

WSR 16-12-006
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed May 19, 2016, 8:49 a.m., effective May 19, 2016, 8:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The primary purpose for this filing is to allow DSHS to continue the individual and family services (IFS) waiver and the community first choice (CFC) program. Both were implemented by emergency rules and need to remain active by emergency while the department completes the process to make them permanent. In addition, these rules clarify where the developmental disabilities administration (DDA) assessment and reassessment are administered and define overnight planned respite services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-823-0010 Definitions, 388-825-020 Definitions, 388-825-057 Am I eligible to receive paid services from DDD?, 388-825-0571 What services am I eligible to receive from DDD if I am under the age of eighteen, have been determined to meet DDD eligibility requirements, and I am in a dependency guardianship or foster care with children's administration?, 388-825-059 How will I know which paid services I will receive?, 388-825-068 What medicaid state plan services may DDD authorize?, 388-825-083 Is there a comprehensive list of waiver and state-only DDD services?, 388-825-305 What service providers are governed by the qualifications in these rules?, 388-825-310 What are the qualifications for providers?, 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CIIBS, or Core waivers, or attendant care services?, 388-825-330 What is required for agencies to provide care in the home of a person with developmental disabilities?, 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, or personal care services?, 388-828-1020 What definitions apply to this chapter?, 388-828-1060 What is the purpose of the DDD assessment?, 388-828-1500 When does DDD conduct a reassessment?, 388-828-1520 Where is the DDD assessment and reassessment administered?, 388-828-1540 Who participates in your DDD assessment?, 388-828-8000 What is the purpose of the individual support plan (ISP) module?, 388-831-0065 What if I refuse to participate in the risk assessment?, 388-831-0160 What services may I receive if I refuse placement in the community protection program?, 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0041 What is DDA's responsibility to provide my services under the DDA HCBS waivers administered by DDA?, 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?, 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different waiver DDA HCBS?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0060 Can my waiver enroll-

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Statutory Authority for Adoption: SSB 6387 of the 63rd legislature, 2014 regular session for the IFS waiver, ESHB 2746 of the 63rd legislative 2014 regular session for the CFC waiver, and ESSB 6052 S.L. of the 64th legislative 2015 3rd sp. sess. for the definition of overnight planned respite services.

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: The purpose for this filing is to allow DSHS to continue the IFS waiver and the CFC program. Both of these were implemented by emergency rules and need to remain active by emergency rules while we continue working with Centers for Medicare and Medicaid Services (CMS), stakeholders, advocacy groups, and other DSHS administrations to refine the semantics and structure of the text for the supplemental CR-102 filing, the comment period, and public hearing.

Related to the IFS Waiver: Once SSB 6387 of the 63rd legislature 2014 regular session was passed, DDA worked on the new required IFS waiver while we concurrently identified and programmed the enhancements needed to our statewide

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

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

Related to Where the DDA Assessment and Reassessment is Administered: These changes are to more closely align our rules with 42 C.F.R. 441.540 (a)(3) that allows the individual to select a time and location of their convenience for assessments.

Related to the Definition of Overnight Planned Respite Services: Rule changes to implement overnight planned respite services, as approved in ESSB 6052.SL of the 64th legislative [legislature] 2015 3rd sp. sess. are being implemented by a different emergency rule filing. However, since the definitions section is already open in this filing we are adding the definition in this filing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 16, Amended 90, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 16, Amended 90, Repealed 0.

Date Adopted: May 16, 2016.

Katherine I. Vasquez
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"K-ABC" means Kaufman assessment battery for children, which is a clinical instrument for assessing intellectual development. It is an individually administered test of intelligence and achievement for children at least age two years, six months but under age twelve years, six months. The K-ABC comprises four global scales, each yielding standard scores. A special nonverbal scale is provided for children at least age four years but under age twelve years, six months.

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

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

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

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

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

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

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

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

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

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

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

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

Communication, daily living skills, socialization, and motor skills.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Overnight planned respite services" means services intended to provide short-term intermittent relief for persons who live with the DDA client as the primary care provider and are either (1) a family member (paid or unpaid); or (2) a nonfamily member who is not paid. These services provide person-centered support, care and planned activities for the client in the community.

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 388-825-0571 What services am I eligible to receive from DDD if I am under the age of eighteen, have been determined to meet DDD eligibility requirements, and I am in a dependency guardianship or foster care with children's administration? Your services from DDD are limited to CFC or medicaid personal care services and related case management if you meet the programmatic eligibility for ~~((medicaid personal care))~~ those programs defined in chapter 388-106 and 388-71 WAC ((governing medicaid personal care (MPC) using the current department approved assessment form, comprehensive assessment reporting evaluation (CARE);)) and:

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

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

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

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

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

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

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

WAC 388-825-083 Is there a comprehensive list of waiver and state-only DDD services? For medicaid state plan services authorized by DDD, see WAC 388-825-068. The following is a list of waiver and state-only services that DDD can authorize and those services that can be either a waiver or a state-only service:

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

(b) Adult family home; and

(c) Adult residential care.

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

(a) Assistive technology;

(b) Behavior management and consultation;

~~((b))~~ (c) Community engagement;

(d) Community guide;

(e) Community transition;

~~((e))~~ (f) Environmental accessibility adaptations;

~~((d))~~ (g) Medical equipment and supplies;

~~((e))~~ (h) Occupational therapy;

~~((f))~~ (i) Peer mentoring;

(j) Person-centered planning facilitation;

(k) Physical therapy;

~~((g))~~ (l) Respite care;

~~((b))~~ (m) Sexual deviancy evaluation;

~~((i))~~ (n) Skilled nursing;

~~((j))~~ (o) Specialized clothing;

(p) Specialized nutrition;

(q) Specialized medical equipment or supplies;

~~((k))~~ (r) Specialized psychiatric services;

~~((h))~~ (s) Speech, hearing and language therapy;

~~((m))~~ (t) Staff/family consultation and training;

~~((n))~~ (u) Supported parenting services;

(v) Therapeutic equipment and supplies;

(w) Transportation/mileage;

~~((o))~~ (x) Vehicle modification;

(y) Residential habilitation services (RHS), including:

(i) Alternative living;

(ii) Companion homes;

(iii) Supported living;

(iv) Group home;

(v) Child foster care;

(vi) Child group care;

(vii) Staffed residential; and

(viii) State operated living alternative (SOLA);

~~((p))~~ (z) Employment/day programs, including:

(i) Community access;

(ii) ~~((Community guide;))~~

~~((iii))~~ ~~((Person-to-person;~~

~~(iv))~~ Prevocational services; and

~~((iv))~~ (iii) Supported employment;

~~((q))~~ (aa) ~~((HEEP))~~ County programs, including child development services;

~~((r))~~ (bb) Behavioral ~~((Mental))~~ health stabilization services, including:

(i) Behavior ~~((management))~~ support and consultation;

(ii) ~~((Mental health crisis))~~ Behavioral health crisis diversion bed services; and

(iii) ~~((Skilled nursing; and~~

~~(s))~~ Specialized psychiatric services.

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

(a) Adult day care;

(b) Architectural and vehicle modification;

(c) Attendant care;

(d) Child care for foster children;

(e) Chore services;

(f) Community services grant;

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

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

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

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

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

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

(2) ~~((Individuals and agencies providing nonwaiver DDD home and community-based services (HCBS) in the client's residence or the provider's residence or other setting must meet the requirements in WAC 388-825-300 through 388-825-400))~~ Individuals and agencies providing state only individual and family services must meet the provider qualifications in chapter 388-832 WAC for the specific service.

(3) Individuals and agencies providing HCBS waiver services must meet the provider qualifications in chapter 388-845 WAC for the specific service. In addition to meeting the provider qualifications in chapter 388-845 WAC, respite care providers must meet requirements in subsection (1) of this section.

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

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

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

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

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

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

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

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

WAC 388-825-355 ~~((Are there any educational))~~
What are the training requirements for individuals providing respite care, attendant care, community first choice, or personal care services? ~~((1) If you are an))~~ The training and certification requirements for individuals who ~~((providing))~~ provide personal care or community first choice services ~~((for adults, you must meet the training requirements))~~ are listed in chapter 388-71 WAC ~~((388-71-05665 through 388-71-05909.))~~

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

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 07-10-029, filed 4/23/07, effective 6/1/07)

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

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

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

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

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

"Adult family home" or "AFH" means a residential home in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services (see RCW 70.12.010).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Raw score" means the numerical value when adding a person's "Frequency of support," "Daily support time," and "Type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

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

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

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

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

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

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

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

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

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the individual and family services (IFS), children's intensive in-home behavioral support (CIIBS) ((Basic)), Basic Plus, and Core waivers per chapter 388-845 WAC.

"You/Your" means the client.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Records your service requests.

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

WAC 388-828-1500 When does DD~~((ø))~~ conduct a reassessment? (1) A reassessment must occur:

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

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

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

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

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

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

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

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

WAC 388-828-1540 Who participates in your DDD assessment? (1) ~~((All relevant persons who are involved in your life may participate in your DDD assessment, including your parent(s), legal representative/guardian, advocate(s), and service provider(s)))~~ You choose the people who participate in your assessment and person-centered service planning meeting.

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

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

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

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

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

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

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

(1) Your goals and desired outcomes;

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

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

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

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

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

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

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

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

WAC 388-831-0065 What if I refuse to participate in the risk assessment? (1) If you refuse to participate in the risk assessment, the division cannot determine what your health and safety needs are, or whether you can be supported successfully in the community with reasonable safeguards.

You will not be eligible for any division services except for case management and community first choice (CFC) or medicaid personal care (MPC) services (if eligible under chapter 388-106 WAC).

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

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

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

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

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

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

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

"CARE" means comprehensive assessment and reporting evaluation.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Home" means present or intended place of residence.

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

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

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

"Integrated business settings" means a setting that enables participants to either work alongside or interact with individuals who do not have disabilities, or both.

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

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

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

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

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

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

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

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

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

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

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

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

"You/your" means the client.

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

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

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

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

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

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

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

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? (1) You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

- ~~((1))~~ (a) You have been determined eligible for DDA services per RCW 71A.10.020.
- ~~((2))~~ (b) You have been determined to meet ICF/ID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.
- ~~((3))~~ (c) You meet disability criteria established in the Social Security Act.
- ~~((4))~~ (d) You meet financial eligibility requirements as defined in WAC ~~((388-515-1510))~~ 182-515-1510.
- ~~((5))~~ (e) You choose to receive services in the community rather than in an ICF/ID facility.

~~((6))~~ (f) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan/individual support plan.

~~((7))~~ (g) You are not residing in hospital, jail, prison, nursing facility, ICF/ID, or other institution.

~~((8))~~ (h) Additionally, for the children's intensive in-home behavioral support (CIIBS) waiver-funded services:

~~((a))~~ (i) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

~~((b))~~ (ii) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

~~((c))~~ (iii) You live with your family; and

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

(2) For individual and family services waiver funded services, you must meet the criteria in subsection (1) of this section and also:

(a) Live in your family home; and

(b) Are age three or older.

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

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

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

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

(a) Your identified health and welfare needs; and

(b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.

(2) You have access to DDA paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDA will provide waiver services you need and qualify for within your waiver.

(4) DDA will not deny or limit, based on lack of funding, the number of waiver services for which you are eligible.

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

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

(1) First priority will be given to current waiver participants assessed to require a different waiver because their

identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDA may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDA has determined to be in immediate risk of ICF/ID admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(i).

(3) ~~((For the Basic Plus waiver only;))~~ DDA may consider persons who need the waiver services available in the Basic Plus or IFS waivers to maintain them in their family's home or in their own home.

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

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

(a) Assess your needs to determine whether your health and welfare needs can be met with services available on your current waiver or whether those needs can only be met through services offered on a different waiver.

(b) If DDA determines your health and welfare needs can be met by services available on your current waiver your enrollment request will be denied.

(c) If DDA determines your health and welfare needs can only be met by services available on a different waiver your service need will be reflected in your person-centered service plan/ISP.

(d) If DDA determines there is capacity on the waiver that is determined to meet your needs, DDA will place you on that waiver.

(2) You will be notified in writing of DDA's decision under subsection (1)(a) of this section and if your health and welfare needs cannot be met on your current waiver, DDA will notify you in writing whether there is capacity on the waiver that will meet your health and welfare needs and whether you will be enrolled on that waiver. If current capacity on that waiver does not exist, your eligibility for enrollment onto that different waiver will be tracked on a statewide data base.

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

WAC 388-845-0055 How do I remain eligible for the waiver? (1) Once you are enrolled in a DDA HCBS waiver,

you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

~~((1))~~ (a) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements; and

~~((2))~~ (b) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 182-513-1320 ~~(3)~~~~((1))~~, or your health and welfare needs require monthly monitoring, which will be documented in your client record; and

~~((3))~~ (c) You complete an in-person DDA assessment/reassessment interview ~~((administered in your home))~~ per WAC 388-828-1520.

~~((4))~~ ~~In addition, for~~ (2) For the children's intensive in-home behavioral supports waiver, you must meet the criteria in subsection (1) of this section and also:

(a) Be under age twenty-one;

(b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

(3) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and:

(a) Live in the family home; and

(b) Be age three or over.

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

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

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

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

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

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

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

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

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

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

(e) You choose to disenroll from the waiver;

(f) You reside out-of-state;

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

(h) You refuse to participate with DDA in:

(i) Service planning;

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

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

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

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

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

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

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

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

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

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

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

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

(a) Are age three or older;

(b) Live in your family home; and

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

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

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

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

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

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

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

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

(b) Live with your family;

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

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

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

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

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

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

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

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

(d) You have not been convicted and/or charged, but you have a history of stalking, violent, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((5))~~ (6) Waiver services cannot replace or duplicate other available paid or unpaid supports or services. Partici-

pants must first pursue benefits available to them through private insurance and the medicaid state plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Personal care;

(b) Transportation to and from a waiver service;

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

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

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

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

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

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

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

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

- (1) You are not eligible for state-only funding for DDA services; and
- (2) You ~~((are not))~~ may be eligible for medicaid personal care or community first choice services.

