHRAE"** means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

**"Attending physician"** means the doctor responsible for a particular individual's total medical care.

**"Berm"** means a bank of earth piled against a wall.

**"Chemical restraint"** means ~~((a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms))~~ the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

**"Civil adjudication proceeding"** means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

**"Civil fine"** is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

**"Condition on a license"** means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

**"Consent"** means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

**"Deficiency"** is a nursing home's 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.

**"Deficiency citation"** or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

**"Deficient facility practice"** or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

**"Dementia care"** means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

**"Denial of payment for new admissions"** is an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

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

**"Department on-site monitoring"** means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

**"Dietitian"** means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

**"Direct care employee"** is a registered nurse, licensed practical nurse, certified nursing assistant, director of nursing, nurse with administrative duties, medication assistant, nursing assistant in training, or geriatric behavioral health worker.

**"Directly supervising"** means the supervising individual is on the premises and is quickly and easily available to provide necessary assessments and other direct care of residents, and provide oversight of supervised staff.

**"Disclosure statement"** means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

**"Drug"** means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

**"Drug facility"** means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

**"Emergency closure"** is an order by the department to immediately close a nursing home.

**"Emergency transfer"** means immediate transfer of residents from a nursing home to safe settings.

**"Entity"** means any type of firm, partnership, corporation, company, association, or joint stock association.

**"Essential community provider"** has the same meaning as this term is defined in RCW 74.46.020.

**"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 or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020 ((6))(7).

**"Habilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

**"Highest practicable physical, mental, and psychosocial well-being"** means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

**"Informal department review"** is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

**"Inspection" or "survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

**"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)"** means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

**"Large nonessential community providers"** has the same meaning as this term is defined in RCW 74.46.020.

**"License revocation"** is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

**"License suspension"** is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

**"Licensee"** means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

**"Licensed practical nurse"** means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

**"Mandated reporter"** as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of assisted living ((facility)) facilities, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed

by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

**"Mechanical restraint"** means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(1) Medically authorized, as required; and

(2) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities.

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

**"NFPA"** means National Fire Protection Association, Inc.

**"Neglect"**:

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means:

((a)) (a) 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 vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(b) 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 vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.-100.

(2) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

**"Noncompliance"** means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

**"Nursing assistant"** means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

**"Nursing facility (NF)" or "medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

**"Nursing home"** means any facility licensed to operate under chapter 18.51 RCW.

**"Officer"** means an individual serving as an officer of a corporation.

**"Owner of five percent or more of the assets of a nursing home"** means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or



(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

**"Partner"** means an individual in a partnership owning or operating a nursing home.

**"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 (for example, one year), after which it expires.

**"Person"** means any individual, firm, partnership, corporation, company, association or joint stock association.

**"Pharmacist"** means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

**"Pharmacy"** means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

**"Physical restraint"** (~~means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body~~) means the application of physical force without the use of any device for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include: (a) briefly holding without undue force a vulnerable adult in order to calm or comfort him or her; or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

**"Physician's assistant (PA)"** means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

**"Plan of correction"** is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

**"Reasonable accommodation"** and **"reasonably accommodate"** has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home 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 nursing home; or

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

**"Receivership"** is established by a court action and results in the removal of a nursing home's current licensee

and the appointment of a substitute licensee to temporarily operate the nursing home.

**"Recurring deficiency"** means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

**"Registered nurse"** means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

**"Rehabilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

**"Resident"** generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

**"Resident care unit"** means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

**"Respiratory isolation"** is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

**"Siphon jet clinic service sink"** means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

**"Skilled nursing facility (SNF)"** or **"medicare-certified skilled nursing facility"** means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under Section 1819(a) of the federal Social Security Act.

**"Small nonessential community providers"** has the same meaning as this term is defined in RCW 74.46.020.

**"Social/therapeutic leave"** means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

**"Staff work station"** means a location at which nursing and other staff perform charting and related activities throughout the day.

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

**"Substantial compliance"** means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicaid certified facility, no deficiencies higher than a scope and severity "C."

**"Surrogate decision maker"** means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

**"Survey"** means the same as **"inspection"** as defined in this section.

**"Temporary manager"** means an individual or entity appointed by the department to oversee the operation of the

nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

**"Temporary restraining order"** means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

**"Termination"** means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's medicaid certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

**"Toilet room"** means a room containing at least one toilet fixture.

**"Uncorrected deficiency"** is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

**"Violation"** means the same as **"deficiency"** as defined in this section.

**"Volunteer"** means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

**"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 assisted living 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; or

(7) ~~((With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW))~~  
Who self directs his or her own care and receives services from a personal aide under chapter 74.39((-050)) RCW.

