

WSR 23-14-004
EMERGENCY RULES

RENTON TECHNICAL COLLEGE

[Filed June 21, 2023, 4:13 p.m., effective June 21, 2023, 4:13 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To incorporate the requirements from HB [2SHB] 1751, Hazing prevention legislation, into the student conduct code and hearing procedures. The updated rules incorporate new prohibited student conduct, statement of jurisdiction, definitions, and hazing prohibited sanctions.

Citation of Rules Affected by this Order: New WAC 495E-110-045; and amending WAC 495E-110-030, 495E-110-050, and 495E-110-060.

Statutory Authority for Adoption: 2SHB 1751, section 4(1) (requiring colleges to issue reports of violations of [or] actual findings of violations [of] colleges' "code of conduct, antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault"), RCW 28B.50.140.

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: Emergency rules adding and amending rules to chapter 495E-110 WAC, Student conduct code and hearing procedure, rules are necessary for compliance with HB [2SHB] 1751. The college intends to proceed with permanent rule making on these subjects in the near future.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 21, 2023.

Jacob Jackson
Vice President of Administration and Finance

OTS-4286.1

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

WAC 495E-110-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student or student group, who commits (~~(or attempts to commit), or~~), attempts to commit, aids, abets, incites, encourages or assists another person to commit, an

act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each faculty course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this section, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's

email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group;

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(10) Alcohol, drug, and tobacco violations.

(a) **Alcohol.** The use, possession, delivery, or sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug including, anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff. There are designated smoking areas on campus.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. (Supplemental Title IX student conduct procedures.)

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including, unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limi-

ted to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of (~~eighteen~~) 18.

(iv) Statutory rape. Consensual intercourse between a person who is (~~eighteen~~) 18 years of age or older, and a person who is under the age of (~~sixteen~~) 16.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this chapter, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, in-

cluding tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: Title IX of Education Amendments of 1972 and RCW 28B.50.140. WSR 21-10-038, § 495E-110-030, filed 4/28/21, effective 5/29/21. Statutory Authority: RCW 28B.50.140(13), Violence Against Women Act of 1994, and Title IX of Education Amendments of 1972. WSR 15-11-013, § 495E-110-030, filed 5/8/15, effective 6/8/15.]

NEW SECTION

WAC 495E-110-045 Hazing prohibited, sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 495E-110-030(9).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

[]

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

WAC 495E-110-050 Statement of jurisdiction. (1) The student conduct code shall apply to ~~((student))~~ conduct by students and student groups that occurs:

(a) On college premises;
 (b) At or in connection with college-sponsored activities; or
 (c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from ~~((the time of application for admission))~~ notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The ~~((college))~~ student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off campus.

[Statutory Authority: Title IX of Education Amendments of 1972 and RCW 28B.50.140. WSR 21-10-038, § 495E-110-050, filed 4/28/21, effective 5/29/21. Statutory Authority: RCW 28B.50.140(13), Violence Against Women Act of 1994, and Title IX of Education Amendments of 1972. WSR 15-11-013, § 495E-110-050, filed 5/8/15, effective 6/8/15.]

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

WAC 495E-110-060 Definitions. The following definitions shall apply for purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) A "complainant" is an alleged victim of sexual misconduct.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(5) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(6) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ~~((ten))~~ 10 instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(7) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) "Respondent" is the student against whom disciplinary action is initiated.

(9) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(10) "Sexual misconduct" has the meaning ascribed to this term in WAC 495E-110-030(13).

(11) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(12) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code.

(13) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(14) "The president" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

[Statutory Authority: Title IX of Education Amendments of 1972 and RCW 28B.50.140. WSR 21-10-038, § 495E-110-060, filed 4/28/21, effective

5/29/21. Statutory Authority: RCW 28B.50.140(13), Violence Against Women Act of 1994, and Title IX of Education Amendments of 1972. WSR 15-11-013, § 495E-110-060, filed 5/8/15, effective 6/8/15.]

WSR 23-14-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-102—Filed June 21, 2023, 4:24 p.m., effective June 22, 2023]

Effective Date of Rule: June 22, 2023.

Purpose: The purpose of this emergency rule is to close the coastal commercial salmon troll fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000T.

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: Estimates of catch to date have been above expectation, leaving limited remaining quota to prosecute the remainder of the June fishery. Closure of the fishery is needed to allow for tabulation of harvest to date to ensure the fishery does not exceed the summer quota. Additional openings in June may be considered if sufficient May - June quota remains.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 21, 2023.

Kelly Susewind
Director

REPEALER

The following section of the Washington Administrative Code is repealed, effective June 22, 2023:

WAC 220-354-30000T Coastal salmon troll seasons—
Commercial. (23-94)

WSR 23-14-013

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed June 22, 2023, 4:48 p.m., effective June 22, 2023, 4:48 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To comply with federal law, the agency is extending the time period of parole for certain Afghan refugees to qualify for refugee medical assistance.

Citation of Rules Affected by this Order: Amending WAC 182-503-0535 and 182-507-0135.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Section 1501 of the Consolidated Appropriations Act, 2023.

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 federal Consolidated Appropriations Act, 2023 (P.L. 117-328, div. M, title V, § 1501, December 29, 2022) amended subsection (a)(1)(A) of section 2502 of the Afghanistan Supplemental Appropriations Act, 2022 (division C of P.L. 117-43) by striking "September 30, 2022" and inserting "September 30, 2023."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 22, 2023.

Wendy Barcus
Rules Coordinator

OTS-4705.1

AMENDATORY SECTION (Amending WSR 22-20-074, filed 9/30/22, effective 10/31/22)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than 21 years of age. In that case, the child retains qualified alien status even after he or she turns 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan granted humanitarian parole between July 31, 2021, and September 30, ((2022)) 2023, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

(xiii) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), was:

(A) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(B) Granted parole into the United States after September 30, 2023, and is:

(I) The spouse or child of a person described in (b) (xiii) (A) of this subsection; or

(II) The parent, legal guardian, or primary caregiver of a person described in (b) (xiii) (A) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(xiv) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than 21 years of age.

(xv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(d) A nonqualified alien may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(e) An undocumented person may be eligible for:

(i) Alien medical programs;

(ii) State-only funded apple health for kids; or

(iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through (xv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021, 41.05.160, and P.L. 117-128. WSR 22-20-074, § 182-503-0535, filed 9/30/22, effective 10/31/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-503-0535, filed 3/23/22, effective 4/23/22; WSR 21-19-029, § 182-503-0535, filed 9/9/21, effective 10/10/21; WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

OTS-4706.1

AMENDATORY SECTION (Amending WSR 22-20-074, filed 9/30/22, effective 10/31/22)

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d) (5) of the INA;

(c) Granted conditional entry under section 203 (a) (7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; (~~(e)~~)

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a) (27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006(~~(-)~~);

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, (~~(2022)~~) 2023, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021; or

(k) A citizen or national of Ukraine (or a person who last habitually resided in Ukraine) who, under section 401 of the Additional Ukraine Supplemental Appropriations Act, 2022 (AUSAA), was:

(i) Granted parole into the United States between February 24, 2022, and September 30, 2023; or

(ii) Granted parole into the United States after September 30, 2023, and is:

(A) The spouse or child of a person described in (k) (i) of this subsection; or

(B) The parent, legal guardian, or primary caregiver of a person described in (k) (i) of this subsection who is determined to be an unaccompanied child under section 462 (g) (2) of the Homeland Security Act of 2002 or section 412 (d) (2) (B) of the Immigration and Nationality Act.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1) of this section.

[Statutory Authority: RCW 41.05.021, 41.05.160, and P.L. 117-128. WSR 22-20-074, § 182-507-0135, filed 9/30/22, effective 10/31/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-08-002, § 182-507-0135, filed 3/23/22, effective 4/23/22. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0135, filed 9/5/12, effective 10/6/12.]

WSR 23-14-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-103—Filed June 23, 2023, 10:51 a.m., effective June 23, 2023, 10:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open Cascade River hatchery Chinook seasons seven days per week.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000H; 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 rule is necessary to open salmon seasons in a portion of Cascade River seven days per week.

Treaty fisheries for hatchery spring Chinook in this section of the Cascade [River] have concluded for the season. Sunday through Tuesday closures to avoid gear conflicts are no longer necessary. The ongoing Skagit system sport fisheries are still within conservation objectives for wild spring Chinook encounters.

This rule also maintains salmon seasons for the Skagit River set in WSR 23-13-075, filed on June 14, 2023.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 23, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000I Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through July 15, 2023, the following provisions of WAC 220-312-040 and regarding salmon seasons for portions of the Skagit River and Cascade River, shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

- (1) **Cascade River (Skagit Co.):** From mouth to Rockport-Cascade Rd. Bridge: Salmon:
- (a) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.
 - (b) Night Closure in effect.
 - (c) Anti-snagging rule in effect.
- (2) **Skagit River (Skagit Co.):**
- (a) From Hwy. 536 Bridge (Memorial Hwy. Bridge) in Mt. Vernon to the Dalles Bridge at Concrete: Salmon:
- (i) Daily limit 3 sockeye. Release all salmon other than sockeye.
 - (ii) Night closure in effect.
 - (iii) Selective gear rules are not in effect for salmon.
- (b) From the Hwy. 530 Bridge at Rockport to Cascade River Rd. (Marblemount Bridge): Salmon:
- (i) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.
 - (ii) Night Closure in effect.
 - (iii) Anti-snagging rule in effect.

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REPEALER

The following section of Washington Administrative Code is repealed, effective immediately:

WAC 220-312-04000H Freshwater exceptions to statewide rules—Puget Sound. (23-100)

WSR 23-14-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-104—Filed June 23, 2023, 3:30 p.m., effective June 24, 2023]

Effective Date of Rule: June 24, 2023.

Purpose: The purpose of this emergency rule is to open commercial salmon troll seasons in Areas 1 through 4.

Citation of Rules Affected by this Order: Amending WAC 220-354-300.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet, and the remaining quota is sufficient to allow larger landing and possession limits for Areas 1 through 4. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fishery Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 23, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-30000U Coastal salmon troll seasons—Commercial.

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective June 24, 2023, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00"W longitude and south of 48°23'00"N latitude open: June 24 through June 29, 2023.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.), open: June 24 through June 29, 2023.

(3) In Washington Catch Reporting Areas 1, 2, 3 and 4, landing and possession limits combined across all areas of:

(a) 11 Chinook per vessel for the landing period June 24 through June 29.

(4) The Cape Flattery and Columbia River Control Zones are closed. The Salmon Troll Yelloweye Rockfish Conservation Area is closed.

(5) Minimum size for Chinook salmon is 27 inches in length (20 1/2 inches frozen dressed). No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(6) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(7) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

(8) During any single trip, only one side of the Leadbetter Point line (46°38'10"N. lat.) may be fished.

(a) Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area south of Leadbetter Point.

(b) For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery.

(c) Vessels may not land fish east of Tongue Point, Oregon.

(9) Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license.

(a) Vessels in possession of salmon south of the Queets River may not cross the Queets River line (47°31'42"N. lat.) without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(b) Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(c) Vessels may not land fish east of the Sekiu River.

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WSR 23-14-032
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed June 26, 2023, 1:17 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The developmental disabilities administration (DDA) is enacting these amendments on an emergency basis to align with SB 5252 (2023) and FBI background check requirements.

Citation of Rules Affected by this Order: Amending WAC 388-825-335, 388-825-615, and 388-825-620.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 43.43.837 and 74.39A.056.

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: Enacting amendments to WAC 388-825-335 and 388-825-620 on an emergency basis is necessary to comply with FBI background check requirements and to conduct background checks necessary to receive federal funding. Enacting amendments to WAC 388-825-615 is necessary to align with amendments to SB 5252.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: June 26, 2023.

Katherine I. Vasquez
 Rules Coordinator

SHS-4986.2

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health? (1) In order to be a long-term care worker employed by a home care agency, a person must:

(a) Complete the required DSHS form authorizing a background check.

(b) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil ad-

judication proceedings and negative actions as those terms are defined in WAC ((388-71-0512)) 388-113-0030.

(c) Effective January 8, 2012, be screened through Washington state's name and date of birth background check, (Preliminary results may require a thumb print for identification purposes); and

(d) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.

(2) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime ((as listed in)) under WAC 388-113-0020, civil adjudication proceeding, or negative action ((as defined in)) under WAC ((388-71-0512 and listed in WAC 388-71-0540)) 388-113-0030; or

(b) Should or should not be employed based on his or her character, competence, and/or suitability.

