

## WSR 17-21-070

EMERGENCY RULES  
DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 16, 2017, 12:50 p.m., effective October 16, 2017, 12:50 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending and repealing existing sections and creating new sections in chapter 388-845 WAC as part of the developmental disabilities administration's (DDA) waiver renewal process. These emergency rules reflect the changes approved by the Centers for Medicare and Medicaid Services (CMS) in August 2017.

The purpose of this filing is to correct an error and to cancel and supersede the CR-103E filed under WSR 17-18-066. This CR-103E adds WAC 388-845-0603 and 388-845-2000 to the set of amended rules.

Citation of Rules Affected by this Order: New WAC 388-845-0515, 388-845-0520 and 388-845-0525; repealing WAC 388-845-1200, 388-845-1205, 388-845-1210, 388-845-1840, 388-845-1845 and 388-845-1850; and amending WAC 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0501, 388-845-0505, 388-845-0506, 388-845-0510, 388-845-0603, 388-845-0700, 388-845-0820, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1150, 388-845-1650, 388-845-1655, 388-845-1660, 388-845-1700, 388-845-1710, 388-845-1865, 388-845-1900, 388-845-2000, 388-845-2010, and 388-845-2170.

Statutory Authority for Adoption: 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: DDA must not authorize waiver services unless they are part of a waiver application approved by CMS. CMS has approved DDA's waiver applications. These emergency rules are necessary to provide the services approved by CMS and for DDA to receive federal funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.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 3, Amended 29, Repealed 6.

Date Adopted: October 12, 2017.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0110 What are ((there limitations)) the limits to the waiver services you ((can)) may receive? ((There are limitations)) The following limits apply to the waiver services((-Those are)) you may receive:**

(1) A service must be available in your waiver and address an unmet need identified in your person-centered service plan.

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

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

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

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

~~((6)) (5) Waiver services ((cannot)) must not replace or duplicate other available paid or unpaid supports or services. You must first ((pursue)) exhaust benefits available to you through private insurance, the medicaid state plan((-)) = including early and periodic screening, diagnosis, and treatment - or other resources.~~

~~((7)) (6) Waiver funding ((cannot)) must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0550.~~

(7) DDA does not authorize the use of waiver funding for:

(a) Restrictive technology;

(b) Location tracking services; or

(c) Audio or video technology to surveil the client.

(8) For IFS and basic plus waivers, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.

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

(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))~~ under 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.

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

(12) Waiver services ~~((do))~~ does not cover copays, deductibles, dues, membership fees, or subscriptions.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0210** ~~What ((is the scope of))~~ What ((is the scope of)) services ((for)) are available under the basic plus waiver? The following services are available under the basic plus waiver:

<del>((BASIC PLUS WAIVER))</del>	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Positive behavior support and consultation Community guide Environmental adaptations  Occupational therapy <u>Chemical extermination of bedbugs (cimex lectularius)</u> 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 <del>((6192))</del> <u>six thousand one hundred ninety-two dollars</u> per year on any combination of these services
	Wellness education  EMPLOYMENT SERVICES: Prevocational services Supported employment Individual technical assistance	Limits are determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015
	Community <del>((access))</del> <u>inclusion</u>	Limits are determined by DDA assessment

<del>((BASIC PLUS WAIVER))</del>	SERVICES	YEARLY LIMIT
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Positive 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
	<del>((Sexual deviancy evaluation))</del> <u>Risk assessment</u>	Limits are determined by DDA
	Emergency assistance is only for basic plus waiver aggregate services	<del>((6000))</del> <u>Six thousand dollars</u> per year; preauthorization required

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0215** ~~What ((is the scope of))~~ What ((is the scope of)) services ((for)) are available under the core waiver? The following services are available under the core waiver:

<del>((CORE WAIVER))</del>	SERVICES	YEARLY LIMIT
	Positive behavior support and consultation Community guide Community transition Environmental adaptations Occupational therapy <u>Chemical extermination of bedbugs (cimex lectularius)</u> Physical therapy <del>((Sexual deviancy evaluation))</del> <u>Risk assessment</u> Skilled nursing Specialized medical equipment/supplies	Determined by the person-centered service <del>((plan/individual support))</del> plan, not to exceed the average cost of an ICF/IID for any combination of services

((CORE-WAIVER))	SERVICES	YEARLY LIMIT
	Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Wellness education	
	Residential habilitation	
	Community ((access)) <u>inclusion</u>  Employment services  Prevocational services Supported employment Individualized technical assistance	Limits are determined by DDA assessment  Limits are determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015
	BEHAVIORAL HEALTH STABILIZATION SERVICES: <u>Positive behavior support and consultation</u> Behavioral health crisis diversion bed services Specialized psychiatric services	Limits determined by a behavioral health professional or DDA
	Respite care	Limits are determined by the DDA assessment

((COMMUNITY-PROTECTION-WAIVER))	SERVICES	YEARLY LIMIT
	<u>Positive behavior support and consultation</u> Community transition Environmental adaptations Occupational therapy <u>Chemical extermination of bedbugs (cimex lectolarius)</u> Physical therapy ((Sexual deviancy evaluation)) <u>Risk assessment</u> Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the person-centered service ((plan/individual support)) plan, not to exceed the average cost of an ICF/IID for any combination of services
	Residential habilitation	
	Employment Services:  Prevocational services Supported employment Individual technical assistance	Limits determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015
	BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavioral support and consultation Behavioral health crisis diversion bed services	Limits determined by a behavioral health professional or DDA

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0220** What is the scope of services for the community protection waiver? The following services are available under the community protection waiver:

<del>((COMMUNITY-PROTECTION-WAIVER))</del>	SERVICES	YEARLY LIMIT
	Specialized psychiatric services	

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

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

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

<del>((CIIBS-Waiver))</del>	Services	Yearly Limit
	<ul style="list-style-type: none"> <li><del>((</del>•) <u>Positive behavior support and consultation</u></li> <li><del>((</del>•) Staff/family consultation and training</li> <li><del>((</del>•) Environmental adaptations</li> <li><del>((</del>•) <u>Occupational therapy</u></li> <li><del>•</del> Physical therapy</li> <li><del>•</del> <u>Sexual deviancy evaluation</u>) <u>Risk assessment</u></li> <li><del>((</del>•) Nurse delegation</li> <li><del>((</del>•) Specialized medical equipment/supplies</li> <li><del>((</del>•) <u>Specialized psychiatric services</u></li> <li><del>•</del> <u>Speech, hearing and language services</u></li> <li><del>•</del>) Transportation</li> <li><del>((</del>•) Assistive technology</li> <li><del>((</del>•) Therapeutic equipment and supplies</li> <li><del>((</del>•) Specialized <del>((nutrition and))</del> clothing</li> <li><del>((</del>•) Vehicle modifications</li> </ul>	<p>Determined by the person-centered service <del>((plan/individual support))</del> plan. Total cost of waiver services <del>((cannot))</del> <u>must not exceed the average cost of (((\$4,000)) four thousand dollars</u> per month per participant.</p>

<del>((CIIBS-Waiver))</del>	Services	Yearly Limit
	Respite care	Limits determined by the DDA assessment. Costs are included in the total average cost of <del>(((\$4000))</del> <u>four thousand dollars</u> per month per participant for all waiver services.
	Behavioral health stabilization services: <del>((Behavioral))</del> <u>Positive behavior support and consultation</u> Crisis diversion bed services <del>((Specialized psychiatric services))</del>	Limits determined by behavioral health specialist

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

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

((IFS Waiver))	Services	Yearly Limit
	((*) Assistive technology ((*) <u>Positive behavior support and consultation</u> ((*) Community engagement ((*) Staff/family consultation and training ((*) Environmental adaptations ((*) Occupational therapy ((*) Physical therapy (( <del>Sexual deviancy evaluation (paid for outside of annual allocation)</del> ) (* Nurse delegation (*) Peer mentoring ((*) Person-centered plan facilitation ((*) Respite care <u>Skilled nursing</u> ((*) Specialized clothing ((*) Specialized medical equipment/supplies (( <del>Specialized nutrition</del> ) ((*) Specialized psychiatric services ((*) Speech, hearing and language services ((*) Supported parenting services ((*) Transportation ((*) Therapeutic equipment and supplies ((*) Vehicle modifications ((*) Wellness education	Total cost of waiver services <del>((cannot))</del> <u>must not exceed</u> annual allocation determined by the person-centered service <del>((plan/ISP))</del> <u>plan</u> .

((IFS Waiver))	Services	Yearly Limit
	<u>Risk assessment</u>	<u>Limits determined by DDA</u>
	((*) Behavioral health stabilization services: (( <del>Behavioral</del> ) <u>Positive behavior support and consultation</u> ((*) Specialized psychiatric services	Limits determined by behavioral health specialist.

(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 and annual allocation based on your assessed need. Annual allocations are as follows:

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

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0425 Are there limits to the assistive technology you ~~((can))~~ may receive? The assistive technology you may receive has the following limits:**

(1) Clinical and support needs for assistive technology are identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) 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.

(3) The department does not pay for experimental technology as defined in WAC 182-531-0550.

(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 assistive technology; and
- (b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.

(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 (4) of this section.

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

(8) Assistive technology excludes any item that is for recreational or diversion purposes such as a television, cable, or DVD player.

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

**WAC 388-845-0500 What is positive behavior support and consultation?** (1) Positive behavior support and consultation may be provided to persons on any of the DDA HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

(a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, and development and implementation of a positive behavior support plan).

(2) Positive behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

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

**WAC 388-845-0501 What is included in positive behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?** (1) In addition to the definition in WAC 388-845-0500, positive behavior support and consultation in the CIIBS waiver must include the following characteristics:

(a) Treatment must be evidence based, driven by individual outcome data, and consistent with DDA's positive behavior support guidelines as outlined in contract;

(b) The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:

(i) Functional behavioral assessment; and

(ii) Positive behavior support plan based on functional behavioral assessment~~(-)~~;

(c) Treatment goals must be objective and measurable. The goals must relate to an increase in skill development and a resulting decrease in challenging behaviors that impede quality of life for the child and family; and

(d) Behavioral support strategies will be individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons.

(2) Positive behavior support and consultation in the CIIBS waiver may also include the following components:

(a) Behavioral technicians (as defined in WAC 388-845-0506) may implement positive behavior support plans which may include 1:1 behavior interventions and skill development activity.

(b) Positive behavior support plans may include recommendations by either a music ~~(and/or)~~ or recreation therapist, or both, as defined in WAC 388-845-2005.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0505 Who is a qualified provider of positive behavior support and consultation?** Under the basic plus, core, ~~((CP))~~ community protection (CP), and IFS waivers, the provider of positive 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) Counselor~~((s))~~ registered or certified ~~((in accordance with the requirements of))~~ under chapter 18.19 RCW;
- (11) Polygrapher; or
- (12) State-operated positive 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 388-845-0506 Who is a qualified provider of positive behavior support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?** ~~((+))~~ Under the CIIBS waiver, providers of positive behavior support and consultation must be contracted with DDA to provide CIIBS intensive services as one of the following ~~((two provider types))~~:

~~((a))~~ (1) Master's or PhD-level behavior specialist, licensed, certified, or ~~((certified/))~~ registered to provide behavioral assessment, intervention, and training; or

~~((b))~~ (2) Behavior technician, licensed, certified, or ~~((certified/))~~ registered to provide behavioral intervention and training, following the lead of the behavior specialist.

~~((2))~~ Providers of behavior support and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.)

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0510 Are there limits to the positive behavior support and consultation you ~~((can))~~ may receive?** (1) Clinical and support needs for positive behavior support and consultation are identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

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

(3) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the ~~((IFS))~~ individual and family services (IFS) waiver limit the amount of service unless provided as a behavioral health stabilization service.

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

(5) Positive behavior support and consultation not provided as a behavioral health stabilization service requires prior approval by the DDA regional administrator or designee for the following waivers:

(a) Basic plus;

(b) Core;

(c) Children's intensive in-home behavior support (CIIBS); and

(d) IFS.

(6) Positive behavior support and consultation services are limited to services:

(a) Consistent with waiver objectives of avoiding institutionalization; and

(b) Not otherwise covered under the medicaid state plan, including early and periodic screening, diagnosis, and treatment.

#### NEW SECTION

**WAC 388-845-0515 What is chemical extermination of bedbugs?** (1) Chemical extermination of cimex lectularius (bedbugs) is professional chemical extermination of bedbugs.

(2) DDA covers professional chemical extermination of bedbugs in your primary residence if you:

(a) Receive residential habilitation services; or

(b) Live in a private house or apartment for which you are financially responsible.

#### NEW SECTION

**WAC 388-845-0520 Who are qualified providers of chemical extermination of bedbugs?** A qualified chemical extermination provider must be:

(1) Licensed as a chemical pesticide applicator by the Washington state department of agriculture; and

(2) Contracted with DDA to provide chemical extermination of bedbugs.

#### NEW SECTION

**WAC 388-845-0525 Are there limits to the chemical extermination of bedbugs services I may receive?** (1) Chemical extermination services covers only:

(a) The assessment or inspection by the qualified provider;

(b) Application of chemical-based pesticide; and

(c) One follow-up visit.

(2) Chemical extermination of bedbugs is limited to two treatments per plan year.

(3) Chemical extermination of bedbugs excludes:

(a) Lodging during the chemical extermination process; and

(b) Preparatory housework associated with the extermination process.

(4) DDA does not cover chemical extermination of bedbugs for a client who lives with their family.

(5) DDA requires prior approval by the regional administrator or designee for chemical extermination of bedbugs.

AMENDATORY SECTION (Amending WSR 17-12-002, filed 5/24/17, effective 6/24/17)

**WAC 388-845-0603 Who is eligible to receive community ~~((access))~~ inclusion services?** You are eligible for community ~~((access))~~ inclusion services if you are enrolled in the basic plus or core waivers and:

(1) You are sixty-two or older; or

(2) You meet age requirements under WAC 388-845-2110(1) and~~((;))~~;

(a) You have participated in the developmental disabilities ~~((administration (DDA's)))~~ administration's (DDA) supported employment services for nine consecutive months; or

(b) DDA has determined that you are exempt from the nine-month DDA supported employment service requirement because:

(i) Your medical or behavioral health records document a condition that prevents you from completing nine consecutive months of DDA supported employment services; or

(ii) You were referred to and were available for DDA supported employment services, but the service was not delivered within ninety days of the referral.

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

**WAC 388-845-0700 What ~~((is a))~~ are community guide services?** Community guide services ~~((increases))~~ increase access to informal community supports. Community guide services are short-term ~~((and))~~ services designed to develop creative, flexible, and supportive community resources for individuals with developmental disabilities to meet a goal identified in the waiver participant's person-centered service plan. ~~((This service is))~~ These services are available in basic plus and core waivers.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0820 Are there limits to your use of emergency assistance?** All of the following ~~((limitations))~~ limits 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))~~ must not exceed six thousand dollars per twelve months based on the effective date of your current person-centered service ~~((plan/individual support))~~ plan;

(3) Emergency assistance services are limited to the following basic plus waiver aggregate services~~((; and))~~;

(a) Positive behavior support and consultation;

(b) Community guide;

(c) Environmental adaptations;

(d) Occupational therapy;

- (e) Physical therapy;
- (f) Specialized medical equipment and supplies;
- (g) Specialized psychiatric services;
- (h) Speech hearing and language services;
- (i) Skilled nursing;
- (j) Staff and family consultation and training, which excludes individual and family counseling; and
- (k) Transportation;

(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 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0910 What ~~((limitations))~~ limits apply to environmental adaptations?** The following service ~~((limitations))~~ limits apply to environmental 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 adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaption that costs:

(a) One ~~((bid is required for adaptations costing one))~~ thousand five hundred dollars or less ~~((Two bids are required for adaptations costing))~~, one bid is required;

(b) More than one thousand five hundred dollars and equal to or less than five thousand dollars ~~((Three bids are required for adaptations costing))~~, two bids are required; or

(c) More than five thousand dollars, three bids are required.

(3) All bids must include:

- (a) The cost of all required permits and sales tax; and
- (b) An itemized and clearly outlined scope of work.

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

(4) Environmental adaptations ~~((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, or central air conditioning.

(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))~~ The 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.

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

(10) The dollar 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.

(11) For core, community protection, and CIIBS waivers, annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

(12) 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))~~ function;

(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; ~~((and))~~

(d) Repairs to personal property such as furniture ~~((s))~~ and appliances ~~((, and normal wear and tear))~~ are excluded; and

(e) Repairs due to normal wear and tear are excluded.

~~((12))~~ (13) The following adaptations are not ~~((included in this service))~~ covered as an environmental adaptation:

(a) Building fences and fence repairs; ~~((and))~~

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, or ceiling fans; and

(d) Roof repair or siding.