**"Whistle blower"** means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

**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 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-1080 Nursing services.** (1) The nursing home must ensure that a sufficient number of qualified nursing personnel are available on a twenty-four hour basis seven days per week to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care.

(2) The nursing home must:

(a) Designate a registered nurse or licensed practical nurse to serve as charge nurse, who is accountable for nursing services on each tour of duty; and

(b) Have a full time director of nursing service who is a registered nurse.

(3) The nursing home must have(=)

~~((a-A)) a registered nurse on duty directly supervising resident care ((a minimum of sixteen hours per day, seven days per week;)) as required in RCW 74.42.360 (3) and (4). ((and~~

~~(b) A registered nurse or licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week. "Directly supervising" means the supervising individual is on the premises and is quickly and easily available to provide necessary assessments and other direct care of residents; and oversight of supervised staff.))~~

(4) The nursing home must ensure that staff respond to each resident's requests for assistance in a manner which promptly meets the quality of life and quality of care needs of all the residents.

(5) The director of nursing services is responsible for:

(a) Coordinating the plan of care for each resident;

(b) Ensuring that registered nurses and licensed practical nurses comply with chapter 18.79 RCW; and

(c) Ensuring that the nursing care provided is based on the nursing process in accordance with nationally recognized and accepted standards of professional nursing practice.

#### NEW SECTION

**WAC 388-97-1090 Direct care hours** (1) Each nursing facility must provide a minimum of 3.4 hours of direct care per resident day (HRD). Direct care includes only care provided by direct care employees, either employed by the facility or contracted by the facility from an outside source.

(2) Each nursing facility shall file reports with the department as follows:

(a) The reports shall be made on forms specified by the department, showing the hours of direct care provided, and the resident census information, for each month of the quarter. Where feasible, the department may use existing forms of the federal centers for medicare and medicaid services for the reporting of direct care hours and resident census.

(b) The reports shall be submitted within forty five days after the end of each calendar quarter, and shall be filed electronically.

(c) Unless the nursing facility reports otherwise, it will be presumed that all hours worked by direct care employees at the facility have been spent providing direct care.

(d) If any hours worked by direct care employees have not been spent providing direct care, the facility shall adjust its report to reflect that.

(3) Compliance with the minimum staffing standard shall be measured as follows:

(a) The direct care hours provided at the facility for each quarter shall be divided by the total resident days at the facility for that quarter to calculate the hours of direct care per resident day provided by the facility.

(b) The department may use census and payroll data from facilities to perform enforcement audits.

(c) The department shall monitor facilities' census information, reported staff hours, and payroll data to determine whether HRD figures are relatively constant throughout a quarter or are being increased at the end of the quarter through unusual spending on direct care.

(4) A nursing facility that fails to meet the minimum staffing requirement of 3.4 hours of direct care per resident day for any quarter is subject to a fine. The department will determine the amount of the fine as follows:

(a) The fine shall be based on the total cost the facility would have incurred had it complied with the 3.4 HRD requirement.

(b) The department will use a formula that calculates a fine based on the cost of certified nurse aid wages and benefits for the missing staff hours.

(c) If the facility believes that application of the standard in subsection (b) to its situation is inequitable, it may explain its position to the department and request consideration of an alternative method of calculating the fine. The department may grant the facility's request at its sole discretion, without right of appeal or review.

(d) The fine will be one and a half times the additional amount it would have cost the facility to provide direct care at the 3.4 HRD standard for a facility's first violation, and two times the additional amount for each subsequent violation by the facility.

(e) After a facility has been free of violations of the 3.4 HRD requirement for four years its status will be reset and any subsequent violation will be treated as an initial violation.

(5) If a non-compliant facility believes that it made a good-faith effort to meet the minimum staffing requirement and asks that the penalty not be imposed, the department may in its sole discretion waive the penalty. No party shall have a right to appeal or review of the department's decision to enforce or waive a penalty.

(6) If a facility's fine is waived under section (5), its non-compliance with the 3.4 HRD requirement shall not count as a violation for determining whether a future violation is a first violation or a subsequent violation under section (4)(d) and shall not count as a violation for the purposes of resetting a facility's status under section (4)(e).

(7) The amount of money the facility would have been required to spend to reach 3.4 HRD shall be treated as a direct care cost during the annual rate settlement process. The portion of the fine representing the additional one-half or one times that amount is a penalty, and will not be added to the actual costs of the facility in the settlement process.