(3) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(4) The department may require a long-term care worker to have a Washington state name and date of birth background check ((~~or~~)) at any time and a Washington state and national fingerprint-based background check((, or both, at any time.)) if information is disclosed or found regarding new:

(a) Pending charges;

(b) Convictions; or

(c) Negative actions.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-335, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-335, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-615 What type of background check is required? (1) Beginning January 7, 2012, long-term care workers, including parents and individual providers, undergoing a background check for initial hire or initial contract, must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(2) Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(a) For a renewal, a person who has continuously resided in Washington state for the past three consecutive years must be screened through a Washington state name and date of birth check.

(b) For a renewal, a person who has resided outside of Washington state in the past three years must be screened through a Washington

state name and date of birth check and a national fingerprint-based background check.

(3) For adult family homes, refer to chapter 388-76 WAC. For assisted living facilities, refer to chapter 388-78A WAC.

(4) Beginning July ((±)) 23, 2023, a residential habilitation center applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(5) All background checks must be completed through the background check system.

[Statutory Authority: RCW 71A.12.020, 71A.12.030, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710, and 43.43.837. WSR 23-07-130, § 388-825-615, filed 3/22/23, effective 4/22/23. Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-615, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0615, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-620 How often must a background check be renewed?

(1) DDA requires a background check at least every three years, or more frequently if required by program rule.

(2) A background check renewal will be conducted as follows:

(a) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(b) Individuals who have lived outside of Washington state within the past three years will be screened through a state name and date of birth check and a national fingerprint-based background check.

(c) Individuals who live outside of Washington state and provide services in Washington state will be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) The department may require a long-term care worker to have a renewed Washington state name and date of birth background check at any time and a Washington state and national fingerprint-based background check if information is disclosed or found regarding new:

(a) Pending charges;

(b) Convictions; or

(c) Negative actions.

[Statutory Authority: RCW 71A.12.020, 71A.12.030, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710, and 43.43.837. WSR 23-07-130, § 388-825-620, filed 3/22/23, effective 4/22/23. Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-620, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0620, filed 6/24/14, effective 7/25/14.]

WSR 23-14-033
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed June 26, 2023, 1:24 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The developmental disabilities administration (DDA) is enacting these changes on an emergency basis in order to align with amendments to home and community-based services waivers as approved by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: WAC 388-845-1105, 388-845-1505, and 388-845-3062.

Statutory Authority for Adoption: RCW 34.05.350, 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: Enacting these rules on an emergency basis is necessary to ensure federal compliance and maintain federal funding for the state. Aligning rules with approved waiver amendments provides assurances required under 42 C.F.R. 441.301.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Date Adopted: June 26, 2023.

Katherine I. Vasquez
 Rules Coordinator

SHS-4988.1

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1105 Who is a qualified provider of stabilization services - crisis diversion bed? Providers of stabilization services - crisis diversion beds must be:

- (1) DDA certified residential agencies per chapter 388-101 WAC;
- (2) Other department licensed or certified agencies; (~~(or)~~)
- (3) State-operated agencies(~~(-)~~); or

(4) Other agencies licensed by the department of children, youth, and families under chapter 110-145 WAC and contracted with DDA to provide services under chapter 388-833 WAC.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1105, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1105, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1105, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the core waiver? Providers of residential habilitation services for participants in the core waiver must be one of the following:

- (1) Individuals contracted with DDA to provide residential support as a "companion home" provider;
- (2) Individuals and agencies contracted with DDA to provide ~~((training))~~ services as an ~~(("))~~ alternative living provider ~~(("))~~ under chapter 388-829A WAC;
- (3) Agencies contracted with DDA and certified per chapter 388-101 WAC;
- (4) State-operated living alternatives (SOLA); or
- (5) Licensed and contracted:
 - (a) Group care facilities and staffed residential homes under chapter 110-145 WAC;
 - (b) Child foster homes under chapter 110-148 WAC; or
 - (c) Child placing agencies under chapter 110-147 WAC.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1505, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1505, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1505, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1505, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3062 Who is required to sign the person-centered service plan and how can it be signed? (1) If you do not have a legal representative, you must sign the person-centered service plan.

(2) If you have a legal representative, your legal representative must sign the person-centered service plan.

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

(4) You choose how to sign your person-centered service plan - with a pen, an electronic signature, or a voice signature.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-3062, filed 9/20/21, effective 10/21/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-3062, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3062, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3062, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-3062, filed 9/26/07, effective 10/27/07.]

WSR 23-14-037
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed June 26, 2023, 3:28 p.m., effective June 27, 2023]

Effective Date of Rule: June 27, 2023.

Purpose: These changes to chapter 388-845 WAC are necessary to implement amendments to the developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers as approved by the federal Centers for Medicare and Medicaid Services (CMS). Major changes to the chapter: Adjust the yearly limits applicable to certain waivers; add assistive technology to multiple waivers; remove the positive behavior support and consultation service from all waivers except the community protection waiver; amend the definition of the specialized evaluation and consultation service; amend the definition of community engagement; add teleservice as a service delivery method; add remote supports to multiple waivers; and make other changes necessary to implement amendments to DDA's HCBS waivers as approved by CMS. The department of social and health services is proceeding with permanent adoption; we filed a CR-102 proposal under WSR 23-12-078. A public hearing is scheduled for August 8, 2023.

Citation of Rules Affected by this Order: New WAC 388-845-0113, 388-845-0945, 388-845-0950, 388-845-0955, 388-845-2141, 388-845-2142 and 388-845-2143; repealing WAC 388-845-0501 and 388-845-0506; and amending WAC 388-845-0001, 388-845-0005, 388-845-0010, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0070, 388-845-0100, 388-845-0105, 388-845-0110, 388-845-0111, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0415, 388-845-0425, 388-845-0500, 388-845-0505, 388-845-0510, 388-845-0515, 388-845-0525, 388-845-0650, 388-845-0660, 388-845-0800, 388-845-0805, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0910, 388-845-0940, 388-845-1030, 388-845-1040, 388-845-1163, 388-845-1190, 388-845-1192, 388-845-1195, 388-845-1197, 388-845-1600, 388-845-1607, 388-845-1620, 388-845-1660, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-1865, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2000, 388-845-2005, 388-845-2010, 388-845-2130, 388-845-2150, 388-845-2155, 388-845-2200, 388-845-2205, 388-845-2210, 388-845-2260, 388-845-2270, 388-845-2283, 388-845-2285, 388-845-2290, 388-845-3055, 388-845-3056, 388-845-3065, 388-845-3075, 388-845-3080, 388-845-4000, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.120.

Other Authority: 42 C.F.R. 441.301, Section 1915(c) of the Social Security Act.

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: Filing these amendments on an emergency basis is necessary to ensure federal compliance and maintain federal funding for the state. This is the fourth emergency filing on these sections and is necessary to keep the rules effective until DDA completes the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 7, Amended 72, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 72, Repealed 2.

Date Adopted: June 26, 2023.

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 23-16 issue of the Register.

WSR 23-14-039
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed June 26, 2023, 3:41 p.m., effective June 26, 2023, 3:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The developmental disabilities administration (DDA) is enacting these changes on an emergency basis to prepare for implementation of HB 1407 (2023), which stipulates that DDA's rules must not "terminate or require redetermination of eligibility for a child under the age of 18 based solely on the child's age if the child has been determined to be eligible for services on or after the child's third birthday."

Citation of Rules Affected by this Order: Amending WAC 388-823-0600, 388-823-0610, 388-823-1005, and 388-823-1010.

Statutory Authority for Adoption: RCW 34.05.350 and 71A.16.040.

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: Enacting these rules on an emergency basis is necessary in order to align DDA's eligibility review rules with amendments to RCW 71A.16.040, which are effective July 23, 2023.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: June 26, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4985.1

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

WAC 388-823-0600 How do I show that I have another neurological or other condition similar to intellectual disability? In order to be considered for eligibility under the category of another neurological or other condition similar to intellectual disability you must:

(1) Be age four or older and have a diagnosis by a licensed physician of a neurological or chromosomal disorder that:

(a) Originated before age ((~~eighteen~~)) 18;

- (b) Is known by reputable authorities to cause intellectual and adaptive skills deficits;
 - (c) Is expected to continue indefinitely without improvement;
 - (d) Is other than intellectual disability, autism, cerebral palsy, or epilepsy;
 - (e) Is not attributable to nor is itself a mental illness, or emotional, social, or behavior disorder; and
 - (f) Has resulted in substantial functional limitations.
- (2) Be receiving fee-for-service medically intensive children program (MICP) services under chapter 182-551 WAC, and have been continuously eligible for DDA due solely to your MICP eligibility since before August 13, 2018; or
- (3) Be under the age of (~~ten~~) 20 and have one or more developmental delays.

[Statutory Authority: RCW 71A.12.030 and 71A.10.020. WSR 18-15-046, § 388-823-0600, filed 7/13/18, effective 8/13/18. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0600, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-0600, filed 6/1/05, effective 7/2/05.]

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

WAC 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial functional limitations? If you have an eligible condition of another neurological or other condition similar to intellectual disability, in order to meet the definition of substantial functional limitations you must have impairments in both intellectual abilities and adaptive skills, which are separate from any impairment due to an unrelated mental illness, or emotional, social, or behavioral disorder.

- (1) For WAC 388-823-0600(1) evidence of substantial functional limitations requires documentation of (a) and (b) below:
- (a) For impairment in intellectual abilities, either subsection (i) or (ii) or (iii) of this section:
 - (i) An FSIQ score of more than 1.5 standard deviations below the mean under WAC 388-823-0720 and subject to all of WAC 388-823-0720 and WAC 388-823-0730;
 - (ii) If you are under the age of (~~twenty~~) 20, significant academic delays defined as delays of more than two standard deviations below the mean at the time of testing in both broad reading and broad mathematics; or
 - (iii) A statement by a licensed physician, a licensed psychologist, or a school psychologist that your condition is so severe that you are unable to demonstrate the minimal skills required to complete testing for an FSIQ.
 - (b) For impairment in adaptive skills, a score of more than two standard deviations below the mean under WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

(2) For WAC 388-823-0600(2) you do not need additional evidence of your substantial functional limitations if your eligible condition is solely due to your eligibility and participation in the fee-for-service medically intensive children program under chapter 182-551 WAC.

(3) For WAC 388-823-0600(3) evidence of substantial functional limitations requires documentation of (a) or (b) or (c) below:

(a) You are under the age of three and have one or more developmental delays under WAC 388-823-0770;

(b) You are under the age of three and meet the ESIT eligibility requirements; or

(c) You are under the age of (~~ten~~) 20 and have three or more developmental delays under WAC 388-823-0770.

[Statutory Authority: RCW 71A.12.030 and 71A.10.020. WSR 18-15-046, § 388-823-0610, filed 7/13/18, effective 8/13/18. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0610, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-0610, filed 6/1/05, effective 7/2/05.]

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

WAC 388-823-1005 When does my eligibility as a DDA client expire?

(1) If you are determined eligible before age three, your eligibility expires on your fourth birthday.

(2) If you are determined eligible (~~(at age three but)~~) under age (~~ten~~) 20 under developmental delays, (~~(or Down syndrome)~~) your eligibility expires on your (~~tenth~~) 20th birthday.

(3) DDA will notify you at least six months before your eligibility expiration date.

(4) If your eligibility expires, you must reapply in order to maintain eligibility with DDA.

(5) If you fail to reapply before your expiration date or if DDA receives your reapplication less than (~~sixty~~) 60 days before your expiration date and DDA does not have sufficient time to make an eligibility determination by the date of expiration, DDA eligibility will expire and your DDA paid services will stop.

(a) If DDA determines you eligible after your eligibility expires, your eligibility will be reinstated on the date that DDA determines you eligible under WAC 388-823-0100.

(b) If DDA determines you eligible after your eligibility expires, your eligibility will not be retroactive to the expiration date.

(6) This expiration of eligibility takes effect even if DDA is unable to locate you to provide written notification that eligibility is expiring.

(7) There is no appeal right to eligibility expiration.

[Statutory Authority: RCW 71A.12.030 and 71A.10.020. WSR 18-15-046, § 388-823-1005, filed 7/13/18, effective 8/13/18. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, §

388-823-1005, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-1005, filed 6/1/05, effective 7/2/05.]