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

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

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

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

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior support and consultation Community guide Environmental ((accessibility)) adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	<u>Wellness Education</u> EMPLOYMENT SERVICES: Prevocational services Supported employment Individual technical assistance	Limits are determined by DDA assessment and employment status; <u>No new</u>

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
		<u>enrollment in prevocational services after September 1, 2015</u>
	Community access ((Adult foster care (adult family home)) ((Adult residential care (assisted living facility)))	Limits are determined by DDA assessment ((Determined per department rate structure))
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavior support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA
	Personal care	Limits determined by the CARE tool used as part of the DDA assessment
	Respite care	Limits are determined by the DDA assessment
	Sexual deviancy evaluation	Limits are determined by DDA
	Emergency assistance is only for Basic Plus waiver aggregate services	\$6000 per year; preauthorization required

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

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

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior support and consultation Community guide Community transition Environmental ((accessibility)) adaptations	Determined by the <u>person-centered service plan</u> /individual support plan, not to exceed the average cost of

CORE WAIVER	SERVICES	YEARLY LIMIT
	Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation <u>Wellness education</u>	an ICF/ID for any combination of services
	Residential habilitation	
	Community access	Limits are determined by DDA assessment
	Employment services	Limits are determined by DDA assessment and employment status; <u>No new enrollment in prevocational services after September 1, 2015</u>
	Prevocational services Supported employment Individualized technical assistance	
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavior support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA

CORE WAIVER	SERVICES	YEARLY LIMIT
	((Personal care)) Respite care	((Limits determined by the CARE tool used as part of the DDA assessment)) Limits are determined by the DDA assessment

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

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

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior support and consultation Community transition Environmental ((accessibility)) adaptations Occupational therapy Physical therapy	Determined by the <u>person-centered service plan/individual support plan</u> , not to exceed the average cost of an ICF/ID for any combination of services
	Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	
	Residential habilitation	
	Employment Services:	Limits determined by DDA assessment and employment status; <u>No new enrollment in</u>

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Prevocational services Supported employment Individual technical assistance	<u>prevocational services after September 1, 2015</u>
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavioral support and consultation Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> Specialized nutrition and clothing Vehicle modifications 	
	((Personal care))	((Limits determined by the DDA assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.))
	Respite care	Limits determined by the DDA assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Behavioral health Stabilization services: Behavioral support and consultation Crisis diversion bed services Specialized psychiatric services	Limits determined by behavioral health specialist

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

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

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

NEW SECTION

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

- (a) Assistive technology;
- (b) Behavioral health stabilization services (paid for outside of annual allocation):
 - (i) Behavioral support and consultation; and
 - (ii) Specialized psychiatric service.
- (c) Behavioral support and consultation;
- (d) Community engagement;
- (e) Environmental adaptations;
- (f) Nurse delegation;
- (g) Occupational therapy;
- (h) Person-centered plan facilitation;
- (i) Peer mentoring;
- (j) Physical therapy;
- (k) Speech, hearing and language services;
- (l) Respite care;
- (m) Psychosexual evaluation (paid for outside of annual allocation);
- (n) Skilled nursing;

- (o) Specialized clothing;
- (p) Specialized medical equipment and supplies;
- (q) Specialized nutrition;
- (r) Supported parenting services;
- (s) Staff/Family consultation and training;
- (t) Therapeutic equipment and supplies;
- (u) Transportation; and
- (v) Vehicle modification.

(2) Your IFS waiver services annual allocation is based upon the DDA assessment described in chapter 388-828 WAC. The DDA assessment determines your service level & annual allocation based on your assessed need. Annual allocations are:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars;
- (d) Level 4 = three thousand six hundred dollars.

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

WAC 388-845-0415 What is assistive technology?

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

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

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

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

- (1) Occupational therapist;
- (2) Physical therapist;

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

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

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

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

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

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

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

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

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

~~((6))~~ (5) Assistive technology requires prior approval by the DDA regional administrator or designee.

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

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

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

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

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;

- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (11) Polygrapher; or
- (12) State operated behavior support agency limited to behavioral health stabilization services.

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

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

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

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

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

~~((4))~~ (5) Behavior support and consultation not provided as a behavioral health stabilization service requires prior approval by the DDA regional administrator or designee.

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

NEW SECTION

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

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

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

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

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

(6) This service is available in IFS waiver.

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

NEW SECTION

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

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

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

NEW SECTION

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

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

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

- (a) Membership fees or dues; and/or
- (b) Equipment related to activities; and/or
- (c) The cost of any activities;

(4) Community engagement services are provided in the community where the participant lives.

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

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

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

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

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

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

- (a) The emergency situation has been resolved; or
- (b) You are transferred to alternative supports that meet your assessed needs; or
- (c) You are transferred to an alternate waiver that provides the service you need.

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

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

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

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

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

(a) Portable and fixed ramps;

(b) Grab bars and handrails;

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

(d) Prefabricated roll-in showers and bathtubs;

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

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

(g) Adaptive toilets, bidets, and sinks;

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

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

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

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

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

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

(n) Adaptive hardware and switches;

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

(p) Other adaptations that meet identified needs.

(3) For the CIIBS and IFS waivers only, adaptations ((~~include repairs~~)) to the home necessary ((~~due to~~)) to prevent property destruction caused by the participant's behavior, as addressed in the participant's positive behavior support plan.

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

WAC 388-845-0905 Who is a qualified provider for ((~~building these~~)) environmental ((~~accessibility~~)) adaptations? ((~~The provider making these environmental accessibility adaptations~~))

(1) For adaptations that do not require installation, qualified providers are retail vendors with a valid business license contracted with DDA to provide this service.

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

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

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

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

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

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

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

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

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

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

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

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

((~~(2) With the exception of damage repairs under the CIIBS waiver, e))~~) (4) Environmental ((~~accessibility~~)) adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

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

(6) Deteriorated condition of the dwelling or other remodeling projects in progress in the dwelling may prevent

or limit some or all environmental adaptations at the discretion of DDA.

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

(8) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

~~((3))~~ (9) Environmental (~~(accessibility)~~) adaptations cannot add to the total square footage of the home.

~~((4))~~ (10) The dollar (~~(limitations)~~) amounts for aggregate services in your Basic Plus waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

~~((5))~~ (11) Damage repairs under the CIIBS and IFS waivers are subject to the following restrictions:

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

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

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

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

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

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Behavior support and consultation;

(2) Specialized psychiatric services; or

(3) Behavioral health crisis diversion bed services (not available to participants on the IFS waiver).

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

WAC 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive? (1) Clinical and support needs for behavioral health stabilization services are identified in the waiver participant's DDA

assessment and documented in the person-centered service plan/individual support plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

NEW SECTION

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

(1) Provide peer mentoring support and training to individuals with developmental disabilities or to families with a member with a developmental disability; and

(2) Are contracted with DDA to provide this service.

NEW SECTION

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

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

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

NEW SECTION

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

(2) Person-centered plan facilitation typically includes:

(a) Identifying and developing a potential circle of people who know and care about the individual;

(b) Exploring what matters to the waiver participant by listening to and learning from the person;

(c) Developing a vision for a meaningful life, as defined by the waiver participant, which may include goals for education, employment, housing, relationships and recreation;

(d) Discovering capacities and assets of the waiver participant and her or his family, neighborhood, and support network;

(e) Generating an action plan; and

(f) Facilitating follow-up meetings to track progress towards goals.

NEW SECTION

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

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

NEW SECTION

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

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

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

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

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

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

(2) You meet the programmatic eligibility requirements for medicaid personal care in chapter 388-106 WAC.

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

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) Clinical and support needs for personal care services are identified in the waiver participant's DDA assessment and documented in the person-centered service plan/individual support plan.

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

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

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

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

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

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

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

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

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

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

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

(b) Significant progress made toward your defined goals;

(c) Recommendation by your individual support plan team.

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

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

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

WAC 388-845-1600 What is respite care? Respite care is short-term intermittent care in order to provide relief for persons who: ~~((normally provide care for and I))~~

(1) Live with you and are your primary care providers; and

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

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

(c) Contracted companion home providers paid by DDA to provide support to you; or

(d) Licensed children's foster home providers paid by DDA to provide support to you.

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

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

WAC 388-845-1605 Who is eligible to receive respite care? You are eligible to receive respite care if you are in the

Basic Plus, CIIBS, ~~((or))~~ Core or IFS waiver and ~~((:))~~ meet the criteria in WAC 388-845-1600.

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

(2) You are age eighteen or older and:

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

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

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

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

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

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

(a) A contracted companion home provider; or

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

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

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

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

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

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

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

(3) Respite cannot replace:

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

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

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

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

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

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

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

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

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

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

(6) Your primary caregivers may not provide other DDA services for you during your respite care hours.

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

~~((7))~~ (8) DDA may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

~~((8))~~ (9) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. Respite care from a LPN or RN requires prior approval per WAC 388-845-1700(2). If you are in the IFS or Basic Plus waiver, skilled nursing services are limited to the dollar ~~((limits))~~ amounts of your basic plus aggregate services or IFS annual allocation per WAC 388-845-0210 and 388-845-0230.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((+))~~ (2) Specialized medical equipment and supplies require prior approval by the DDA regional administrator or designee for each authorization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Clinical and support needs for specialized nutrition are identified in the waiver participant's DDA assessment and

documented in the person-centered service plan/individual support plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION

WAC 388-845-1855 What is specialized clothing?

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

NEW SECTION

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

NEW SECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((2))~~ (3) ~~((Staff/family consultation and training require prior approval by the DDA regional administrator or designee.))~~ The dollar amounts for aggregate service in your

basic plus waiver or the dollar amount of the annual allocation in your IFS waiver limit the amount of staff/family consultation and training you may receive.

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

NEW SECTION

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

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

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

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

NEW SECTION

WAC 388-845-2135 Who are qualified providers of supported parenting services? Qualified providers of supported parenting services must:

(1) Have an understanding of the manner in which persons with intellectual/developmental disabilities best learn;

(2) Have skills in child development and family dynamics;

(3) Have a supported parenting contract with DDA; and

(4) Be one or more of the following licensed, registered or certified professionals:

(a) Audiologist;

(b) Licensed practical nurse;

(c) Marriage and family therapist;

(d) Mental health counselor;

(e) Occupational therapist;

(f) Physical therapist;

(g) Registered nurse or licensed practical nurse;

(h) Speech/language pathologist;

(i) Social worker;

(j) Psychologist;

(k) Certified American sign language instructor;

(l) Nutritionist;

(m) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;

(n) Certified dietician;

(o) Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation;

(p) Psychiatrist;

(q) Professional advocacy organization.

NEW SECTION

WAC 388-845-2140 Are there any limitations on my receipt of supported parenting services? The following

limitations apply to your receipt of supported parenting services:

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Therapeutic equipment and supplies requires a prior approval by the DDA regional administrator or designee.

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

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

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

~~(2) Support needs for transportation services are identified in your DDA assessment and documented in your person-centered service plan/individual support plan.~~

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

~~(4)) Support needs for transportation services are identified in your DDA assessment and documented in your person-centered service plan/individual support plan.~~

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

~~((4))~~ (3) Transportation does not include the purchase of a bus pass.

~~((5))~~ (4) Reimbursement for provider mileage requires prior ~~((approval))~~ authorization by DDA and is paid according to contract.

~~((6))~~ (5) This service does not cover the purchase or lease of vehicles.

~~((7))~~ (6) Reimbursement for provider travel time is not included in this service.

~~((8))~~ (7) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

~~((9))~~ (8) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

~~((10))~~ (9) The dollar limitations for aggregate services in your Basic Plus waiver or the dollar amount of your annual allocation in the IFS waiver limit the amount of service you may receive.

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

~~((12))~~ (10) If your individual waiver personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to ~~((sixty))~~ one hundred miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of ~~((sixty))~~ one hundred miles per month. This cost is not counted toward the dollar limitation for aggregate services in the Basic Plus waiver.

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

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

WAC 388-845-2260 What are vehicle modifications? ~~((This service is only available in the CHBS waiver.))~~ (1) Vehicle modifications are adaptations or alterations to a vehicle required in order to accommodate the unique needs of the individual, enable full integration into the community, and ensure the health, welfare, and safety of the ~~((individual))~~ participant and/or ~~((family members))~~ caregivers.

(2) Vehicle modifications require prior approval from the DDA regional administrator or designee.

(3) Examples of vehicle modifications include:

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

(b) Wheelchair cover;

(c) Wheelchair strap-downs;

(d) Portable wheelchair ramp;

(e) Accessible running boards and steps;

(f) Assist poles and/or grab handles.

(j) Power activated carrier for all wheelchair types;

(h) Permanently installed wheelchair ramps;

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

(j) Other access modifications.

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

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

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

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

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

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

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

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

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

(8) The dollar amount for your annual allocation in your IFS waiver limits the amount of vehicle modification service you are authorized to receive.

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

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the DDA assessment and the service planning process as defined in chapter 388-828 WAC. Only identified

health and welfare needs will be authorized for payment in the ~~((ISP))~~ person-centered service plan/individual support plan.

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

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

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

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

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

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

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

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

(a) Your identified health and welfare needs;

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

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

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

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

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

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

(b) Is reasonably available;

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

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

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

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

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

(2) Continue your current waiver services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) ~~((At the end of the ten-day advance notice period, unless you file an appeal, DDA will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-845-3062 above))~~ Your complete person-centered service plan/individual support plan is sent to you for signature after DDA signs and dates it. If your signed ISP is not returned to DDA within two months of your assessment completion, DDA will terminate your services.

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

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

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

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

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

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

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

- (a) Identify more available natural supports;
 - (b) Initiate an exception to rule to access available non-waiver services not included in the IFS, CIIBS, Core or Community Protection waiver other than natural supports;
 - (c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;
 - (d) Offer you placement in an ICF/ID.
- (2) If none of the above options is successful in meeting your health and welfare needs, DDA may terminate your waiver eligibility.
- (3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDA services but access to state-only funded DDA services is limited by availability of funding.

WSR 16-12-061

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed May 26, 2016, 12:27 p.m., effective May 28, 2016]

Effective Date of Rule: May 28, 2016.

Purpose: The department is creating new rules that support the 2015-2017 biennium budgets for overnight planned respite services as found on pages 63 and 64 of ESSB 6052.SL (chapter 4, Laws of 2015 3rd sp. sess.). The department is in the process of permanent adoption. The public hearing is scheduled for June 21, 2016, 10:00 a.m. at 1115 Washington Street S.E., Olympia, WA.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-1610 and 388-845-1615.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ESSB 6052.SL

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

Reasons for this Finding: The 2015-2017 biennium budgets provided funding to develop eight community respite beds for adults with developmental disabilities for the provision of short-term community-based planned respite services and eight enhanced respite beds across the state for children. The purpose for these respite beds is to provide family and caregivers relief from the intensity of personal caregiving and an opportunity for behavioral stabilization for children. Without these services some families may be unable to continue to

care for their children in their own home and out of home placement could be necessary.

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 39, 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 39, Amended 2, Repealed 0.

Date Adopted: May 17, 2016.

Katherine I. Vasquez
Rules Coordinator

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

WAC 388-845-1610 Where can respite care be provided? (1) Respite care can be provided in the following location(((+))):

- (a) Individual's home or place of residence;
 - (b) Relative's home;
 - (c) Licensed children's foster home;
 - (d) Licensed, contracted and DDA certified group home;
 - (e) Licensed assisted living facility contracted as an adult residential center;
 - (f) Adult residential rehabilitation center;
 - (g) Licensed and contracted adult family home;
 - (h) Children's licensed group home, licensed staffed residential home, or licensed childcare center;
 - (i) Other community settings such as camp, senior center, or adult day care center((-)); and
 - (j) Certified overnight planned respite services home.
- (2) Additionally, your respite care provider may take you into the community while providing respite services.

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

WAC 388-845-1615 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with DDA for respite care:

- (1) Individuals meeting the provider qualifications under chapter 388-825 WAC;
- (2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;
- (3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;
- (4) Licensed and contracted adult family homes;

- (5) Licensed and contracted adult residential care facilities;
- (6) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;
- (7) Licensed child care centers under chapter 170-295 WAC;
- (8) Licensed child day care centers under chapter 170-295 WAC;
- (9) Adult day care providers under chapter 388-71 WAC contracted with DDA;
- (10) Certified provider under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services; ((☞))
- (11) Certified overnight planned respite services providers under chapter 388-829R WAC; or
- (12) Other DDA contracted providers such as community center, senior center, parks and recreation, summer programs.