**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 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1000 What are extended state plan services?** (1) Extended state plan services ~~((refer to))~~ means physical therapy ~~((s))~~, occupational therapy ~~((s))~~, and speech, hearing, and language services not available to you under the medicaid ~~((without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the))~~ state ~~((medicaid))~~ plan. ~~((These services are available under all DDA HCBS waivers))~~

(2) Extended state plan services are available to clients age twenty-one and older under the following waiver programs:

(a) Basic plus;

(b) Core;

(c) Individual and family services; and

(d) Community protection;



(3) Extended state plan services are available to a client if the therapy:

(a) Addresses a remedial need and allows the client to remain in the home; or

(b) Is medically necessary and all state plan services have been exhausted.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1015 Are there limits to the extended state plan services you ~~((can))~~ may receive?** (1) ~~((Clinical and support needs for))~~ Extended state plan services are limited to ~~((those))~~ therapies identified in your 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.~~

~~((3))~~ (3) The department does not pay for treatment determined by DSHS to be experimental as described in WAC 182-531-0550.

~~((4))~~ (4) The department determines the need for and amount of service you ~~((can))~~ may receive ~~((=)).~~

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

(b) The department will require evidence that you have ~~((accessed))~~ exhausted your full benefits through the medicaid state plan, your private health insurance, or other resources before authorizing this waiver service.

~~((5))~~ (5) The dollar amount for basic plus waiver aggregate services limit the amount of service you may receive.

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

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**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) Positive behavior support and consultation;

(2) Specialized psychiatric services for people age twenty-one and older; 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 388-845-1650 What are ~~((sexual deviancy evaluations))~~ is a risk assessment?** (1) ~~((Sexual deviancy evaluations))~~ A risk assessment:

(a) ~~((Are))~~ Is a professional evaluation ~~((s))~~ that ~~((assess the))~~ assesses a person's needs and the person's level of risk of ~~((sexual offending or sexual recidivism))~~ sexual predatory behavior or aggression;

(b) Determines the need for psychological, medical, or therapeutic services; and

(c) Provides treatment recommendations to mitigate any assessed risk.

(2) ~~((Sexual deviancy evaluations are))~~ A risk assessment is available in all DDA HCBS waivers.

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

**WAC 388-845-1655 Who is a qualified provider of ~~((sexual deviancy evaluations))~~ a risk assessment?** The provider of ~~((sexual deviancy evaluations))~~ a risk assessment must:

(1) Be a ~~((certified sexual offender treatment provider (SOTP); and))~~ licensed psychologist under chapter 246-924 WAC; or

(2) ~~((Meet the standards contained in))~~ Be a certified sexual offender treatment provider (SOTP) and meet requirements under WAC 246-930-030 ~~((education required prior to certification))~~ and WAC 246-930-040 ~~((professional experience required prior to examination))~~ if the provider is performing a risk assessment.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1660 Are there ~~((limitations))~~ limits to the ~~((sexual deviancy evaluations))~~ risk assessment you ~~((can))~~ may receive?** (1) Clinical and support needs for ~~((sexual deviancy evaluations))~~ a risk assessment are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan. ~~((Sexual deviancy evaluations))~~ A risk assessment must meet the standards ~~((contained))~~ in WAC 246-930-320.

(2) ~~((Sexual deviancy evaluations require))~~ A risk assessment requires prior approval by the DDA regional administrator or designee.

(3) The ~~((costs))~~ cost of ~~((sexual deviancy evaluations do))~~ a risk assessment does not count toward the dollar limits for aggregate services in the basic plus waiver ~~((s))~~ or the annual allocation in the IFS waiver.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1700 What is waiver skilled nursing?** (1) Waiver skilled nursing ~~((is continuous))~~ means long-term, intermittent, ~~((or part time))~~ and hourly skilled nursing services ~~((These services are));~~

(a) Available in the basic plus, core, IFS, and ~~((CP))~~ community protection (CP) waivers; and

(b) That address nursing care tasks not available to you under the medicaid state plan - including early and periodic screening, diagnosis, and treatment.

(2) Waiver skilled nursing services include nurse delegation services ~~((per))~~ provided by a registered nurse under

WAC 388-845-1170(~~(, provided by a registered nurse, including the initial visit, follow-up instruction, and supervisory visits)).~~

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1710 Are there ~~((limitations))~~ limits to the skilled nursing services you ~~((can))~~ may receive?** The following ~~((limitations))~~ limits apply to your receipt of skilled nursing services:

(1) Clinical and support needs for skilled nursing services are limited to those identified in your 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.

(3) ~~((DDA and the treating professional determine the need for and amount of service))~~ Skilled nursing hours must not exceed the number of hours determined by the nursing care consultant skilled nursing assessment.

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

(5) The dollar 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.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

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

(a) Clinical and support needs for specialized clothing are limited to those identified in your 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 the IFS waiver, the dollar amount for your annual allocation limits the amount of service you may receive.

(3) You must receive prior approval from the DDA regional administrator or designee to receive specialized clothing.

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

**WAC 388-845-1900 What are specialized psychiatric services?** (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing behavioral health symptoms. These services are available ~~((in all DDA HCBS waivers))~~ to people age twenty-one and older.

(2) ~~((Service))~~ Specialized psychiatric services may be any of the following:

- (a) Psychiatric evaluation~~((;))~~;
- (b) Medication evaluation and monitoring~~((;))~~;
- (c) Psychiatric consultation.

(3) These services are also available as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**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 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 basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-2010 Are there ~~((limitations))~~ limits to the ~~((staff/family))~~ staff and family consultation and training you ~~((can))~~ may receive?** (1) Clinical and support needs for ~~((staff/family))~~ staff and family consultation and training are limited to those identified in your 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))~~ staff and family consultation and training.

(3) 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))~~ staff and family consultation and training you may receive.

(4) Basic plus waiver individual and family counseling is limited to family members who:

- (a) Live with the waiver participant; and
- (b) Have been assaulted by the waiver participant and the assaultive behavior was:
  - (i) Documented in the person-centered service plan; and
  - (ii) Addressed in the waiver participant's positive behavior support plan or therapeutic plan.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-2170** Are there ((limitations on)) **limits to your receipt of therapeutic equipment and supplies?** The following ((limitations)) **limits** 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.
- (7) Therapeutic equipment and supplies excludes non-specialized recreational items such as trampolines, swing sets, or hot tubs.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                  |   |
|------------------|---|
| WAC 388-845-1200 | What are "person-to-person" services?                           |
| WAC 388-845-1205 | Who are qualified providers of person-to-person services?       |
| WAC 388-845-1210 | Are there limits to the person-to-person service I can receive? |
| WAC 388-845-1840 | What is specialized nutrition?                                  |
| WAC 388-845-1845 | Who are qualified providers of specialized nutrition?           |
| WAC 388-845-1850 | Are there limitations to your receipt of specialized nutrition? |

**WSR 17-22-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Children's Administration)

[Filed October 18, 2017, 12:14 p.m., effective October 19, 2017]

Effective Date of Rule: October 19, 2017.

Purpose: The department is amending licensing regulations in WAC 388-148-1320 and creating WAC 388-148-1321 due to new legislative requirements from the 2017 session. The WAC changed or created due to the 2017 legislation are required to go into effect on October 19, 2017. Therefore, these WAC must be filed as emergency WAC.

The changes to WAC 388-148-1320 will now require fingerprint-based background checks for all persons residing in a home that will provide foster care for dependent youth who are sixteen years old and older.

The new legislation also requires the division of licensed resources (DLR) to issue provisional expedited licenses for individuals that were previously licensed within the last five years when they meet the specific criteria outlined in the law. In order to meet this requirement, the department created new WAC 388-148-1321, that describes the criteria and process to obtain a provisional expedited license.

WAC 388-145-1325 is being amended to align DLR WAC with legislation that went into effect on January 1, 2016. The legislation requires all group care agency employees to complete a fingerprint-based background check if the agency takes placement of developmental disabilities administration (DDA) children. As any DLR-licensed agency could potentially take placement of a DDA child, the decision was made to fingerprint all group care agency employees. This change will now align DLR WAC with the legislation and DLR's practice since January 1, 2016.

WAC 388-145-1805 is also being amended based on recommendations from the children's administration regional medical consultants. The revised WAC will clarify that neither formula nor breastmilk can be warmed in a microwave oven. These changes are made to ensure child safety; therefore, they meet the criteria for emergency WAC and are included in this emergency WAC filing.

There will be no other content or language changes to the WAC that are part of this emergency rule change.

Citation of Rules Affected by this Order: New WAC 388-148-1321; and amending WAC 388-145-1325, 388-145-1805, and 388-148-1320.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, and section 4, chapter 20, Laws of 2017, which will create a new section in chapter 74.15 RCW.

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

Reasons for this Finding: These changes are being filed as an emergency WAC to meet the legislative deadline of October 19, 2017.

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 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

Date Adopted: October 12, 2017.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-06-041, filed 2/24/16, effective 3/26/16)

**WAC 388-145-1325 What is required to apply for a group care facility license?** (1) You, the person responsible for the license, must submit a completed application which is available from the division of licensed resources, children's administration.

(2) You must submit ~~((the following))~~ a completed background authorization form for your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06A WAC~~((;))~~.

~~((a) Completed background authorization form; and))~~ (3) You must ensure that an agency employee who may have unsupervised access to children complete a FBI fingerprint check.

~~((b))~~ (4) You must ensure that agency volunteers or interns that have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check ((if the individual over eighteen years of age has lived out of state during any portion of the previous three years)).

~~((c))~~ (5) You must ensure that no employee, volunteer or subcontractor has unsupervised access to children until ((a full and satisfactory)) you are notified by children's administration that a background check ((is)) was completed ((and returned to you, qualifying the individual for)) that qualifies the individual to have unsupervised access. If ((your employee requires FBI fingerprints, they are allowed to work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540)) you have both a license issued by DLR and a contract with the department you must adhere to the most stringent background check requirement.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1805 Are there special requirements for serving milk?** (1) The milk or milk products you serve must be pasteurized and follow these recommended guidelines:

(a) Children under the age of twelve months must receive formula or breast milk unless written authorization from the child's ~~((physician))~~ licensed health care provider requires a different liquid intake; and

(b) Children between the age of twelve and twenty-four months must receive whole milk unless you have written authorization from a ~~((physician))~~ licensed health care provider not to serve whole milk.

(2) Before serving a child breast milk you must have approval of the child's DSHS worker, ~~((physician))~~ licensed health care provider, parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(3) When you are using bottles to feed infants you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within twenty-four hours. If more than one child is bottle-fed, the child's name and date the bottle is prepared must be on each bottle.

(4) You must hold infants, under the age of six months, for all bottle feedings. Infants who are six months of age or over who are developmentally able may hold their own bottles as long as an adult remains in the room and within sight. You must take bottles from the child when the child finishes feeding, when the bottle is empty, or when the child falls asleep. You must not prop bottles when feeding infants.

(5) To prevent burns, formula or breast milk must not be warmed in a microwave oven ~~((in the bottle that will be used for feeding the infant))~~.

AMENDATORY SECTION (Amending WSR 16-01-121, filed 12/18/15, effective 1/18/16)

**WAC 388-148-1320 When will the department grant me a foster family license?** (1) We issue you a license when you and everyone in your household meet the licensing requirements contained in this chapter, and all required documents are in the licensing file.

(2) You and other caregivers over the age of eighteen must:

(a) Complete first aid training and age-appropriate adult and/or infant CPR (cardiopulmonary resuscitation). Training must be department approved and accredited with nationally recognized standards; and

(b) Complete HIV/AIDS and bloodborne pathogens training including infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) You, your household members and anyone else having unsupervised contact with your foster child(ren) must pass the following background check requirements per chapter 388-06A WAC (This includes people living on any part of your property):

(a) ~~((Anyone over the age of sixteen must pass a criminal history check.~~

~~(b))~~ Anyone ~~((over the age of eighteen))~~ sixteen years old or older must pass an FBI fingerprint check.

(b) Anyone younger than sixteen years old must pass a background check where the department determines it is warranted to ensure the safety of a child in foster care; and

(c) Anyone ~~((over the age of))~~ eighteen years old or older must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or have had a negative TB test in the previous twelve months. If there is a positive TB test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(5) You must have proof of current immunizations for any children living on your premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exception to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA and ARNP).

(6) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home. The department may license you to serve children under the age of two even though you or someone in your home is unable to obtain an influenza vaccination for medical reasons. In this case, a licensed health care provider's statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that there is no other form of the influenza vaccine that would not cause severe medical consequences. All other persons in the home must still be vaccinated.

(7) Before granting or renewing a license, your licensor will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licensor will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check or TB test.

#### NEW SECTION

**WAC 388-148-1321 May I request a provisional expedited foster family license?** (1) You may request a provisional expedited foster family license if you meet all of the following requirements:

(a) You have been licensed to provide foster care within the previous five years;

(b) You have not had your foster care license closed due to a denial, revocation, or an agreement to relinquish;

(c) You reside in the same home in which you previously held a foster care license and no additional individuals have moved into your home;

(d) You are applying for an expedited license that will be supervised by the same agency that previously licensed or certified you and the agency agrees to supervise your home; and

(e) You and all household members age sixteen years old and older have passed a fingerprint-based background check for this provisional expedited foster family license.

(2) To initiate a provisional expedited license, you must submit a completed expedited license application and completed background check authorization forms for all household members who are sixteen years old and older to DLR or a licensed child-placing agency.

(3) In order for your full license to be processed you must submit your licensing application packet within fourteen days. Application packets are available from DLR and licensed child-placing agencies.

(4) You will be issued a provisional expedited foster family license if you have submitted the policy agreements and all of the required household members in your home have passed the required background check. The provisional expedited foster family license will be issued for ninety days and will close after ninety days.

(5) Your licensing or certifying agency will continue to work with you and make every effort to ensure that individuals qualified for and seeking a provisional expedited foster family license may become fully foster care licensed within forty days of the department's receipt of a complete application for a provisional expedited foster family license.

(6) You do not have the right to appeal the department's decision that you do not meet the criteria for a provisional expedited foster family license.

#### **WSR 17-22-002 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 17-284—Filed October 18, 2017, 12:34 p.m., effective October 21, 2017]

Effective Date of Rule: October 21, 2017.

Purpose: Amend recreational fishing rules for North Fork Toutle and Green rivers (Cowlitz County).

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000J; and amending WAC 220-312-030.

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

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

Reasons for this Finding: The returns of Chinook and coho salmon to the North Toutle Hatchery this year have been well below the forecasts. Washington department of fish and wildlife projects that with the current salmon fishing regulations on the North Fork Toutle and Green rivers, not enough coho or Chinook will reach the hatchery to meet egg take goals. Closing the salmon fishing season in these two rivers will increase the number of hatchery fish available for broodstock and help ensure future hatchery returns.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 18, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-03000K Freshwater exceptions to statewide rules—Southwest.** Notwithstanding the provisions of WAC 220-312-030, effective October 21, 2017, until further notice, salmon fishing is closed in waters of the North Fork Toutle River and the Green River (Cowlitz Co.).

#### REPEALER

The following section of the Washington Administrative Code is repealed effective October 21, 2017:

WAC 220-312-03000J Freshwater exceptions to statewide rules—Southwest. (17-273)

#### **WSR 17-22-003**

#### **EMERGENCY RULES**

#### **SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed October 18, 2017, 1:07 p.m., effective October 18, 2017, 1:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: SSB 5605 (2017) made several changes to state laws governing the office of superintendent of public instruction's (OSPI) authority to perform criminal background checks for individuals who work in schools. Those changes become effective on October 19, 2017. The purpose of this emergency rule is to align OSPI's rules for accessing finger-

print criminal background records to the new statutory requirements.

Citation of Rules Affected by this Order: New WAC 392-300-022 and 392-300-024; and amending WAC 392-300-001, 392-300-005, 392-300-010, 392-300-015, 392-300-020, 392-300-025, 392-300-030, 392-300-035, 392-300-040, 392-300-045, 392-300-050, 392-300-055, 392-300-060, and 392-300-070.

Statutory Authority for Adoption: RCW 28A.400.305.

Other Authority: SSB 5605 (2017).

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: Section 1 of SSB 5605 amended RCW 28A.400.303 (record checks for employees) and gave school districts and other educational agencies the authority to fingerprint any prospective volunteer who will have regularly scheduled unsupervised access to children under eighteen years of age or developmentally disabled, during the course of his or her involvement with the school or organization under certain circumstances. Section 1 also described OSPI's authority to impose fees for background checks. Immediate adoption of these rule amendments is necessary for OSPI to provide criminal background checks to school districts when SSB 5605 becomes effective, so as to preserve the safety and welfare of children and developmentally disabled adults in schools.

A preproposal statement of inquiry related to permanently revising these rules was filed on October 18, 2017.