AMENDATORY SECTION (Amending WSR 19-14-119, filed 7/3/19, effective 8/3/19)

WAC 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA? (1)

DDA will review your eligibility:

(a) If you are age (~~nineteen~~) 19 and your most recent eligibility determination was completed before your (~~sixteenth~~) 16th birthday unless you were determined eligible under developmental delay;

(b) If you are age (~~nineteen~~) 19 and were determined eligible under another neurological or other condition similar to intellectual disability and have used academic delays as evidence of your substantial functional limitations;

(c) Before authorization of any DDA-paid service if you are not currently receiving paid services and your most current eligibility determination was made before June 1, 2005;

(d) If the evidence used to make your most recent eligibility determination is insufficient, contains an error, or appears fraudulent;

(e) If new information becomes available that does not support your current eligibility determination; or

(f) If you were determined eligible due solely to your eligibility for fee-for-service (FFS) medically intensive children's program (MICP) services and you are no longer eligible for FFS MICP services.

(2) If DDA requires additional information to make a determination of eligibility during a review and you do not provide sufficient information, DDA will terminate your eligibility:

(a) On your (~~twentieth~~) 20th birthday if the review is because you are age (~~nineteen~~) 19; or

(b) (~~Ninety~~) 90 days after DDA requests the information if the review is because:

(i) You have requested a paid service;

(ii) The evidence used to make your most recent eligibility determination is insufficient, contains an error, or appears fraudulent;

(iii) New information is available that does not support your current eligibility determination; or

(iv) You are no longer eligible for FFS MICP services under chapter 182-551 WAC.

[Statutory Authority: RCW 71A.12.030. WSR 19-14-119, § 388-823-1010, filed 7/3/19, effective 8/3/19. Statutory Authority: RCW 71A.12.030 and 71A.10.020. WSR 18-15-046, § 388-823-1010, filed 7/13/18, effective 8/13/18. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-1010, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.040, and 74.08.090. WSR 14-07-028, § 388-823-1010, filed 3/10/14, effective 4/10/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-1010, filed 6/1/05, effective 7/2/05.]

WSR 23-14-052

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 27, 2023, 2:10 p.m., effective June 27, 2023, 2:10 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 employment security department (department) began permanent rule making on the included topics by filing a preproposal statement of inquiry.

Purpose: The department is adopting emergency rules concerning blanket overpayment waivers for pandemic unemployment assistance, pandemic emergency unemployment compensation, federal pandemic unemployment compensation, and mixed earner unemployment compensation. The department is also adopting rules concerning waivers for conditional benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021, and the process for requesting overpayment waivers for overpaid benefits for the weeks ending February 2, 2020, through the week ending September 4, 2021, for all federal and state unemployment compensation programs.

These emergency rules were originally adopted on March 29, 2023, as WSR 23-08-024. The extension is being filed along with a preproposal [statement] of inquiry to conduct permanent rule making.

Citation of Rules Affected by this Order: New WAC 192-220-018; and amending WAC 192-220-017 and 192-220-080.

Statutory Authority for Adoption: RCW 50.20.190, 50.24.020, 50.12.010, and 50.12.040.

Other Authority: Unemployment Insurance Program Letter Number 20-21, Change 1 (February 7, 2022).

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 initially adopted emergency rules related to overpayment waivers (WSR 23-08-024) due to the drastic rise in unemployment insurance claims during the COVID-19 pandemic, which resulted in more than 137,000 claimants with overpayments accounting for more than \$1.2 billion that accrued from February 2, 2020, through September 4, 2021. In May 2023, the department began processing blanket waivers approved by the United States Department of Labor for pandemic-era overpayments using those emergency rules. The department also began accepting waiver requests for claimants with overpayments accrued during the pandemic. The department has processed many of these waivers but will not be able to complete the work prior to the expiration of the adopted emergency rules. Therefore, the department has begun permanent rule making regarding blanket overpayment waivers for pandemic unemployment assistance, pandemic emergency unemployment compensation, federal pandemic unemployment compensation, mixed earner unemployment compensation, and waivers for conditional benefits.

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 Nongovernmental Entity: New 1, Amended 2, Repealed 0.

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

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

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

Date Adopted: June 27, 2023.

Joy E. Adams
Employment Security Policy Director

OTS-4233.2

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-017 Am I required to repay the overpayment? (1) You must repay the full amount of the overpayment, even if you are not at fault, unless you are granted a waiver. (See also WAC 192-230-110.) A waiver means you do not have to repay the overpayment.

(2) Except as provided in subsection (3), you are potentially eligible for a waiver of an overpayment when it would be against equity and good conscience for the department to require you to repay the full amount.

(3) You are not eligible for a waiver when:

(a) You are at fault for the overpayment;

(b) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));

(c) The overpayment is the result of a conditional payment of benefits, except for benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021;

(d) The overpayment decision was issued by a state other than Washington; or

(e) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-017, filed 10/9/08, effective 11/9/08.]

NEW SECTION

WAC 192-220-018 Blanket overpayment waivers for federally funded pandemic era benefits. The department will waive overpayments for federally funded benefits when:

(1) The individual answered "no" to being able to work and available for work and:

(a) The state paid Pandemic Unemployment Assistance, Federal Pandemic Unemployment Compensation, or Pandemic Emergency Unemployment Compensation without adjudicating the eligibility issue;

(b) Upon requesting additional information from the individual, the individual either did not respond or the individual confirmed that they were not able to work nor available for work for the week in question; and

(c) The paid benefits resulted in an overpayment for that week.

(2) The individual answered "no" to being unemployed, partially unemployed, or unable or unavailable to work because of the approved COVID-19-related reasons provided in 15 U.S.C. § 9021(a)(3)(A)(ii)(I) and:

(a) The state paid Pandemic Unemployment Assistance anyway;

(b) Following a request from the department for a new self-certification, the individual either did not respond or the individual confirmed that none of the approved COVID-19-related reasons were applicable; and

(c) The state's payment of these benefits resulted in an overpayment for that week.

(3) The individual complied with instructions from the department to submit proof of earnings to be used in calculating the individual's Pandemic Unemployment Assistance weekly benefit amount and:

(a) Through no fault of the individual, the department's instructions were either inadequate or the department incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher Pandemic Unemployment Assistance weekly benefit amount; and

(b) The department established an overpayment for the difference in the individual's Pandemic Unemployment Assistance weekly benefit amount.

(4) The individual complied with instructions from the department to submit proof of earnings to be used in calculating the individual's Mixed Earner Unemployment Compensation weekly benefit amount and:

(a) Through no fault of the individual, the department's instructions were either inadequate or the department incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher Mixed Earner Unemployment Compensation weekly benefit amount; and

(b) The department established an overpayment for the difference in the individual's Mixed Earner Unemployment Compensation weekly benefit amount.

[]

AMENDATORY SECTION (Amending WSR 17-04-090, filed 1/31/17, effective 3/3/17)

WAC 192-220-080 How do I obtain a waiver? (1) When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the response deadline indicated in the notice, which will be no less than five working days plus reasonable mailing time, if any. If you do not provide the information by the deadline, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

(7) For benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021, the department will allow claimants to apply for a waiver of their overpayment for benefits, even if the individual previously had an overpayment waiver request denied or was previously deemed ineligible for an overpayment waiver.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-04-090, § 192-220-080, filed 1/31/17, effective 3/3/17; WSR 16-21-013, § 192-220-080, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-080, filed 10/9/08, effective 11/9/08.]

WSR 23-14-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-106—Filed June 27, 2023, 4:46 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The purpose of this emergency rule is to open commercial salmon troll seasons in Areas 1 through 4.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000U; and amending WAC 220-354-300.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet, and the remaining quota is sufficient to allow larger landing and possession limits for Areas 1 through 4. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fishery Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 27, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-30000V Coastal salmon troll seasons—Commercial.

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective July 1, 2023, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken

with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00"W longitude and south of 48°23'00"N latitude open: July 1 through September 30, 2023.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.), open: July 1 through September 30, 2023.

(3) Landing and possession limit of 50 Chinook per vessel per landing week, defined as Thursday through Wednesday.

(4) Landing and possession limit of 150 marked coho per vessel per landing week, defined as Thursday through Wednesday.

(5) The Cape Flattery and Columbia River Control Zones are closed. The Salmon Troll Yelloweye Rockfish Conservation Area is closed.

(6) All retained coho must be marked with a healed adipose fin clip.

(7) No chum retention north of Cape Alava, WA in August and September.

(8) Minimum size for Chinook salmon is 27 inches in length (20 1/2 inches frozen dressed). Minimum size for coho salmon is 16 inches in length (12 inches frozen dressed). No minimum size for pink, sock-eye or chum salmon.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

(11) During any single trip, only one side of the Leadbetter Point line (46°38'10"N. lat.) may be fished.

(a) Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area south of Leadbetter Point.

(b) For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery.

(c) Vessels may not land fish east of Tongue Point, Oregon.

(12) Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license.

(a) Vessels in possession of salmon south of the Queets River may not cross the Queets River line (47°31'42"N. lat.) without first noti-

fyng WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(b) Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(c) Vessels may not land fish east of the Sekiu River.

[]

REPEALER

The following section of the Washington Administrative Code is repealed, effective July 1, 2023:

WAC 220-354-30000U Coastal salmon troll seasons—
Commercial. (23-104)

WSR 23-14-065
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 28, 2023, 2:43 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The department is amending WAC 388-474-0012 What is a state supplemental payment and who can get it? and 388-478-0055 How much do I get from my state supplemental payments (SSP)?

These amendments will update the SSP standard rate for individuals who are receiving care in a medical institution or residential setting. This rate is based off the Washington state institutional personal needs allowance (PNA) standard which will increase due to the passage of HB 1128 (chapter 201, Laws of 2023), effective July 1, 2023.

Citation of Rules Affected by this Order: Amending WAC 388-474-0012 and 388-478-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.250.

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

Reasons for this Finding: These amendments will update the SSP standard rate for individuals who are receiving care in a medical institution or residential setting. This rate is based off the Washington state institutional PNA standard which will increase due to the passage of HB 1128 (chapter 201, Laws of 2023), effective July 1, 2023.

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 2, Repealed 0.

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

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

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

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

Date Adopted: June 28, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4987.2

AMENDATORY SECTION (Amending WSR 15-16-022, filed 7/24/15, effective 8/24/15)

WAC 388-474-0012 What is a state supplemental payment and who can get it? (1) The state supplemental payment (SSP) is a state-funded cash assistance program for certain clients who the Social Security Administration determines are eligible for supplemental security income (SSI).

(2) You can get an SSP if:

(a) You are a grandfathered SSI recipient under WAC 388-474-0001;

(b) You are an individual with an ineligible spouse under WAC 388-474-0001;

(c) You receive SSI because you are age (~~(sixty-five)~~) 65 or older under WAC 388-474-0001;

(d) You receive SSI because you are blind under WAC 388-474-0001;

(e) You receive SSI because you are disabled under WAC 388-474-0001;

(f) You are determined eligible for SSP by the developmental disabilities administration; (~~(e)~~)

(~~(f)~~) (g) You are eligible for and receive SSI as a foster child receiving specific services through children's administration behavior rehabilitation services (BRS) for part or all of a month, and not eligible for foster care reimbursement under Title IV-E of the Social Security Act (~~(g)~~); or

(h) You are an SSI recipient residing in a medical institution and your SSI has been reduced based on the institutional SSI payment standard.

[Statutory Authority: RCW 74.04.500, 74.04.510, and 74.08A.120. WSR 15-16-022, § 388-474-0012, filed 7/24/15, effective 8/24/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 05-07-031, § 388-474-0012, filed 3/9/05, effective 4/9/05; WSR 03-21-125, § 388-474-0012, filed 10/20/03, effective 11/1/03; WSR 03-03-114, § 388-474-0012, filed 1/21/03, effective 2/23/03.]

AMENDATORY SECTION (Amending WSR 20-23-053, filed 11/13/20, effective 1/1/21)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a (~~(payment from the state)~~) state-funded cash assistance program issued to certain individuals who the Social Security Administration (SSA) determines are eligible for supplemental security income (SSI) (eligible people) as described in WAC 388-474-0012.

(2) (~~(If you converted to the federal SSI program from state assistance in January 1974 because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a minimum income level (MIL) client.~~)

A change in living situation, cost-of-living adjustment (COLA), or federal benefit rate (FBR) can affect a grandfathered MIL client. A grandfathered MIL client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

~~(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal COLA since then; or~~

~~(b) The current payment standard.~~

~~(3) The monthly) Monthly SSP rate standards for eligible persons ((under)) as described in WAC 388-474-0012 ((and individuals residing in an institution)) are:~~

((SSP-eligible persons	Standard
Individual (aged 65 and older)	\$38.25
Individual (blind as determined by SSA)	\$38.25
Individual with an ineligible spouse	\$38.25
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.)