Chapter 388-829R WAC

OVERNIGHT PLANNED RESPITE SERVICES

NEW SECTION

WAC 388-829R-005 What definitions apply to this chapter? The following definitions apply to this chapter:

"Adult protective services" or "APS" means the investigative body designated by the aging and long term care services administration (AL TSA) to investigate suspected cases of abandonment, abuse, financial exploitation, and neglect as defined in chapter 74.34 RCW.

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

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and who the administration has determined eligible to receive services under chapter 71A.16 RCW. When used in this section, "you" is interchangeable with client.

"DDA" or "the administration" means the developmental disabilities administration, an administration of the department of social and health services and its employees and authorized agents.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

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

"Mandatory reporter" means any person working with vulnerable adults required to report suspected incidents of abandonment, abuse, neglect, financial exploitation under chapter 74.34 RCW.

"NA-R" means nursing assistant-registered under chapter 18.88A RCW.

"NA-C" means nursing assistant-certified under chapter 18.88A RCW.

"Overnight planned respite services" means services that are intended to provide short-term intermittent relief for persons who live with the DDA client as the primary care provider and are either a family member who is paid or unpaid or a non-family member who is not paid. These services also provide the opportunity for the client to receive support, care, and engagement in the community.

"Overnight planned respite services provider," "service provider" and "provider" means a provider that is contracted to provide overnight planned respite services.

"Registered nurse delegation" means the process by which a registered nurse transfers the performance of selected nursing tasks to a NA-R or NA-C in selected situations as set forth in chapter 18.79 RCW and WAC 246-840-910 through 246-840-970).

NEW SECTION

WAC 388-829R-010 What is the purpose of this chapter? This chapter establishes rules for clients and providers regarding overnight planned respite services administered by DDA.

NEW SECTION

WAC 388-829R-015 What conditions must be met to be eligible to receive overnight planned respite services?

(1) Recipients of overnight planned respite services must meet the following conditions at a minimum:

(a) Have been determined eligible for DDA services per chapter 388-823 WAC;

(b) Be at least eighteen years of age; and

(c) Live at home with primary care providers who are paid or unpaid family members or non-family members who are not paid to provide care for you.

(2) The adult respite services committee will consider the following factors when reviewing requests for services:

(a) Whether the recipient's needs can be safely met in the respite setting;

(b) Whether there are available vacancies within ninety days of requested dates; and

(c) Whether the stay will reduce utilization of residential habilitation centers for respite.

NEW SECTION

WAC 388-829R-016 How do I access overnight planned respite services? (1) Your case resource manager will assist you with completing a brief application and ensure overnight planned respite services are included in your individual support plan.

(2) Upon approval for services, you will work with the provider to complete an individual respite services agreement that outlines agreed support needs and activities prior to your stay.

NEW SECTION

WAC 388-829R-017 Who are the qualified providers of overnight planned respite services? Qualified providers

must be certified by and contracted with DDA to provide overnight planned respite.

NEW SECTION

WAC 388-829R-018 What are the time limitations of overnight planned respite services? Overnight planned respite services may not exceed fourteen days in a calendar year.

NEW SECTION

WAC 388-829R-020 What are the responsibilities of an overnight planned respite services provider? An overnight planned respite services provider must:

- (1) Meet the requirements of this chapter and its contract;
- (2) Deliver the service on the dates approved by the administration;
- (3) Provide supports and services outlined in the individual respite services agreement;
- (4) Provide adequate staff to administer the program and meet the needs of clients;
- (5) Ensure that clients have immediate access to staff or the means to contact staff at all times; and
- (6) Retain all records and other material related to the services contract for six years after expiration of the contract.

NEW SECTION

WAC 388-829R-025 What requirements must an agency meet to contract with DDA to provide overnight planned respite services? To be eligible to contract with DDA to provide overnight planned respite services, an agency:

- (1) Must be certified by the DDA to perform the duties of overnight planned respite service;
- (2) Must be approved as a contractor by the department; and
- (3) Providing respite to more than one client per respite home is prohibited.

NEW SECTION

WAC 388-829R-030 Are the rules in chapter 388-113 and 388-825 regarding background checks applicable to providers of overnight planned respite services? Yes. The rules in chapter 388-113 and 388-825 regarding background checks are applicable to providers of overnight planned respite services.

NEW SECTION

WAC 388-829R-035 What will disqualify overnight planned respite services providers from working in a capacity that may involve access to individuals with a developmental disability? Criminal convictions and pending charges that disqualify overnight planned respite services providers and their employees and volunteers from working with individuals with a developmental disability are listed in chapter 388-113 WAC. Individuals employed by overnight

planned respite services providers who receive a DSHS background check with disqualifying results are prohibited from any access to DDA clients.

NEW SECTION

WAC 388-829R-060 What are the minimum requirements for overnight planned respite services providers? Overnight planned respite services providers must at a minimum:

- (1) Have a high school diploma or GED equivalent, unless hired before September 1, 1991;
- (2) Be at least eighteen years of age when employed as a direct care staff, or at least twenty-one years of age when employed as an administrator;
- (3) Have a clear understanding of job responsibilities and knowledge of individual support plans and client needs;
- (4) Have a current background check as required by WAC 388-829R-030; and
- (5) Be able to:
 - (a) Read, understand, and provide services outlined in the individual support plan (ISP) and individual respite services agreement;
 - (b) Reasonably accommodate the client's individual preferences;
 - (c) Know the community resources, such as medical facilities, emergency resources, and recreational opportunities;
 - (d) Enable the client to keep in touch with family and friends in a way preferred by the client;
 - (e) Protect the client's financial interests;
 - (f) Fulfill reporting requirements as required in this chapter and the overnight planned respite services contract;
 - (g) Know how and when to contact the client's representative and case manager; and
 - (h) Successfully complete the training required in this chapter.

NEW SECTION

WAC 388-829R-065 What training requirements must overnight planned respite services staff meet? Overnight planned respite services provider staff must meet all training and certification requirements that apply to community residential service businesses in accordance with chapter 388-829 WAC. The provider must document that its staff has met these requirements and make this documentation available for DDA.

NEW SECTION

WAC 388-829R-070 What policies and procedures must overnight planned respite services providers have?

- (1) Overnight planned respite services providers must develop and implement policies and procedures that address:
 - (a) Client rights, including a client's right to file a complaint or suggestion without interference;
 - (b) Reporting requirements for suspected abuse, neglect, financial exploitation, or abandonment;
 - (c) Client protections when there have been allegations of abuse, neglect, financial exploitation, or abandonment;

(d) Emergent situations that may pose a danger or risk to the client or others;

(e) Response to a missing person and other client emergencies;

(f) Emergency response plans for natural or other disasters;

(g) Client access to medical, mental health, and law enforcement resources for clients;

(h) Notification to client's legal representative or relatives in case of emergency;

(i) Client grievances;

(j) Appropriate response and supports for clients who engage in aggressive or assaultive behavior; and

(k) All aspects of medication management including but not limited to:

(i) Supervision of medication;

(ii) Client refusal;

(iii) Services related to medications and treatments provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;

(iv) The monitoring of a client who self-administers medication;

(v) Medication assistance for clients who need support; and

(vi) What the service provider will do in the event it becomes aware that a client is no longer safe to take his or her own medications.

(2) The service provider must train staff on its policies and procedures, maintain current written policies and procedures, and make them accessible to all staff and available to clients and legal representatives upon request.

NEW SECTION

WAC 388-829R-075 What are the requirements for an individual respite services agreement? (1) Overnight planned respite services providers must develop an individual respite services agreement with the client's paid or unpaid caregiver at least three business days prior to the client's placement.

(2) The individual respite services agreement must outline supports and services to be provided during the respite stay.

NEW SECTION

WAC 388-829R-080 What services and activities must be a part of overnight planned respite services? The overnight planned respite services provider must provide the following services and activities at no cost to the client:

(1) Support staff available twenty-four hours per day for each day of the respite stay as determined in the individual respite services agreement to meet the client's needs as identified in the client's assessment;

(2) A furnished home environment including a private, furnished bedroom for the respite client;

(3) An accessible site for clients with physical disabilities;

(4) Three nutritious meals and two snacks per day;

(5) Bedding and towels;

(6) Access to laundry facilities;

(7) Access to a telephone for local calls;

(8) Medication monitoring, assistance and administration as needed;

(9) Instruction and support services identified in the client's individual respite services agreement;

(10) Transportation as identified in the individual respite services agreement;

(11) Supports for performing personal hygiene routines and activities of daily living as identified in the individual respite service agreement and individual support plan; and

(12) Activities within the home and community as outlined in the individual respite services agreement.

NEW SECTION

WAC 388-829R-085 Are overnight planned respite providers responsible to transport a client? (1) The client and client's family are responsible for transportation to and from the respite services.

(2) The overnight planned respite services provider is responsible to ensure that the client's transportation needs are met during the respite stay as identified in the client's individual respite services agreement.

NEW SECTION

WAC 388-829R-090 What requirements must be met before an overnight planned respite provider transports a client? Before transporting a client, overnight planned respite services providers must:

(1) Carry automobile insurance per chapter 46.30 RCW; and

(2) Have a valid driver's license per chapter 46.20 RCW.

NEW SECTION

WAC 388-829R-110 What health care assistance must an overnight planned respite provide a client? The overnight planned respite services provider must provide the client the following health care assistance:

(1) Observe the client for changes in health, take appropriate action, and respond to emergencies;

(2) Manage medication assistance per chapter 246-888 WAC and administration per WAC 246-840-910 to 246-840-970 and DDA residential medication management requirements specified in the overnight planned respite services contract;

(3) Assist the client with any medical treatment prescribed by health professionals that does not require registered nurse delegation or professionally licensed services;

(4) Communicate directly with health professionals when needed; and

(5) Provide a balanced, nutritional diet.

NEW SECTION

WAC 388-829R-115 How may an overnight planned respite services provider assist a client with medication?

(1) An overnight planned respite services provider may only provide medication assistance per chapter 246-888 WAC if the client meets the following criteria:

- (a) Is able to put the medication into his or her mouth, apply, or instill the medication; and
 - (b) Is aware that he or she is receiving medication.
- (2) An overnight planned respite services provider may provide specific medication assistance tasks as described under chapter 246-888 WAC as follows:

Medication Assistance Task	May an overnight planned respite services provider complete this task if the client meets both criteria in subsections (1)(a) and (b) of this section?
Remind or coach the client to take his or her medication.	Yes
Open the medication container.	Yes
Hand client the medication container.	Yes
Place medication in the client's hand.	Yes
Transfer medication from a container to another device for the purpose of an individual dose (e.g., pouring liquid medication from a container to a calibrated spoon, medication cup or adaptive device.	Yes
Alter a medication by crushing or mixing, or similar alterations.	Yes, if the client is aware that the medication has been altered or added to food or beverage. A pharmacist or other qualified practitioner must determine it is safe to alter a medication and this must be documented on the prescription container or in the client's record.
Handing the client a pre-filled insulin syringe.	Yes, but the client must be able to inject the insulin by him or herself.
Guide or assist client to apply or instill skin, nose, eye and ear preparations.	Yes, but hand-over-hand administration is not allowed.
Assistance with injectable or IV medication.	No, this is not allowed.
Hand-over-hand assistance with medication.	No, may only be done under nurse delegation.

Medication Assistance Task	May an overnight planned respite services provider complete this task if the client meets both criteria in subsections (1)(a) and (b) of this section?
Assistance with medication beyond the examples provided in this chart.	No, may only be done by a licensed professional within the scope of their license or under registered nurse delegation.

NEW SECTION

WAC 388-829R-120 What is required for an overnight planned respite services provider to administer medication and provide delegated nursing tasks? Before overnight planned respite services providers may administer medication or provide nursing tasks for their clients, they must meet one of the following requirements:

- (1) Be a registered nurse (RN) or licensed practical nurse (LPN); or
- (2) Be delegated to perform nursing care tasks by a registered nurse.

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

NEW SECTION

WAC 388-829R-125 What is required for an overnight planned respite services provider to perform nursing tasks under the registered nurse delegation program? In order to be delegated to perform nursing tasks, an overnight planned respite services provider must:

- (1) Receive client-specific training from the delegating registered nurse; and
- (2) Verify with the registered nurse delegator that it has complied with chapter 18.79 RCW and WAC 246-840-910 through 246-840-990 by providing the registered nurse delegator with proof of:
 - (a) A current NA-R or NA-C registration or certification as a home care aide (HCA-C) without restriction, or a certification showing completion of the "nurse delegation for nursing assistants" class; and
 - (b) A certification of completion of the "nurse delegation training: special focus on diabetes" class when the provider anticipates that the NA-R, NA-C or HCA-C may be administering insulin injections under nurse delegation; or a certification showing completion of "fundamentals of caregiving" if the overnight planned respite services provider is an NA-R.

NEW SECTION

WAC 388-829R-130 When is an overnight planned respite services provider not allowed to perform nursing tasks? (1) An overnight planned respite services provider is prohibited from performing delegated nursing tasks for a cli-

ent if it has not complied with the requirements in WAC 388-829R-125.

(2) An overnight planned respite services provider may not offer support to a client whose needs it is unable to meet.

(3) If the overnight planned respite services provider is not eligible to perform nursing tasks, a legally authorized person such as an RN or LPN must perform the task.

NEW SECTION

WAC 388-829R-135 What records must the overnight planned respite services provider keep regarding registered nurse delegation? (1) The overnight planned respite services provider must keep the following records when participating in registered nurse delegation:

(a) Written instructions for performing the delegated task from the delegating RN;

(b) The most recent six months of documentation showing that the task was performed; and

(c) Validation of nursing assistant registrations or certifications.

(2) These records must be accessible to the delegating nurse at all times.

NEW SECTION

WAC 388-829R-140 Where must overnight planned respite services be provided? Overnight planned respite services providers must provide overnight planned respite services in a single person residence maintained and furnished by the provider.

NEW SECTION

WAC 388-829R-145 How must overnight planned respite services providers regulate the water temperature at their residence? (1) Overnight planned respite services providers must regulate the water temperature at their residence as follows:

(a) Maintain the water temperature in the household between one hundred five degrees and one hundred twenty degrees fahrenheit; and

(b) Check the water temperature at least every six months. The water temperature is best measured two hours after substantial hot water usage.

(2) The overnight planned respite services provider must document compliance with these requirements.

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

NEW SECTION

WAC 388-829R-150 What are the requirements for record entries? (1) The overnight planned respite services provider must make entries at the time of or immediately following the event and maintain both the original and corrected entries when an error in the record is made.

(2) Written entries must be legible, in ink, and signed and dated.

(3) Electronic record entries must identify the date entry and the person who made the entry by his or her unique user ID.

NEW SECTION

WAC 388-829R-155 Are client records considered confidential? The overnight planned respite services provider must consider all client information privileged and confidential.

(1) Any transfer or inspection of records to parties other than DSHS must be authorized by DDA or through a release of information form that:

(a) Includes a specific description of the records the client consents to be released; and

(b) Is signed by the client or the client's legal representative.

(2) A signed release of information is valid for up to one year and must be renewed annually from the signature date.

NEW SECTION

WAC 388-829R-160 How long must an overnight planned respite services provider keep client records? An overnight planned respite services provider must keep a client's records for a period of six years from the end of the client's respite stay.

NEW SECTION

WAC 388-829R-165 What must overnight planned respite services providers do to plan for and respond to emergencies? (1) The overnight planned respite services provider must develop an emergency response plan to address natural and other disasters.