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 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 13, Repealed 0.

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

Date Adopted: October 18, 2017.

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 96-17-045, filed 8/19/96, effective 9/19/96)

**WAC 392-300-010 Definition—Record check database.** As used in this chapter, "record check database" means the electronic database or printed copy equivalent maintained

by the superintendent of public instruction or designee that contains:

(1) The names and other identifiable information of individuals checked under RCW 28A.195.080, 28A.400.303 and 28A.410.090; and

(2) Whether there is any record of arrest and prosecution for the individual.

**AMENDATORY SECTION** (Amending WSR 07-19-012, filed 9/7/07, effective 10/8/07)

**WAC 392-300-015 Definition—District employee.** As used in this chapter, "district employee" shall mean any individual currently employed by or being considered for employment by a school district, a school district contractor, ~~((the state school for the deaf))~~ the Washington state center for childhood deafness and hearing loss, the state school for the blind, an educational service district, educational service district contractor, charter school established under chapter 28A.710 RCW, school that is subject of a state tribal education compact under chapter 28A.715 RCW, or a Bureau of Indian Affairs funded school.

**NEW SECTION**

**WAC 392-300-022 Definition—Volunteer.** As used in this chapter, "volunteer" means an individual not employed by a school district, educational service district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, charter schools established under chapter 28A.710 RCW, school that is subject of state tribal education compact under chapter 28A.715 RCW, Bureau of Indian Affairs funded school, approved private schools, and their contractors who will have regularly scheduled unsupervised access to children under eighteen years of age or developmentally disabled persons, during the course of his or her involvement with the school or organization under circumstances where access will or may involve the following:

(1) Groups of five or fewer children under twelve years of age;

(2) Groups of three or fewer children between twelve and eighteen years of age; or

(3) Developmentally disabled persons.

**NEW SECTION**

**WAC 392-300-024 Fees for record checks.** The cost of record checks must include: The fee established by the Washington state patrol and the Federal Bureau of Investigation for the criminal history background checks; a fee paid to the superintendent of public instruction for the cost of processing the criminal history background checks.

**AMENDATORY SECTION** (Amending WSR 10-17-059, filed 8/12/10, effective 9/12/10)

**WAC 392-300-025 Access to record check information by district employee ~~((and))~~, applicant, or volunteer.** All district employees ~~((and))~~, applicants, and volunteers shall have access to record check information about them maintained by the superintendent of public instruction or des-

ignee. Any additional information collected by the superintendent of public instruction or designee as a result of the investigation of any data shall be available for inspection and copying by the district employee ~~((or))~~, applicant, or volunteer to whom it pertains during normal office hours in the office where the information is located. ~~((Information that is gathered as part of an ongoing investigation, shall not be released to the district employee or applicant until the investigation is completed.))~~

**AMENDATORY SECTION** (Amending WSR 10-17-059, filed 8/12/10, effective 9/12/10)

**WAC 392-300-035 Requests for record check information.** In accordance with the requirements of RCW 42.56.100 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, record check information is obtainable by district employees ~~((or))~~, applicants, or volunteers to whom it pertains when they comply with the following procedures:

The request shall be made in writing. The district employee ~~((or))~~, applicant, or volunteer shall complete, sign and return the request for Background Check Results form located at <http://www.k12.wa.us/profpractices/fingerprint>. The written request shall be presented to the fingerprint ~~((records office))~~ background check unit of the superintendent of public instruction during customary office hours or may be mailed or faxed to the office. The request shall include the following information:

(1) The name of the person requesting the record;

(2) The ~~((time of day and the))~~ calendar date on which the request was made;

(3) The nature of the request;

(4) Height, weight and date of birth of individual fingerprinted; and

(5) Social Security number of individual fingerprinted (optional).

**AMENDATORY SECTION** (Amending WSR 96-17-045, filed 8/19/96, effective 9/19/96)

**WAC 392-300-045 Protection of record check information.** Members of the public and agency personnel not processing record check information shall not be permitted access to any criminal record information.

(1) Record check information and a facility for their inspection will be provided by the fingerprint ~~((records office))~~ background check unit. Such records shall not be removed from the place designated. Records may be copied pursuant to the provisions of WAC 392-300-040.

(2) All record check information shall be maintained in a secure and private environment in order to protect the confidentiality of all district employees ~~((or))~~, applicants, and volunteers.

(3) All employees of the superintendent of public instruction who have access to criminal record information shall undergo record checks by the Washington state patrol and the Federal Bureau of Investigation.

AMENDATORY SECTION (Amending WSR 10-22-054, filed 10/28/10, effective 11/28/10)

**WAC 392-300-050 Access to record check database.**

School districts, ~~((the state school for the deaf))~~ the Washington state center for childhood deafness and hearing loss, the state school for the blind, educational service districts, state tribal education compact schools, Bureau of Indian Affairs funded schools, approved charter schools, authorized employees of approved private schools, colleges and universities shall establish written policies or procedures to determine which employees are authorized to access the database. Access to the superintendent of public instruction's record check database shall be limited to:

(1) Employees of the superintendent of public instruction processing record check information including employees within the fingerprint ~~((records section))~~ background check unit, the office of professional practices, the legal services section, the certification section or their equivalents in case of future agency reorganization.

(2) Authorized employees of school districts.

(3) Authorized employees of educational service districts.

(4) Authorized employees of college or universities with ~~((state board of education))~~ professional education standards board approved certification programs.

(5) Authorized employees of the ~~((state school for the deaf))~~ Washington state center for childhood deafness and hearing loss.

(6) Authorized employees of the state school for the blind.

(7) Authorized employees of Bureau of Indian Affairs funded schools.

(8) Authorized employees of state tribal education compact schools.

(9) Authorized employees of approved private schools.

~~((9))~~ (10) Authorized employees of approved charter schools.

(11) Other authorized individuals as determined by the superintendent of public instruction or designee.

Access to the database will be controlled by a confidential password issued by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 07-19-012, filed 9/7/07, effective 10/8/07)

**WAC 392-300-055 Prohibition of redissemination of fingerprint record information by educational service districts, ~~((the state school for the deaf))~~ the Washington state center for childhood deafness and hearing loss, the state school for the blind, school districts, Bureau of Indian Affairs funded schools, state tribal education compact schools, approved private schools, and approved charter schools.** Fingerprint record information is highly confidential and shall not be redisseminated to any organization or individual by any educational service district, ~~((state school for the deaf))~~ the Washington center for childhood deafness and hearing loss, state school for the blind, school district, ~~((or))~~ Bureau of Indian Affairs funded school, state

tribal education compact schools, approved private schools, or approved charter schools.

AMENDATORY SECTION (Amending WSR 07-19-012, filed 9/7/07, effective 10/8/07)

**WAC 392-300-060 Protection of fingerprint record information by educational service districts, ~~((state school for the deaf))~~ the Washington center for childhood deafness and hearing loss, state school for the blind, school districts, ~~((and))~~ Bureau of Indian Affairs funded schools, state tribal education compact schools, approved private schools, and approved charter schools.** Educational service districts, ~~((state school for the deaf))~~ the Washington state center for childhood deafness and hearing loss, state school for the blind, school districts, ~~((and))~~ Bureau of Indian Affairs funded schools, state tribal education compact schools, approved private schools, and approved charter schools shall have policies and procedures to:

(1) Protect the confidentiality of fingerprint record information, including the secure location of ~~((RAP sheets))~~ criminal history record information (CHRI);

(2) Limit access to authorized personnel processing or requiring fingerprint record information to make employment decisions; and

(3) Prevent the unlawful redissemination of fingerprint record information.

Noncompliance with these provisions may allow for the recovery of civil damages under applicable federal and state statutes.

AMENDATORY SECTION (Amending WSR 10-22-054, filed 10/28/10, effective 11/28/10)

**WAC 392-300-070 Private school fingerprint process.** Fingerprinting of subject individuals employed by private schools.

(1) Definitions of private school terms.

(a) "Subject individual" means: Any person, certified or classified employed by a private school or volunteer in a position having regularly scheduled, unsupervised access to children;

(b) "Regularly scheduled, unsupervised access to children" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed to process fingerprint cards through the Washington state patrol and Federal Bureau of Investigation records check;

(d) "Information to be required" means all information requested by the office of the superintendent of public instruction;

(e) "Conviction~~((s of crimes))~~ information" means, notwithstanding any other statutes or Washington administrative rule, ~~((conviction of a crime listed in WAC 180-86-013, or being under indictment for any of the crimes listed in WAC 180-86-013))~~ criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject;



(f) "Private school" means a school that is approved with the Washington state board of education under chapter 180-90 WAC.

(2) The office of the superintendent of public instruction shall request criminal information from the Washington state patrol and the Federal Bureau of Investigation in the manner prescribed by law. A fee shall be charged for such services.

(3) Upon the private school's submission of the completed fingerprint cards and information form, the office of the superintendent of public instruction shall review the criminal records of subject individual.

(4) OSPI will send conviction information to administrators of approved private schools as allowed under RCW 10.97.050.

(5) The office of the superintendent of public instruction shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced used by Washington state patrol or Federal Bureau of Investigation.

(6) Only cards and forms approved by the office of the superintendent of public instruction will be accepted. The office of the superintendent of public instruction will hold fingerprint cards on file and notify the private school and/or subject individual when there is no fee, an incorrect fee, when necessary information is missing from the fingerprint cards, or the information form was not received.

(7) The office of the superintendent of public instruction will return to the private school any fingerprint cards that the Washington state patrol or Federal Bureau of Investigation rejects for poor quality prints. The private school will be responsible for having the subject individual submit additional prints as required.

(8) The superintendent's office shall maintain a record of all properly submitted fingerprint cards in the current records database for a period of at least two years. The record shall include at least the following:

- (a) Card sequence number;
- (b) Name of private school submitting the cards;
- (c) Date cards received at the Washington state patrol;
- (d) Date letter regarding incomplete card was sent to the subject individual with a copy to the private school (only if applicable);
- (e) ~~((Date Washington state patrol received fingerprint cards;~~
- (f)) Date private school was notified of Washington state patrol criminal history record or ~~((clearance))~~ lack of record;
- ~~((g))~~ (f) Date private school was notified of Federal Bureau of Investigation record or lack of record.
- ~~((This WAC will remain in effect through June 30, 2011.))~~

Purpose: This rule-making order amends WAC 16-390-240, the United States Department of Agriculture (USDA) audit verification and terminal market inspection fees, by modifying the fees the department charges for audit verification and terminal market inspection services performed under a cooperative agreement with USDA-Agricultural Marketing Service (USDA-AMS). Both the cooperative agreement and USDA-AMS regulations require that federal-state inspection agencies (which the department acts as for these services) charge no less than the current USDA-AMS fees for these services. After publication in the Federal Register, USDA-AMS recently revised their fees. Although, most of the fees increased, two of the fees actually decreased. As part of the federal rule-making process, stakeholders affected by this fee change were provided the opportunity to comment prior to USDA-AMS adopting the fee changes.

Citation of Rules Affected by this Order: Amending WAC 16-390-240.

Statutory Authority for Adoption: RCW 15.17.030, [15.17.]140, [15.17.]150, and [15.17.]270.

Other Authority: Chapter 34.05 RCW.

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

Reasons for this Finding: USDA adopted amendments to fees in 7 C.F.R. Part 51 effective October 1, 2017. The department, under a cooperative agreement with USDA-AMS is required to charge fees no less than fees mandated in 7 C.F.R. Part 51. Therefore, the department is required to adopt rule amendments to be consistent with the fees charged in 7 C.F.R. Part 51.

Immediate adoption is necessary for the preservation of the general welfare and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest. If the department does not immediately adopt the fees in the recently adopted USDA-AMS regulations, USDA-AMS will itself charge the fees to the customers directly. Dealing with the accounting and confusion of this procedure will increase the customer's costs beyond any increase otherwise imposed by any net increase in fees. Further, charging fees for audit verification and terminal market inspection services that are lower than the recently adopted USDA-AMS fees may jeopardize our designation as a federal-state inspection agency. If the department loses its designation, customers would have to obtain these services directly from USDA-AMS. This may affect the time it will take to respond to inspection requests. Terminal market inspections are time sensitive because the quality of fruits and vegetables decrease over time. Increased response time for inspection requests would create an undue hardship to customers.

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

#### WSR 17-22-004

#### EMERGENCY RULES

#### DEPARTMENT OF AGRICULTURE

[Filed October 18, 2017, 3:09 p.m., effective October 18, 2017, 3:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: October 18, 2017.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 14-24-086, filed 12/1/14, effective 1/1/15)

**WAC 16-390-240 USDA audit verification and terminal market inspection fees.** WSDA performs audit and inspection services requested by customers under a "cooperative agreement" with the United States Department of Agriculture's Agricultural Marketing Service (USDA/AMS). Under USDA/AMS rules, WSDA provides these services as a "federal-state inspection agency." Under USDA/AMS regulations and the cooperative agreement, the fees that WSDA charges for these services must be no less than the current USDA/AMS fees for these services. The applicable current USDA/AMS fees were published in the Federal Register at Vol. 82, No. 88, on May 9, 2017, under the "Fruit and Vegetable Fees" table and, for the overtime and holiday fees, in Patch #26, dated September 25, 2017, for incorporation in the USDA/AMS "General Market Manual" at Appendix II, "Schedule of User Fees." In conformity with the cooperative agreement, WSDA adopts the same applicable fees for these services as set forth in this section.

(1) The fee for USDA audit verification services (~~is \$92.00~~) is \$108.00 per hour (~~as per the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621))~~).

(2) Mileage related to audit verification services is charged at the rate established by the Washington state office of financial management at the time the service was performed.

(3) The fee for terminal market inspection services is (~~(\$74.00)~~) \$85.00 per hour, (~~(\$151.00)~~) \$191.00 per lot for a carlot equivalent of each product, and (~~(\$125.00)~~) \$159.00 per lot for one-half carlot equivalent or less of each product. The fee for each additional lot of the same product is (~~(\$69.00)~~) \$79.00. The overtime fee for terminal market inspection services is an additional (~~(\$38.00)~~) \$27.00 per hour. The fee for terminal market inspection services on a holiday is an additional (~~(\$74.00)~~) \$63.00 per hour. The mileage fee related to terminal market inspection services is \$1.32 per mile. USDA fees for lots and mileage are regulated by 7 C.F.R. 51.38 and 51.40, respectively, and are current as of (~~August 5, 2014~~) October 1, 2017.

## WSR 17-22-007

### EMERGENCY RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed October 18, 2017, 4:00 p.m., effective October 18, 2017, 4:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is creating new WAC 182-546-4600 for ambulance transportation for involuntary substance use disorder treatment as directed by the Washington state legislature in E3SHB 1713, also known as the Ricky Garcia Act.

Citation of Rules Affected by this Order: New WAC 182-546-4600.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB [E3SHB] 1713 (chapter 29, Laws of 2016 1st sp. sess.)

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: As directed by the Washington state legislature to implement under E3SHB 1713, this emergency filing continues the current emergency rule filed under WSR 17-14-002 which is set to expire on October 19, 2017. Finalizing of the permanent rule was delayed because of issues in implementing a training program for designated crisis responders who are licensed and credentialed to provide both mental health and substance use disorder services. This training program is directly related to the permanent rule making for WAC 182-546-4600. Since the last emergency filing, the training issues have been resolved and the permanent rule making is moving forward.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

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

Date Adopted: October 18, 2017.

Wendy Barcus  
Rules Coordinator

#### NEW SECTION

**WAC 182-546-4600 Ambulance transportation—Involuntary substance use disorder treatment—Ricky Garcia Act.** (1) Definitions. For the purposes of this section, the following definitions and those found in chapter 182-500 WAC apply:

(a) **"Behavioral health organization (BHO)"** - See WAC 182-500-0015.

(b) **"Designated chemical dependency specialist"** means a person appointed by the behavioral health organization (BHO) or by the BHO-designated county substance use disorder treatment program coordinator to perform the duties specified in this section.

(c) **"Detention" or "detain"** means the lawful confinement of a person, under the provisions of this chapter.

(d) **"Evaluation and treatment facility"** means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to people suffering from a mental disorder, and which is certified as such by the department of social and health services (DSHS). DSHS may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, DSHS or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility under this chapter.

(e) **"Gravely disabled"** means that a person experiences a loss of cognition or control over the person's actions, is not receiving care essential for the person's health or safety, and is in danger of serious physical harm.

(f) **"Involuntary Treatment Act"** means, for adults, chapter 71.05 RCW; for juveniles, chapter 71.34 RCW. See also chapter 388-865 WAC.

(g) **"Less restrictive alternative treatment"** means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585.

(h) **"Nearest and most appropriate destination"** means the nearest facility able and willing to accept the involuntarily detained person for treatment, not the closest facility based solely on driving distance.