((Medical institution Individual	Monthly SSP Rate
	\$40.00))

(a) \$38.25 for:

(i) Individuals with an ineligible spouse;

(ii) Aged 65 and older;

(iii) Blind as determined by SSA; or

(iv) Disabled as determined by SSA.

(b) Between \$0.54 and \$199.77 for grandfathered clients as defined in 388-474-0001 and varies by individual based on federal requirements.

(c) \$70.00 for individuals residing in a medical institution. It is based on increasing the federal SSI personal needs allowance (PNA) of \$30.00 up to the current Washington state institutional PNA standard described in subsection (5) of WAC 182-513-1105. The current state PNA standard for institutional apple health is located at <https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources>.

(3) A change in living situation, cost-of-living adjustment (COLA), or federal benefit rate (FBR) can affect a grandfathered client. A grandfathered client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal COLA since then; or

(b) The current payment standard.

(4) ((We may adjust the)) SSP rate standards may be adjusted at the end of the calendar year to comply with WAC 388-478-0057.

~~((5) The medical institution SSP rate is based on increasing the federal SSI personal needs allowance (PNA) up to the current Washington state institutional PNA standard described in WAC 182-513-1105. The state rate may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors and disability social security recipients as published by the federal social security administration. This adjustment is subject to state legislative funding. The current PNA rule used in institutional apple health is loca-~~

ted at ~~https://www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.~~)

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 20 C.F.R. § 416.2095 through § 416.2099. WSR 20-23-053, § 388-478-0055, filed 11/13/20, effective 1/1/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 18-24-032, § 388-478-0055, filed 11/28/18, effective 1/1/19; WSR 13-22-037, § 388-478-0055, filed 10/31/13, effective 12/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 2008 c 329 § 207(8). WSR 08-16-067, § 388-478-0055, filed 7/31/08, effective 9/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 07-22-022, § 388-478-0055, filed 10/26/07, effective 11/26/07; WSR 06-16-071, § 388-478-0055, filed 7/28/06, effective 8/28/06. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090. WSR 06-01-045, § 388-478-0055, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-07-024, § 388-478-0055, filed 3/8/04, effective 4/8/04; WSR 03-03-114, § 388-478-0055, filed 1/21/03, effective 2/23/03. Statutory Authority: RCW 74.08.090, 74.04.057. WSR 01-19-024, § 388-478-0055, filed 9/12/01, effective 11/1/01; WSR 01-08-015, § 388-478-0055, filed 3/23/01, effective 5/1/01. Statutory Authority: RCW 74.08.090. WSR 00-20-054, § 388-478-0055, filed 9/29/00, effective 11/1/00. Statutory Authority: RCW 74.08.090 and 74.04.057. WSR 00-11-130, § 388-478-0055, filed 5/22/00, effective 7/1/00; WSR 99-18-063, § 388-478-0055, filed 8/30/99, effective 10/1/99. Statutory Authority: RCW 74.08.090 and 74.04.630. WSR 99-04-103, § 388-478-0055, filed 2/3/99, effective 3/6/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0055, filed 7/31/98, effective 9/1/98. Formerly WAC 388-511-1115.]

WSR 23-14-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-108—Filed June 28, 2023, 3:39 p.m., effective June 28, 2023, 3:39 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 220-359-02000Q; and amending WAC 220-359-020.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *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 rule extends the Columbia River treaty summer season commercial gillnet fishery for nontreaty buyers. This rule is consistent with actions of the Columbia River Compact on June 7 and 28, 2023. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *United States 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 28, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000R 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, 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 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, 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 Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately through 11:59 PM July 31, 2023.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead caught after 6:00 AM on June 16 may be sold or kept for subsistence. Shad, yellow perch, bass, walleye, catfish and carp may also be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: Immediately through 11:59 PM July 31, 2023. Only during days and times opened under tribal rule.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp caught after 6:00 AM on June 16 may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

(3) Open Areas: Wind River, Drano Lake, and Klickitat River.

(a) Season: Immediately, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and reel with hook and Line. Gillnets may only be used in Drano Lake.

Allowable sales: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

(4) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: 6:00 AM July 3 through 6:00 PM July 6, 2023

(b) Gear: Set and Drift Gill nets with a minimum 7-inch mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(d) Standard river mouth and dam closed areas applicable to gill-net gear, except the Spring Creek Hatchery sanctuary is not in effect during the summer management period.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Fish caught during the open period may be sold after the period concludes.

[]

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

REPEALER

The following section of the Washington Administrative Code is repealed, effective immediately:

WAC 220-359-02000Q Columbia River salmon seasons above Bonneville Dam. (23-95)

WSR 23-14-070
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 28, 2023, 3:41 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The department is amending WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA, and GA-S cash assistance, 388-484-0006 TANF/SFA time limit extensions, and other related rules as may be required.

Effective July 1, 2023, these amendments remove the 60-month time limit for child-only TANF and SFA households with an ineligible parent, per 2SHB 1447 (chapter 418, Laws of 2023).

Citation of Rules Affected by this Order: Amending WAC 388-484-0005 and 388-484-0006.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010, and 74.08A.015.

Other Authority: 2SHB 1447 (chapter 418, Laws of 2023).

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 amendments meet implementation requirements for 2SHB 1447 (chapter 418, Laws of 2023), allowing certain families exceeding the 60-month lifetime TANF time limit access to benefits needed to sustain basic needs.

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 2, Repealed 0.

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

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

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

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

Date Adopted: June 21, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4980.4

AMENDATORY SECTION (Amending WSR 12-05-039, filed 2/10/12, effective 3/12/12)

WAC 388-484-0005 There is a five-year (~~((sixty))~~ 60-month) time limit for TANF, SFA, and GA-S cash assistance. (1) What is the (~~((sixty))~~ 60-month time limit?

(a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of (~~((sixty))~~ 60 months. The time limit applies to cash assistance provided by any combination of these programs, and whether or not it was received in consecutive months.

(b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.

(c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance, or medicaid.

(2) When did the (~~((sixty))~~ 60-month time limit go into effect?

The (~~((sixty))~~ 60-month time limit applies to cash assistance received on or after August 1, 1997, for TANF and SFA. Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999, through July 31, 1999.

(3) Does the time limit apply to me?

(~~((a))~~) The (~~((sixty))~~ 60-month time limit applies to you for any month in which you are (~~(an ineligible parent or)~~) a parent or other relative as defined in WAC 388-454-0010, or a minor parent emancipated through court order or marriage.

(~~((b) An ineligible parent is a natural, adoptive or step parent as defined in WAC 388-454-0010 who receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance.))~~)

(4) Do any exceptions to the time limits apply to me?

The department does not count months of assistance towards the (~~((sixty))~~ 60-month time limit if you are:

(a) An other relative as defined in WAC 388-454-0010(3);

(b) An ineligible parent who is a natural, adoptive, or stepparent as defined in WAC 388-454-0010 who receives TANF/SFA grant for their child, but is ineligible to receive TANF/SFA assistance such as:

(i) A parent who is ineligible due to receiving supplemental security income (SSI) benefits, or

(ii) A parent who is ineligible due to citizenship, or

(iii) A parent who is ineligible due to felony status;

(~~((a))~~) (c) An adult caretaker, other than an ineligible parent, as described in WAC 388-454-0005 through 388-454-0010, who is not a member of the assistance unit and you are receiving cash assistance on behalf of a child;

(~~((b))~~) (d) An unemancipated pregnant or parenting minor living in a department approved living arrangement as defined by WAC 388-486-0005; or

(~~((e))~~) (e) An adult and you are living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan native village and you are receiving TANF, SFA, or GA-S cash assistance during a period when at least (~~((fifty percent))~~) 50% of the adults living in Indian country or in the village were not employed. See WAC 388-484-0010.

(5) (~~What happens if an ineligible parent in the home or a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?~~)

~~Once any adult or emancipated minor in the assistance unit has received sixty months of cash assistance, or an ineligible parent in the home has received sixty months of cash assistance for themselves or their child, the entire assistance unit becomes ineligible for TANF or SFA cash assistance, unless they qualify for a hardship extension and are eligible for an extended period of cash assistance called a TANF/SFA time limit extension under WAC 388-484-0006.~~

(~~6~~) ~~What can I do if I disagree with how the department has counted my months of cash assistance?~~

(a) If you disagree with how we counted your months of cash assistance, you may ask for a hearing within (~~ninety~~) 90 days of the date we sent you a letter telling you how many months we are counting.

(b) You will get continued benefits (the amount you were getting before the change) if:

(i) You have used all (~~sixty~~) 60 months of benefits according to our records; and

(ii) You ask for a hearing within the (~~ten~~) 10-day notice period, as described in chapter 388-458 WAC.

(c) If you get continued benefits and the administrative law judge (ALJ) agrees with our decision, you may have to pay back the continued benefits after the hearing, as described in chapter 388-410 WAC.

(~~7~~) 6 Does the department ever change the number of months that count against my time limit?

We change the number of months we count in the following situations:

(a) You repay an overpayment for a month where you received benefits but were not eligible for any of the benefits you received. We subtract one month for each month that you completely repay. If you were eligible for some of the benefits you received, we still count that month against your time limit.

(b) We did not close your grant on time when the division of child support (DCS) collected money for you that was over your grant amount two months in a row, as described in WAC 388-422-0030.

(c) An ALJ decides at an administrative hearing that we should change the number of months we count.

(d) You start getting worker's compensation payments from the department of labor and industries (L&I) and your L&I benefits have been reduced by the payments we made to you.

(e) You participated in the excess real property (ERP) program in order to get assistance and we collected the funds when your property sold.

(f) Another state gave us incorrect information about the number of months you got cash assistance from them.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapters 74.08A and 74.12 RCW, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 2. WSR 12-05-039, § 388-484-0005, filed 2/10/12, effective 3/12/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-484-0005, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.08A RCW. WSR 06-10-034, § 388-484-0005, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, §

388-484-0005, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.08.090, 74.04.050, and 78.08A.340. WSR 03-06-046, § 388-484-0005, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-484-0005, filed 5/31/02, effective 6/1/02. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010, and 42 U.S.C. 608 (a) (7). WSR 01-04-016, § 388-484-0005, filed 1/26/01, effective 2/1/01. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 99-08-050, § 388-484-0005, filed 4/1/99, effective 5/2/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-484-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 23-01-020, filed 12/8/22, effective 1/8/23)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive 60 or more months of TANF/SFA cash assistance?

After you receive 60 or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, (~~or are an ineligible parent, and you have~~) received 60 cumulative months of TANF and you:

(a) (~~You~~) Are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) (~~or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation~~); or

~~(b) You:~~

~~((i)) (b) Are a ((supplemental security income recipient or a)) Social Security disability insurance recipient; or~~

~~(ii)) (c) Are at least 65 years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or~~

~~((iii)) (d) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or~~

~~((iv)) (e) Are working in unsubsidized employment for 32 hours or more per week; or~~

~~((v)) (f) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or~~

~~((vi)) (g) Are homeless by reason of hardship, including when your family includes a child or youth who is without a fixed regular, and adequate nighttime residence as described in the federal McKinney-Vento Homeless Assistance Act (Title 42. U.S.C. 11434a(2), chapter 119, subchapter VI, part B) as it existed on January 1, 2020; or~~

~~((vii))~~ (h) Are an active TANF recipient from July 1, 2021, through June 30, 2023; or

~~((viii))~~ (i) Are an active TANF recipient, beginning July 1, 2022, when Washington state employment security department's most recently published unemployment rate is seven percent or above.

~~((ix))~~ (j) Do not qualify for other time limit extension criteria in this section and received TANF during a month on or after March 1, 2020, when the Washington state employment security department's unemployment rate was at seven percent or above. The extension provided for under this subsection (2)(b)(ix) is equal to the number of months that you received TANF on or after March 1, 2020, when the Washington state employment security department's unemployment rate was at seven percent or above.

(3) Who reviews and approves a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least 52 months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

~~((a))~~ You are still a TANF/SFA recipient ~~((or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child))~~ and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

~~((b))~~ During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) How long will a hardship TANF/SFA time limit extension last?