(2) In an emergency, the overnight planned respite services provider must:

(a) Immediately call 911 if it is a life threatening emergency;

(b) Provide emergency services;

(c) Notify DDA and the client's legal representative; and

(d) Submit a written report to DDA as required by the DDA residential reporting requirements specified in the overnight planned respite services contract.

NEW SECTION

WAC 388-829R-170 What records must overnight planned respite services providers keep? Overnight planned respite services providers must keep the following information:

(1) Client's name and address;

(2) Name, address, and telephone number of the client's relative or legal representative;

(3) A copy of the most recent ISP;

(4) A copy of the individual respite services agreement;

(5) Nurse delegation records;

(6) Water temperature monitoring records;

(7) Staff training records;

(8) Staff time sheets specific to locations worked;

(9) Payment records;

- (10) Dates and times of service;
- (11) Progress notes and incident reports;
- (12) Medication intake records;
- (13) A list of the client's personal property upon arrival and departure; and
- (14) A record of money or gift cards managed by the respite provider on behalf of the client during the respite stay.

NEW SECTION

WAC 388-829R-175 Are overnight respite services providers mandatory reporters? (1) Yes. Overnight respite services providers are mandatory reporters. They are required to report all instances of suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults as defined in chapter 74.34 RCW.

(2) Overnight respite services providers must comply with DDA's residential reporting requirements specified in their contract.

(3) Providers must retain a signed copy of the DDA policy on residential reporting requirements specified in their contract and submit a signed copy of the policy to DDA.

NEW SECTION

WAC 388-829R-180 How must overnight respite services providers report abuse and neglect? Overnight respite services providers must immediately report suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults to:

(1) Adult protective services using the DSHS toll free telephone number, 1-866-END-HARM or 1-866-363-4276;

(2) DDA in compliance with the DDA residential reporting requirements as specified in the overnight planned respite services contract; and

(3) Law enforcement agencies as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

NEW SECTION

WAC 388-829R-185 Who oversees, monitors, and evaluates overnight planned respite services? DDA oversees and monitors the overnight planned respite services provider. DDA will conduct an evaluation in the home where the respite is provided at least every twelve months.

NEW SECTION

WAC 388-829R-190 How often must DDA evaluate overnight planned respite services providers? (1) DDA must complete its initial evaluation within the first ninety days after the overnight planned respite services provider begins providing respite services.

(2) Following DDA's initial evaluation, it must evaluate the overnight planned respite services provider at least every twelve months.

(3) DDA may conduct additional reviews at its discretion.

NEW SECTION

WAC 388-829R-195 How must the overnight planned respite services provider participate in the evaluation process? The overnight planned respite services provider must participate in the evaluation process by:

(1) Allowing scheduled and unscheduled home visits by DDA staff and DDA contracted evaluators;

(2) Providing information and documentation as requested by DDA and DDA contracted evaluators; and

(3) Cooperating in setting up appointments with DDA and DDA contracted evaluators.

NEW SECTION

WAC 388-829R-200 What occurs during the review and evaluation process? During the review and evaluation process, DDA contracted evaluators will review compliance with this chapter and the DDA overnight planned respite services provider contract.

NEW SECTION

WAC 388-829R-205 What happens if the overnight planned respite services provider is found to be out of compliance? (1) If DDA finds in its evaluation that the overnight planned respite services provider is out of compliance with any part of this chapter or the DDA contract, the provider and DDA must develop a corrective action plan.

(2) The corrective action plan must:

(a) Outline methods for the provider to comply with the required corrections; and

(b) Provide a time frame for the provider to complete the corrective actions.

NEW SECTION

WAC 388-829R-210 When may DDA stop the authorization for payment or terminate a contract for the services of an overnight planned respite services provider? DDA may stop the authorization for payment or terminate a contract for the services of an overnight planned respite services provider when:

(1) The provider demonstrates inadequate performance or inability to deliver quality care that jeopardizes the client's health, safety, or well-being;

(2) The provider does not complete the corrective actions within the agreed upon time frame;

(3) The provider fails to comply with the requirements of this chapter or the overnight planned respite services provider contract; or

(4) DDA has a reasonable, good faith belief that the client's health, safety, or well-being is at risk.

NEW SECTION

WAC 388-829R-215 May the overnight planned respite services provider request an administrative hearing to contest DDA's decision to stop payment or terminate its contract? No. The overnight planned respite services provider may not contest the decision to stop payment

or termination of the contract by administrative hearing. A client may challenge DDA's decision to deny a provider of choice.

WSR 16-13-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-133—Filed June 2, 2016, 9:39 a.m., effective June 4, 2016]

Effective Date of Rule: June 4, 2016.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500H; and amending WAC 220-56-255.

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

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

Reasons for this Finding: An emergency rule is needed to reopen the recreational halibut fishery in Marine Areas 3 and 4 as there is sufficient quota remaining in Marine Areas 3 and 4 to open the recreational halibut fishery for another day. The recreational halibut quota for the all depth fishery in Marine Area 1 has reached the Pacific halibut quota reserved for this area; there is not enough quota pounds available to open this area for an additional fishing day. This rule conforms to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. 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: June 2, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-25500I Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective June 4, 2016, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1 (Nearshore fishery)**

Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon).

(a) Open until further notice, Mondays through Wednesdays.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(2) **Catch Record Card Areas 3 and 4**

(a) Open June 11, 2016.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour, except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
48°23.6'N. lat., 124°44.9'W. long.
48°18.6'N. lat., 124°43.6'W. long.
48°18.6'N. lat., 124°48.2'W. long.
48°10.0'N. lat., 124°48.8'W. long.
48°02.4'N. lat., 124°49.3'W. long.
47°37.6'N. lat., 124°34.3'W. long.
47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-56-230.

(3) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(4) All other permanent rules remain in effect.

(5) It is unlawful to land halibut in a port within an area closed to halibut fishing.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 4, 2016:

WAC 220-56-25500H Halibut—Seasons—Daily and possession limits. (16-113)

WSR 16-13-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-132—Filed June 2, 2016, 10:08 a.m., effective June 2, 2016,
10:08 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Columbia River seine fishery emerging commercial fishery.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule establishes an emerging commercial fishery with limited participants using beach or purse seine gear in the Columbia River. This limited entry fishery is established consistent with RCW 77.70.160 and is implemented based on Policy C-3620 which includes guiding principles and a progressive series of actions to improve the management of salmon in the Columbia River basin. The fisheries outlined here are part of a series of actions meant to be progressively implemented in 2013-2016 during the transitional period of the policy. Aside from the research fishery conducted in 2014, and the pilot 2015 fishery, this set of commercial regulations allowing seine gear in the Columbia River is the first in decades, and is meant to inform fishery managers in how best to implement such fisheries. 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 4, 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: June 2, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-88-05000C Designation of Columbia River seine fishery as an emerging commercial fishery. (1) The director designates the Columbia River seine salmon fishery as an emerging commercial fishery for which use of a vessel is required. The director has determined a need to limit the number of participants in this fishery.

(2) It is unlawful to fish for, possess, or deliver salmon taken for commercial purposes using beach or purse seine unless the fisher possesses a valid emerging commercial fishery license and a salmon experimental fishery permit for either beach seine or purse seine gear. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

NEW SECTION

WAC 220-88-06000C Columbia River seine emerging commercial fishery—Qualifications—Issuance of experimental fishery permits—License fee—Permit conditions. (1) Individuals interested in participating in this fishery must apply for an emerging fishery license. The initial application deadline is midnight June 17, 2016.

(a) Experimental fishery permits will be drawn randomly from the pool of emerging fishery license applications for Columbia River seine fisheries received by the deadline. Applications will be pooled by gear type (i.e. beach seine pool and purse seine pool). Only one application per person.

(b) Random drawings will begin after the application deadline. Drawings will continue until the number of permits needed is filled for each gear type and zone as determined by the agencies.

(c) Once drawn, the emerging fishery license and experimental fishery permit will be awarded so long as the applicant meets the qualifications for the license and permit as provided in subsection (2) of this section. Random drawings will continue from this pool of applicants until all permits are filled, or the pool of qualified applicants is exhausted. Award notifications for successful applicants are expected to occur no later than June 24, 2016. The primary mode for notification will be via telephone.

(d) If the total number of permits needed is not filled from the first round of applications received by deadline, the department may ask for additional applications and perform random drawings or consider applications on a first-come first served basis. This 'second-round' is open to all qualified applicants, including those awarded a permit in the first round.

(e) Alternate permits for each for gear type may be drawn. Alternate permits for each gear type may be awarded if needed at the Department's discretion.

(f) Applicants drawn for an emerging fishery license and experimental fishery permit must respond within ten (10) business days of being notified by the department to accept the permit and purchase the emerging fishery license. At that time the emerging fishery license fee will be due, and the license and permit will be issued by WDFW upon receipt of payment. The department will not issue the emerging fishery license or the experimental fishery permit until payment is received. If an applicant is drawn for the license and permit

and fails to purchase the license and permit within ten (10) business days of notification of selection, the department may issue the license and permit to another selected applicant.

(g) The emerging fishery license and experimental fishery permit expire on December 31, 2016.

(2) Qualifications: An experimental fishery permit will only be issued to a natural person who has a valid emerging commercial fishery license and who:

(a) Possesses a commercial gillnet salmon license/permit issued by Washington or Oregon for the Columbia River, Columbia River/Willapa Bay or Columbia River/Grays Harbor and can demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River Select Areas within the past two calendar years (2014 and 2015) under that license; or

(b) Can demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River Select Areas by the applicant under a commercial salmon license issued for the Columbia River, Columbia River/Willapa Bay or Columbia River/Grays Harbor within the past two calendar years (2014 and 2015).

(3) Nothing in this section gives preference to 2016 permit holders for issuance of potential future permits.

(4) Experimental fishery permits are not transferable between persons. The permit holder must be present and in possession of a valid experimental fishery permit during seine fishing operations. A violation of this subsection is punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(5) It is unlawful to violate the conditions of the experimental fishery permit for the Columbia River seine emerging commercial fishery. A violation of this subsection is punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(6) Experimental fishery permits may be revoked at the discretion of the Director and future permits denied for failure to comply with conditions specified in the permit or violations of other commercial fishing regulations.

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

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

NEW SECTION

WAC 220-88-07000F Columbia River seine emerging commercial fishery—Season, area, and gear requirements. It is unlawful to fish for salmon for commercial purposes with beach or purse seine gear except as provided in this section:

(1) Season: Open with state regulatory processes for commercial fishing with these gear types (beach or purse seine). Fishing periods are expected in 2016 during the months of August, September, and October. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(2) Open area: Columbia River from the Grays Point/Tongue Point line upstream to Rooster Rock, as described in WAC 220-22-010 salmon management and catch reporting areas 1B-1D and as determined by the Columbia River Compact. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(3) Gear type: Beach seines or purse seines only. Only one net per boat.

(a) Purse seine gear requirements:

(i) Net length: 200 fathoms maximum, including associated lead nets.

(ii) Net depth: 200 meshes deep (approximately 50 feet).

(iii) Mesh size/type: 3.5-inch maximum mesh. 3-strand nylon. Twine \geq #12.

(iv) Bunt: No less than six fathoms of knotless bunt (1.5-inch maximum).

(v) Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net.

(vi) Block or drum gear is permissible.

(b) Beach seine gear requirements:

(i) Net length: 200 fathoms maximum, including associated lead nets.

(ii) Net depth: 200 meshes deep (approximately 50 feet).

(iii) Mesh size/type: 3.5-inch maximum mesh. 3-strand nylon. Twine \geq #12.

(iv) Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net.

(4) A violation of subsection (3) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

NEW SECTION

WAC 220-88-08000C Columbia River seine emerging commercial fishery—Allowable possession and sales—Catch handling requirements. (1) Allowable possession and sales: Salmon, and as determined by the Columbia River Compact. All species other than salmon must be carefully handled and returned to the water promptly.

(2) Handling of catch: Catch may only be handled by hand or with rubber coated nets when sorting fish. Fish must be sorted while submerged in the water; it is unlawful to dry sort fish on land.

WSR 16-13-011

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-134—Filed June 2, 2016, 1:14 p.m., effective June 2, 2016, 1:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100N; and amending WAC 220-52-051.

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

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

Reasons for this Finding: The 2016 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule reduces the weekly limit and closes the pot fishery season for nonspot shrimp in Shrimp Management Areas 1A, 1B and 1C, as the quota will be reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 2, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-05100P Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all non-spot shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) In Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 6:00 a.m. June 16, 2016.

(ii) Effective 9:00 p.m. June 7, 2016, all waters of Shrimp Management Areas 1A, 1B and 1C are closed.

(iii) All waters of Shrimp Management Area 2E and Catch Areas 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed.

(iv) All waters of Shrimp Management Area 1A north of a line projected at 48°31.5' N latitude are closed.

(b) Effective immediately, until 9:00 p.m. June 7, 2016, it is unlawful for the combined total harvest of non-spot shrimp by a fisher and/or the fisher's alternate operator to exceed 800 pounds from Shrimp Management Areas 1A, 1B and 1C.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher and/or the fisher's alternate operator to exceed 800 pounds from Shrimp Management Area 2W.

(d) The shrimp catch accounting week is Wednesday through Tuesday.

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

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B is open.

(c) That portion of Catch Area 20B within SMA 1B is open effective 6:00 a.m. June 16, 2016, until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100N Puget Sound shrimp pot and beam trawl fishery—Season. (16-119)

WSR 16-13-014

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-130—Filed June 3, 2016, 9:01 a.m., effective June 7, 2016, 9:00 p.m.]

Effective Date of Rule: June 7, 2016, 9:00 p.m.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Sets a mainstem commercial fishing period for hatchery spring Chinook. This season allows the commercial mainstem fishery to access some of its allocation of spring Chinook. Spring season select area commercial seasons also remain in place. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 27 and June 2, 2016. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: June 3, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-01000L Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1. Mainstem Columbia River

a) **Dates:** 9:00 p.m. June 7 to 5:00 a.m. June 8, 2016.

b) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

c) **Sanctuaries:** Grays River, Elochoman-B, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers.

d) **Allowable Possession:** Adipose fin-clipped Chinook salmon and shad. Landing limits in place: A maximum of 6 adult adipose fin clipped Chinook may be possessed or sold by each participating vessel. The first 6 adult hatchery fish must be retained and no additional drifts may be conducted once the Chinook limit has been retained. Jacks (Chinook less than 24-inches in total length) do not count against the adult landing limit.

e) **Gear:** Drift nets only. 8-inch minimum mesh size. Net length not to exceed 150 fathoms. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline.

f) Miscellaneous Regulations:

(i) **Soak times** are defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, must not exceed 45 minutes.

(ii) **Red corks** are required at 25-fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

(iii) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each chamber of the recovery box(es) must

include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked; pumps must continue to run until the net is fully retrieved and completely on board the vessel. Pumps shall continue to run whenever a fish is in the recovery box. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any non-legal salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(iv) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during the fishery. In addition, cooperation with department personnel prior to a fishing period is expected.

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

(2) Deep River Select Area

a) **Dates:** Open hours are 7 PM to 7 AM Monday and Thursday nights immediately through June 14, 2016.

b) **Area:** From USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of

the stream (WAC 220-20-015)(1). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17).

d) **Allowable Possession:** Chinook salmon and shad

e) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catch. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

(3) Tongue Point/South Channel

a) **Dates:** Open hours are 7 PM to 7 AM Monday and Thursday nights immediately through June 14, 2016.

b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

d) **Allowable Possession:** Chinook salmon and shad

e) **Miscellaneous:** Permanent transportation rules in effect.