(2) The medicaid agency pays for transportation services for a person detained for involuntary chemical dependency treatment when the following apply:

(a) The person has been assessed by a designated chemical dependency specialist and found to be:

- (i) A danger to self;
- (ii) A danger to others;
- (iii) Gravely disabled as a result of chemical dependency.

(b) The transportation is from:

- (i) The site of the initial detention;
- (ii) An evaluation and treatment facility designated by DSHS; or
- (iii) A court hearing.

(c) The transportation is to:

- (i) An evaluation and treatment facility;
- (ii) A less restrictive alternative setting, except when ambulance transport to a client's home is not covered; or
- (iii) A court hearing.

(d) The transportation is provided by a qualified transportation provider. The qualified transportation provider must:

(i) Be substance use disorder treatment provider designated as such by:

- (A) The local community mental health center; or
- (B) The BHO.

(ii) Comply with DSHS requirements for drivers, driver training, vehicle and equipment standards and maintenance.

(3) The transportation must be to the nearest and most appropriate destination. The reason for the diversion to a more distant facility must be clearly documented in the person's file.

(4) The designated chemical dependency specialist authorizes the level of transportation provided to and from covered facilities based on the person's need. A copy of the agency's Authorization for Substance Use Disorder (SUD) Ambulance Transportation form by the designated chemical dependency specialist must be kept in the person's file.

(5) The DSHS chemical dependency division establishes payment for substance use disorder transportation. Providers must clearly identify Involuntary Treatment Act transportation on the claim form when submitting claims to the agency.

## WSR 17-22-010

### EMERGENCY RULES

#### OFFICE OF

#### FINANCIAL MANAGEMENT

[Filed October 19, 2017, 9:15 a.m., effective October 19, 2017, 9:15 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: 2ESSB 5890 creates the foster parent shared leave pool to allow state employees to donate leave to be used as shared leave for any state employee who is a licensed foster parent pursuant to RCW 74.15.040 needing to care for a foster child or to prepare to accept a foster child in their home.

Citation of Rules Affected by this Order: New WAC 357-31-835, 357-31-840, 357-31-845, 357-31-850, 357-31-855, 357-31-860, 357-31-865, 357-31-870, 357-31-873, 357-31-875, 357-31-880, 357-31-885, 357-31-890, 357-31-895, 357-31-900, 357-31-905, 357-31-910, 357-31-915, and 357-31-920.

Statutory Authority for Adoption: Chapter 20, Laws of 2017 (2ESSB 5890).

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: Allows state employees to donate their leave to a pool to be used as shared leave by eligible employees so they may care for a foster child or to prepare to accept a foster child in their home.

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 19, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 19, Amended 0, Repealed 0.

Date Adopted: October 19, 2017.

Roselyn Marcus  
Assistant Director of  
Legal and Legislative Affairs

#### NEW SECTION

**WAC 357-31-835 What is the purpose of the foster parent shared leave pool?** The foster parent shared leave pool was created to allow state employees to voluntarily donate their leave to be used by any eligible employee who is a licensed foster parent pursuant to RCW 74.15.040 so they may:

- (1) Care for a foster child; and/or
- (2) Prepare to accept a foster child in their home.

#### NEW SECTION

**WAC 357-31-840 Who shall administer the foster parent shared leave pool?** The department of social and health services, in consultation with office of financial management, shall administer the foster parent shared leave pool.

#### NEW SECTION

**WAC 357-31-845 What definitions apply to the foster parent shared leave pool?** The following definitions apply to the foster parent shared leave pool:

"Caring for" means taking foster child to health care appointments, court appointments, visitation with family members and/or any other reasons that sick leave may be used for in WAC 357-31-130.

"Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained as defined in RCW 41.04.655.

"Monthly salary" means the monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. Monthly salary does not include overtime pay, callback pay, standby pay or performance bonuses.

"Preparing for" means arranging their living space, enrolling in school, and/or enrolling in childcare.

#### NEW SECTION

**WAC 357-31-850 Must employers have a written policy regarding the foster parent shared leave pool?** Each employer must have a written policy which at a minimum addresses:

(1) Amount of leave that may be withdrawn from the foster parent shared leave pool;

(2) Eligibility requirements for use of the foster parent shared leave pool;

(3) Donation of leave;

(4) Use of pool leave; and

(5) Abuse of pool.

#### NEW SECTION

**WAC 357-31-855 Is participation in the foster parent shared leave pool voluntary?** Participation in the foster parent shared leave pool must at all times be voluntary on the part of the donating and receiving employee.

#### NEW SECTION

**WAC 357-31-860 Which employees are eligible to request leave from the foster parent shared leave pool?** Employees that are licensed foster parents pursuant to RCW 74.15.040 are eligible to request leave from the foster parent shared leave pool.

#### NEW SECTION

**WAC 357-31-865 How must employees who are receiving leave from the foster parent shared leave pool be treated during their absence?** An employee using shared leave under the foster parent shared leave pool receives the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued vacation leave or sick leave.

#### NEW SECTION

**WAC 357-31-870 May the receiving employee's employer restrict the amount of shared leave an eligible employee may receive, per occurrence, to care for a foster child?** The receiving employee's employer may limit the amount of shared leave their eligible employee receives, per occurrence, under the foster parent shared leave pool to care for a foster child.

#### NEW SECTION

**WAC 357-31-873 Is there a limit to the amount of shared leave an eligible employee may receive, per occurrence, to prepare to accept a foster child in their home?** An eligible employee may receive up to five days of shared leave, per occurrence, from the foster parent shared leave pool to prepare to accept a foster child in their home.

#### NEW SECTION

**WAC 357-31-875 What is the total amount of shared leave an eligible employee may receive under the foster parent shared leave pool?** An eligible employee must not receive more than five hundred twenty-two days of shared leave under the foster parent shared leave pool during their total state employment.

NEW SECTION

**WAC 357-31-880 Is shared leave received under the foster parent shared leave pool included in the shared leave limits specified in RCW 41.04.665?** Shared leave received under the foster parent shared leave pool is not included in the five hundred twenty-two day total specified in RCW 41.04.665.

NEW SECTION

**WAC 357-31-885 May employees donating leave for the purpose of the foster parent shared leave pool direct the donation to a specific individual?** Leave donated under this section is "pooled" and is withdrawn from the pool by eligible employees according to priorities established by the department of social and health services. Leave donated cannot be directed to a specific individual. All employees who donate must specify their intent to donate to the foster parent shared leave pool.

NEW SECTION

**WAC 357-31-890 What types of leave may an employee donate for the purposes of the foster parent shared leave pool?** An employee may donate vacation leave, sick leave, and all or part of a personal holiday for purposes of the foster parent shared leave pool under the following conditions:

(1) Vacation leave: The donating employee's employer approves the employee's request to donate a specified amount of vacation leave to the foster parent shared leave pool. The full-time employee's request to donate leave will not cause their vacation leave balance to fall below eighty hours after the transfer. For part-time employees, requirements for vacation leave balances are prorated.

(2) Sick leave: The donating employee's employer approves the employee's request to donate a specified amount of sick leave to the foster parent shared leave pool. The employee's request to donate leave will not cause their sick leave balance to fall below one hundred seventy-six hours after the transfer.

(3) Personal holiday: The donating employee's employer approves the employee's request to donate all or part of their personal holiday to the foster parent shared leave pool.

NEW SECTION

**WAC 357-31-895 Must employees use their own leave before receiving shared leave from the foster parent shared leave pool?** Employees who are eligible to receive shared leave from the foster parent shared leave pool must first use all compensatory time, recognition leave as described in WAC 357-31-565, and personal holiday before requesting shared leave from the foster parent shared leave pool. The employee is not required to deplete all of their vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

NEW SECTION

**WAC 357-31-900 What salary will an eligible employee receive when withdrawing shared leave from the foster parent shared leave pool?** Shared leave paid under the foster parent shared leave pool must not exceed the level of the employee's state monthly salary as defined in WAC 357-31-845.

NEW SECTION

**WAC 357-31-905 What documentation is an employee seeking shared leave under the foster parent shared leave pool be required to submit?** Employees seeking shared leave under the foster parent shared leave pool must provide proof of a current foster parent license.

NEW SECTION

**WAC 357-31-910 What happens if the foster parent shared leave pool does not have a sufficient balance to cover shared leave requests?** Foster parent shared leave may not be granted unless the pool has a sufficient balance to fund the requested shared leave.

NEW SECTION

**WAC 357-31-915 May an agency head, higher education president or designee establish restrictions on the amount of leave an employee may donate under this section?** An agency head, higher education president or designee may limit the amount of leave an employee may donate under this section.

NEW SECTION

**WAC 357-31-920 When an employer and/or the department of social and health services has determined that abuse of the foster parent shared leave pool has occurred will the employee be required to repay the shared leave drawn from the pool?** Employers and/or the department of social and health services must investigate any alleged abuse of the foster parent shared leave pool and on a finding of wrongdoing the employee may be required to repay all of the shared leave received from the foster parent shared leave pool. The only time an employee will have to repay leave credits is when there is a finding of wrongdoing.

WSR 17-22-012

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 19, 2017, 1:40 p.m., effective October 20, 2017]

Effective Date of Rule: October 20, 2017.

Purpose: The department is amending these rules to implement the nursing facility methodology changes from SHB 1274, found in chapter 2, Laws of 2015 2nd sp. sess.

Citation of Rules Affected by this Order: New WAC 388-96-915, 388-96-916 and 388-96-917; repealing WAC 388-96-540, 388-96-552, 388-96-553, 388-96-554, 388-96-558, 388-96-559, 388-96-561, 388-96-562, 388-96-564, 388-96-565, 388-96-572, 388-96-574, 388-96-708, 388-96-744, 388-96-746, 388-96-747, 388-96-748, 388-96-759, 388-96-762, 388-96-767, 388-96-776, 388-96-783, 388-96-784 and 388-96-786; and amending WAC 388-96-010, 388-96-022, 388-96-107, 388-96-205, 388-96-208, 388-96-211, 388-96-218, 388-96-505, 388-96-525, 388-96-534, 388-96-542, 388-96-556, 388-96-560, 388-96-580, 388-96-585, 388-96-709, 388-96-710, 388-96-713, 388-96-758, 388-96-781, 388-96-782, and 388-96-901.

Statutory Authority for Adoption: RCW 74.46.800, 74.46.561(1).

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

Reasons for this Finding: The department held a number of stakeholder meetings regarding implementation of the rules. The department held a public hearing, received comments, and the program has prepared response in the concise explanatory statement. A cost-benefit analysis was also completed. The department anticipates the CR-103P will be finalized and filed before November 1, 2017. This emergency covers the time until the final becomes effective.

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 3, Amended 22, Repealed 24.

Number of Sections Adopted at the Request of a Non-governmental 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 3, Amended 22, Repealed 24.

Date Adopted: October 19, 2017.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 17-23 issue of the Register.

**WSR 17-22-013**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-285—Filed October 19, 2017, 3:21 p.m., effective October 19, 2017, 3:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department has filed a CR-101 (WSR-17-20-109) for a permanent rule and is actively undertaking the appropriate procedures to adopt this emergency rule as a permanent rule.

Purpose: Amend the Sultan River authorized work time in the Gold and Fish pamphlet to protect fall Chinook, coho and steelhead because a new fish passage structure now allows anadromous fish to spawn above the city of Everett's municipal drinking water diversion dam.

Citation of Rules Affected by this Order: Repealing WAC 220-660-30000B; and amending WAC 220-660-300.

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

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

Reasons for this Finding: The Washington department of fish and wildlife (WDFW) filed an emergency rule on June 29, 2017, revising the authorized work time in the Gold and Fish pamphlet for the Sultan River upstream of the city of Everett's municipal drinking water diversion dam located at river mile 9.4. That emergency rule expires October 24, 2017. WDFW started rule making (WSR-17-20-109) for a permanent modification on October 4, 2017, but a second emergency rule is needed until the permanent rule is adopted.

Work on the diversion dam completed in October 2016 now enables steelhead, fall Chinook and coho salmon found in the lower Sultan River to pass above the diversion dam to spawn and rear. The current authorized work time for the section of river upstream of the diversion is July 16 to February 28. This work time protected resident trout spawning and incubation areas. WDFW must amend the authorized work time for the section of river upstream of the diversion dam to river mile 15.7 (0.7 river miles below the Culmback Dam) from July 16 to February 28 to August 1 to August 31 to protect steelhead and salmon spawning and incubation areas as well. The authorized work time from river mile 15.7 upstream to Elk Creek and upstream of Elk Creek will remain unchanged.

Without modification to the work windows steelhead and salmon eggs and alevins could be impacted by mineral prospectors working under the statewide Gold and Fish pamphlet during the 2017 spawning season because prospecting activities could take place where fish are spawning.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 19, 2017.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-660-3000C Mineral prospecting.** Notwithstanding the provisions of WAC 220-660-300, effective immediately until further notice, the following rules apply:

County	Mineral Prospecting Allowable Dates	Prospecting Equipment with 4 1/4" nozzle	Prospecting Equipment with 5 1/4" Nozzle
<b>Snohomish County</b>			
<u>Sultan River (07.0881) - Diversion Dam to river mile 15.7 (0.7 river miles downstream of Culmback Dam Elk Creek</u>	<u>Closed until further notice</u>	X	X
<u>Sultan River (07.0881) - Upstream of river mile 15.7 to Elk Creek</u>	<u>Open until further notice</u>	X	

**Reviser's note:** The unnecessary strike through and 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 220-330-66000B Mineral prospecting. (17-147)

**Reviser's note:** The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-330-66000B is probably intended to be WAC 220-660-30000B.

ized flows, allowing salmon to migrate upstream to spawning areas. 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 the Request of a Non-governmental 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: October 20, 2017.

J. W. Unsworth  
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective October 21, 2017:

WAC 220-312-02000N Freshwater exceptions to statewide rules—Coastal. (17-282)

**WSR 17-22-016**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 17-286—Filed October 20, 2017, 11:01 a.m., effective October 21, 2017]

Effective Date of Rule: October 21, 2017.

Purpose: Reopens the Hoh River and South Fork Hoh River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000N.

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 reopen the Hoh and South Fork Hoh rivers which were closed by filing WSR 17-21-054. Recent rainfall has normal-

**WSR 17-22-021**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-288—Filed October 20, 2017, 2:45 p.m., effective October 20, 2017, 2:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting threatened or endangered species under the Endangered Species Act.

Citation of Rules Affected by this Order: Repealing WAC 220-359-08000B; and amending WAC 220-359-080.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This emergency rule is needed to allow treaty fisheries to remove excess and undesirable hatchery sturgeon from the populations in the Priest Rapids and Wanapum pools. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 20, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-359-08000B Season—Sturgeon above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-080, effective immediately, it is unlawful to take,

fish for or possess sturgeon for commercial purposes in the Columbia River Priest Rapids and Wanapum pools, except that those individuals possessing treaty fishing rights under the Yakama treaties may fish for sturgeon with setline gear under the following provisions:

(1) **SEASON:** Immediately through 5:00 p.m. December 2, 2017.

(2) **AREA:** Priest Rapids Pool from one-half mile upstream of Priest Rapids Dam to the Boat Restricted Zone markers below Wanapum Dam, and in Wanapum Pool from one-half mile upstream of Wanapum Dam to Boat Restricted Zone markers below Rock Island Dam.

(3) **GEAR:** Setlines only. Hook size must be 9/0 or larger and circle hooks are encouraged over J-hooks. All other gears are specifically prohibited. Setlines are restricted to no more than 100 hooks per line.

(4) **COMMERCIAL AND SUBSISTENCE SIZE LIMITS:** Legal size limits include sturgeon from 38 inches to 72 inches fork length for any purpose in the Priest Rapids and Wanapum Pools. It shall be unlawful to contort or mutilate sturgeon in any way to conform to size limits.

(5) **ADDITIONAL REGULATIONS:** 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-352-180, **except** that landings must be reported within 24 hours of completing the fish ticket. Sturgeon must be delivered to the buyer "in the round", that is with fins, eggs, guts, scutes, and gills intact.

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:01 p.m. December 2, 2017:

WAC 220-359-08000B Columbia River sturgeon.

**WSR 17-22-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-289—Filed October 20, 2017, 2:46 p.m., effective October 22, 2017]

Effective Date of Rule: October 22, 2017.

Purpose: Amends commercial purse seine and gillnet fisheries in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000B and 220-354-01600B; and amending WAC 220-354-120 and 220-354-160.

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 limit the commercial salmon fisheries in Salmon Management and Catch Reporting Areas 7 and 7A as there is not



enough nontreaty share remaining to allow for full day openings. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

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

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

Date Adopted: October 20, 2017.