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a) ~~((, (b)(i) or (ii))~~) then we will review your extension at least every 12 months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) ~~((iii))~~, ~~((iv), (v), or (vi))~~ (2)(c), (2)(d), or (2)(e) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.010, 74.08A.015, and 2022 c 297 and 2022 c 24. WSR 23-01-020, § 388-484-0006, filed 12/8/22, effective 1/8/23. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.010 and 2021 c 334, 2021 c 239. WSR 21-22-053, § 388-484-0006, filed 10/28/21, effective 11/28/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 2020 c 320 and C.F.R. 20 § 416.2095 through 416.2099. WSR 21-12-077, § 388-484-0006, filed 5/28/21, effective 7/1/21. Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-484-0006, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-484-0006, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapters 74.08A and 74.12 RCW, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 2. WSR 12-05-039, § 388-484-0006, filed 2/10/12, effective 3/12/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-484-0006, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.08A RCW. WSR 06-10-034, § 388-484-0006, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 03-24-057, § 388-484-0006, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-484-0006, filed 5/31/02, effective 6/1/02.]

WSR 23-14-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-107—Filed June 29, 2023, 7:59 a.m., effective June 29, 2023, 7:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close adult summer Chinook retention in the Columbia River, from the Megler-Astoria Bridge to Priest Rapids Dam.

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

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 action closes mainstem recreational adult summer Chinook retention downstream of Priest Rapids Dam. The technical advisory committee (TAC) met on June 26 but did not provide an in-season abundance projection for the summer Chinook return. TAC concurred that the summer Chinook return was tracking less than forecasted and expects to downgrade the return on June 29. The states utilized a 30 percent run size reduction in order to calculate potential in-season harvest allocations which indicated that recreational summer Chinook fisheries downstream of Priest Rapids Dam have achieved (111 percent) the area-specific summer Chinook allocation at this reduced abundance. The fishery is consistent with Washington's Upper Columbia Management Agreement and the *U.S. v. Oregon* Management Agreement, associated biological opinion and compact action of June 28, 2023. Conforms Washington state rules with Oregon state rules. The general public welfare is protected with the immediate closure of recreational Chinook retention downstream of Priest Rapids Dam. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act (ESA). On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the imple-

mentation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 28, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia River. Effective immediately, through July 31, 2023, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Megler-Astoria Bridge to Priest Rapids Dam, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From the Megler-Astoria Bridge upstream to The Dalles Dam:

Salmon and steelhead:

(a) Effective immediately through June 30, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye, and hatchery steelhead.

(b) Effective July 1 through July 31, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a hatchery steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye and hatchery steelhead.

(2) From The Dalles Dam upstream to a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington south-

ern shore located approximately 200' above the fish ladder exit: Salmon and steelhead:

Effective immediately, until further notice: Closed to fishing for and retention of salmon and steelhead.

(3) From a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington south shore located approximately 200' above the fish ladder exit upstream to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

(a) Effective immediately through June 30, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook, sockeye and hatchery steelhead.

(b) Effective July 1 through July 31, 2023: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a hatchery steelhead. Release all salmon and steelhead other than hatchery jack Chinook, sockeye and hatchery steelhead.

(4) From Columbia Point (approximately 1/3 mile downstream of I-182 Bridge) upstream to I-182 Bridge: Salmon:

(a) Effective immediately through July 15, 2023: Closed to angling from a floating device or by any method except hand-cast lines from the west shore (Richland side of the river).

(b) Effective immediately through June 30, 2023: Daily limit 6, no more than 2 adult salmon may be retained. Release all salmon other than hatchery adult Chinook, chinook jacks, and sockeye.

(c) Effective July 1 through July 15, 2023: Daily limit 6, no more than 2 sockeye salmon may be retained. Release all salmon other than jack Chinook and sockeye.

(5) From I-182 Bridge upstream to Priest Rapids Dam: Salmon:

(a) Effective immediately through June 30, 2023: Daily limit 6, no more than 2 adult salmon may be retained. Release all salmon and steelhead other than hatchery adult Chinook, jack Chinook, and sockeye.

(b) Effective July 1 through August 15, 2023: Daily limit 6, no more than 2 adult sockeye salmon may be retained. Release all salmon and steelhead other than jack Chinook and sockeye.

[]

REPEALER

The following section of the Washington Administrative Code is repealed, effective immediately:

WAC 220-312-06000Q Freshwater exceptions to statewide rules—Columbia River. (23-93)

WSR 23-14-078
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-109—Filed June 29, 2023, 11:09 a.m., effective June 29, 2023, 11:09 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The southern resident killer whales (SRKWs) are a distinct population segment of North Pacific killer whales. SRKWs have a high risk of extinction and are classified as endangered under the Endangered Species Act, and their listing was reaffirmed by National Oceanic and Atmospheric Administration in January of 2022. They also are listed as endangered at the state level, and orca, specifically the SRKW population of orca, are identified as a species of greatest conservation need under the state wildlife action plan. SRKWs are comprised of three family groups (pods): J pod, K pod, and L pod. Each individual whale has an alphanumeric identifier that corresponds with its pod and birth order. Because individual whales are identifiable and documented, the health and status of each whale can be measured and tracked over time.

In June of 2023, the SeaLife Response Rehabilitation and Research (SR3) team contracted by the Washington department of fish and wildlife (WDFW) to monitor SRKW body conditions concluded their analysis of SRKW observations collected between September 2022 and June 2023.

Body Condition: SR3 uses measurements taken from drone photographs and statistical analyses detailed in Stewart et al. (2021) to identify whales in poor condition, which means the orca's body condition falls in the lowest 20 percent of measurements for their age and sex compared to comparable measurements from 2016-2023. This lowest body condition state is classified as "BC1." The best available science suggests that whales measured to be in the "poor condition" state had a significantly increased (two to three times higher) probability of subsequent mortality.

The analysis found 10 whales in the BC1 state from J, K, and L pods, including one adult male (M), two adult females (F), two young females (J), and five subadult males (S): J16(F), J44(S), J39(M), J49(S), K38(S), L90(F), L110(S), L117(S), J56(J), and J53(J).

This includes six whales that were measured to be in BC1 and designated as vulnerable in 2022 (J44, J49, L90, L110, L117, and J56). Additionally, there were four whales which were not classified as BC1 in 2022 that have declined into poor condition and are now listed as BC1 (J16, J39, K38, and J53). K38 was not imaged in the fall 2022 - spring 2023 period, but is on the list because he was measured to be BC1 when last imaged in September 2022. Typically, when SRKWs return to the Salish Sea in the spring, they are significantly leaner than in the fall (Fearnbach et al. 2019), and thus we have no reason to believe that K38's condition has improved.

Late-Stage Pregnancy: There is a high rate of failed pregnancies in SRKWs (Wasser et al. 2017), and failed pregnancy can be lethal (Raverty et al. 2020). Late-stage pregnancy requires more food, as much as 25 percent in the final month of gestation (Kriete 1995). Vessels compound food stress, particularly for females (Holt et al. 2021). SR3 analyzed all of the female SRKW of reproductive age (33 whales, ages >8 and <50) to identify any whales that may be pregnant, and particularly any in late-stage pregnancy (p>0.75 probability of being within six months of birth, out of an approximately 17-month gestation period).

Four females were determined to fall in this classification when last measured in November of 2022: K16, K43, L72, and L94. These whales were last measured in November 2022, so we expect these pregnancies may have ended as of late June 2022. Recent online photos show a young calf traveling with L pod, but it appears that neither L72 nor L94 are its mother, so the results of their pregnancies are still unknown. If these whales (K16, K43, L72, and/or L94) are encountered and still exhibit signs of late-stage pregnancy, an emergency rule at that time will be warranted.

Another whale, J22, was determined to be in late-stage pregnancy in April 2023 but no longer showed signs of pregnancy in June 2023. Another whale, J36, was assessed in June 2023 and found to be in late-stage pregnancy. Currently, we expect that only this individual, J36, remains in late-stage pregnancy, meriting vulnerable status.

As a reminder, calves and their mothers receive extra protection via WAC 220-460-110, which prohibits motorized commercial whale watching vessels from approaching within .5 nautical mile of a group of SRKWs that contains a calf of under one year of age.

Other Factors: Beyond the factors described here, WDFW may determine a whale is vulnerable based on other criteria. For example, whales showing signs of illness or injury (emaciated appearance, collapsed dorsal fin, lacerations, entanglement, vessel strike, etc.) would merit extra protection. Additionally, whales that exhibit a dramatic or sudden decline in body condition (for example, dropping two body condition states over a short period of time) or calves that show constrained growth may raise cause for alarm and merit a vulnerable status designation. At this time, no whales beyond those described above are being designated as vulnerable.

Per WAC 220-460-110, the department is adopting an emergency rule to designate J16, J36, J39, J44, J49, J53, J56, K38, L110, L117, and L90 as vulnerable and thereby prevent commercial whale watching operators from approaching these individuals or a group containing any of these individuals within .5 nautical mile. This designation and the additional distance is necessary to ensure that the ability of these whales to survive is not hindered by the presence of vessels and it is timely, as there would otherwise be increased commercial viewing of these vulnerable SRKW at closer distances in July - September.

Citation of Rules Affected by this Order: Amending WAC 220-460-110.

Statutory Authority for Adoption: RCW 77.65.620.

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 imminent risk to an endangered species requires additional protection immediately. This emergency action is necessary to protect the public's interest in the preservation of a vulnerable endangered animal.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 29, 2023.

Amy H. Windrope
for Kelly Susewind
Deputy Director

NEW SECTION

WAC 220-460-11000E Limits on number of vessels in the vicinity of southern resident killer whales at once. In conjunction with WAC 220-460-110(2), the department designates the Southern Resident Killer Whales J16, J36, J39, J44, J49, J53, J56, K38, L110, L117, and L90 as vulnerable individuals.

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WSR 23-14-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-110—Filed June 29, 2023, 4:03 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The purpose of this emergency rule is to set July salmon seasons for Catch Record Card Areas 6 and 11.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000U; and amending WAC 220-313-060.

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 necessary to set salmon seasons in Catch Record Card Areas 6 and 11 as agreed to during the 2023 North of Falcon season setting process. These rules are temporary until permanent rules, filed in WSR 23-13-072, take effect on July 16, 2023.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 29, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000V Puget Sound salmon—Saltwater seasons and daily limits. Effective July 1 through July 15, 2023, the following provisions of WAC 220-313-060 regarding salmon seasons for Catch Record Card Area 6 and Catch Record Card Area 11 shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) **Catch Record Card Area 6:** Salmon:

(a) West of a true north/south line through the #2 Buoy immediately east of Ediz Hook:

- (i) Daily limit 2. Release chum, wild coho, and wild Chinook.
- (ii) Waters of Port Angeles Harbor west of a line from the tip of Ediz Hook to the ITT Rayonier Dock: Closed.
- (b) East of a true north/south line through the #2 Buoy immediately east of Ediz Hook:
 - (i) Daily limit 2. Release chum, wild coho, and Chinook.
 - (ii) Waters of Dungeness Bay inside a line from Dungeness Spit Lighthouse to the #2 Red Buoy, and then to the Port Williams Boat Ramp: Closed.
- (2) **Catch Record Card Area 11, except year-round piers:** Salmon:
 - (a) Open Thursdays through Sundays only.
 - (b) Daily limit 2 including no more than 1 chinook. Release chum and wild Chinook.
 - (c) Waters of Commencement Bay east of a line from the Cliff House Restaurant to the Sperry Ocean Dock: Closed.

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REPEALER

The following section of Washington Administrative Code is repealed effective July 1, 2023:

WAC 220-313-06000U Puget Sound salmon—Saltwater seasons and daily limits. (23-97)

WSR 23-14-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-112—Filed June 29, 2023, 4:51 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The purpose of this emergency rule is to return Wind River to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000B; 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 necessary to return Wind River salmon and steelhead angling rules to permanent rules.

The adult salmon daily limit on the Wind River was reduced earlier in the year to help ensure the Spring Chinook broodstock collection goal for Carson National Fish Hatchery was achieved. Hatchery managers have indicated that enough broodstock have been collected to cover all hatchery programs; therefore, a reduced daily limit is no longer needed.

This rule also carries forward emergency rules previously filed in WSR 23-12-005 (Order 23-83), on May 24, 2023, for Klickitat and Lewis rivers.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 29, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000D Freshwater exceptions to statewide rules—Southwest. Effective July 1, 2023, until further notice, the provisions of WAC 220-312-030 regarding Klickitat River and Lewis River

salmon seasons shall be modified during times and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Klickitat River (Klickitat Co.):

(a) From the mouth to Fisher Hill Bridge: Effective immediately, until further notice: Salmon: Closed

(b) From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery: Effective immediately, until further notice: Salmon: Closed.