(4) Blind Slough/Knappa Slough Select Area

f) **Dates:** Open hours are 7 PM to 7 AM Monday and Thursday nights immediately through June 14, 2016.

a) **Area:** Blind Slough and Knappa Slough areas are both open. Immediately until further notice, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

b) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

c) **Allowable Possession:** Chinook salmon and shad

d) **Miscellaneous:** Permanent transportation rules in effect.

(5) **24-hour quick reporting** is in effect for Washington buyers (WAC 220-69-240(14)(d)). Permanent transportation rules in effect.

(6) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

(7) **Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. June 7, 2016:

WAC 220-33-01000K Columbia River seasons below Bonneville. (16-123)

WSR 16-13-017

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-135—Filed June 3, 2016, 11:22 a.m., effective June 16, 2016]

Effective Date of Rule: June 16, 2016.

Purpose: Amend Columbia River recreational salmon fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000P; and amending WAC 220-310-200.

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

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

Reasons for this Finding: This emergency rule is needed because the pre-season forecast for upper Columbia River sockeye salmon is only for about 102,000 fish returning to the river mouth. This run abundance is insufficient to support sockeye harvest in the upper Columbia River and meet spawning escapement goals in the Wenatchee and Okanogan basins. Achieving a successful sockeye spawn in 2016 is extremely important following the massive mortality and poor spawning escapement of upper Columbia sockeye

caused by the drought and high water temperatures in 2015. The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: June 3, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000P Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200:

(1) Effective June 16 through August 15, 2016:

(a) It is permissible to fish for salmon in waters of the Columbia River from the Highway 395 Bridge at Pasco to the Interstate 182 Bridge in Richland.

(b) Daily limit of three salmon, of which no more than one may be adult hatchery chinook. Release wild adult Chinook and sockeye.

(2) Effective June 16 through August 15, 2016:

(a) It is permissible to fish for salmon in waters of the Columbia River from the Interstate 182 Bridge in Richland to Priest Rapids Dam.

(b) Daily limit of four salmon, of which no more than two may be adult hatchery chinook. Release wild adult Chinook and sockeye.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 16, 2016:

WAC 220-310-20000P Exceptions to statewide rules—
Columbia River.

WSR 16-13-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-136—Filed June 6, 2016, 2:49 p.m., effective June 6, 2016, 6:00 p.m.]

Effective Date of Rule: June 6, 2016, 6:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100V.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Discontinues the sale of fish caught in the Zone 6 Columbia River tribal fisheries and the sale of fish caught in Yakama Nation tributary fisheries. The area downstream of Bonneville Dam (SMCRA 1E1) remains closed to sales of fish. Treaty fisheries are approaching the allocated harvest limit of upriver spring Chinook based on a run size of 184,000 fish. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on June 6, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some

incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: June 6, 2016.

Joe Stohr
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. June 6, 2016:

WAC 220-32-05100V Columbia River salmon seasons above Bonneville Dam. (16-118)

WSR 16-13-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-137—Filed June 6, 2016, 2:57 p.m., effective June 9, 2016]

Effective Date of Rule: June 9, 2016.

Purpose: Amend recreational fishing rules for the Yakima River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500K; and amending WAC 220-310-195.

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

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

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

Reasons for this Finding: Yakama Nation (YN) and Washington department of fish and wildlife fishery managers are forecasting a total return of four thousand six hundred ten adult spring Chinook to the Yakima River in 2016 (three thousand one hundred wild and one thousand five hundred ten hatchery fish), representing fifty-five percent of the recent ten year (2006-2015) average adult return of eight thousand three hundred twenty spring Chinook. This emergency rule is needed to reduce the daily limit from two to one hatchery fish and shorten the length of the season. 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: June 6, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500K Exceptions to statewide rules—Yakima River. Notwithstanding the provisions of WAC 220-310-195:

(1) Effective June 9 through June 30, 2016, a person may fish for salmon in waters of the Yakima River from the Interstate 82 bridge at Union Gap (river mile 107.1) to the BNSF railroad bridge approximately 600 feet downstream of Roza Dam (river mile 127.8). Daily limit of one hatchery chinook. Terminal gear is restricted to two, single (point), barbless hooks with a hook gap from point to shank of 3/4 inch or less when fishing for salmon. During the salmon fishery, the Selective Gear Rules requirement prohibiting use of bait and knotted nets is temporarily suspended for all species, but only in the river section open to salmon fishing. Night closure is in effect.

(2) The Columbia River Salmon/Steelhead Endorsement is required to participate in this fishery (except for Free Fishing Weekend, June 11-12), in addition to a freshwater fishing license.

(3) The use of two (2) fishing poles is permitted during the salmon fishery provided the participating angler has purchased a "Two-Pole Endorsement" (in addition to the fresh-

water fishing license and Columbia River salmon/steelhead endorsement).

REPEALER

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

WAC 220-310-19500K Exceptions to statewide rules—
Yakima River.

WSR 16-13-038 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-138—Filed June 7, 2016, 10:35 a.m., effective June 9, 2016]

Effective Date of Rule: June 9, 2016.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500I; and amending WAC 220-56-255.

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 Marine Area 1 recreational halibut fishery has taken the Pacific halibut quota set aside for the nearshore fishery. There are not enough quota pounds remaining for another day, this area will be closed to recreational halibut fishing for the remainder of the year. This rule conforms to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. 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: June 7, 2016.

James B. Scott
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-25500J Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective June 9, 2016, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Areas 3 and 4**

(a) Open June 11, 2016.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour, except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
 48°23.6'N. lat., 124°44.9'W. long.
 48°18.6'N. lat., 124°43.6'W. long.
 48°18.6'N. lat., 124°48.2'W. long.
 48°10.0'N. lat., 124°48.8'W. long.
 48°02.4'N. lat., 124°49.3'W. long.
 47°37.6'N. lat., 124°34.3'W. long.
 47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-56-230.

(2) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(3) All other permanent rules remain in effect.

(4) It is unlawful to land halibut in a port within an area closed to halibut fishing.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 9, 2016:

WAC 220-56-25500I Halibut—Seasons—Daily and possession limits. (16-133)

WSR 16-13-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-139—Filed June 8, 2016, 12:03 p.m., effective June 12, 2016]

Effective Date of Rule: June 12, 2016.

Purpose: Amend recreational fishing rules for the Snake River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500L; and amending WAC 220-310-195.

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

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

Reasons for this Finding: Based on the current harvest estimates one hundred thirty adult hatchery Chinook are available to harvest in the Snake River. We anticipate that this additional fishery will utilize the majority of the remaining allotment of harvestable spring Chinook in the Snake River. This emergency rule is needed to open the area for two days while providing additional angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 8, 2016.

James B. Scott Jr.
 for J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-19500L Freshwater exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 220-310-195 and WAC 220-56-180, effective June 12 through June 13, 2016:

(1) A person may fish for and possess salmon in the following waters of the Snake River from Texas Rapids boat launch (south side of the river approximately 3.5 miles upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam. Minimum size

for Chinook is 12 inches in length. This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the wall" in front of the juvenile collection facility). Open Sunday and Monday each week. Daily limit of six hatchery Chinook, of which not more than two may be an adult Chinook.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

REPEALER

The following section of the Washington Administrative Code is repealed June 14, 2016:

WAC 220-310-19500L Freshwater exceptions to statewide rules—Snake River.

WSR 16-13-047 EMERGENCY RULES OFFICE OF

ADMINISTRATIVE HEARINGS

[Filed June 8, 2016, 3:20 p.m., effective June 8, 2016, 3:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Citation of Existing Rules Affected by this Order:
Amending WAC 10-08-150.

Statutory Authority for Adoption: RCW 34.12.030, 34.05.020, 34.250 [34.05.250].

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

Reasons for this Finding: The office of administrative hearings (OAH) is required by state law to use interpreter services during the administrative hearing process only from providers who have been properly selected by the state contracting process. In order to be compliant with state law and to ensure that limited English speaking parties receive timely and qualified interpretive and translation services, OAH must amend the existing rule. The contracted for services are able

to provide a qualified translator for the hearings and for the post-hearing sight translations, but those persons may not be the same person. These amendments to the OAH interpreter regulation will allow for the use of properly qualified interpreters under both state and OAH master contracts consistent with the technology and processes now available.

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: June 8, 2016.

Lorraine Lee
Chief Administrative
Law Judge

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-150 Adjudicative proceedings—Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the presiding officer shall appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(2) Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose ((sole)) function is to interpret at administrative hearings.

(3) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(4) If at any time during the proceeding, in the opinion of the impaired or non-English-speaking person, the presiding

officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the presiding officer shall appoint another interpreter.

(5) Mode of interpretation.

(a) The administrative office of the courts (AOC) recognizes three spoken language interpreting modes: Consecutive, simultaneous, and sight translation. Sight translation means the act of reading a written text out loud.

(b) Interpreters for non-English-speaking persons shall use the simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

~~((b))~~ (c) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

~~((c))~~ (d) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(6) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. An interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(7) The presiding officer shall explain to the non-English-speaking party that a written decision or order will be issued in English, and that ~~((the party may contact the interpreter for an oral translation))~~ a visual translation or sight translation of the decision ((and that the translation itself) is available at no cost to the party. ((The interpreter shall provide to the presiding officer and the party the interpreter's telephone number. The telephone number shall be attached to the decision or order mailed to the party. A copy of ~~))~~ The presiding officer shall attach to or include in the decision or order ((shall also be mailed to the interpreter for use in)) a telephone number to request a visual translation or sight translation.

(8) If the party has a right to review of the order or decision, the presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(9) The agency involved in the hearing shall pay interpreter fees and expenses.

WSR 16-13-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-140—Filed June 8, 2016, 5:00 p.m., effective June 8, 2016, 5:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial salmon troll fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000G; and amending WAC 220-24-040.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 8, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-24-04000H All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to deliver or land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2 and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open:

June 10 through 16,
June 24 through 30, 2016.

(2) Landing and possession limits:

- a. 65 Chinook per vessel per entire open period for the entire Catch Areas 1 and 2.
- b. 15 Chinook per vessel per entire open period for the open portion of Catch Area 4.
- c. No vessel may possess, land or deliver more than 65 Chinook during any open period.

(3) All fishers intending to fish Area 4 must declare that intention before fishing by notifying WDFW at (360) 249-1215 with boat name, approximate time they intend to fish in Area 4 and destination at the end of the trip. All fish from Area 4 must be landed before fishing any other Area. No fish from other Areas may be in possession with fish from Area 4.

(4) Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

(5) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(6) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(7) Fishers must deliver and land their catch to Ports within salmon management catch areas 1, 2, 3 or 4, including the Ports of Chinook and Ilwaco. Fishers must complete a Washington State Fish Receiving ticket within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of fish from Area 2 must stay in the closed areas to transit through Areas 3 and 4 to land in La Push or Neah Bay. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook and halibut catch aboard, and destination. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

a. For the purposes of this section, the term "delivery" means arrival at a port.

b. For the purposes of this section, the term "land" means the transfer of fish from a fishing vessel or the initiation of a fish receiving ticket to include fishers signature, species, number of fish and pounds of fish.

(8) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(9) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357°

true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(10) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(11) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(12) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000G All-citizen commercial salmon troll.
(16-99)

WSR 16-13-050
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed June 9, 2016, 9:16 a.m., effective June 9, 2016, 9:16 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making is to implement requirements of ESSB 6293 (chapter 62, Laws of 2016) which allows public and private colleges to create unpaid student volunteer programs in for-profit or nonprofit businesses, and allows

those businesses to elect medical aid coverage for student volunteers and unpaid students participating in the program. Providing employers the opportunity to elect medical aid coverage for student volunteers and unpaid students in experience-based activities will encourage more employers to participate in these school-sponsored programs. ESSB 6293 is effective on June 9, 2016.

Also, private colleges will now be able to elect medical aid coverage for qualifying students volunteering for the college. (Current law requires state colleges to cover volunteers serving the college, but allows only charitable private organizations to elect coverage for volunteers.)

This legislation also creates a means for all entities with coverage for volunteers, student volunteers, or unpaid students to cap reporting at one hundred hours per volunteer per calendar year. This type of reporting is not currently an option for employers and the department of labor and industries must design rules to implement such a reporting and pre-emptive change.

Citation of Existing Rules Affected by this Order: New WAC 296-17-935 Options for reporting qualifying volunteers, including student volunteers and unpaid students; and amending WAC 296-17-35201 Recordkeeping and retention, 296-17-925 Student volunteers, 296-17-930 Volunteers, 296-17A-6901 Classification 6901 (volunteers and student volunteers), and 296-17A-6906 Classification 6906 (volunteer law enforcement officers).

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

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

Reasons for this Finding: These rules should be in place to allow proper workers' compensation insurance reporting based on the requirements of ESSB 6293. There is currently no mechanism in place to allow the new type of employer reporting method. In addition, employers may now elect coverage for student volunteers and unpaid students beyond what was previously allowed by law. Immediate rule making is necessary to provide these additional coverage elections.

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 5, Repealed 0.

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

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

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

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

Date Adopted: June 9, 2016.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 03-23-025, filed 11/12/03, effective 1/1/04)

WAC 296-17-35201 Recordkeeping and retention. Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums due to the state for workers' compensation insurance for their covered workers. In the administration of Title 51 RCW, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums due to the state fund. The records so specified and required, shall be provided at the time of audit to any authorized representative of the department who has requested them.

Failure to produce the requested records within thirty days of the request, or within an agreed upon time period shall constitute prima facie evidence of noncompliance with this rule and shall invoke the statutory bar to challenge found in RCW 51.48.030 and/or 51.48.040. See WAC 296-17-925, 296-17-930, and 296-17-935 for additional reporting and recordkeeping requirements for qualifying volunteers, student volunteers, and unpaid students.

(1) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which employment occurred:

- (a) The name of each worker;
- (b) The Social Security number of each worker;
- (c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each such worker;
- (d) The basis upon which wages are paid to each worker;
- (e) The number of units earned or produced for each worker paid on a piecework basis;
- (f) The risk classification applicable to each worker whenever the worker hours of any one employee are being divided between two or more classifications;
- (g) The number of actual hours worked (WAC 296-17-31002) by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021 or 296-17-935;
- (h) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;
- (i) The workers' total gross pay period earnings;
- (j) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;
- (k) The net pay earned by each such worker.

(2) Business, financial records, and record retention. Every employer is required to keep and preserve all original employment time records for three full calendar years following the calendar year in which employment occurred. The three-year period is specified in WAC 296-17-352 as the

composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. Employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(3) Recordkeeping - Estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in subsections (1) and (2) of this section, who fails to make, keep, and preserve such records, shall for the purpose of premium calculation assume worker hours using the average hourly wage rate for each classification, and also will be subject to penalties prescribed in subsection (4) of this section. The records compiled by the department shall be the basis for determining the average hourly wage rate: Provided, That the average hourly wage rate shall be no less than the state minimum wage existing at the time such assumed hours are worked. Notwithstanding any other provisions of this section, workers employed in a work activity center subject to Classification 7309 shall be reported on the basis of the average hourly wage.