Joe Stohr  
for J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-354-12000B Purse seine—Open periods.**

Notwithstanding the provisions of WAC 220-354-120, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
7, 7A	7:00 a.m. - 3:00 p.m. October 22

**NEW SECTION**

**WAC 220-354-16000B Gillnet—Open periods.**

Notwithstanding the provisions of WAC 220-354-160, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
7, 7A	7:00 a.m. - 7:00 p.m. October 22

**REPEALER**

The following sections of the Washington Administrative Code are repealed effective 7:01 p.m. October 22, 2017:

WAC 220-354-12000B Purse seine—Open periods.

WAC 220-354-16000B Gillnet—Open periods.

**WSR 17-22-040**

**EMERGENCY RULES**

**BUILDING CODE COUNCIL**

[Filed October 24, 2017, 3:59 p.m., effective October 24, 2017, 3:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this action is to amend a section of a rule filed on April 25, 2017, as WSR 17-10-028. This action will amend currently adopted language in Section 907 Fire Alarm and Detection Systems. The state building code council convened a technical advisory group to develop this amendment to provide options for compliance with current codes and safe school law.

Citation of Rules Affected by this Order: Amending WAC 51-54A-0907.

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 2016 legislature took action to modify the requirements of this section under ESHB 2380.SL/New Section 6012. A new section is added to 2015 3rd32sp.s. c 3 (uncodified) to read as follows: To avoid unnecessary duplication of infrastructure installation and reduce school construction costs funded through the school construction assistance program in this budget, the building code council adopted emergency amendments as directed by the legislature to provide that buildings classed as E occupancies, as defined in the state building code, are not required to install an emergency voice alarm system as defined in the 2012 International Building Code and International Fire Code section 907.2.3. The school district must comply with RCW 28A.320.126 by working collaboratively with local law enforcement agencies to develop an emergency response system using evolving technologies and the school district must adopt a safe school plan under RCW 28A.320.125. The state building code council technical advisory group worked with stakeholders to develop amendatory language for emergency and permanent rule making.

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

Number of Sections Adopted at the Request of a Non-governmental 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: May 12, 2017.

Steve Simpson  
Chair

AMENDATORY SECTION (Amending WSR 17-10-028, filed 4/25/17, effective 5/26/17)

**WAC 51-54A-0907 Fire alarm and detection systems.**

~~907.2.3 Group E. ((A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.~~

**EXCEPTIONS:**

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 3.1 Interior corridors are protected by smoke detectors.
  - 3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
  - 3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
4. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.))

Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or

2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:

2.1 The ability to broadcast voice messages or customized announcements;

2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;

2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;

2.4 The ability for two-way communications;

2.5 The ability for individual room calling;

2.6 The ability for a manual override;

2.7 Installation in accordance with NFPA 72;

2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and

2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

Exceptions:

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:

3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or

3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).

4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

4.1 Interior corridors are protected by smoke detectors.

4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.

4.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:

5.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.

5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.

5.3 Manual activation is provided from a normally occupied location.

**907.2.3.1 Sprinkler systems or detection.** When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

**907.2.6 Group I.** A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

- EXCEPTIONS:
1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
  2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

**907.2.6.1 Group I-1.** An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and *kitchens*. The system shall be activated in accordance with Section 907.4.

- EXCEPTIONS:
1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
  2. Smoke detection is not required for exterior balconies.

**907.2.6.4 Group I-4 occupancies.** A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

- EXCEPTIONS:
1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.
  2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

**907.5.2.1.2 Maximum sound pressure.** The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

**907.10 NICET: National Institute for Certification in Engineering Technologies.**

**907.10.1 Scope.** This section shall apply to new and existing fire alarm systems.

**907.10.2 Design review:** All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the

design requirements of the state of Washington and the local jurisdiction (effective July 1, ((2017)) 2018).

**907.10.3 Testing/maintenance:** All inspection, testing, maintenance and programming not defined as "*electrical construction trade*" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms (effective July 1, ((2017)) 2018).

**WSR 17-22-056  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-293—Filed October 25, 2017, 4:09 p.m., effective October 25, 2017, 4:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends commercial purse seine and gillnet fisheries in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000C and 220-354-16000C; and amending WAC 220-354-120 and 220-354-160.

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 close the commercial salmon fisheries in Salmon Management and Catch Reporting Areas 7 and 7A as there is not enough nontreaty share remaining to allow for multiple day openings. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

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

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

Date Adopted: October 25, 2017.

Nate Pamplin  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-354-12000C Purse seine—Open periods.** Notwithstanding the provisions of WAC 220-354-120, effec-

tive immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
7, 7A	Closed 10/26

**NEW SECTION**

**WAC 220-354-16000C Gillnet—Open periods.** Notwithstanding the provisions of WAC 220-354-160, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
7, 7A	Closed 10/26

**REPEALER**

The following sections of the Washington Administrative Code are repealed effective 11:59 p.m. October 26, 2017:

WAC 220-354-12000C Purse seine—Open periods.

WAC 220-354-16000C Gillnet—Open periods.

**WSR 17-22-062  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-291—Filed October 26, 2017, 10:44 a.m., effective October 30, 2017]

Effective Date of Rule: October 30, 2017.

Purpose: Amend recreational fishing regulations in the Quillayute River system.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000M; and amending WAC 220-312-020.

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 because harvest estimates to date have exceeded preseason expectations. This will delay additional impacts on wild fall Chinook until they have primarily cleared the system. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 26, 2017.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-312-02000P Freshwater exceptions to statewide rules—Coastal.** Notwithstanding the provisions of WAC 220-312-020, effective October 30, 2017, until further notice:

- (a) Quillayute River (Clallam County): Closed to fishing.
- (b) Sol Duc River (Clallam County): Closed to fishing.
- (c) Dickey River (Clallam County): Closed to fishing.
- (d) Bogachiel River (Clallam County): Closed to fishing.
- (e) Calawah River (Clallam County): Closed to fishing.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective October 30, 2017:

WAC 220-312-02000M Freshwater exceptions to statewide rules—Coastal. (Order 17-281)

**WSR 17-22-063  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-290—Filed October 26, 2017, 10:45 a.m., effective October 31, 2017]

Effective Date of Rule: October 31, 2017.

Purpose: Amends commercial salmon rules for Willapa Bay.

Citation of Rules Affected by this Order: Repealing WAC 220-354-25000B; and amending WAC 220-354-250.

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 consistent with the outcome of discussions through the 2017 North of Falcon season setting process and the Willapa Bay Salmon Management Policy. This emergency rule corrects an error in the permanent rules. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 26, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-354-25000B Willapa Bay salmon fall fishery.** Notwithstanding the provisions of WAC 220-354-250, the following rules apply. Unless otherwise amended all permanent rules remain in effect:

Willapa Bay Salmon Management and Catch Reporting Areas 2M, 2N, 2R, 2T and 2U - Open 12:01 a.m. November 1 through 11:59 p.m. November 2, 2017.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective November 3, 2017:

WAC 220-354-25000B Willapa Bay salmon fall fishery

**WSR 17-22-075  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-295—Filed October 27, 2017, 1:38 p.m., effective October 28, 2017]

Effective Date of Rule: October 28, 2017.

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. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Wash-

ington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000U; and amending WAC 220-312-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This emergency rule is needed to allow for additional opportunity to meet the recreational harvest guideline of one thousand two hundred forty-five white sturgeon by opening an additional fishing day. This action is consistent with decisions made at the joint state hearing on October 26, 2017. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 27, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia River.** Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Retention of white sturgeon is allowed on October 28, 2017.

(a) The area open to fishing is the mainstem Columbia River from the Wauna powerlines upstream to Bonneville Dam.

(b) The daily retention limit of white sturgeon is one fish between 44-inches minimum and 50-inches maximum fork length. The yearly limit is two retained sturgeon.

(c) Catch and release continues to be allowed in the mainstem Columbia River.

(2) Fork length is measured in a straight line from the tip of the nose to the fork in the caudal fin (tail) with the fish laying on its side on a flat surface, with the tape measure/ruler positioned flat under the fish.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective October 29, 2017:

WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia River.

**WSR 17-22-076**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-296—Filed October 27, 2017, 1:40 p.m., effective October 28, 2017]

Effective Date of Rule: October 28, 2017.

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. 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 Rules Affected by this Order: Repealing WAC 220-312-06000V; and amending WAC 220-312-060.

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: The proposed modification will allow night angling opportunity for warmwater species, with no expected increase in steelhead handle or mortalities, while retaining the closure for other species for the remainder of the year. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 27, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia.** Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Mainstem Columbia River from a true north-south line through Buoy 10 upstream to the old Hanford townsite wooden powerline towers,**

(a) Effective October 28, 2017 through December 31, 2017, it is unlawful to angle for or retain salmon, steelhead, shad, sturgeon, trout or whitefish except during daylight hours.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2018:

WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia River (17-155)

**WSR 17-22-077**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-297—Filed October 27, 2017, 1:42 p.m., effective October 27, 2017, 1:42 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000J; and amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This order continues the fall 2017 platform and hook and line fisheries through the end of 2017. The expectation for treaty fisheries to be within the preseason ESA guidelines continues to be unchanged. 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 when open under tribal regulations. The forecast for upriver fall Chinook is four hundred eighty-four thousand one hundred fish. Fisheries are consistent with the 2008-2017 Management Agreement and the associated biological opinion. This rule is consistent with actions of the Columbia River compacts on October 26, 2017, and July 27, 2017. This action 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 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or

Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 27, 2017.

J. W. Unsworth  
Director

### NEW SECTION

**WAC 220-359-02000K Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030 and WAC 220-359-090, 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 PM Tuesday, October 31 to 6:00 PM Sunday December 31
  - (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. Live release of all oversize and under-size sturgeon is required.
  - (d) All sanctuaries for these gear types are in effect.
- (2) Columbia River Tributaries upstream of Bonneville Dam:
  - (a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.
  - (b) Area: Drano Lake, 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 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.

(3) 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: Immediately through October 31, 2017. 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.

(4) 24-hour quick reporting is required as provided in WAC 220-352-180, 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.

(5) Sales of fish are allowed after open period concludes, as long as the fish sold were landed during the open period.

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

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000J Columbia River salmon seasons above Bonneville Dam. (17-265)

**WSR 17-22-078  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-298—Filed October 27, 2017, 2:25 p.m., effective October 28, 2017, 6:00 p.m.]

Effective Date of Rule: October 28, 2017, 6:00 p.m.  
Purpose: Amends Puget Sound commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000E, 220-340-45500C and 220-352-18000B; and amending WAC 220-340-420, 220-340-455, and 220-352-180.

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: The provisions of this rule will close Puget Sound Region 1 as outlined above. This area is closing early to allow for the use of the remaining allocation during a future opener. All remaining Puget Sound commercial crab regions will remain open at a fifty pots per license limit. These provisions are in conformity with agreed management plans with applicable tribes. These management plans were entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 0, Repealed 3.

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

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

Date Adopted: October 27, 2017.

J. W. Unsworth  
Director

## NEW SECTION

**WAC 220-340-42000F Commercial crab fishery—Unlawful acts.** Notwithstanding the provisions of WAC 220-340-420:

(1) Effective 6:00 p.m., October 28, 2017, until further notice, it is unlawful for any person to fish for crabs for commercial purposes in Crab Management Regions 1. This region includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B.

(2) Effective immediately, until further notice, it is unlawful for any person to fish for crabs with more than 50 pots per license per buoy tag number in Region 2 East, Region 2 West, Region 3-1, Region 3-2, Region 3-3 East or 3-3 West. These regions include Marine Fish-Shellfish Catch



Reporting Areas 24A, 24B, 24C, 24D, 25A, 25B, 25D, 25E, 26A East, 26A West, 23A, 23B, 23C and 29.

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

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

[NEW SECTION]

**WAC 220-340-45500D Commercial crab fishery—Seasons and areas—Puget Sound.** Notwithstanding the provisions of WAC 220-340-455:

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

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

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

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

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

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

(3) Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

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

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

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

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

NEW SECTION

**WAC 220-352-18000C Duties of commercial purchasers and receivers.** Notwithstanding the provisions of WAC 220-352-180, effective immediately, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Buyers must report by fax to (425) 338-1066 or by e-mail at [crabreport@dfw.wa.gov](mailto:crabreport@dfw.wa.gov), and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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

REPEALER

The following section of the Washington Administrative Code are repealed effective 6:00 p.m. October 28, 2017:

WAC 220-340-42000E Commercial crab fishery—Unlawful acts. (17-261)

WAC 220-340-45500C Commercial crab fishery—Seasons and areas—Puget Sound. (17-261)

WAC 220-352-18000B Duties of commercial purchasers and receivers. (17-261)

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

**WSR 17-22-079  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-287—Filed October 27, 2017, 2:42 p.m., effective October 29, 2017]

Effective Date of Rule: October 29, 2017.

Purpose: Amend recreational fishing rules in the Snohomish, Skykomish, Snoqualmie, and Wallace rivers.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000W; and amending WAC 220-312-040.

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: This emergency rule is needed because spawning ground surveys, counts at the Sunset Falls trap, and Wallace Hatchery rack returns indicate that the run

size of coho and pink salmon in the Snohomish watershed are well below preseason forecasts. To protect future runs of coho, spawner escapement goals must be met. If indicators of abundance improve fisheries may be reopened. 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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 27, 2017.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-312-04000Z Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-312-040, effective October 29 through December 31, 2017, release all salmon except for hatchery coho in the following waters:

(a) Snohomish River (Snohomish County): from mouth to confluence of Skykomish and Snoqualmie Rivers

(b) Skykomish River (Snohomish County): from mouth to confluence of North and South Forks

(c) Snoqualmie River (King/Snohomish County): from mouth to Snoqualmie Falls

(d) Wallace River (Snohomish County): from mouth to 200 feet upstream of the water intake of the salmon hatchery

REPEALER

The following section of the Washington Administrative Code is repealed effective October 29, 2017:

WAC 220-312-04000W Freshwater exceptions to statewide rules—Puget Sound. (Order 17-258)

**WSR 17-22-082  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-299—Filed October 27, 2017, 3:14 p.m., effective October 29, 2017]

Effective Date of Rule: October 29, 2017.

Purpose: Amends commercial purse seine and gillnet fisheries in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000D and 220-354-16000D; and amending WAC 220-354-120 and 220-354-160.

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 close the commercial salmon fisheries in Salmon Management and Catch Reporting Areas 7 and 7A as there is not enough nontreaty share remaining to allow for multiple day openings. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

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

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

Date Adopted: October 27, 2017.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-354-12000D Purse seine—Open periods.** Notwithstanding the provisions of WAC 220-354-120, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
7, 7A	Closed October 29 and 30

NEW SECTION

**WAC 220-354-16000D Gillnet—Open periods.** Notwithstanding the provisions of WAC 220-354-160, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except during the periods provided in this section, pro-

vided that unless otherwise amended, all permanent rules remain in effect:

Areas	Open Periods
7, 7A	Closed October 29 and 30

**REPEALER**

The following sections of the Washington Administrative Code are repealed effective 11:59 p.m. October 30, 2017:

WAC 220-354-12000D Purse seine—Open periods.

WAC 220-354-16000D Gillnet—Open periods.

**WSR 17-22-085  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-294—Filed October 27, 2017, 3:47 p.m., effective October 27, 2017, 3:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clam harvest.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000G; and amending WAC 220-330-160.

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 to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1 and 3 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. Razor clam beaches are closed by permanent rules unless opened by an emergency rule. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 27, 2017.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-330-16000G Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. November 3, 2017 through 11:59 p.m. November 5, 2017, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. November 3, 2017 through 11:59 p.m. November 5, 2017, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) It is unlawful to dig for razor clams at any time in the Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 6, 2017:

WAC 220-330-16000G Razor clams—Areas and seasons.

**WSR 17-22-086  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 17-292—Filed October 27, 2017, 4:17 p.m., effective November 1, 2017]

Effective Date of Rule: November 1, 2017.

Purpose: Rescinds the rule that charges a fee for the combination guide license which is no longer valid for license year 2018. The fees were updated in HB 1597.

Citation of Rules Affected by this Order: Amending WAC 220-351-080.

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 rescind the fee for the combination guide license which is no longer valid for license year 2018. The department of fish and wildlife will be going through the permanent rule process.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 27, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

##### **WAC 220-351-08000A Combined fish guide license.**

Notwithstanding the provisions of WAC 220-351-080, effective November 1, 2017, until further notice:

The rule which states the fee for a resident combined fish guide license is \$435 and the fee for a non-resident combined fish guide license is \$1,435 is rescinded.

#### **WSR 17-22-099**

##### **EMERGENCY RULES**

##### **WASHINGTON STATE UNIVERSITY**

[Filed October 30, 2017, 2:22 p.m., effective October 30, 2017, 2:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add new chapter 504-49 WAC, regarding the administration of the state renewable energy system incentive program for citizens, businesses, and utilities. The incentive program is to be administered by the Washington State University (WSU) energy program, in accordance with the renewable energy system incentive program law, ESSB 5939, signed into law on July 7, 2017.