(2) Lewis River (Clark/Cowlitz Co.):

Salmon: From the mouth to Colvin Creek: Effective immediately, through July 31, 2023: Daily limit 6 including no more than 1 adult. Release all salmon other than hatchery Chinook.

[]

REPEALER

The following section of the Washington Administrative Code is repealed, effective July 1, 2023:

WAC 220-312-03000B Freshwater exceptions to statewide rules—Southwest. (23-83)

WSR 23-14-090
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed June 30, 2023, 9:02 a.m., effective June 30, 2023, 9:02 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending rules to provide continuous enrollment in medicaid through age five for children with household income below 215 percent of the federal poverty level at the time of application.

Citation of Rules Affected by this Order: Amending WAC 182-504-0015, 182-504-0035, and 182-505-0210.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The legislature directed the agency to pursue an 1115 Medicaid waiver to extend continuous eligibility for Washington apple health covered children ages zero through five. Section 211(71), chapter 334, Laws of 2021 (ESSB 5092). The agency received federal government approval effective April 14, 2023, of an 1115 Medicaid waiver application to provide the continuous eligibility described in the purpose section. This emergency filing is necessary to ensure eligible children ages zero to six do not lose their coverage due to the eligibility redetermination process related to the unwinding of the public health emergency.

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

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

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

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

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

Date Adopted: June 30, 2023.

Wendy Barcus
Rules Coordinator

OTS-4721.1

AMENDATORY SECTION (Amending WSR 17-12-018, filed 5/30/17, effective 6/30/17)

WAC 182-505-0210 Eligibility for children. (1) General eligibility. For purposes of this section, a child must:

(a) Be a Washington state resident under WAC 182-503-0520 and 182-503-0525;

(b) Provide a Social Security number under WAC 182-503-0515, unless exempt; and

(c) Meet program-specific requirements.

(2) **Deemed eligibility groups.** A child is automatically eligible for coverage without an application if the child meets the program-specific requirements in (a) through (c) of this subsection.

(a) **Newborn coverage.** A child under age one is eligible for categorically needy (CN) coverage if the birth parent was eligible for Washington apple health on the date of delivery:

(i) Including a retroactive eligibility determination; or

(ii) By meeting a medically needy (MN) spenddown liability with expenses incurred by the date of the newborn's birth:

((~~(b)~~)) **(b) Washington apple health for supplemental security income (SSI) recipients.** A child who is eligible for SSI is automatically eligible for CN coverage under WAC 182-510-0001.

(c) **Foster care coverage.** A child age ((~~twenty~~)) 20 and younger is eligible for CN coverage under WAC 182-505-0211 when the child is in foster care or receives subsidized adoption services. For children who age out of the foster care program, see WAC 182-505-0211(3).

(3) **MAGI-based eligibility groups.** A child age ((~~eighteen~~)) 18 and younger is eligible for CN coverage based on modified adjusted gross income (MAGI):

(a) At no cost when the child's countable income does not exceed the standard in WAC 182-505-0100 (6) (a);

(b) With payment of a premium when the child's countable income does not exceed the standard in WAC 182-505-0100 (6) (b), and the child meets additional eligibility criteria in WAC 182-505-0215;

(c) Under chapter 182-514 WAC, if the child needs long-term care services because the child resides or is expected to reside in an institution, as defined in WAC 182-500-0050, for ((~~thirty~~)) 30 days or longer. An institutionalized child is eligible for coverage under the medically needy program if income exceeds the CN income standard for a person in an institution (special income level);

(d) Under WAC 182-505-0117, if a child is pregnant;

(e) When the child has household income at or below 215 percent of the federal poverty level at the time of application and is eligible for Washington apple health continuous eligibility for children under age six.

(4) **Non-MAGI-based children's programs.** The agency determines eligibility for the:

(a) Medically needy (MN) program according to WAC 182-510-0001(6) and 182-519-0100. A child age ((~~eighteen~~)) 18 and younger is eligible if the child:

(i) Is not eligible for MAGI-based coverage under subsection (3) of this section;

(ii) Meets citizenship or immigration requirements under WAC 182-503-0535 (2) (a), (b), (c), or (d); and

(iii) Meets any spenddown liability required under WAC 182-519-0110.

(b) **SSI-related program.** A child age ((~~eighteen~~)) 18 and younger is eligible for CN or MN SSI-related coverage if the child meets:

(i) SSI-related eligibility under chapter 182-512 WAC;

(ii) Citizenship or immigration requirements under WAC 182-503-0535 (2) (a), (b), (c), or (d); and

(iii) Any MN spenddown liability under WAC 182-519-0110.

(c) **SSI-related long-term care program.**

(i) A child age (~~(eighteen)~~) 18 and younger is eligible for home and community based (HCB) waiver programs under chapter 182-515 WAC if the child meets:

(A) SSI-related eligibility under chapter 182-512 WAC;

(B) Citizenship or immigration requirements under WAC 182-503-0535 (2) (a), (b), (c), or (d); and

(C) Program-specific age and functional requirements under chapters 388-106 and 388-845 WAC.

(ii) A child age (~~(eighteen)~~) 18 and younger who resides or is expected to reside in a medical institution as defined in WAC 182-500-0050 is eligible for institutional medical under chapter 182-513 WAC if the child meets:

(A) Citizenship or immigration requirements under WAC

182-503-0535 (2) (a), (b), (c), or (d);

(B) Blindness or disability criteria under WAC 182-512-0050; and

(C) Nursing facility level of care under chapter 388-106 WAC.

(5) **Alien emergency medical program.** A child age (~~(twenty)~~) 20 and younger who does not meet the eligibility requirements for a program described under subsections (2) through (4) of this section is eligible for the alien emergency medical (AEM) program if the child meets:

(a) The eligibility requirements of WAC 182-507-0110; and

(b) MN spenddown liability, if any, under WAC 182-519-0110.

(6) **Other provisions.**

(a) A child residing in an institution for mental disease (IMD) as defined in WAC 182-500-0050(1) is not eligible for inpatient hospital services, unless the child is unconditionally discharged from the IMD before receiving the services.

(b) A child incarcerated in a public institution as defined in WAC 182-500-0050(4) is only eligible for inpatient hospital services.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-018, § 182-505-0210, filed 5/30/17, effective 6/30/17; WSR 16-01-034, § 182-505-0210, filed 12/8/15, effective 1/8/16; WSR 15-15-153, § 182-505-0210, filed 7/21/15, effective 8/21/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-505-0210, filed 7/29/14, effective 8/29/14. WSR 12-13-056, recodified as § 182-505-0210, filed 6/15/12, effective 7/1/12. Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.057, 74.09.500, and PPACA, § 2102 (b) (1) (A) of the Social Security Act, and Public Law 111-3 (CHIPRA). WSR 11-23-077, § 388-505-0210, filed 11/15/11, effective 12/16/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-505-0210, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-505-0210, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-505-0210, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-23-013, § 388-505-0210, filed 11/4/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-057, § 388-505-0210, filed 7/13/04, effective 8/13/04. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 03-14-107, § 388-505-0210, filed 6/30/03, effective 7/31/03. Statutory Authority: RCW 74.08.090,

74.08A.100, 74.09.080, and 74.09.415. WSR 02-17-030, § 388-505-0210, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.08.090, 74.04.050, [74.04.]055, and [74.04.]057. WSR 01-11-110, § 388-505-0210, filed 5/21/01, effective 6/21/01. Statutory Authority: RCW 74.08.090 and 74.08A.100. WSR 99-17-023, § 388-505-0210, filed 8/10/99, effective 9/10/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-505-0210, filed 7/31/98, effective 9/1/98. Formerly WAC 388-509-0905, 388-509-0910 and 388-509-0920.]

OTS-4720.1

AMENDATORY SECTION (Amending WSR 22-21-072, filed 10/13/22, effective 11/13/22)

WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs. (1) A certification period is the period of time we determine that you are eligible for a categorically needy (CN) Washington apple health program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues through the end of the last month of the certification period.

(2) For ((a)) newborn (~~(eligible for apple health)~~) coverage, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) If you are eligible for apple health based on pregnancy, the certification period continues through the last day of the month the pregnancy ends. After-pregnancy coverage begins the first day of the month, following the end of the pregnancy, and ends the last day of the 12th month from the time after-pregnancy coverage began.

(4) If you are newly eligible for apple health coverage and had a pregnancy end within the last 12 months, your certification period for after-pregnancy coverage:

(a) Begins the first day of the month you are eligible; and

(b) Ends the last day of the 12th month following the end of your pregnancy.

(5) If you are eligible for the refugee program, the certification period ends at the end of the 12th month following your date of entry to the United States.

(6) If you are a child under age six receiving apple health for kids without a premium, your certification period ends the month of your sixth birthday.

(7) If you are eligible for newborn coverage, the certification period continues through the last day of the month of your first birthday. Apple health for kids coverage begins the first day of the month after your newborn coverage ends and ends the last day of the month of your sixth birthday.

(8) For all other CN coverage, the certification period is 12 months.

((+7)) (9) If you are a child, eligibility is continuous throughout the certification period regardless of a change in circum-

stances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months, or you:

- (a) Turn age 19;
- (b) Move out-of-state; or
- (c) Die.

~~((8))~~ (10) When you turn 19, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the 12-month period is not over, unless:

- (a) You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month you turn 19;
- (b) The inpatient stay continues into the following month or months; and
- (c) You remain eligible except for turning age 19.

~~((9))~~ (11) A retroactive certification period is described in WAC 182-504-0005.

~~((10))~~ (12) Coverage under premium-based programs included in apple health for kids as described in chapter 182-505 WAC begins no sooner than the month after creditable coverage ends.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-21-072, § 182-504-0015, filed 10/13/22, effective 11/13/22; WSR 22-12-033, § 182-504-0015, filed 5/24/22, effective 6/24/22; WSR 17-12-017, § 182-504-0015, filed 5/30/17, effective 6/30/17. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0015, filed 7/29/14, effective 8/29/14. WSR 11-24-018, recodified as § 182-504-0015, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-416-0015, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-416-0015, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-416-0015, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-416-0015, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-19-031, § 388-416-0015, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-21-064, § 388-416-0015, filed 10/18/04, effective 11/18/04. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. WSR 04-03-019, § 388-416-0015, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 74.09.450. WSR 00-08-002, § 388-416-0015, filed 3/22/00, effective 5/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-416-0015, filed 7/31/98, effective 9/1/98. Formerly 388-509-0970, 388-521-2105, 388-522-2210 and 388-522-2230.]

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-504-0035 Washington apple health—Renewals. (1) For all Washington apple health (WAH) programs, the following applies:

(a) You are required to complete a renewal of eligibility at least every (~~twelve~~) 12 months with the following exceptions:

(i) If you are eligible for WAH medically needy with spenddown, then you must complete a new application at the end of each three- or six-month base period;

(ii) If you are eligible for WAH alien emergency medical, then you are certified for a specific period of time to cover emergency in-patient hospitalization costs only (see WAC 182-507-0115(8)); (~~or~~)

(iii) If you are eligible for WAH refugee coverage, you must complete a renewal of eligibility after eight months; or

(iv) If you are a child on apple health for kids without premiums, your first renewal is due the month of your sixth birthday.

(b) You may complete renewals online, by phone, or by paper application that you mail or fax to us (the agency or its designee).

(c) If your WAH is renewed, we decide the certification period according to WAC 182-504-0015.

(d) We review all eligibility factors subject to change during the renewal process.

(e) We redetermine eligibility as described in WAC 182-504-0125 and send you written notice as described in WAC 182-518-0005 before WAH is terminated.

(f) If you need help meeting the requirements of this section, we provide equal access services as described in WAC 182-503-0120.

(2) For programs based on modified adjusted gross income (MAGI) as described in WAC 182-503-0510:

(a) Sixty days prior to the end of the certification period:

(i) When information from electronic sources shows income is reasonably compatible (as defined in WAC 182-500-0095), we administratively renew your coverage (as defined in WAC 182-500-0010) for a new certification period and send you a notice of renewal with the information used. You are required to inform us if any of the information we used is wrong.

(ii) If we are unable to complete an administrative renewal (as defined in WAC 182-500-0010), you must give us a signed renewal in order for us to decide if you will continue to get WAH coverage beyond the current certification period.