(4) Failure to maintain records - Penalties. Any employer required by this section to make, keep, and preserve records containing the information as specified in subsections (1) and (2) of this section, who fails to make, keep, and preserve such record, shall be liable, subject to RCW 51.48.030, to a penalty in the amount of two hundred fifty dollars for each such offense. Failure to make, keep, and preserve records containing the information as specified in subsections (1) and (2) of this section, for a single employee shall constitute one offense, for two employees two offenses, and so forth.

AMENDATORY SECTION (Amending WSR 94-24-007, filed 11/28/94, effective 1/1/95)

WAC 296-17-925 ((Student volunteers-)) Record-keeping requirements for student volunteers and/or unpaid students. ((Any employer electing to insure student volunteers under the authority of chapter 51.12 RCW as now or hereafter amended shall give notice in writing on a form prescribed by the department. Any employer having elected to insure student volunteers shall maintain office records of all hours of work performed by student volunteers. Such office records shall include notice in writing as a registration of each student who has been recognized by the school and accepted by the employer to perform or observe the work of the employer. A report of such hours will be included with the employer's regular quarterly report of payroll as prescribed by the department, and will include payment for the premium based on such hours and at such rates per hour as assigned by the department.)) If you elect to insure qualifying student volunteers and/or unpaid students as defined in chapter 51.12 RCW, as now or hereafter amended, you must give the department written notice on a form prescribed by the department.

All entities with coverage for qualifying student volunteers or unpaid students must maintain the following additional records relating to:

- Names of all qualifying persons that the employer seeks to cover under this election; and

- Proof of registration of qualifying persons' current enrollment in school or institution of higher education as defined in RCW 51.12.170; and

- Authorization from the school or institution of higher education for qualifying persons' participation in the school's volunteer program or the school's unpaid work-based learning program;

- Qualifying persons' actual hours worked, unless you have notified the department in writing of your decision to report one hundred hours per volunteer per calendar year (one hundred hour-cap method; see WAC 296-17-935).

If you fail to keep records to demonstrate individuals are qualified student volunteers or unpaid students, or if you are unable to provide records to the department upon request, the department will determine classification and premiums due for each individual in question.

See relevant rules, including WAC 296-17-935, for reporting options for volunteers, student volunteers, and unpaid students; and WAC 296-17-35201 for recordkeeping requirements.

AMENDATORY SECTION (Amending Order 77-27, filed 11/30/77, effective 1/1/78)

WAC 296-17-930 Volunteers. Any city, town, county, school district, municipal corporation or any other political subdivision, or private nonprofit charitable organization electing to insure qualified volunteers under the authority of RCW 51.12.035 as now or hereafter amended, shall give ((notice in writing on a form prescribed by the department. Any employer having elected to insure volunteers shall maintain office records of all hours of work performed by volunteers. Such office records shall include notice in writing as a registration of each person who has volunteered and has been accepted by the employer to perform work as a volunteer. A report of such hours will be included with the employer's regular quarterly report of payroll as prescribed by the department, and will include payment for the premium based on such hours and at such rates per hour as assigned by)) the department written notice of its intent to provide coverage on a form prescribed by the department. Any employer insuring qualifying volunteers shall choose a reporting method option to apply to all qualifying volunteers. Employers have the option of choosing either:

- Maintaining records of all actual hours of work performed by each qualifying volunteer; or

- Reporting one hundred hours for each qualifying volunteer per calendar year (one hundred-hour cap method) rather than keep a record of actual hours for each qualifying volunteer per calendar year (see WAC 296-17-935).

Note: Election of reporting method is for each calendar year. Electing employers must report all of their qualified volunteers in the same manner each calendar year.

Note: Employers insuring qualifying volunteers must provide their reporting method (by selecting between either: Actual hours per qualifying volunteer or one hundred hours per such volunteer per calendar year) in the first quarter of the calendar year in which coverage for the volunteers is effective, along with the employer's regular quarterly report of payroll as prescribed by the department; see relevant reporting rules, including WAC 296-17-935.

The employer's office records shall include, in addition to records required under WAC 296-17-35201, written:

- Registration of each person who has volunteered; and
- Acceptance by the employer to perform work as a volunteer.

NEW SECTION

WAC 296-17-935 Options for reporting qualifying volunteers, including student volunteers and unpaid students. If you elect to insure qualifying volunteers, including student volunteers or unpaid students, as defined in chapter 51.12 RCW as now or hereafter amended, you must give notice in writing on a form prescribed by the department. If you do not currently have elective coverage for such volunteers, including student volunteers or unpaid students, and you would like to cover them, please contact our underwriting section at phone number 360-902-4817.

Effective June 9, 2016, a law change (see section 3, chapter 62, Laws of 2016) created an additional reporting option for employers who cover qualifying volunteers (including student volunteers and unpaid students) for medical aid only.

When filing your quarterly report in the first quarter of the calendar year in which coverage for your qualifying volunteers is effective, you must indicate your choice to report all such qualifying volunteers based on either:

- Actual hours worked; or
- One hundred hours per qualifying volunteer per calendar year (one hundred-hour cap method).

You must use the same method to report all your qualifying volunteers in the calendar year. The first time you file your quarterly report in subsequent calendar years, you may change your reporting method for that calendar year.

If you have previously chosen in a calendar year to report one hundred hours per qualifying volunteer per calendar year, for all quarterly reports for that calendar year:

- You must report one hundred hours for any new qualifying volunteers who you have not reported in previous quarters of the calendar year.
- If you have no new qualifying volunteers in the quarters after you chose to report one hundred hours per qualifying volunteer, you must report zero hours for the volunteer classification.

For calendar year 2016 only, in addition to the above requirements, since the one hundred hour reporting option may be used only after the effective date of the law change, if you choose to report one hundred hours per qualifying volunteer:

- You must still report and pay premium based on actual hours for qualifying volunteers in the second quarter of 2016; and

- Your premium payment for one hundred hours per qualifying volunteer applies only for coverage for the third and fourth quarter of 2016; and

- Hours reported in the first and second quarter of 2016 for volunteer coverage do not count toward the one hundred hours per qualifying volunteer for 2016.

See relevant rules, including WAC 296-17-925 for recordkeeping requirements for student volunteers and unpaid students, WAC 296-17-930 for recordkeeping requirements for other volunteers, and WAC 296-17-35201 for general recordkeeping and retention requirements.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6901 Classification 6901.

~~((6901-00))~~ Volunteers

~~((Applies to the medical aid coverage for volunteers of state agencies, municipal corporations, political subdivisions, or private nonprofit charitable organizations. Medical aid coverage is *mandatory* for volunteers of state agencies. Medical aid coverage is *optional* for volunteers of city, county, town, special district, municipal corporations, political subdivisions, or nonprofit charitable organizations.~~

~~This classification excludes student volunteers of private sector employers who are to be reported separately in classification 6901-01; volunteer law enforcement officers of cities, towns, counties and taxing districts for whom medical aid only coverage has been elected who are to be reported separately in classification 6906; and volunteer law enforcement officers of cities, towns, counties, or Native American tribal councils for whom full coverage has been elected who are to be reported separately in classification 6905.~~

~~**Special note:** To elect coverage for volunteers, employers or charitable organizations must submit a completed Application for Optional Coverage to the department. Conditions of coverage are outlined on the application. State Fund workers' compensation is not provided to volunteer firemen covered by chapter 41.24 RCW and emergency services workers covered by chapter 38.52 RCW.~~

6901-01 Student volunteers

~~Applies to the medical aid coverage for student volunteers. Medical aid coverage is *optional* for student volunteers. A student volunteer is defined as a student who is enrolled in a public school (kindergarten level through grade 12), is participating as a volunteer in a program authorized or sponsored by the public school to provide work-based learning experiences, and who receives no wages for their volunteer services. Maintenance and reimbursement for actual expenses incurred in performing assigned duties are not considered wages.~~

~~This classification excludes volunteer workers for state agencies, local government agencies and private nonprofit charitable organizations who are to be reported separately in classification 6901-00; volunteer law enforcement officers of cities, towns, counties and taxing districts for whom medical aid only coverage has been elected who are to be reported separately in classification 6906; and volunteer law enforcement officers of cities, towns, counties, or Native American~~

tribal councils for whom full coverage has been elected who are to be reported separately in classification 6905.

Special note: To elect coverage for student volunteers, employers or charitable organizations must submit a completed Application for Optional Coverage to the department. Conditions of coverage are outlined on the application. State Fund workers' compensation is not provided to volunteer firemen covered by chapter 41.24 RCW and emergency services workers covered by chapter 38.52 RCW.)) Applies to the medical aid coverage for volunteers of state agencies, municipal corporations, political subdivisions, private non-profit charitable organizations, and student volunteers and/or unpaid students as defined in chapter 51.12 RCW.

- Medical aid coverage is mandatory for volunteers of state agencies.

- Medical aid coverage is optional for volunteers of cities, counties, towns, special districts, municipal corporations, political subdivisions, private nonprofit charitable organizations, and for qualifying student volunteers and/or unpaid students as defined in chapter 51.12 RCW.

This classification excludes:

- Volunteer law enforcement officers of cities, towns, counties and taxing districts for whom medical aid only coverage has been elected who are to be reported separately in classification 6906; and

- Volunteer law enforcement officers of cities, towns, counties, or Native American tribal councils for whom full coverage has been elected who are to be reported separately in classification 6905.

Special note: See relevant rules, including WAC 296-17-925, 296-17-930, 296-17-935, and 296-17-35201 for reporting instructions and recordkeeping requirements. To elect coverage for qualified volunteers, employers or charitable organizations must submit a completed Application for Elective Coverage of Excluded Employment form to the department. State Fund workers' compensation is not provided to volunteer firefighters covered by chapter 41.24 RCW, nor to emergency services workers covered by chapter 38.52 RCW.

For administrative purposes, classification 6901 is divided into the following subclassifications:

6901-00 Volunteers of state agencies, cities, counties, towns, municipal corporations, political subdivisions, or private nonprofit charitable organizations

6901-01 Student volunteers, unpaid students

A student volunteer is defined as a student who is:

- Currently enrolled in a public or private K-12 school or state public or private institution of higher education; and
- Participating as a student volunteer in a program authorized by the school; and
- Performing duties for the employer without receiving wages for their volunteer services. Maintenance and reimbursement for actual expenses necessarily incurred in performing the assigned duties are not considered wages.

An unpaid student is defined as a student who is:

- Currently enrolled in a state public or private institution of higher education; and

- Participating in an unpaid work-based learning program (including cooperative education, clinical experience, and internship programs) authorized by the school; and

- Performing duties for the employer without receiving wages for their services; and

- Receiving credit towards completing the school program. Maintenance and reimbursement for actual expenses necessarily incurred in performing the assigned duties are not considered wages. Credit towards completing the school program, certification, or degree are not considered wages.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6906 Classification 6906.

~~((6906-00 Volunteer law enforcement officers of cities and towns—Medical aid only~~

~~Applies to medical aid coverage for volunteer law enforcement officers of cities and towns for whom the cities or towns have elected coverage. Duties of law enforcement officers include, but are not limited to, directing traffic, patrolling by motor vehicle, motorcycle, bicycle, or on foot or horseback, preventing crimes, investigating disturbances of the peace, arresting violators, conducting criminal investigations, giving first aid, and guarding persons detained at the police station.~~

~~This classification excludes salaried law enforcement officers and volunteer law enforcement officers for whom the cities or towns have elected full coverage who are to be reported separately in classification 6905.~~

~~See classifications 0803, 1301, 1507, 5305, 6901, 6904, and 6905 for other city or town operations.~~

~~**Special note:** This coverage is optional for volunteer law enforcement officers. To elect coverage for volunteer law enforcement officers, the city or town must submit a completed Application for Optional Coverage to the department. Conditions of coverage are outlined on the application. If coverage is provided, all law enforcement officers must be included.~~

~~**6906-01 Volunteer law enforcement officers of counties, taxing districts and Native American tribal councils—Medical aid only**~~

~~Applies to medical aid coverage for volunteer law enforcement officers of counties, taxing districts and Native American tribal councils for whom the counties, taxing districts or Native American tribal councils have elected coverage. Duties of law enforcement officers include, but are not limited to, directing traffic, patrolling by motor vehicle, motorcycle, bicycle, or on foot or horseback, preventing crimes, investigating disturbances of the peace, arresting violators, conducting criminal investigations, giving first aid, and guarding persons detained at the police station.~~

~~This classification excludes salaried law enforcement officers and volunteer law enforcement officers for whom the counties, taxing districts or Native American tribal councils have elected full coverage, who are to be reported separately in classification 6905. See classifications 1301, 1501, 1507, 5306, 6901, 6904, and 6905 for other county or taxing district operations.~~

Special note: This coverage is optional for volunteer law enforcement officers. To elect coverage for volunteer law enforcement officers, the counties, taxing districts or Native American tribal councils must submit a completed Application for Optional Coverage to the department. Conditions of coverage are outlined on the application. If coverage is provided, all law enforcement officers must be included.

6906-02 Volunteer law enforcement officers of state agencies - Medical aid only

Applies to medical aid coverage for volunteer law enforcement officers of state agencies for whom the state agencies have elected coverage. Duties of law enforcement officers include, but are not limited to, directing traffic, patrolling by motor vehicle, motorcycle, bicycle, or on foot or horseback, preventing crimes, investigating disturbances of the peace, arresting violators, conducting criminal investigations, giving first aid, and guarding persons detained at the police station.

This classification excludes salaried law enforcement officers and volunteer law enforcement officers for whom the state agencies have elected full coverage who are to be reported separately in classification 7103.

See classifications 4902, 4906, 5307, 7103, and 7201 for other state government operations.

Special note: This coverage is optional for volunteer law enforcement officers. To elect coverage for volunteer law enforcement officers, the state agencies must submit a completed Application for Optional Coverage to the department. Conditions of coverage are outlined on the application. If coverage is provided, all law enforcement officers must be included.)) **Volunteer law enforcement officers**

Applies to medical aid coverage for volunteer law enforcement officers of cities, towns, counties, taxing districts, Native American tribal councils, and state agencies for whom these entities have elected coverage for medical aid only. Duties of law enforcement officers include, but are not limited to:

- Directing traffic;
- Patrolling by motor vehicle, motorcycle, bicycle, on foot or horseback;
- Preventing crimes;
- Investigating disturbances of the peace;
- Arresting violators;
- Conducting criminal investigations;
- Giving first aid;
- Guarding persons detained at the police station; and
- Other similar activity conducted within the course of official duties.

This classification excludes:

- Salaried law enforcement officers;
- Volunteer law enforcement officers for whom the cities, towns, counties, taxing districts or Native American tribal councils have elected full coverage, who are to be reported separately in classification 6905;
- Volunteer law enforcement officers for whom the state agencies have elected full coverage who are to be reported separately in classification 7103;
- Student volunteers and/or unpaid students as defined in chapter 51.12 RCW for whom the cities, towns, counties, taxing districts, or Native American tribal councils have elected

medical aid coverage, or for whom state agencies must provide coverage, who are to be reported separately in classification 6901.

For other operations of cities, towns, counties, taxing districts, or state government, see chapter 296-17A WAC classifications: 0803, 1301, 1501, 1507, 4902, 4906, 5305, 5306, 5307, 6901, 6904, 6905, 7103, and 7201.