Citation of Rules Affected by this Order: New WAC 504-49-010, 504-49-100, 504-49-103, 504-49-105, 504-49-108, 504-49-110, 504-49-115, 504-49-120, 504-49-125, 504-49-130, 504-49-135, 504-49-140, 504-49-145, 504-49-150, 504-49-155, 504-49-160, 504-49-165, 504-49-170, 504-49-175, 504-49-180, 504-49-185, 504-49-190, 504-49-195, 504-49-200, 504-49-205, 504-49-210, 504-49-215, 504-49-220, 504-49-225, 504-49-230, 504-49-235, 504-49-240, 504-49-245, 504-49-250, 504-49-300, 504-49-305, 504-49-310, 504-49-400, 504-49-405, 504-49-500, 504-49-505, 504-49-510, 504-49-515, 504-49-520, 504-49-525, 504-49-600, 504-49-605, 504-49-610, 504-49-615, 504-49-700, 504-49-705, 504-49-710, and 504-49-715.

Statutory Authority for Adoption: RCW 28B.30.150.

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 emergency rules are necessary to preserve the general welfare in that the WSU energy program is replacing Washington state department of revenue to administer an existing program that provides incentives for renewable energy. Failure to having [have] rules in place for an existing program that is now managed by a different agency for a considerable amount of time would cause considerable disruption to the program. These emergency rules will allow for the continuation of the program while the WSU energy program goes through the process of establishing permanent rules. Further, the emergency rules are necessary for the fair and equitable implementation of ESSB 5939 to provide consistent application of procedures, program definitions, eligibility, incentive payment rates, and decision appeal procedures, all in accordance with the language and intent of ESSB 5939. Further, emergency rules are necessary to provide immediate guidance to interested applicants because the WSU energy program became the administrator of this incentive program on October 1, 2017.

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 53, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 53, Amended 0, Repealed 0.

Date Adopted: October 30, 2017.

Deborah L. Bartlett, Director  
Procedures, Records, and Forms  
and University Rules Coordinator

#### **Chapter 504-49 WAC**

##### **RENEWABLE ENERGY SYSTEM INCENTIVE PROGRAM**

#### NEW SECTION

**WAC 504-49-010 Introduction.** (1) The rules in this chapter explain the renewable energy system incentive program, which is administered by the Washington State University energy program (hereinafter referred to as "energy program"). It is the legislature's intent to provide the incentives as described in RCW 82.16.130 in order to ensure the sustainable job growth and vitality of the state's renewable energy sector. The purpose of the incentive is to reduce the costs associated with installing and operating renewable energy systems by persons or entities receiving the incentive. This incentive program authorizes an incentive payment based on electricity generated by renewable energy systems located in

Washington state. Qualified renewable energy systems include:

- (a) Solar energy systems;
  - (b) Wind generators; and
  - (c) Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that generates electricity.
- (2) The rules in this chapter are divided into seven parts based on subject matter, as follows:
- (a) Part I: Definitions;
  - (b) Part II: Participation and application requirements, and incentive levels by project type;
  - (c) Part III: Calculation of incentives;
  - (d) Part IV: General topics;
  - (e) Part V: Manufactured in Washington state;
  - (f) Part VI: Application process for currently certified renewable energy systems in the cost recovery incentive program; and
  - (g) Part VII: Appeals rights.

## PART I DEFINITIONS

### NEW SECTION

**WAC 504-49-100 Overview.** The definitions in Part I of this chapter (this section and WAC 504-49-103 through 504-49-195) apply throughout this chapter unless the context clearly requires otherwise.

### NEW SECTION

**WAC 504-49-103 Administrator.** The term "administrator" has the following two meanings in this chapter:

(1) For purposes of a shared commercial solar project, the administrator is a utility or a business under contract with a utility which administers a shared commercial solar project that meets the eligibility requirements specified in this chapter. The administrator applies for certification on behalf of each of the project participants. In addition, the administrator performs administrative tasks on behalf of the owners as may be necessary, such as:

- (a) Receiving the renewable energy incentive payments;
- (b) Allocating and paying appropriate amounts of such payments to owners; and
- (c) Communicating with the energy program about any changes in participants.

(2) For purposes of a community solar project as defined in WAC 504-49-120, the administrator is the utility, non-profit, or local housing authority (as defined in RCW 35.82.020) that organizes and administers the community solar project. The administrator is responsible for applying for the renewable energy system incentive on behalf of the system's owners. In addition, the administrator performs administrative tasks on behalf of the owners as may be necessary, such as:

- (a) Receiving the renewable energy incentive payments;

(b) Allocating and paying appropriate amounts of such payments to owners; and

(c) Communicating with the energy program about any changes in participants.

### NEW SECTION

**WAC 504-49-105 Caps and limits.** "Caps and limits" are defined as follows:

(1) "Annual incentive limits" means the annual limits on total incentives paid per person, business, or household for a given fiscal year of electricity generation from the four project types described in chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939). Each incentive recipient may qualify for payments up to the incentive cap within each project type. However, incentive recipients who have multiple projects within one project type are subject to the cap for the applicable project type. These caps are as follows:

- (a) Residential-scale systems: Five thousand dollars;
- (b) Commercial-scale systems: Twenty-five thousand dollars;
- (c) Shared commercial solar projects: Up to thirty-five thousand dollars per year per project participant, as determined by the terms specified in chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939); and
- (d) Community solar projects: Five thousand dollars per project participant.

(2) "Utility credit cap" means that the maximum annual incentives paid by an electrical utility may not exceed one and one-half percent of the businesses' taxable power sales generated in calendar year 2014 and due under RCW 82.16.020 (1)(b) or two hundred fifty thousand dollars, whichever is greater, up to the utility's public utility tax liability.

(3) "Project type cap" has the following two meanings in this chapter:

(a) For commercial-scale systems, the project type cap is twenty-five percent of the remaining funds for credit available to a utility as of July 1, 2017; and

(b) For community solar and shared commercial solar projects combined, the project type cap is fifty percent of the remaining funds for credit available to a utility as of July 1, 2017.

(4) "Incentive rate limit" for shared commercial solar project participants means that the incentive rate must not exceed the difference between the levelized cost of energy output and the participant's retail rate.

(5) "Total program limit" means that the total incentive payments made under this program (in this chapter) may not exceed one hundred ten million dollars.

### NEW SECTION

**WAC 504-49-108 Certification.** "Certification" means the authorization issued by the energy program establishing a system's eligibility and the eligibility of a person, business, or household to receive annual incentive payments from the serving utility for the incentive program term.

NEW SECTION

**WAC 504-49-110 Commercial-scale system.** "Commercial-scale system" means a renewable energy system or system other than a community solar project or a shared commercial solar project with a direct current combined nameplate capacity greater than twelve kilowatts that meets the applicable system eligibility requirements established in section 6, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

**WAC 504-49-115 Community solar project.** "Community solar project" means a solar energy system that:

- (1) Has a nameplate generating capacity that is no larger than one thousand kilowatts direct current;
- (2) Must have at least ten participants or one participant for every ten kilowatts direct current nameplate capacity, whichever is greater; and
- (3) Meets the applicable eligibility requirements established in sections 6 and 7, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

**WAC 504-49-120 Consumer-owned utility.** "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

NEW SECTION

**WAC 504-49-125 Customer-owner.** "Customer-owner" means the owner of a residential-scale or commercial-scale renewable energy system, where such owner:

- (1) Is not a utility;
- (2) Is the primary account holder of the utility account; and
- (3) Either owns or occupies the premises where the renewable energy system is installed.

NEW SECTION

**WAC 504-49-130 Direct current.** "Direct current" means the unidirectional flow of electric charge.

NEW SECTION

**WAC 504-49-135 Electric utility or utility.** "Electric utility" or "utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.020.

NEW SECTION

**WAC 504-49-140 Fiscal year.** "Fiscal year" means July 1st through June 30th of the following year for the purposes of this rule. For example, fiscal year 2018 goes from July 1, 2017, through June 30, 2018.

NEW SECTION

**WAC 504-49-145 Nonprofit organization.** "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

NEW SECTION

**WAC 504-49-150 Person, business, and household.** "Person, business, and household" means any individual, firm, partnership, corporation, company, association, agency, or any other legal entity that resides on a property or has a business located on a property within the service area of the utility where the renewable energy system is located.

- (1) No person, business, or household is eligible to receive incentive payments provided under section 1, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939) of more than:
  - (a) Five thousand dollars per year for residential-scale systems or community solar projects;
  - (b) Twenty-five thousand dollars per year for commercial-scale systems; or
  - (c) Thirty-five thousand dollars per year for shared commercial solar projects.
- (2) Example: Two or more individuals living together in one household, with one customer account with the participating utility, constitutes a household. Although they may each individually participate in this incentive program, these same individuals living together in one household receive incentives in accordance with this chapter.

NEW SECTION

**WAC 504-49-155 Program term.** "Program term" means eight years, or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first. Eight years is equivalent to ninety-six months of electricity generation from the time of certification.

NEW SECTION

**WAC 504-49-160 Project participant.** "Project participant" has the two following meanings:

- (1) For purposes of community solar projects, a utility customer who participates in a community solar project in order to obtain a beneficial interest. Eligible participants of a community solar project that are business entities, such as a limited liability company or a corporation, are analyzed for participant eligibility and applicable incentive caps and limits by looking through the business entity to the members or stockholders that own the business entity.
- (2) For purposes of shared commercial solar projects, a customer of a utility and located in the state of Washington.

NEW SECTION

**WAC 504-49-165 Renewable energy system.** "Renewable energy system" means:

- (1) A solar energy system;

- (2) An anaerobic digester as defined in RCW 82.08.900;  
or  
(3) A wind generator used for producing electricity.

NEW SECTION

**WAC 504-49-170 Residential-scale system.** "Residential-scale system" means a renewable energy system or systems located at a single situs with combined nameplate capacity of twelve kilowatts direct current or less that meets the applicable system eligibility requirements established in section 6, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

**WAC 504-49-175 Shared commercial solar project.** "Shared commercial solar project" means a solar energy system, owned or administered by an electric utility, which:

- (1) Has a combined nameplate capacity of greater than one megawatt direct current and not more than five megawatts direct current;
- (2) Has at least five participants; and
- (3) Meets the applicable eligibility requirements established in sections 6 and 8, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

**WAC 504-49-180 Solar energy system.** "Solar energy system" means any device or combination of devices or elements that rely on direct sunlight as an energy source for use in the generation of electricity.

NEW SECTION

**WAC 504-49-185 Solar inverter.** "Solar inverter" means the device used to convert direct current to alternating current in a solar energy system.

NEW SECTION

**WAC 504-49-190 Solar module.** "Solar module" means the smallest nondivisible, self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

NEW SECTION

**WAC 504-49-195 Total system price.** (1) "Total system price" includes only the renewable energy system components (defined as "machinery and equipment" in WAC 458-20-263) and fees that are integral and necessary for the generation of electricity. Components and fees include:

- (a) Renewable energy system equipment (depends on system type):
  - (i) Solar energy system: Solar modules, inverter(s);
  - (ii) Wind generator: Turbine(s), tower(s), inverter(s);
  - (iii) Anaerobic digester: Digester/reactor, electrical generator.

(b) Balance of system (such as racking, wiring, switch gear, meter base);

(c) Nonhardware costs incurred up to the date of the final electrical inspection (such as fees associated with engineering, permitting, interconnection, application);

(d) Labor;

(e) Sales tax (as applicable).

(2) Total system price does not include structures and fixtures that are not integral to the generation of electricity per WAC 458-20-263.

**PART II****PARTICIPATION AND APPLICATION REQUIREMENTS, AND INCENTIVE LEVELS BY PROJECT TYPE**NEW SECTION

**WAC 504-49-200 Participation by a utility in the renewable energy system incentive program is voluntary.**

(1) A utility electing to participate in the incentive program must notify the energy program of such election in writing.

(2) The utility may terminate its voluntary participation in the incentive program by providing notice in writing to the energy program to cease issuing new certifications for renewable energy systems that would be served by that utility.

(3) Such notice of termination of participation is effective after fifteen days, at which point the energy program may not accept new applications for certification of renewable energy systems that would be served by that utility.

(4) Upon receiving a utility's notice of termination of participation in the incentive program, the energy program must report on its web site that customers of that utility are no longer eligible to receive new certifications under the incentive program.

(5) A utility's termination of participation does not affect the utility's obligation to continue to make annual incentive payments for electricity generated by systems that were certified prior to the effective date of the notice. The energy program must continue to process and issue certifications for renewable energy systems that were received by the energy program before the effective date of the notice of termination.

(6) A utility that has terminated participation in the program may resume participation upon filing notice with the energy program.

NEW SECTION

**WAC 504-49-205 Certification restrictions.** No new certification may be issued under this chapter for a system which an applicant received notice of eligibility from the department of revenue under the cost recovery program (RCW 82.16.120), or for a renewable energy system served by a utility that has elected not to participate in the incentive program, as provided in WAC 504-49-200.

NEW SECTION

**WAC 504-49-210 Renewable energy project requirements.** Any person, business, or household, as defined in

WAC 504-49-150, that participates in any of the four types of renewable energy projects defined in sections 5 through 8, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939), must meet the specified participation requirements and is subject to the system capacity limits, application requirements, and incentive limits, as follows:

(1) Residential-scale:

(a) Participation: The participant must be an owner of a residential-scale renewable energy system that is not a utility and:

(i) Is a customer of the utility that serves that location and has established an interconnection agreement with the utility for the renewable energy system;

(ii) Is located on contiguous property; and

(iii) Either owns or occupies the premises where the renewable energy system is installed.

(b) Capacity: Twelve kilowatts direct current or less, combined:

(i) Example 1: A property with a six kilowatts direct current solar system on one structure and a five kilowatts direct current system on the same or separate structure qualifies for the residential-scale incentive rate because the total capacity is less than twelve kilowatts direct current, combined.

(ii) Example 2: A property with a six kilowatts direct current solar system on one structure and a seven kilowatts direct current system on the same or separate structure does not qualify for the residential-scale incentive rate because the total capacity is greater than twelve kilowatts direct current, combined. This combined system instead qualifies for the commercial-scale incentive rate.

(iii) In the case of multiple renewable energy systems on a structure such as a condominium or commercial building, each having a separate customer-owner and separate utility and production meters, each system, if under twelve kilowatts direct current, would qualify for the residential-scale rate.

(c) Application: The owner submits a completed application to the energy program for certification per requirements specified in WAC 504-49-220.

(d) Annual incentive limit: Five thousand dollars per person, business, or household.

(2) Commercial-scale:

(a) Participation: The participant must be an owner of a commercial-scale renewable energy system that is not a utility and:

(i) Is a customer of the utility that serves that location and has established an interconnection agreement with the utility for the renewable energy system;

(ii) Is located on contiguous property; and

(iii) Either owns or occupies the premises where the renewable energy system is installed.

(b) Capacity: Greater than twelve kilowatts direct current, combined.

(i) Example 1: A property with a six kilowatts direct current solar system on one structure and a seven kilowatts direct current system on the same or separate structure qualifies for the commercial-scale incentive rate because the total capacity is greater than twelve kilowatts direct current, combined.

(ii) Example 2: A property with a six kilowatts direct current solar system on one structure and a five kilowatts

direct current system on the same or separate structure qualifies for the residential-scale incentive rate because the total capacity is less than twelve kilowatts direct current, combined.

(c) Application: The owner submits a completed application to the energy program for certification per requirements specified in WAC 504-49-220.

(d) Annual incentive limit: Twenty-five thousand dollars per person, business, or household.

(3) Shared commercial solar:

(a) Administration: Administrators of this project type must be a utility or a business under contract with a utility;

(b) Participation: Projects must have at least five project participants, each of which is a customer of the utility and located in the state of Washington;

(c) Capacity: Combined nameplate capacity greater than one megawatt direct current and not more than five megawatts direct current;

(d) Application:

(i) Precertification. Prior to applying for certification, a shared commercial solar administrator must apply for precertification against the remaining funds available for incentive payments as of July 1, 2017. Precertification application requirements include, but are not limited to:

(A) The name of the utility serving the project location;

(B) Contact information for the project administrator and technical management personnel; and

(C) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable;

(D) Additional information regarding deployment of projects in low- and moderate-income communities, as those terms are defined in RCW 43.63A.510, as requested.

(ii) Certification. The application for certification may not exceed the precertified system capacity. An application for certification must be completed by the shared commercial solar project administrator and approved by the energy program within one year of precertification issuance. Extensions past the three hundred sixty-five-day period are not granted. Projects that do not meet this deadline lose precertification status.