(iii) We follow the requirements described in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(b) If your WAH coverage is terminated because you did not renew, you have (~~ninety~~) 90 days from the termination date to give us a completed renewal. If we decide you are still eligible to get WAH coverage, we will restore your WAH without a gap in coverage.

(3) For non-MAGI based programs (as described in WAC 182-503-0510):

(a) Forty-five days prior to the end of the certification period, we send notice with a renewal form to be completed, signed, and returned by the end of the certification period.

(b) We follow the requirements in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(c) If you are terminated for failure to renew, you have (~~thirty~~) 30 days from the termination date to submit a completed renewal. If still eligible, we will restore your WAH without a gap in coverage.

(4) If we determine that you are not eligible for renewal of your WAH coverage, we:

(a) Consider your eligibility for all other WAH programs before ending your WAH coverage; and

(b) Coordinate with the health benefit exchange any request for information that is necessary to determine your eligibility for:

(i) Other WAH programs; and

(ii) With respect to qualified health plans, health insurance premium tax credits (as defined in WAC 182-500-0045) and cost-sharing reductions (as defined in WAC 182-500-0020).

(5) We reconsider our decision that you are not eligible for WAH coverage without a new application from you when:

(a) We receive the information that we need to decide if you are eligible within (~~thirty~~) 30 days of the date on the termination notice; or

(b) You request a hearing within (~~ninety~~) 90 days of the date on the renewal denial letter and an administrative law judge (ALJ) or HCA review judge decides our decision was wrong (per chapter 182-526 WAC).

(6) If you disagree with our decision, you can ask for a hearing. If we decided that you are not eligible for renewal because we do not have enough information, the ALJ will consider the information we already have and anymore information you give us. The ALJ does not consider the previous absence of information or failure to respond in determining if you are eligible.

[Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0035, filed 7/29/14, effective 8/29/14.]

WSR 23-14-093
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 30, 2023, 11:43 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The department is extending emergency adoption of WAC 388-439-0005 What is the pandemic EBT program?, 388-439-0015 General information about pandemic EBT benefits, 388-439-0020 Eligibility for pandemic EBT benefits for children under age six, and 388-439-0025 Eligibility for pandemic EBT benefits during the 2023 summer period, to support continued implementation of the pandemic EBT (P-EBT) program. States are authorized to implement P-EBT under approved plans as long as there is a federal public health emergency designation (as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act, as amended by Section 1108 of H.R. 1319, American Rescue Plan Act of 2021).

Changes to these emergency rules are needed per recent approval from USDA Food and Nutrition Service regarding Washington's P-EBT state plan for children in child care for school year 2022-23 and Washington's P-EBT state plan for summer 2023.

Citation of Rules Affected by this Order: New WAC 388-439-0005, 388-439-0015, 388-439-0020, and 388-439-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120; H.R. 6201.

Other Authority: H.R. 8337, H.R. 133, H.R. 1319.

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

Reasons for this Finding: Emergency adoption of these rules is necessary to support implementation of the P-EBT program that protects the health, safety, and general welfare of Washington residents by supporting access to public assistance.

The department filed a CR-102 under WSR 23-03-096, and a public hearing occurred on February 21, 2023. The department is continuing to move forward with permanent rule making for these WAC. This filing cancels and supersedes emergency rules filed under WSR 23-08-017 on March 24, 2023.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: June 30, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4858.12

**Chapter 388-439 WAC
PANDEMIC EBT (P-EBT) PROGRAM**

NEW SECTION

WAC 388-439-0005 What is the pandemic EBT program? (1) The pandemic electronic benefits transfer (P-EBT) program is a temporary federally funded nutrition program authorized specifically through the families first coronavirus act. P-EBT provides food benefits to eligible children who do not have access to meals at a covered childcare center or free or reduced-price school meals due to the COVID-19 public health emergency. P-EBT is administered by the department of social and health services (department) and is not bound by the same state or federal rules, regulations, and procedures governing the supplemental nutrition assistance program (SNAP). P-EBT is governed by its own specific rules as found in this chapter. The 2022-2023 school year will be the final year for all P-EBT programs due to the May 2023 expiration of the federal public health emergency (PHE).

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child;

(b) "Child and adult care food program (CACFP)" means a federal program that provides reimbursements for nutritious meals and snacks to eligible children and adults who are enrolled for care at participating childcare centers, day care homes, and adult day care centers;

(c) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(i) Receiving a benefit from a federal means tested assistance program, including SNAP, temporary assistance for needy families (TANF), food distribution program on Indian reservations (FDPIR), some medicaid programs; or

(ii) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program (ECEAP);

(d) "Eligible student" means a child or student, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program (NSLP) and school breakfast program (SBP) during the school year, who is:

(i) Enrolled in a school or registered in a program in Washington state that normally participates in the NSLP;

(ii) Attending a school that has been closed or has reduced attendance or hours for five or more consecutive days during the school year due to the COVID-19 PHE designation; and

(iii) Determined by the school to be eligible for free or reduced-priced school meals or attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program. Students are identified as eligible for free or reduced-price school meals using direct certification or free or reduced-price school meals application;

(e) "Free or reduced-price school meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act;

(f) "Meal service" means the typical meals (SBP and NSLP) served when school is in session and consumed on-site as part of the school day. Meal service includes both breakfast and lunch.

(g) "Operating days" are days a school regularly operates, excluding weekends, breaks, and holidays;

(h) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible students or children under age six;

(i) "Public health emergency" means a federal declaration of a public health emergency due to the COVID-19 pandemic as issued by the secretary of health and human services;

(j) "School" means any public or nonprofit private schools, charter schools, and tribal compact schools within the state of Washington;

(k) "School closure" means that the school was closed for in-person or remote learning with no meal service available to students enrolled in the school;

(l) "Summer period" means the months of July and August between the end of the school year and the start of the next school year.

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NEW SECTION

WAC 388-439-0015 General information about pandemic EBT benefits. (1) Pandemic electronic benefit transfer (P-EBT) benefits will be deposited into an account accessible with a designated P-EBT card. A P-EBT card and eligibility notice will be issued to each eligible student or child under age six. Each P-EBT card will be:

(a) Linked to a P-EBT account for each eligible student or child under age six for P-EBT benefits; and

(b) Mailed to either:

(i) The last known address on file with the school as reported by the parent or caregiver for the eligible student; or

(ii) The last known address on file with the department as reported by the parent or caregiver for the basic food case for the child under age six.

(c) It is the parent's or caregiver's responsibility to accurately and timely report any address changes to the department for children under six and to the school for school age children. The department or school is not responsible for the expungement of benefits due to unreceived P-EBT notices or cards sent through the mail.

(2) To use a P-EBT account:

(a) The P-EBT card can be used by the eligible student or child under age six or responsible household member, such as a parent or caregiver, on behalf of the eligible student or child under age six, to access the benefits in their EBT account;

(b) A personal identification number (PIN) has to be created that must be used with the P-EBT card to purchase food items;

(c) P-EBT benefits must be accessed from the P-EBT card of an eligible student or child under age six. P-EBT benefits cannot be transferred to a bank account or issued as a check;

(d) P-EBT benefits must be used within 274 days from the initial deposit or last purchase activity on the eligible child's account;

(e) P-EBT benefits not used within 274 days of either activity will be removed; and information about the removal of benefits is included in the initial notice of approval.

(f) P-EBT benefits cannot be replaced once redeemed, removed, lost, or stolen due to fraudulent use.

(g) Families are responsible for keeping the P-EBT card and PIN of an eligible student or child under age six in a safe and secure place.

(3) The purpose of P-EBT benefits is to help low-income families or individuals have a more nutritious diet by providing food benefits to eligible children during the COVID-19 PHE.

(a) P-EBT benefits are used to buy food items for an eligible child (or youth) from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. department of agriculture food and nutrition service (FNS).

(b) Use P-EBT benefits the same as other food benefits under WAC 388-412-0046 (2)(c).

(c) It is not legal to use P-EBT benefits as described under WAC 388-412-0046 (2)(d).

(d) If people intentionally misuse P-EBT benefits, they may be:

(i) Subject to fines; or

(ii) Subject to legal action, including criminal prosecution. Department of social and health services (DSHS) will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking P-EBT benefits.

(4) The household must request a hearing within 90 days of the mailing date in the notice when disagreeing with a decision explained in the notice.

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NEW SECTION

WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between September 1, 2022, and May 11, 2023;

(b) Under age of six during the specified time period.

(2) Children who do not qualify for federally funded P-EBT benefits because they receive state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between September 1, 2022, and May 11, 2023.

(b) State-funded P-EBT benefits are contingent on the availability of state funds.

(3) We calculate a standard benefit level for each month of P-EBT eligibility by:

(a) Using the full daily meal reimbursement rate of \$8.18 for breakfast, lunch, and snack;

(b) For September 2022, through April 2023, multiplied by the statewide average operating days of 18 days per month;

(c) For the partial prorated month of May 2023, multiplied by the nine operating days prior to the May 11 expiration of the PHE;

(d) Multiplied using a percentage of benefit reimbursement based on statewide child and adult care food program (CACFP) reported meal service prior to the COVID-19 PHE compared to the current school year, a 29.8 percent reduction, as follows:

Child Care Months	Daily Reimbursement Rate	Average Operating Days	Reduction in CACFP Claims	Average Monthly Benefits
September 2022-April 2023	\$8.18	18	29.8%	\$43.88
May 1,-May 11, 2023	\$8.18	9	29.8%	\$28.94

(e) P-EBT benefits are issued for each month that the household receives a SNAP or FAP benefit more than zero dollars.

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as follows:

(a) A lump sum one-time P-EBT allotment is issued for eligible months from September 2022, through May 2023;

(b) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(6) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.

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NEW SECTION

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2023 summer period. (1) During the summer period of July and August 2023, schools and covered childcare centers will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after the 2022-2023 school year, prior to August 31, 2023, a child must be:

(a) An eligible student as defined under WAC 388-439-0005(2)(d) in June 2023; or

(b) A child under age six, as defined under WAC 388-439-0020(1), between July 1, 2023, and August 31, 2023.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$120 for the 2023 summer period.

(4) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(5) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.

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WSR 23-14-094

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed June 30, 2023, 1:18 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: To add a new standard in WAC 51-54A-8000 and provide additional guidance on the installation of energy storage systems by adding a new amendment to WAC 51-54A-1201. An additional emergency filing is required to extend the effectiveness of the emergency rule while the building code council (council) continues work on a permanent rule filing.

Citation of Rules Affected by this Order: New WAC 51-54A-1201; and amending WAC 51-54A-8000.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

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

Reasons for this Finding: Energy storage systems is an industry that is emerging very quickly and there are many associated life and safety hazards to the installation of these systems. The 2018 International Fire Code (IFC) does not have enough language to address these hazards. This proposal permits the authority having jurisdictions to use NFPA 855 as a referenced document, per Section 102.7. The standard will be part of the IFC as a state amendment until the appropriate code sections are updated in future editions. The council is currently in the process of adopting the permanent rules for these systems, with public hearings tentatively set for late August/September. The 2021 IFC was originally scheduled to go into effect July 1, 2023, but was recently delayed until October 29, 2023; thus the emergency rule needs to be extended to be effective until the new code is in effect.

Date Adopted: June 30, 2023.

Tony Doan
Council Chair

OTS-3419.4NEW SECTION

WAC 51-54A-1201 General. 1201.1 Scope. The provisions of this chapter shall apply to the installation, operation, and maintenance of energy systems used for generating or storing energy. It shall not apply to equipment associated with the generation, control, transformation, transmission, or distribution of energy installations that is under the exclusive control of an electric utility or lawfully designated agency. Energy storage systems regulated by Section 1206 shall comply with this chapter as applicable and NFPA 855.

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AMENDATORY SECTION (Amending WSR 19-02-086, filed 1/2/19, effective 7/1/19)

WAC 51-54A-8000 Referenced standards.

The following standards are added:

NFPA 96-07 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations 609.3

NFPA 720-15 Standard for the Installation of Carbon Monoxide (CO) Warning Equipment in Dwelling Units 1103.9

NFPA 130-17 Standard for Fixed Guideway Transit and Passenger Rail Systems 3901.1

NFPA 855-23 Standard for the Installation of Stationary Energy Storage Systems 1201.1

[Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-8000, filed 1/2/19, effective 7/1/19. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-8000, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-8000, filed 2/1/13, effective 7/1/13.]

WSR 23-14-095

EMERGENCY RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2023-03.01—Filed June 30, 2023, 1:18 p.m., effective July 23, 2023]

Effective Date of Rule: July 23, 2023.