Special note: This coverage is optional for volunteer law enforcement officers of cities, towns, counties, taxing districts, Native American tribal councils, and state agencies. To elect coverage for volunteer law enforcement officers, the city, town, county, taxing district, Native American tribal council, or state agency must submit a completed Application for Elective Coverage of Excluded Employments to the department. Conditions of coverage are outlined on the application. If coverage is provided, all law enforcement officers must be included. See relevant rules, including WAC 296-17-925, 296-17-930, 296-17-935, and 296-17-35201 for reporting instructions and recordkeeping requirements.

For administrative purposes, classification 6906 is divided into the following subclassifications:

6906-00 Volunteer law enforcement officers of cities and towns - Medical aid only

6906-01 Volunteer law enforcement officers of counties, taxing districts and Native American tribal councils - Medical aid only

6906-02 Volunteer law enforcement officers of state agencies - Medical aid only

WSR 16-13-053

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-141—Filed June 9, 2016, 3:31 p.m., effective June 10, 2016]

Effective Date of Rule: June 10, 2016.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000M and 220-310-20000Q; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: The regulation extends the 2016 spring recreational salmon season in the Columbia River from Tongue Point/Rocky Point Line upstream to Bonneville Dam. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of May 24, 2016. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 2.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 2.

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

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

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

Date Adopted: June 9, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000Q Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective June 10 through June 15, 2016.

(a) Open for fishing for salmonids. From the Tongue Point/Rocky Point Line upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse #2.

(b) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(c) Release all wild Chinook, wild steelhead and sock-eye.

(d) Salmon minimum size is 12 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 10, 2016:

WAC 220-310-20000M Exceptions to statewide rules—
Columbia River. (16-120)

The following section of the Washington Administrative Code is repealed effective June 16, 2016:

WAC 220-310-20000Q Exceptions to statewide rules—
Columbia River

WSR 16-13-064 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-142—Filed June 13, 2016, 2:11 p.m., effective June 16, 2016, 6:00 a.m.]

Effective Date of Rule: June 16, 2016, 6:00 a.m.

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

Citation of Existing Rules Affected by this Order: Amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); Northwest Gillnetters *Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Allows the sale of fish caught in Zone 6 Columbia River tribal fisheries with platform and hook and line gear for the summer season. The sale of fish caught in Yakama Nation tributary fisheries is also allowed when open under Yakama Nation regulations. The area downstream of Bonneville Dam (SMCRA 1E1) is open to sales of fish beginning June 16 when open under tribal regulations. Three weekly gillnet fishing periods during the summer season have also been set. The preseason forecast for summer Chinook is ninety-three thousand fish, and twenty-nine thousand one hundred seventy-five harvestable fish are available to the treaty tribes. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on June 9, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow[s] for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: June 13, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1E1, 1F, 1G, and 1H, and in the Wind River, Klickitat River, Drano Lake, Yakima River and Icicle Creek. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions.

(1) Open Area: SMCRA 1F, 1G, 1H (Zone 6):

(a) Season:

6:00 AM Thursday June 16 to 6:00 PM Saturday June 18, 2016

6:00 AM Monday June 20 to 6:00 PM Thursday June 23, 2016

6:00 AM Monday June 27 to 6:00 PM Thursday June 30, 2016

(b) Gear: Gillnets. 7-inch minimum mesh size.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for this gear type are in effect, except Spring Creek.

(2) Open Area: SMCRA 1F, 1G, 1H (Zone 6):

(a) Season: 6:00 AM Thursday June 16 to 11:59 PM Sunday July 31, 2016

(b) Gear: Hoop nets, bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38-54 inches in fork length in the Bonneville Pool and sturgeon between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(d) All sanctuaries for these gear types are in effect, except Spring Creek.

(3) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Wind River, Drano Lake, Icicle Creek, Yakima River and Klickitat River.

(c) Gear: Hoop nets, bag nets, dip nets, and rod and reel with hook and line. Gill nets may only be used in Drano Lake.

(d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 43-54 inches fork length harvested in tributaries within The Dalles or John Day Pools and sturgeon between 38-54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Live release of all oversize and under-size sturgeon is required.

(4) Open Area: SMCRA 1E1. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife for tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe, and only within any specific regulations set by each tribe.

(a) Participants:

(i) Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2013 MOU with the Nez Perce Tribe.

(ii) Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(b) Season: 6:00 AM June 16 through 11:59 PM July 31, 2016. Open only during those days and hours when allowed under lawfully enacted tribal subsistence fishery regulations for enrolled tribal members.

(c) Allowable gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(d) Allowable Sales: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon retention is prohibited for any purpose. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

(5) 24-hour quick reporting is required as provided in WAC 220-69-240, for Washington wholesale dealers for all areas, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket.

(6) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

WSR 16-13-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-143—Filed June 13, 2016, 2:14 p.m., effective June 15, 2016]

Effective Date of Rule: June 15, 2016.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Sets a mainstem commercial fishing period for summer Chinook. The preseason summer Chinook forecast is ninety-three thousand three hundred fish. A run of this size allocates two thousand six hundred thirty-three Chinook available for harvest in mainstem commercial fisheries. The preseason sockeye forecast is one hundred one thousand six hundred fish. A run of this size allocates three hundred five sockeye available for harvest in mainstem commercial fisheries. Sets additional fishing time in two select areas to harvest some remaining spring Chinook in the area. The fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regu-

lation is consistent with compact action of June 9, 2016. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: June 13, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-0100M Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for

commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Mainstem Columbia River

(a) **Dates:** 9:00 PM Thursday June 16 to 5:00 AM Friday June 17, 2016.

(b) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

(c) **Sanctuaries:** Elochoman-A, Cowlitz River, Kalama-A, Lewis-A, Sandy, and Washougal rivers.

(d) **Allowable Possession:** Chinook, sockeye and shad.

(e) **Gear:** Drift nets only. 8-inch minimum mesh size.

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Open Thursday June 16 to Friday June 17, Monday June 20 to Friday June 21, and Thursday June 23 to Friday June 24, 2016.

(b) **Hours:** Open 7 PM to 7 AM

(c) **Area:** Blind Slough and Knappa Slough areas are both open. The lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall boundary).

(d) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is permissible.

(e) **Allowable possession:** Salmon and shad

(3) Tongue Point/South Channel Select Area

(a) **Dates:** Open Thursday June 16 to Friday June 17 and Monday June 20 to Friday June 21, 2016.

(b) **Hours:** Open 7 PM to 7 AM

(c) **Area:** The Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southernmost) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore. The South Channel area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on the eastern tip of Burnside Island defining the upstream terminus of South Channel.

(d) **Gear:** 9 3/4-inch maximum mesh size restriction. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms and no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

(e) **Allowable possession:** Salmon and shad

(4) The following provisions apply to all seasons listed above:

(a) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules are in effect.

(b) **Multi-Net Rule:** It is permissible to possess onboard a vessel nets not specifically authorized for use in these areas so long as they are properly stored (WAC 220-33-001(2)).

(c) **Lighted Buoys:** Nets fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is fished while attached to a boat, then one lighted buoy on the opposite end of the net from the boat is required.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 15, 2016:

WAC 220-33-01000L Columbia River seasons below Bonneville. (16-130)

WSR 16-13-077

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed June 14, 2016, 1:37 p.m., effective June 14, 2016, 1:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule is being filed for renewal of WSR 16-06-017 on February 19, 2016. The rule was established to provide regulatory guidance to marijuana processing or extraction facilities. Significant public comment on the proposed rules was received at two public hearings for permanent rule making on chapter 51-54A WAC in 2015. As a result, the council withdrew the proposed permanent rules and called for formation of a special technical advisory group (TAG) to include industry representatives, local officials, and other affected parties to develop proposed permanent rules. TAG met seven times and completed their work on May 27, 2016. This filing is the result of that work and will replace the original emergency rules; permanent rule making is underway with public hearings scheduled in September/October 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54A-105; and new WAC 51-54A-3800.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

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

Reasons for this Finding: These emergency rules provide operational and construction permit requirements for marijuana extraction. Marijuana extraction can involve explosive materials and dangerous processes that pose serious risks to public health, safety and welfare. These rules provide administrative direction, establish definitions, create requirements for engineering reports and inspections, identify construction requirements and electrical systems, and direct other administrative oversight to protect public safety. The state liquor and cannabis board's WAC 314-55-104 looks to state fire safety and building codes implemented by local building and

fire officials to provide these protections. Given the potentially serious risks posed by activities regulated by this rule, observing permanent rule timing requirements would be contrary to the public interest. Permanent rule making is underway, with public hearings being scheduled for September and October 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 1, 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: June 10, 2016.

Steve K. Simpson
Chair

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-0105 Permits.

SECTION 105 SCOPE AND GENERAL REQUIREMENTS

105.1.1 Permits required. Any property owner or authorized agent who intends to conduct an operation or business, or install or modify systems and equipment, which is regulated by this code, or to cause any such work to be done shall first make application to the fire *code official* and obtain the required permit.

105.6.4 Carbon dioxide systems. An operational permit is required for carbon dioxide systems having more than 100 pounds of carbon dioxide.

((105.6.4.9)) 105.6.49 Marijuana extraction systems. An operational permit is required to use a marijuana/cannabis extraction system regulated under WAC 314-55-104.

105.7.19 Marijuana extraction systems. A construction permit is required to install a marijuana/cannabis extraction system regulated under WAC ((244-55-104 [WAC 314-55-104])) 314-55-104.

105.7.20 Underground supply piping for automatic sprinkler system. A construction permit is required for the installation of the portion of the underground water supply piping, public or private, supplying a water-based fire protection system. The permit shall apply to all underground piping and appurtenances downstream of the first control valve on the lateral piping or service line from the distribution main to one foot above finished floor of the facility with the fire protection system. Maintenance performed in accordance with this

code is not considered to be a modification and does not require a permit.

EXCEPTIONS: 1. When the underground piping is installed by the aboveground piping contractor.
2. Underground piping serves a fire protection system installed in accordance with NFPA 13D.

NEW SECTION

WAC 51-54A-3800 Marijuana processing or extraction facilities.

SECTION 3801—ADMINISTRATION

3801.1 Scope. Facilities used for marijuana processing or extraction that utilize chemicals or equipment as regulated by the International Fire Code shall comply with this chapter and the International Building Code. The extraction process includes the act of extraction of the oils and fats by use of a solvent, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter and the International Building Code.

3801.2 Application. The requirements set forth in this chapter are requirements specific only to marijuana processing and extraction facilities and shall be applied as exceptions or additions to applicable requirements set forth elsewhere in this code.

3801.2.1 For the purposes of this chapter, marijuana processing and extraction shall be limited to those processes and extraction methods that utilize chemicals defined as hazardous by the International Fire Code and are regulated as such. Such processes and extraction methods shall meet the requirements of this chapter and other applicable requirements elsewhere in this code and its referenced standards.

EXCEPTION: Provisions of WAC 314-55-104 do not apply to this chapter.

3801.2.2 The use of equipment regulated by the International Fire Code for either marijuana processing or marijuana extraction shall meet the requirements of this chapter and other applicable requirements elsewhere in this code.

3801.3 Multiple hazards. Where a material, its use or the process it is associated with poses multiple hazards, all hazards shall be addressed in accordance with Section 5001.1 and other material specific chapters.

3801.4 Existing building or facilities. Existing buildings or facilities used for the processing of marijuana shall comply with this chapter.

3801.5 Permits. Permits shall be required as set forth in Section 105.6 and 105.7.

SECTION 3802—DEFINITIONS

Desolventizing. The act of removing a solvent from a material.

Finding. The results of an inspection, examination, analysis or review.

Marijuana processing. Processing that uses chemicals or equipment as regulated by the International Fire Code; this does not include the harvesting, trimming, or packaging of the plant.

Miscella. A mixture, in any proportion, of the extracted oil or fat and the extracting solvent.

Observation. A practice or condition not technically non-compliant with other regulations or requirements, but could lead to noncompliance if left unaddressed.

Transfilling. The process of taking a gas source, either compressed or in liquid form (usually in bulk containers), and transferring it into a different container (usually a smaller compressed cylinder).

SECTION 3803—PROCESSING OR EXTRACTION OF MARIJUANA

3803.1 Location. Marijuana processing shall be located in a building complying with the International Building Code and this code. Requirements applied to the building shall be based upon the specific needs for mitigation of the specific hazards identified.

3803.2 Systems, equipment and processes. Systems, equipment, and processes shall be in accordance with Sections 3803.2.1 through 3803.2.7. In addition to the requirements of this chapter, electrical equipment shall be listed or evaluated for electrical fire and shock hazard in accordance with RCW 19.28.010(1).

3803.2.1 Application. Systems, equipment and processes shall include, but are not limited to, vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps.

3803.2.2 General requirements. In addition to the requirements in Section 3803, systems, equipment and processes shall also comply with Section 5003.2, other applicable provisions of this code, the International Building Code, and the International Mechanical Code. The use of ovens in post-process purification or winterization shall comply with Section 3803.2.7.

3803.2.3 Systems and equipment. Systems or equipment used for the extraction of oils from plant material shall be listed and approved for the specific use. If the system used for extraction of oils and products from plant material is not listed, then a technical report prepared by a Washington licensed engineer shall be provided to the code official for review and approval.

3803.2.4 Change of extraction medium. Where the medium of extraction or solvent is changed from the material indicated in the technical report, or as required by the manufacturer, the technical report shall be revised at the cost of the facility owner, and submitted for review and approval by the fire code official prior to the use of the equipment with the new medium or solvent.

3803.2.5 Required technical report. The technical report documenting the equipment design shall be submitted for review and approval by the fire code official prior to the equipment being installed at the facility.

3803.2.5.1 Content of technical report and engineering analysis. All, but not limited to, the items listed below shall be included in the technical report.

1. Manufacturer information.
2. Engineer of record information.
3. Date of review and report revision history.
4. Signature page shall include:
 - 4.1 Author of the report;
 - 4.2 Date of report;
 - 4.3 Seal, date and signature of engineer of record performing the design; and
5. Model number of the item evaluated. If the equipment is provided with a serial number, the serial number shall be included for verification at the time of site inspection.
6. Methodology of the design review process used to determine minimum safety requirements. Methodology shall consider the basis of design, and shall include a code analysis and code path to demonstrate the reason why specific codes or standards are applicable or not.
7. Equipment description. A list of all components and subassemblies of the system or equipment, indicating the material, solvent compatibility, maximum temperature and pressure limits.
8. A general flow schematic or general process flow diagram (PFD) of the process, including maximum temperatures, pressures and solvent state of matter shall be identified in each step or component. It shall provide maximum operating temperature and pressure in the system.
9. Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components.
10. Structural analysis for the frame system supporting the equipment.
11. Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process.
12. Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. This portion of the review should include review of emergency procedure information provided by the manufacturer of the equipment or process and not that of the facility, building or room.
13. Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer.
14. Report shall include findings and observations of the analysis.
15. List of references used in the analysis.

3803.2.6 Building analysis. The technical report, provided by the engineer of record, shall include a review of the construction documents for location, room, space or building and include recommendations to the fire code official.

3803.2.6.1 Site inspection. The engineer of record of the equipment shall inspect the installation of the extraction equipment for conformance with the technical report and provide documentation to the fire code official that the equipment was installed in conformance with the approved design.

3803.2.7 Post-process purification and winterization. Post-processing and winterization involving the heating or pressurizing of the miscella shall be approved and performed

in an appliance listed for such use. Domestic or commercial cooking appliances shall not be used. The use of industrial ovens shall comply with Chapter 30.