(e) Incentive rate: The incentive rate is set at the date of precertification approval;

(f) Annual incentive limit: Thirty-five thousand dollars per participant (person, business, household), consistent with their share of participation.

(4) Community solar project:

(a) Administration: A utility, nonprofit, or local housing authority that organizes or administers a solar project;

(b) Participation: The project must have at least ten participants, or one participant for every ten kilowatts direct current nameplate capacity, whichever is greater; and all participants must be customers of the participating utility;

(c) Capacity: Nameplate capacity that is no more than one thousand kilowatts direct current;

(d) Application:

(i) Precertification. Prior to applying for certification, a community solar project administrator must apply for precertification against the remaining funds available for incentive



payments as of July 1, 2017. Precertification application requirements include, but are not limited to:

- (A) The name of the utility serving the project location;
- (B) Contact information for the project administrator and technical management personnel; and
- (C) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(ii) Certification. The application for certification may not exceed the precertified system capacity. An application for certification must be completed by the community solar project administrator and approved by the energy program within one year of precertification issuance. Extensions past the three hundred sixty-five-day period are not granted. Projects that do not meet this deadline lose precertification status.

(e) Incentive rate: The incentive rate is set at the date of precertification approval;

(f) Annual incentive limit: Five thousand dollars per participant (person, business, household), consistent with their share of participation.

#### NEW SECTION

**WAC 504-49-215 Department of revenue-certified renewable energy systems.** To continue to be eligible to receive incentive payments under the renewable energy system cost recovery program (as described in WAC 458-20-273), the applicants (as defined in WAC 458-20-273) with the department of revenue certification must reapply with the energy program. This reapplication process is described in Part VI of this chapter and must be completed by April 30, 2018.

(1) Participation: Only applicants with renewable energy systems previously certified by the department of revenue may reapply for continued incentives.

(2) Application: Submit a completed reapplication to the energy program for certification in accordance with the requirements specified in Part VI of this chapter. For community solar projects, also submit a list of participants in the project.

(3) Annual incentive limit: Five thousand dollars per individual, household, business, or local governmental entity.

(4) Deadline: Reapplications must be submitted by April 30, 2018.

#### NEW SECTION

**WAC 504-49-220 Requirements to apply for certification—Residential-scale and commercial-scale projects.** The application must contain, but is not limited to, the following information; additional requirements are specified in WAC 504-49-210.

(1) The name and address of the customer-owner and location of the renewable energy system.

(2) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(3) An executed interconnection agreement with the serving utility.

(4) The date and supporting documentation verifying that the local jurisdiction issued its final electrical inspection of the renewable energy system.

(5) Documentation, including final sales invoice, and details of the total system price as defined in WAC 504-49-195.

(6) A signed statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(7) A signed statement that the applicant has not previously received a notice of eligibility from the department of revenue under RCW 82.16.120 entitling the applicant to receive annual incentive payments for electricity generated by the renewable energy system.

(8) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

(9) Payment of the one hundred twenty-five dollar application fee.

(10) Provisional certification. The energy program may grant provisional certification prior to proof of final electrical inspection. Provisional certification expires one hundred eighty days after issuance, unless the applicant submits proof of the final electrical inspection from the applicable local jurisdiction, or the energy program extends the certification for a term or terms of thirty days due to extenuating circumstances.

#### NEW SECTION

**WAC 504-49-225 Requirements to apply for certification—Shared commercial and community solar projects.** The application must contain, but is not limited to, the information detailed below. Additional requirements are specified in WAC 504-49-210.

(1) The name and address of the project administrator and location of the renewable energy system.

(2) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(3) An executed interconnection agreement with the serving utility.

(4) The date and supporting documentation verifying that the local jurisdiction issued its final electrical inspection of the renewable energy system.

(5) Documentation, including final sales invoice, and details of total system price as defined in WAC 504-49-195.

(6) A signed statement that the administrator understands that this information is true, complete, and correct to the best of administrator's knowledge and belief under penalty of perjury.

(7) A signed statement that the administrator has not previously received a notice of eligibility from the department of revenue under RCW 82.16.120 entitling the community solar project participants to receive annual incentive payments for electricity generated by the solar energy system.

(8) A signed statement authorizing the energy program and the serving utility to share information related to issuing

annual incentive payments, including application details and energy generation.

(9) Payment of the one hundred twenty-five dollar application fee.

(10) Additional information required for certification of shared commercial solar and community solar projects may include, but is not limited to:

(a) Shared commercial solar projects:

(i) Project design details;

(ii) Levelized cost of energy output of the system over its production life, and the calculations used to determine such cost;

(iii) A list of participants, including:

(A) Name;

(B) Address;

(C) Retail rate; and

(D) Utility account number;

(iv) Interconnection information; and

(v) Details regarding the majority of the installation work. If the majority of the installation of a shared commercial solar project is awarded to out-of-state contractors, the administrator must submit to the energy program:

(A) The reasons for using out-of-state contractors;

(B) The percentage of installation work performed by out-of-state contractors; and

(C) A cost comparison of the installation services performed by out-of-state contractors compared to the same services performed by Washington-based contractors.

(b) Community solar projects:

(i) System ownership information and business address;

(ii) Project design details;

(iii) Proof of administrator registration with the utilities and transportation commission, as applicable;

(iv) A list of participants, including:

(A) Name;

(B) Address; and

(C) Utility account number.

(v) Subscription information, including:

(A) Rates;

(B) Fees;

(C) Terms and conditions.

(vi) Executed interconnection agreement if the project size is greater than five hundred kilowatts direct current; and

(vii) Updated information regarding deployment of projects in low- and moderate-income communities, as those terms are defined in RCW 43.63A.510, as requested.

#### NEW SECTION

**WAC 504-49-230 Response from the energy program.** Within thirty days of receipt of the application for pre-certification or certification, the energy program must notify the customer-owner or administrator, electronically or by mail, whether the renewable energy system qualifies for incentive payments. This notice must state the rate to be paid per kilowatt-hour of electricity generated by the renewable energy system, as provided in section 6(12), chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939), subject to any applicable caps and limits on total annual payment as defined in this chapter.

#### NEW SECTION

**WAC 504-49-235 Public disclosure.** System certifications and the information contained therein are subject to public disclosure. In addition, all energy generation and incentive payment information associated with the certified system (as collected by the energy program) is subject to public disclosure.

#### NEW SECTION

**WAC 504-49-240 Denial or revocation of system certification.** The energy program may deny or revoke the approval of a system's certification and an appeal of this final determination may be initiated. The appeal provisions under Part VII of this chapter apply here.

#### NEW SECTION

**WAC 504-49-245 Utility liability.** A utility is not liable for incentive payments to a customer-owner if the utility has disconnected the customer due to a violation of a customer service agreement, such as nonpayment of the customer's bill or a violation of an interconnection agreement.

#### NEW SECTION

**WAC 504-49-250 Modification to system.** Modification details must be provided to the energy program. Examples are provided in WAC 504-49-305.

### PART III

#### CALCULATION OF INCENTIVES

#### NEW SECTION

**WAC 504-49-300 Incentive payment rate.** The incentive payment rate is the sum of the base rate and the made-in-Washington bonus, if applicable. To determine the incentive payment, the incentive payment rate is then multiplied by the system's gross kilowatt-hours generated during the fiscal year to determine the incentive payment.

(1) Determining the base rate. The first step in computing the incentive payment is to determine the correct base rate to apply. This rate depends on the fiscal year in which the system was certified and the type of renewable energy project under consideration, as defined in the table in subsection (2) of this section.

(2) Made-in-Washington bonus. The bonus rate is determined by whether all applicable system components (solar modules, wind turbines or towers) are manufactured in Washington state. See additional manufacturing details in Part V of this chapter. Bonus rates vary depending on the fiscal year in which the system is certified, as provided in the table below.

Fiscal year of system certification	Base rate: Residential-scale	Base rate: Commercial-scale	Base rate: Community solar	Base rate: Shared commercial solar	Made-in-Washington bonus
2018	\$0.16	\$0.06	\$0.16	\$0.06	\$0.05
2019	\$0.14	\$0.04	\$0.14	\$0.04	\$0.04
2020	\$0.12	\$0.02	\$0.12	\$0.02	\$0.03
2021	\$0.10	\$0.02	\$0.10	\$0.02	\$0.02

(3) Examples: A renewable energy system certified in fiscal year 2019 and generate:

(a) Residential-scale system: Two thousand five hundred kilowatt-hours; commercial-scale system: Fourteen thousand kilowatt-hours.

(i) If a residential-scale or commercial-scale renewable energy system has only solar modules manufactured out-of-state, the computation is as follows:

(A) Residential-scale:  $0.14 \times 2,500 = \$350.00$ ;

(B) Commercial-scale:  $0.04 \times 14,000 = \$560.00$ .

(ii) If a residential-scale or commercial-scale renewable energy system has all solar modules manufactured in Washington state, the computation is as follows:

(A) Residential-scale:  $(0.14 + 0.04) \times 2,500 = \$450.00$ ;

(B) Commercial-scale:  $(0.04 + 0.04) \times 14,000 = \$1,120.00$ .

(iii) If a residential-scale or commercial-scale renewable energy system has a solar module manufactured in Washington state combined with additional solar modules manufactured out-of-state, the computation would be as follows:

(A) Residential-scale:  $0.14 \times 2,500 = \$350.00$ ;

(B) Commercial-scale:  $0.04 \times 14,000 = \$560.00$ .

(iv) If residential-scale or commercial-scale wind generator equipment has an out-of-state turbine combined with a tower manufactured in Washington state, the computation is as follows:

(A) Residential-scale:  $(0.14 + 0.04) \times 2,500 = \$450.00$ ;

(B) Commercial-scale:  $(0.04 + 0.04) \times 14,000 = \$1,120.00$ .

(v) If residential-scale wind generator equipment has both an out-of-state turbine and tower, the computation is as follows:

(A) Residential-scale:  $0.14 \times 2,500 = \$350.00$ ;

(B) Commercial-scale:  $0.04 \times 14,000 = \$560.00$ .

(b) Shared commercial solar project system: Four million kilowatt-hours.

(i) If a shared commercial system has out-of-state solar modules, the computation is as follows:  $0.04 \times 4,000,000 = \$160,000.00$ . The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is  $\$160,000.00 \times 0.05 = \$8,000.00$  (contingent on the rates, fees, terms or conditions of the project).

(ii) If a shared commercial system has all solar modules manufactured in Washington state, the computation is as follows:  $(0.04 + 0.04) \times 4,000,000 = \$320,000.00$ . The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is  $\$320,000.00 \times 0.05 = \$16,000.00$  (contingent on the rates, fees, terms or conditions of the project).

(c) Community solar project system: Fifty thousand kilowatt-hours.

(i) If a community solar energy system has all solar modules manufactured in Washington state combined with an out-of-state inverter, the computation is as follows:  $(0.14 + 0.04) \times 50,000 = \$9,000.00$ . The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is  $\$9,000.00 \times 0.05 = \$450.00$  (contingent on the rates, fees, terms or conditions of the project).

(ii) If a community solar energy system has some solar modules manufactured in Washington state combined with additional solar modules manufactured out-of-state, the computation is as follows:  $0.14 \times 50,000 = \$7,000.00$ . The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is  $\$7,000.00 \times 0.05 = \$350.00$  (contingent on the rates, fees, terms or conditions of the project).

#### NEW SECTION

**WAC 504-49-305 Additions or changes to existing certified systems.** (1) All additions or changes to existing certified systems are subject to existing utility standards and policies.

(2) If a residential-scale or commercial-scale customer-owner makes investments that result in an expansion of capacity, the applicant must provide this information to the energy program. The energy program may:

(a) Issue a new certification for an additional system installed with a previously certified system, as long as the new system meets the program requirements and its production can be measured separately from the previously certified system; or

(b) Issue a recertification if the additional capacity is not measured separately. Such recertification expires on the same day as the original certification for the residential-scale or commercial-scale system, and applies the incentive rates and program rules that are in effect as of the date of the recertification.

(3) The following examples illustrate how increases in system capacity may affect incentive payments:

(a) A five kilowatts direct current residential-scale system is certified in February 2019 and is eligible for the fourteen cents incentive rate. Two kilowatts direct current of capacity is added in February 2021 without a separate production meter and the system is recertified in the same fiscal year. The incentive rate of ten cents per kilowatt-hour applies to all future incentive payments of the entire seven kilowatts

direct current system. Incentive payments end in 2027 or when cumulative incentive payments reach fifty percent of the total system price plus the expansion price, including applicable sales tax, whichever comes first;

(b) A five kilowatts direct current residential-scale system is certified in February 2019 and is eligible for the fourteen cents incentive rate. If two kilowatts direct current of capacity is added in February 2021 with its own production meter, the addition may be certified separately and the ten cent rate applies only to the production from this separate system and ends in 2029. The originally certified five kilowatts direct current system continues to be certified at the fourteen cents rate, with those payments ending in 2027. Cumulative incentive payments of fifty percent of the total system price, including applicable sales tax, apply separately to the five kilowatts direct current and two kilowatts direct current installations;

(c) An increase in nameplate capacity results in the total system size being greater than twelve kilowatts direct current. The system requires recertification and the applicable commercial-scale incentive rate applies.

#### NEW SECTION

**WAC 504-49-310 Cumulative limit on incentive payments.** Incentive payments continue for eight years or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

### PART IV

#### MANUFACTURED IN WASHINGTON STATE

#### NEW SECTION

**WAC 504-49-400 What constitutes manufactured in Washington?** The energy program must, in consultation with the department of commerce, establish a list of equipment that is eligible for the bonus rates described in this chapter.

(1) In order for a solar module, or a wind turbine or tower, to qualify as manufactured in Washington state, the manufactured component must meet the following definitions:

(a) "Solar module" means the smallest nondivisible, self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. The lamination of the modules must occur in Washington state;

(b) "Wind turbine" refers to a device that converts the wind's kinetic energy into electrical energy and "tower" refers to the supporting structure.

(2) Is combining products considered to be manufacturing? When determining whether a solar module, or a wind turbine or tower, are manufactured in Washington, the energy program considers various factors to determine if a manufacturer combining various items into a single package is engaged in a manufacturing activity. Any one of the following factors is not considered conclusive evidence of a manufacturing activity:

(a) The ingredients are purchased from various suppliers;

(b) The manufacturer combining the ingredients attaches his or her own label to the resulting product;

(c) The ingredients are purchased in bulk and broken down to smaller sizes;

(d) The combined product is marketed at a substantially different value from the selling price of the individual components; and

(e) The manufacturer combining the items does not sell the individual items except within the package.

#### NEW SECTION

**WAC 504-49-405 What is the process for a manufacturer to get its product qualified as made in Washington?** The manufacturer must request certification from the energy program that its product, such as a module, or wind turbine or tower, qualifies as made in Washington.

(1) Manufacturer's statement. The manufacturer must supply the energy program with a statement specifying what processes were carried out in Washington state to qualify the product.

(2) Penalty of perjury. The manufacturer's statement must be made under penalty of perjury.

(3) Field visit to view manufacturing process. The energy program performs a field visit to view the manufacturing process for the product, which may also include, but is not limited to:

(a) An inspection of the process by an engineer or other technical expert;

(b) Testing and evaluation of a product pulled off the production line;

(c) Review of purchase invoices to verify the vendor sources for the parts used in the manufacturing of the product;

(d) Inspection of the production line; and

(e) Requests for clarification concerning questions, if any, discovered during the inspection.

(4) Approval or disapproval of manufacturer's certification. Within thirty days of the field visit, the energy program issues a written decision to the manufacturer on its product's qualification as made in Washington state. The energy program makes the decision available to the public.

(5) Change in manufacturing process. The manufacturer must notify the energy program of any change in the manufacturing process for previously certified products within ten days of such a change.

(6) Inspection of previously certified product's manufacturing process. The energy program reserves the right to perform an inspection of the manufacturing processes for each product, such as a solar module, or a wind tower or turbine, that has been previously certified as manufactured in Washington state. The inspection is conducted to verify that the product continues to qualify as manufactured in Washington state.

(7) Denial or revocation of approval of certification. The energy program may revoke the approval of certification that a product, such as a module, or a wind turbine or tower, is made in Washington state when it finds that the product does

not qualify for certification as manufactured in Washington state.

(8) The appeal provisions under Part VII of this chapter apply here.

(9) Document retention. The manufacturer must retain the documentation of the made in Washington certification process for five years after the application period for the related incentive program closes.

## PART V

### GENERAL TOPICS

#### NEW SECTION

**WAC 504-49-500 Is there a time limit on when incentive payment may be made for a system's generated electricity?** Yes. Incentive payments may only be made for kilowatt-hours generated on or after July 1, 2017, and for the following eight years, or until cumulative incentive payments for electricity generated by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

(1) Authorization of incentive payments. No incentive payments may be authorized or accrued until the final electrical inspection and executed interconnection agreement are submitted to the energy program.