(8) The department will monitor compliance with the 3.4 HRD minimum staffing requirement for the quarter beginning July 1, 2016, but will not impose any penalties on facilities that do not comply during that quarter. The department instead will notify non-complying facilities what their penalty would otherwise have been, and will require those facilities to submit a written plan for correcting the deficiency. Fines will begin to be imposed for the quarter beginning October 1, 2016. Noncompliance with the 3.4 HRD requirement during the quarter beginning July 1, 2016 shall not

count as a first violation for fine calculation purposes under section (4)(d).

(9) Payment of the penalty provided in subsection must be made by check. Penalty checks will be deposited into the nursing facility quality enhancement account in the custody of the state treasurer. The department's secretary, or the secretary's designee, may authorize expenditures from the account. Such expenditures may only be for: technical assistance to nursing facilities, specialized training for nursing facilities, or an increase to the quality enhancement component of the daily medicaid rate provided by RCW 74.46.581.

### WSR 16-02-049

#### EMERGENCY RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 31, 2015, 10:05 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: Emergency rule making is necessary to remove references to billing in thirty-minute units from WAC 182-535-1400 by January 1, 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 182-535-1400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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: Effective January 1, 2016, the American Dental Association/Centers for Medicare and Medicaid Services is eliminating the billing code for thirty-minute time increments for dental procedures listed in WAC 182-535-1400. The agency became aware of this change in November 2015. Emergency rule making is necessary to make these changes by January 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 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 1, Repealed 0.

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

Date Adopted: December 31, 2015.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535-1400 Payment for dental-related services.** (1) The agency considers that a provider who furnishes covered dental services to an eligible client has accepted the agency's rules and fees.

(2) Participating providers must bill the agency their usual and customary fees.

(3) Payment for dental services is based on the agency's schedule of maximum allowances. Fees listed in the agency's fee schedule are the maximum allowable fees.

(4) The agency pays the provider the lesser of the billed charge (usual and customary fee) or the agency's maximum allowable fee.

(5) The agency pays dental general anesthesia services for eligible clients as follows:

(a) ~~((The initial thirty minutes constitutes))~~ Fifteen-minute increments are billed as one unit of time. When a dental procedure ~~((requiring dental general anesthesia results in))~~ requires multiple ~~((time))~~ fifteen-minute units and there is a remainder (less than fifteen minutes), the remainder ~~((or fraction))~~ is considered ~~((as one time))~~ one unit.

(b) When billing for anesthesia, the provider must show the actual beginning and ending times in the client's medical record. Anesthesia time begins when the provider starts to physically prepare the client for the induction of anesthesia in the operating room area (or its equivalent), and ends when the provider is no longer in constant attendance (i.e., when the client can be safely placed under postoperative supervision).

(6) The agency pays "by report" on a case-by-case basis, for a covered service that does not have a set fee.

(7) Participating providers must bill a client according to WAC 182-502-0160, unless otherwise specified in this chapter.

(8) If the client's eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility. The exception to this is dentures and partial dentures as described in WAC 182-535-1240 and 182-535-1290.

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: An emergency closure is needed as spawner survey and harvest information available to date the Washington department of fish and wildlife (WDFW) and Nisqually Indian Tribe is concerned that the winter chum return to the Nisqually River is not as abundant as forecast and has the potential to fall short of our escapement goal. Given this information and the need to achieve our shared conservation goals both WDFW and the Nisqually Tribe are closing their fisheries for chum salmon. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 4, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19000U Freshwater exceptions to statewide rules—Puget Sound** Notwithstanding the provisions of WAC 220-310-190, effective January 6, 2016, until further notice, it is unlawful to fish in waters of the Nisqually River from the mouth to military tank crossing bridge (located one mile upstream of mouth of Muck Creek).

**WSR 16-02-081**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-01—Filed January 4, 2016, 6:39 p.m., effective January 6, 2016]

Effective Date of Rule: January 6, 2016.

Purpose: Amend recreational fishing rules for the Nisqually River.

Citation of Existing Rules Affected by this Order: Amending WAC 220-310-190.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

**WSR 16-02-086**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-02—Filed January 5, 2016, 10:20 a.m., effective January 5, 2016, 10:20 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for razor clams.

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

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1 and 4. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 5, 2016.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-56-36000G Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, 3, 4, 5, 6 or 7 except as provided for in this section:

(1) Effective 12:01 p.m. January 7 through 11:59 p.m. January 14, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. January 8 through 11:59 p.m. January 9, 2016, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) It is unlawful to dig for razor clams at any time in the Long Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 15, 2016:

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