EXCEPTION: An automatic fire extinguishing system shall not be required for batch-type Class A ovens having less than 3.0 cubic feet of work space.

3803.3 Construction requirements.

3803.3.1 Location. Marijuana extraction shall not be located in any building containing a Group A, E, I or R occupancy.

3803.3.1.1 Extraction room. The extraction equipment and processes utilizing hydrocarbon solvents shall be located in a room or area dedicated to extraction.

3803.3.2 Egress. When a marijuana extraction room is provided, at least one exit, swinging in the direction of egress travel shall be provided with an automatic door closing device and panic hardware.

3803.3.2.1 Facility egress. Egress requirements shall be in compliance with Chapter 10 of the International Building Code.

3803.3.3 Ventilation. Ventilation shall be provided in compliance with Chapter 4 of the International Mechanical Code.

3803.3.4 Control area. Control areas shall comply with Section 5003.8.3.

3803.3.5 Ignition source control. Extraction equipment and processes using flammable or combustible gas or liquid solvents shall be provided with ventilation rates for the room to maintain the concentration of flammable constituents in air below 25% of the lower flammability limit of the respective solvent. If not provided with the required ventilation rate, Class I Division II electrical requirements shall apply to the entire room.

3803.3.6 Interlocks. When a hazardous exhaust system is provided, all electrical components within the extraction room or area shall be interlocked with the hazardous exhaust system, and when provided, the gas detection system. When the hazardous exhaust system is not operational, then light switches and electrical outlets shall be disabled. Activation of the gas detection system shall disable all light switches and electrical outlets.

3803.3.7 Emergency power.

3803.3.7.1 Emergency power for extraction process. Where power is required for the operation of the extraction process, an automatic emergency power source in accordance with Section 5004.7 and 604 shall be provided. The emergency power source shall have sufficient capacity to allow safe shutdown of the extraction process plus an additional 2 hours of capacity beyond the shutdown process.

3803.3.7.2 Emergency power for other than extraction process. An automatic emergency power system in accordance with Section 604 shall be provided when any of the following items are installed:

1. Extraction room lighting;
2. Extraction room ventilation system;
3. Solvent gas detection system;

- 4. Emergency alarm systems;
- 5. Automatic fire extinguishing systems.

3803.3.8 Continuous gas detection system. For extraction processes utilizing gaseous hydrocarbon-based solvents, a continuous gas detection system shall be provided. The gas detection threshold shall not exceed 25% of the LEL/LFL limit of the materials.

3803.4 Carbon dioxide enrichment or extraction. Extraction processes using carbon dioxide shall comply with this section.

3803.4.1 Scope. Carbon dioxide systems with more than 100 pounds of carbon dioxide shall comply with Sections 3803.4 through 3803.4.3. This section is applicable to carbon dioxide systems utilizing compressed gas systems, liquefied-gas systems, dry ice, or on-site carbon dioxide generation.

3803.4.2 Permits. Permits shall be required as set forth in Sections 105.6 and 105.7.

3803.4.3 Signage. At the entrance to each area using or storing carbon dioxide, signage shall be posted indicating the hazard. Signs shall be durable and permanent in nature and not less than 7 inches wide by 10 inches tall. Signs shall bear the warning "DANGER! POTENTIAL OXYGEN DEFICIENT ATMOSPHERE." NFPA 704 signage shall be provided at the building main entry and the rooms where the carbon dioxide is used and stored.

3803.5 Flammable or combustible liquid. The use of a flammable or combustible liquid for the extraction of oils and fats from marijuana shall comply with this section.

3803.5.1 Scope. The use of flammable and combustible liquids for liquid extraction processes where the liquid is boiled, distilled, or evaporated shall comply with this section and NFPA 30.

3803.5.2 Location. The process using a flammable or combustible liquid shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors. Electrical equipment used within the hazardous exhaust fume hood shall be listed or approved for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited.

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 2016 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule opens a nonspot shrimp pot "clean up" fishery in Shrimp Management Area 2E with a lowered limit to harvest the relatively small amount of quota remaining. 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: June 15, 2016.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 220-52-05100Q Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 2E, 2W, 3 and 6 are open to the harvest of all non-spot shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) All waters of Shrimp Management Area 2E and Catch Areas 23A-E, 23A-W, 23A-C and the Discovery Bay Shrimp District are closed, with the following exception:

(A) Effective 6:00 a.m. June 21, 2016, through 2:00 p.m. June 24, 2016, all waters of Shrimp Management Area 2E are open to the harvest of all non-spot shrimp species.

(b) Effective 6:00 a.m. June 21, 2016, through 2:00 p.m. June 24, 2016, it is unlawful for the combined total harvest of non-spot shrimp by a fisher and/or the fisher's alternate operator to exceed 325 pounds from Shrimp Management Area 2E.

WSR 16-13-083

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-146—Filed June 15, 2016, 11:21 a.m., effective June 15, 2016, 11:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound shrimp.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100P; and amending WAC 220-52-051.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher and/or the fisher's alternate operator to exceed 800 pounds from Shrimp Management Area 2W.

(d) The shrimp catch accounting week is Wednesday through Tuesday.

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

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B is open.

(c) That portion of Catch Area 20B within SMA 1B is open effective 6:00 a.m. June 16, 2016, until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100P Puget Sound shrimp pot and beam trawl fishery—Season. (16-134)

WSR 16-13-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-145—Filed June 15, 2016, 11:23 a.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: Amend recreational fishing rules for the Columbia River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000S; and amending WAC 220-310-200.

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 preseason forecast for Okanogan sockeye salmon is only about forty thousand fish returning to the Columbia River mouth. This run abundance is insufficient to support sockeye harvest in the upper Columbia River and meet spawning escapement goals in the Canadian Okanogan basin. Achieving a successful sockeye spawn in 2016 is extremely important following the massive mortality and poor spawning escapement of upper Columbia sockeye caused by the drought and high water temperatures in 2015. These changes were proposed and discussed during the

North of Falcon salmon season rule setting public meeting and are interim until permanent rules take effect. 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: June 15, 2016.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000S Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, Effective July 1 through August 31, 2016, it is permissible to fish for salmon in waters of the Columbia River from Priest Rapids Dam to Chief Joseph Dam, Chelan River, Okanogan River, and Similkameen River. Daily limit of four salmon, of which no more than two may be adult hatchery Chinook. Release wild adult Chinook and sockeye.

REPEALER

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

WAC 220-310-20000S Exceptions to statewide rules—Columbia River.

WSR 16-13-093
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-147—Filed June 15, 2016, 3:57 p.m., effective June 15, 2016, 3:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Clarifies recreational salmon angling rules for the north jetty.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 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 clarify salmon angling rules for the north jetty during the summer fishery which begins June 16, 2016. A change to this rule is also needed to make the permanent rule enforceable. 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: June 15, 2016.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-19500A Closed areas—Saltwater salmon angling. Notwithstanding the provisions of WAC 220-56-195 and WAC 220-310-200, effective immediately until further notice, Columbia River Mouth Control Zone 1: Washington waters within Control Zone 1, which Control Zone is described as an area at the Columbia River mouth bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N/124°06'50" W) and the green lighted Buoy #7 (46°15'09" N/124°06'16" W); on the east by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N/124°03'07" W to its intersection with the north jetty; on the north by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N/124°05'20" W), and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south by a line running northeast/southwest between the red lighted Buoy #4 and the tip of the south jetty (46°14'03" N/124°04'05" W), and then along the south jetty to the point of intersection with the Buoy #10 line: Closed to salmon angling at all times, except open to fishing from the north jetty when adjacent waters north of the Control Zone are open to salmon angling, or when the Buoy 10 fishery is open below the Megler Astoria Bridge.

WSR 16-13-104 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-148—Filed June 17, 2016, 11:06 a.m., effective June 17, 2016, 11:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500J; and amending WAC 220-56-255.

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: There is sufficient quota remaining in Marine Areas 3 and 4 to open the recreational halibut fishery for another day. This rule conforms to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. 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: June 17, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-25500K Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Areas 3 and 4**

(a) Open June 23, 2016.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour, except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
 48°23.6'N. lat., 124°44.9'W. long.
 48°18.6'N. lat., 124°43.6'W. long.
 48°18.6'N. lat., 124°48.2'W. long.
 48°10.0'N. lat., 124°48.8'W. long.
 48°02.4'N. lat., 124°49.3'W. long.
 47°37.6'N. lat., 124°34.3'W. long.
 47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-56-230.

(2) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(3) All other permanent rules remain in effect.

(4) It is unlawful to land halibut in a port within an area closed to halibut fishing.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500J Halibut—Seasons—Daily and possession limits. (16-138)

WSR 16-13-114
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-144—Filed June 21, 2016, 10:31 a.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: Amend Columbia River recreational fishing rules for sturgeon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000R; and amending WAC 220-310-200.

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

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

Reasons for this Finding: This emergency rule is needed to allow sturgeon harvest because hatchery-origin white sturgeon residing in Wanapum and Priest Rapids reservoirs since the early 2000s are abundant and have grown to a harvestable size. Removal of these hatchery-origin fish is consistent with ongoing actions to rebuild depressed populations of wild-origin white sturgeon in Wanapum and Priest Rapids reservoirs. 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: June 21, 2016.

Joe Stohr
 for J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-20000R Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, effective July 1 through September 30, 2016, it is permissible to fish for and possess white sturgeon in waters of Priest Rapids Reservoir (from Priest Rapids Dam to Wanapum Dam) and Wanapum Reservoir (from Wanapum Dam to Rock Island Dam). The following rules apply:

(1) Daily limit of two sturgeon between 38 and 72 inches fork length may be harvested from Wanapum and Priest Rapids reservoirs only. No annual harvest limit of sturgeon between 38 and 72 inches fork length from Wanapum and Priest Rapids reservoirs only.

(2) Anglers are not required to record sturgeon harvested from Wanapum and Priest Rapids reservoirs on a Catch Record Card.

(3) Catch-and-release fishing is allowed in Wanapum and Priest Rapids reservoirs after the daily limit is harvested. Any sturgeon not to be harvested must be released immediately. Oversized sturgeon cannot be removed totally or in part from the water.

(4) Only one single-point barbless hook and bait is allowed while fishing for sturgeon. Night closure is in effect for sturgeon only.

(5) Anglers may fish with two poles with the purchase of a Two-Pole Endorsement license.

(6) In the field, anglers must retain eggs with intact carcass of fish from which they came.

REPEALER

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

WAC 220-310-20000R Freshwater exceptions to statewide rules—Columbia River.

WSR 16-13-117
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-149—Filed June 21, 2016, 10:49 a.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: Amend recreational fishing rules for the Chehalis River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000X; and amending WAC 220-310-180.

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

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

Reasons for this Finding: This emergency rule is necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: June 21, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000X Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective July 1 through July 31, 2016, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Chehalis River - Closed to salmon fishing from the mouth (Hwy 101 bridge in Aberdeen) to the South Elma Bridge (Wakefield Rd.).

REPEALER

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

WAC 220-310-18000X Freshwater exceptions to statewide rules—Coastal.

WSR 16-13-123
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed June 21, 2016, 11:18 a.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: This emergency rule is necessary to provide consistency between new requirements for minimum live load values for exterior balconies and decks, and new tables that detail specific requirements for deck ledger attachment, deck joist spans, deck beam spans and other related requirements. The current rule is not consistent with the requirements of the new tables: The proposed language will remove a sixty lbs/sq. ft. requirement and replace it with forty lbs/sq. ft. in Table R301.5. This modification will create safer conditions for deck construction.

Citation of Existing Rules Affected by this Order: Amending WAC 51-51-0301.

Statutory Authority for Adoption: Chapter 19.27 RCW.

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

Reasons for this Finding: The current code language creates a potential safety hazard. The lack of detail to support live load requirements for decks and balconies presents an emergency situation that could lead to deck failure; this would constitute a life/safety hazard. Adoption of the emergency rule would correct the values in the table, and would eliminate the potential life/safety hazard.

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

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

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

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

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

Date Adopted: June 10, 2016.

Steve K. Simpson
Chair

AMENDATORY SECTION (Amending WSR 16-03-025, filed 1/11/16, effective 7/1/16)

WAC 51-51-0301 Design criteria.

R301.2 Climatic and geographic design criteria. Buildings shall be constructed in accordance with the provisions of this code as limited by the provisions of this section. Additional criteria shall be established by the local jurisdiction and set forth in Table R301.2(1). The local jurisdiction shall designate the salt water coastal areas within their jurisdiction.

R301.2.2.3.1 Height limitations. Wood-framed buildings shall be limited to three stories above *grade plane* or the limits given in Table R602.10.3(3). Cold-formed, steel-framed buildings shall be limited to less than or equal to three stories above *grade plane* in accordance with AISI S230. *Mezzanines* that comply with Section R328 shall not be considered as stories. Structural insulated panel buildings shall be limited to two stories above *grade plane*.

R301.5 Live load. The minimum uniformly distributed live load shall be as provided in Table R301.5.

**TABLE R301.5
MINIMUM UNIFORMLY DISTRIBUTED LIVE LOADS
(in pounds per square foot)**

Use	Live Load
Uninhabitable attics without storage ^b	10
Uninhabitable attics with limited storage ^{b, g}	20
Habitable attics and attics served with fixed stairs	30
Balconies (exterior) and decks ^e	((60)) 40
Fire escapes	40
Guards and handrails ^d	200 ^h
Guard in-fill components ^f	50 ^h
Passenger vehicle garages ^a	50 ^a
Rooms other than sleeping rooms	40
Sleeping rooms	30
Stairs	40 ^c

(No change to footnotes)

WSR 16-13-150

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed June 22, 2016, 11:12 a.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: Recent legislation, 2ESHB 2778, requires the department of licensing (DOL) to determine clean alternative fuel vehicles' base model manufacturer's suggested retail price (MSRP) by rule. The MSRP as determined by DOL will be used in evaluating whether a clean alternative fuel vehicle meets the retail sales and use tax exemption criteria set by statute.

Statutory Authority for Adoption: RCW 82.08.809 and 82.12.809.

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: 2ESHB 2778, enacted by the 2016 legislature, requires that DOL adopt a rule to determine the lowest manufacturer's retail price for base model clean alternative fuel vehicles for purposes of retail and use tax exemption criteria set by statute. This bill goes into effect on July 1, 2016, which does not afford DOL enough time to complete the normal rule-making process. In order to meet the requirements of the bill, DOL is adopting this emergency rule that will go into effect on the effective date of the bill. A CR-101 preproposal statement of inquiry has been filed with the code reviser (WSR 16-01-188) and DOL intends to continue the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, 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: June 22, 2016.

Damon Monroe
Rules Coordinator

NEW SECTION

WAC 308-04-030 Retail sales and use tax exemption criteria for clean alternative fuel vehicles. For the purposes of RCW 82.08.809 and 82.12.809:

(1) The lowest manufacturer's retail price for a base model vehicle is the one provided by a vendor selected by the department;

(2) The department publishes and periodically updates a list of all vehicle models qualifying for the sales and use tax exemptions under those sections; and

(3) The list of qualifying vehicle models is available on the department's web site.

As used in this section, "base model" means the least expensive and least optioned model of a qualifying vehicle identified in RCW 82.08.809 (1)(a) and 82.12.809 (1)(a).