(2) Certification is valid for the incentive program term. This certification entitles the person, business, or household to receive incentive payments for electricity generated from the date the renewable energy system commences operation, or the date the system is certified, whichever date is later.

(3) Changes to incentive rates. Incentive rates determined by certification date may not be retroactively changed except to correct errors that were made during the original application or certification process and that are discovered later.

(4) Incentive schedule. Incentives are issued based on the gross kilowatt-hours generated during the fiscal year beginning on July 1st and ending on June 30th. For the last year of incentive payments, the payment is the balance of the last year of generation less the first year of generation. A negative balance for the last year results in nonpayment.

(5) Certification date. Certification date is determined by the date when the energy program completes its review of a submitted application. However, due to the timing of this program, the following administrative processes apply:

(a) For applications submitted from July 1, 2017, to December 31, 2017:

(i) For purposes of systems that commenced operation on or after July 1, 2017: The certification date is assigned based on the date that the local jurisdiction issued its final approval of the electrical inspection of the renewable energy system.

(ii) For purposes of systems that commenced operation before July 1, 2017: The certification date is assigned as July 1, 2017.

(b) For applications submitted on or after January 1, 2018: The certification date is assigned on the date when the energy program completes its review of a submitted applica-

tion. The energy program encourages customer-owners to submit all applications on the date the local jurisdiction issues its final approval of the electrical inspection of the renewable energy system. In instances where the certification date might follow the final electrical inspection by more than thirty days, the customer-owner or the serving utility must provide additional information to ascertain the correct initial electrical generation amount to use in calculating the first year of incentive payments.

#### NEW SECTION

**WAC 504-49-505 Must the customer-owner or administrator keep records regarding incentive payments?** (1) Customer-owners or administrators receiving incentive payments must keep and preserve, for a period of five years after the receipt of the last incentive payment from the utility, suitable records as may be necessary to determine the amount of incentive received.

(2) Examination of records. Such records must be open for examination at any time upon notice by the energy program.

#### NEW SECTION

**WAC 504-49-510 How to determine if community solar or shared commercial solar projects located on the same property are one combined system or separate systems for determining the applicable limit?** In determining if a community solar or shared commercial solar project is within the applicable limit when more than one community solar or shared commercial solar project is located on one property, the energy program treats each project's system as separate from the other projects if there are separate production meters and separate certification applications have been submitted to the energy program.

#### NEW SECTION

**WAC 504-49-515 Are the renewable energy system's environmental attributes transferred when ownership of the renewable energy system changes?** The nonpower attributes of the renewable energy system belong to the utility customer who owns or hosts the system or, in the case of a community solar project or a shared commercial solar project, the participant. The attributes may be kept, sold, or transferred at the utility customer's discretion unless, in the case of a utility-owned community solar or shared commercial solar project, a contract between the customer and the utility clearly specifies that the utility retains the attributes.

#### NEW SECTION

**WAC 504-49-520 What do I have to do if I purchase property that has an existing renewable energy system?** If a person, business, or household purchases a property that has a certified renewable energy system, the new customer-owner must (at a minimum) notify the energy program of the transfer of ownership and provide an executed interconnection agreement with the utility serving the premises.

NEW SECTION

**WAC 504-49-525 What if I sell my share in a community solar or shared commercial solar project?** The administrator of a community solar project or shared commercial solar project must provide notice to the energy program of any changes or transfers in project participation.

**PART VI****APPLICATION PROCESS FOR CURRENTLY CERTIFIED RENEWABLE ENERGY SYSTEMS IN THE COST RECOVERY INCENTIVE PROGRAM**NEW SECTION

**WAC 504-49-600 Requirements to reapply for certification.** The reapplication for continued incentive payments through June 30, 2020, must be submitted to the energy program by April 30, 2018. This reapplication must contain, but is not limited to, the following information as specified in the applicant and eligibility requirements in WAC 458-20-273:

- (1) The name and address of the applicant and location of the renewable energy system;
- (2) The applicant's tax registration number;
- (3) The utility name and utility account number;
- (4) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable;
- (5) A signed statement that the applicant understands that this information is true, complete, and correct to the best of their knowledge and belief under penalty of perjury; and
- (6) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

NEW SECTION

**WAC 504-49-605 May a renewable energy system that has already been certified by the department of revenue be certified in the new program for incentive payments beyond June 30, 2020?** No. If the applicant's renewable energy system has already been certified by the department of revenue for cost recovery incentives, that system is ineligible for the new incentive program.

NEW SECTION

**WAC 504-49-610 May I increase the capacity of a department of revenue-certified system?** The person, business, or household may not increase the capacity of a department of revenue-certified system to receive additional cost recovery program incentive payments.

NEW SECTION

**WAC 504-49-615 Is there a fee to reapply?** No. There is no fee for reapplication for a department of revenue-certified renewable energy system.

**PART VII****APPEALS RIGHTS**NEW SECTION

**WAC 504-49-700 What are the appeal rights under the renewable energy system incentive payment program?** (1) The energy program may take four different types of actions that may result in a right to an appeal:

- (a) Denying a system's precertification or certification;
- (b) Revoking a system's precertification or certification;
- (c) Denying a manufacturer's statement of a product as qualifying as made in Washington state; and
- (d) Revoking a previously approved certification of a product qualifying as made in Washington.

(2) The same appeal procedures apply to all four types of action. All appeals involving the renewable energy system incentive program in this chapter are conducted as formal adjudicative proceedings under RCW 34.05.413 through 34.05.476 and chapter 10-08 WAC.

(3) The notice issued by the energy program provides an explanation of the reasons for the denial or revocation, and advises the recipient about how to appeal the decision if the recipient disagrees.

(4) The energy program's action is final unless the recipient files an appeal petition with the energy program within thirty days of service (receipt) of the notice of the energy program's action. RCW 34.05.010(19) defines "service" and includes service by postal mail, electronic mail, and personal service.

NEW SECTION

**WAC 504-49-705 Presiding officer—Final order—Review.** For both a denial of an application for certification and a notice of intent to revoke a previously approved certification, the presiding officer of a formal adjudicative proceeding is the Washington state office of administrative hearings. The presiding officer makes the final decision and enters a final order as provided in RCW 34.05.461 (1)(b).

NEW SECTION

**WAC 504-49-710 Petitions for reconsideration.** RCW 34.05.470 governs petitions for reconsideration. Petitions for reconsideration must be addressed to or delivered to the presiding officer at the address provided in the final order. The petition for reconsideration must be filed and served as required by WAC 10-08-110.

NEW SECTION

**WAC 504-49-715 Judicial review.** Judicial review of the final order of the presiding officer is governed by RCW 34.05.510 through 34.05.598.

**WSR 17-22-102**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-300—Filed October 30, 2017, 4:38 p.m., effective October 31, 2017, 6:00 p.m.]

Effective Date of Rule: October 31, 2017, 6:00 p.m.

Purpose: Amend commercial crab rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000F and 220-340-45500D; and amending WAC 220-340-420.

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

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

Reasons for this Finding: The provisions of this rule will maintain the closure of Puget Sound region. The rule will close Regions 2 East, 2 West and 3-2 as outlined in WAC. These areas are closing early to allow for the use of the remaining allocation during a future opener. Region 2 East is being closed to allow treaty fishers to match the current landings by the State fisheries. Regions 3-1, 3-3 East and 3-3 West will remain open to allow additional opportunity in these technically challenging regions. These provisions are in conformity with agreed management plans with applicable tribes. These management plans were entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: October 30, 2017.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-340-42000G Commercial crab fishery—unlawful acts.** Notwithstanding the provisions of WAC 220-340-420:

(1) Effective immediately, until further notice, it is unlawful for any person to fish for crabs for commercial purposes in Crab Management Regions 1. This region includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B.

(2) Effective 6:00 p.m., October 31, 2017, until further notice, it is unlawful for any person to fish for crabs for commercial purposes in Crab management Region 2 East, 2 West or 3-2. These regions include Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, 25A, 25B, 25D, 25E, 26A East, 26A West.

(3) Effective immediately, until further notice, it is unlawful for any person to fish for crabs with more than 50 pots per license per buoy tag number in Region 3-1, 3-3 East or 3-3 West. These regions include Marine Fish-Shellfish Catch Reporting Areas 23A, 23B, 23C and 29.

(4) All remaining buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

**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 are repealed effective 6:00 p.m. October 31, 2017:

WAC 220-340-42000F Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (17-298)

WAC 220-340-45500D Commercial crab fishery—Seasons and areas—Puget Sound. (17-298)

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

**WSR 17-22-103**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-301—Filed October 30, 2017, 4:40 p.m., effective October 30, 2017, 4:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for recreational razor clam harvest.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000G and 220-330-16000H; and amending WAC 220-330-160.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: October 30, 2017.

J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-330-16000H Razor clams—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. November 3, 2017 through 11:59 p.m. November 5, 2017, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. November 3, 2017 through 11:59 p.m. November 5, 2017, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. November 2, 2017 through 11:59 p.m. November 2, 2017 and November 4, 2017 through 11:59 p.m. November 4, 2017, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) Effective 12:01 p.m. November 3, 2017 through 11:59 p.m. November 3, 2017 and November 5, 2017 through 11:59 p.m. November 5, 2017, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) It is unlawful to dig for razor clams at any time in the Twin Harbors and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-330-16000G Razor clams—Areas and seasons.

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 6, 2017:

WAC 220-330-16000H Razor clams—Areas and seasons.

### WSR 17-22-123

#### EMERGENCY RULES

#### WASHINGTON STATE PATROL

[Filed October 31, 2017, 4:05 p.m., effective October 31, 2017, 4:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend WAC 446-65-010(1) to bring current the effective date of all the Code of Federal Regulations (C.F.R.) adopted by reference in the rule.

Citation of Rules Affected by this Order: Amending WAC 446-65-010.

Statutory Authority for Adoption: RCW 46.32.020.

Other Authority: RCW 46.48.170.

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 regulatory review performed by the Federal Motor Carrier Safety Administration (FMCSA) during the spring of 2017 noted that many of the C.F.R. adopted in WAC 446-65-010 were not the C.F.R. currently in effect. The lack of conformity was the result of specific language in WAC 446-65-010 that adopted the federal regulations "in effect on the effective date" of the rule, which was October 4, 2013. Since the rule adoption in 2013, many of the C.F.R. adopted by reference in the rule have been amended, some to a significant degree.

On August 29, 2017, the Washington state patrol was notified that the Owner-Operator Independent Driver's Association submitted a petition to FMCSA alleging that Washington state's administrative rules are out of compliance with a 2015 change to 49 C.F.R. 395 relating to electronic logging devices (ELD). The petition asserts that under the current WAC, Washington will not have authority to enforce the ELD requirement when it goes into effect in December 2017. The petition asks FMCSA to withdraw funds from noncompliant states, such as Washington.

Failure to update WAC 446-65-010 to incorporate all of the recent amendments to the C.F.R. adopted by reference therein could jeopardize grant funding to the state in the amount of \$6,462,667. Therefore, the adoption of this rule change, which brings all of the C.F.R. incorporated by reference current to October 1, 2017, will allow enforcement of all of the federal regulations contained in WAC and will enable the uninterrupted receipt of grant funds to Washington, both



of which will preserve the public health, safety and general welfare of our citizens.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 the Request of a Non-governmental 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: October 30, 2017.

John R. Batiste  
Chief

**AMENDATORY SECTION** (Amending WSR 13-18-069, filed 9/3/13, effective 10/4/13)

**WAC 446-65-010 Transportation requirements.** (1)

The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations (C.F.R.), (~~in effect on the effective date of this section~~) as they exist on October 1, 2017, for motor carriers used in intrastate or interstate commerce in their entirety:

(a) Part 40 Procedures for transportation workplace drug and alcohol testing programs.

(b) Part 325 Compliance with interstate motor carrier noise emission standards.

(c) Part 350 Commercial motor carrier safety assistance program.

(d) Part 355 Compatibility of state laws and regulations affecting interstate motor carrier operations.

(e) Part 365 Rules governing applications for operating authority.

(f) Part 367 Standards for registration with states.

(g) Part 372 Exemptions, commercial zones and terminal areas.

(h) Part 373 Receipts and bills.

(i) Part 376 Lease and interchange of vehicles.

(j) Part 379 Preservation of records.

(k) Part 380 Special training requirements.

(l) Part 381 Waivers, exemptions, and pilot programs.

(m) Part 382 Controlled substances and alcohol use and testing.

(n) Part 383 Compliance with commercial driver's license program.

(o) Part 385 Safety fitness procedures.

(p) Part 387 Minimum levels of financial responsibility for motor carriers.

(q) Part 390 General.

(r) Part 391 Qualification of drivers. Provided that 49 C.F.R. 391 subpart D (Tests), and E (Physical Qualifications and Examinations) do not apply to motor carriers operating

vehicles with gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating intrastate, and not used to transport hazardous materials in a quantity requiring placarding.

(s) Part 392 Driving of motor vehicles.

(t) Part 393 Parts and accessories necessary for safe operation.

(u) Part 395 Hours of service of drivers: Except if a company has drivers of commercial motor vehicle of any size, hauling logs from the point of production or driving in dump truck operations in intrastate commerce provided that:

(i) The driver must:

(A) Operate within a one hundred air-mile radius of the location where the driver reports to work and the driver must return to the work reporting location at the end of each duty tour;

(B) Have at least ten consecutive hours off duty separating each on-duty period;

(C) Not drive:

- More than twelve hours following at least ten hours off duty; or

- After the fourteenth hour after coming on duty on at least five days of any period of seven consecutive days; and

- After the sixteenth hour after coming on duty on no more than two days of any period of seven consecutive days; and

- After having been on duty for eighty hours in seven consecutive days if the employing motor carrier does not operate commercial motor vehicle every day of the week; or

- After having been on duty for ninety hours in eight consecutive days if the employing motor carrier operates commercial motor vehicle every day of the week; in any period of seven or eight consecutive days may end with the beginning of any off-duty period of twenty-four or more consecutive hours.

(ii) The motor carrier that employs the driver must maintain and retain for a period of twelve months accurate and true time recordings showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The total number of hours the driver drives each day;

(D) The time the driver is released from duty each day; and

(E) The total time the driver is driving and on duty for the preceding seven days.

(v) Part 396 Inspection, repair, and maintenance.

(w) Part 397 Transportation of hazardous materials; driving and parking rules.

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined as starting February 1 and ending November 30 of each year.

(3) Links to the C.F.Rs. are available on the Washington state patrol web site at [www.wsp.wa.gov](http://www.wsp.wa.gov). Copies of the C.F.Rs. may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.

**WSR 17-22-124**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-303—Filed October 31, 2017, 4:10 p.m., effective November 1, 2017]

Effective Date of Rule: November 1, 2017.

Purpose: Amends recreational fishing rules for the North Fork Toutle and Green rivers (Cowlitz County).

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000K and 220-312-03000L; and amending WAC 220-312-030.

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 coho retention because the North Toutle Hatchery is now on track to meet egg take goals for coho salmon but remains short of egg take goals for Chinook salmon. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: October 31, 2017.

J. W. Unsworth  
 Director

**NEW SECTION**

**WAC 220-312-03000L Southwest—Freshwater exceptions to statewide rules.** Notwithstanding the provisions of WAC 220-312-030, effective November 1 through November 30, 2017, in the waters of the North Fork Toutle and Green Rivers (Cowlitz County):

Daily limit is 6 salmon, up to 2 may be adults, release salmon other than hatchery coho.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective November 1, 2017:

WAC 220-312-03000K Freshwater exceptions to statewide rules—Southwest. (17-284)

The following section of the Washington Administrative Code is repealed effective December 1, 2017:

WAC 220-312-03000L Freshwater exceptions to statewide rules—Southwest. (17-303)

**WSR 17-22-130**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-302—Filed November 1, 2017, 9:26 a.m., effective November 1, 2017]

Effective Date of Rule: November 1, 2017.

Purpose: Amends commercial salmon rules for Willapa Bay.

Citation of Rules Affected by this Order: Repealing WAC 220-354-25000A.

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 to rescind filing WSR 17-20-058 which modified the 2017 permanent commercial fishery rules to address the potential of overcrowding the recovery box. The concern for overcrowding originated from unanticipated environmental conditions that were likely to produce higher encounters of Chinook and steelhead, together with expected high levels of chum. The resulting overcrowding from required use of recovery box for all species was expected to produce higher levels of Chinook and steelhead mortality making it harder to stay within conservation objectives, particularly for Chinook. Permanent rules take effect November 1, 2017.

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 the Request of a Non-governmental 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: October 31, 2017.

J. W. Unsworth  
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2017:

WAC 220-354-25000A Willapa Bay salmon fall fishery.  
(17-269)