Purpose: The health care authority is creating new WAC 182-30-5000 School employees benefits board employer groups and 182-30-5010 School board members participation in school employees benefits board health plans as authorized in SSB 5275, chapter 13, Laws of 2023, 68th legislature, 2023 regular session.

Citation of Rules Affected by this Order: New WAC 182-30-5000 and 182-30-5010.

Statutory Authority for Adoption: SSB 5275, chapter 13, Laws of 2023, 68th legislature, 2023 regular session.

Other Authority: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This emergency rule making is necessary by establishing rules for the school employees benefits board employer groups and the school board members to implement SSB 5275, chapter 13, Laws of 2023, while the health care authority conducts the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 30, 2023.

Wendy Barcus
Rules Coordinator

OTS-4678.1NEW SECTION**WAC 182-30-5000 School employees benefits board employer groups.**

(1) The following definitions apply to this section:

(a) "School employee" means an employee of an employee organization representing school employees and an employee of a tribal school as defined in RCW 28A.715.010.

(b) "Employer group" has the same meaning as defined in RCW 41.05.011 (9) (b).

(2) This section applies to all employer group applications received through December 31, 2024.

(3) Employer groups may apply to obtain school employees benefits board (SEBB) insurance coverage through a contract with the authority for SEBB insurance coverage to begin January 1, 2024, if they meet the group application process and requirements in a similar way as described in WAC 182-08-235. All documents and information required with the application must be submitted to the SEBB program.

(4) Employer groups that apply for participation in SEBB insurance coverage as described in subsection (3) of this section will have a one-time opportunity to request inclusion of retired employees who are covered under its retiree health plan at the time of application in a similar way as described in WAC 182-08-237. The retirees included will be enrolled in public employees benefits board (PEBB) retiree insurance coverage.

(5) The authority will review the employer group application based on the documents submitted by the employer group and the employer group evaluation criteria in a similar way as described in WAC 182-08-240.

(6) Employer groups must meet the participation requirements, including requirements for terminating participation in SEBB insurance coverage, in a similar way as described in WAC 182-08-245.

(7) Employer groups that enter into a contractual agreement with the authority on or after May 4, 2023, and whose contractual agreement is subsequently terminated, shall make a one-time payment to the authority for each of the employer group's retired or disabled employees who continue their participation in insurance plans and contracts under RCW 41.05.080 (1) (a) (ii).

(a) For each of the employer group's retired or disabled employees who will be continuing their participation, the authority shall determine the one-time payment by:

(i) Calculating the difference in cost between the rate charged to retired or disabled employees as described in RCW 41.05.080(2); and

(ii) The actuarially determined value of the medical benefits for retired and disabled employees who are not eligible for Parts A and B of medicare; and

(iii) Multiplying that difference by the number of months until the retired or disabled employee would become eligible for medicare.

(b) Employer groups shall not be entitled to any refund of the amount paid to the authority as described in this subsection.

(8) Employer groups may appeal a decision of the authority to deny an employer group application in a similar way as described in WAC 182-16-2060. The appeal must be sent to the SEBB appeals unit.

(9) School employees may appeal a decision made by the employer group in a similar way as described in WAC 182-16-2010(2), 182-16-2030(2), and chapter 182-32 WAC.

(10) All rules in chapters 182-30, 182-31, and 182-32 WAC apply to employer groups and enrollees, except for WAC 182-30-100, 182-30-120, 182-30-130, 182-30-140, 182-31-030, and 182-31-060.

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NEW SECTION

WAC 182-30-5010 School board members participation in school employees benefits board health plans. (1) In this section, "school board member" means the board of directors of a school district as governed by chapter 28A.343 RCW or the board of directors of an educational service district as governed by chapter 28A.310 RCW.

(2) Effective January 1, 2024, a school board member may enroll in health plans offered by the school employees benefits board (SEBB) by self-paying the premium and applicable premium surcharges set by the health care authority (HCA). A school board member must enroll in SEBB medical, SEBB dental, and SEBB vision.

(3) A school board member may participate in SEBB health plan coverage for the duration of their elected term as a school board member as long as premiums and applicable premium surcharges continue to be paid as described in WAC 182-30-040 and may renew their participation at the start of each subsequent term as a school board member.

(4) A school board member may elect to enroll in SEBB health plan coverage by submitting the required forms and first premium payments to the SEBB program, and they must be received as follows:

(a) Currently elected or appointed school board members have between November 1, 2023, and February 29, 2024, to submit the required forms to the SEBB program.

(i) If the required forms are received on or before December 31, 2023, SEBB health plan coverage will begin January 1, 2024. The first premium payment and applicable premium surcharges must be received no later than 45 days after January 1, 2024.

(ii) If the required forms are received between January 1, 2024, and February 29, 2024, SEBB health plan coverage will begin the first day of the month following the day the SEBB program receives the required forms. The first premium payment and applicable premium surcharges must be received no later than 45 days after the 60-day election period ends.

(b) Newly elected school board members must submit their required forms no later than 60 days from the beginning of their elected or appointed term. The school board member's SEBB health plan coverage will begin the first day of the month following the day the SEBB program receives the required forms. The first premium payment and applicable premium surcharges must be received no later than 45 days after the 60-day election period ends.

(5) A school board member's account may incur the tobacco use premium surcharge or the spousal premium surcharge in addition to their monthly medical premium, and the subscriber must attest as described in WAC 182-30-050 (1) and (2). A premium surcharge will be applied if the school board member does not attest. If the attestation results in a premium surcharge, it will take effect the same date as SEBB medical begins.

(6) If a school board member is reelected for a new term consecutive from their previous term, the school board member will not be required to make new elections.

(7) A school board member may enroll eligible dependents as described in WAC 182-31-140 and must include the dependent's enrollment information on the required form. If the school board member elects to enroll a dependent in SEBB health plan coverage, the dependent will be enrolled in the same SEBB medical, SEBB dental, and SEBB vision plans as the school board member.

(8) If a school board member is terminated due to no longer paying the premium and applicable premium surcharges as described in WAC 182-30-040 (1)(c) or requests to voluntarily terminate their enrollment in SEBB health plan coverage prior to the end of their elected term, they are no longer eligible under this section to participate in SEBB health plan coverage for the remainder of their elected term. Those who request to voluntarily terminate their SEBB health plan coverage must do so in writing. SEBB health plan coverage will end on the last day of the month in which the SEBB program receives the termination request or on the last day of the month specified in the school board member's termination request, whichever is later. If the termination request is received on the first day of the month, SEBB health plan coverage will end on the last day of the previous month.

(9) A school board member may make enrollment changes on the same terms and conditions as a continuation coverage subscriber as described in WAC 182-30-085, 182-30-090, and 182-31-150.

(10) A school board member must update their address with the SEBB program as described in WAC 182-30-075.

(11) A school board member is limited to one enrollment per individual in SEBB health plan coverage, as described in WAC 182-31-070.

(12) A school board member may appeal a decision made by the SEBB program as described in chapter 182-32 WAC.

(13) The requirements in WAC 182-31-160 about National Medical Support Notice apply.

(14) A school board member may receive the SEBB wellness incentive as described in WAC 182-31-190.

(15) A school board member is not eligible for public employees benefits board retiree insurance coverage.

(16) The eligibility criteria for a school board member in this section replaces the eligibility criteria found in WAC 182-08-235, 182-08-245, 182-12-111, and 182-12-146 effective January 1, 2024.

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WSR 23-14-096
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-111—Filed June 30, 2023, 1:41 p.m., effective July 6, 2023]

Effective Date of Rule: July 6, 2023.

Purpose: The purpose of this emergency rule is to set temporary recreational fishing closure dates for a portion of the Skagit River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000I; 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 rule is necessary to temporarily close a portion of the Skagit River to avoid gear conflicts with treaty fisheries.

This rule also maintains salmon seasons for Cascade and Skagit rivers set in WSR 23-14-022, filed on June 23, 2023.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 29, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000J Freshwater exceptions to statewide rules—Puget Sound. Effective July 6, through July 15, 2023, the following provisions of WAC 220-312-040 and regarding fishing seasons for portions of the Skagit River and Cascade River, shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

(1) **Cascade River (Skagit Co.):** From mouth to Rockport-Cascade Rd. Bridge: Salmon:

- (a) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.
- (b) Night Closure in effect.
- (c) Anti-snagging rule in effect.
- (2) **Skagit River (Skagit Co.):**
 - (a) From Hwy. 536 Bridge (Memorial Hwy. Bridge) in Mt. Vernon to the Hwy. 9 Bridge in Sedro Woolley: Salmon:
 - (i) Daily limit 3 sockeye. Release all salmon other than sockeye.
 - (ii) Night closure in effect.
 - (iii) Selective gear rules are not in effect for salmon.
 - (b) From the Hwy 9 Bridge in Sedro Woolley to the Dalles Bridge at Concrete:
 - (i) All species: July 6, 7, and 11, 2023: Closed Waters.
 - (ii) Salmon:
 - (A) Daily limit 3 sockeye. Release all salmon other than sockeye.
 - (B) Night closure in effect.
 - (C) Selective gear rules are not in effect for salmon.
 - (D) Closed July 6, 7, and 11, 2023.
 - (c) From the Dalles Bridge at Concrete to the Baker River: All species: July 6, 7, and 11, 2023: Closed Waters.
 - (d) From the Hwy. 530 Bridge at Rockport to Cascade River Rd. (Marblemount Bridge): Salmon:
 - (i) Daily limit 4 including no more than 2 adults. Release all salmon other than hatchery Chinook.
 - (ii) Night Closure in effect.
 - (iii) Anti-snagging rule in effect.

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REPEALER

The following section of Washington Administrative Code is repealed, effective July 6, 2023:

WAC 220-312-04000I Freshwater exceptions to statewide rules—Puget Sound. (23-103)

WSR 23-14-097

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed June 30, 2023, 1:53 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The agency is amending rules to increase the income and resource limits for the tailored supports for older adults (TSOA) program eligibility and revise the application process.

Citation of Rules Affected by this Order: Amending WAC 182-513-1625, 182-513-1635, and 182-513-1640.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; section 1115 of the Social Security Act.

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 agency received approval from the Centers for Medicare and Medicaid Services (CMS) on June 30, 2023, of the medicaid transformation demonstration waiver which increases the income and resource limits for TSOA allowing more people to participate in the TSOA program. This emergency filing is necessary to ensure people who are at risk of needing long-term services and supports in the future and who don't currently meet medicaid financial eligibility criteria are able to participate effective July 1, 2023, while the agency is pursuing the permanent rule-making process filed under WSR 23-13-157.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Date Adopted: June 30, 2023.

Wendy Barcus
Rules Coordinator

OTS-4345.1

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-513-1625 Tailored supports for older adults (TSOA)—Applications. (1) Applications for tailored supports for older adults (TSOA) are submitted:

(a) Online at Washington Connection at www.washingtonconnection.org;

- (b) By sending a completed HCA ((~~18-008~~) 18-005) application for TSOA form to P.O. Box 45826, Olympia, WA 98605;
- (c) By faxing a completed HCA ((~~18-008~~) 18-005) application for TSOA form to 1-855-635-8305;
- (d) By contacting the local area agency on aging (AAA) office at 1-855-567-0252; or
- (e) By contacting the local home and community services (HCS) office. To find the local HCS office, see ((~~www.altsa.dshs.wa.gov/Resources/clickmap.htm~~)) <https://www.dshs.wa.gov/AL TSA/resources>.
- (2) Help filing an application:
- (a) The medicaid agency or the agency's designee provides help with the application or renewal process in a manner that is accessible to people with disabilities, limitations, or other impairments as described in WAC 182-503-0120 and to those who are limited-English proficient as described in WAC 182-503-0110;
- (b) For help filing an application, a person may:
- (i) Contact a local AAA office;
- (ii) Contact a local HCS office; or
- (iii) Have an authorized representative apply on the person's behalf.
- (3) The following people can apply for the TSOA program:
- (a) The applicant (the person receiving care);
- (b) The applicant's spouse;
- (c) The applicant's caregiver (person providing in-home caregiver services);
- (d) A legal guardian; or
- (e) An authorized representative, as defined in WAC 182-500-0010.
- (4) A phone interview is required to establish TSOA financial eligibility, but may be waived if the applicant is unable to comply:
- (a) Due to the applicant's medical condition; and
- (b) Because the applicant does not have another person that is able to conduct the interview on the applicant's behalf.
- (5) The agency or the agency's designee processes TSOA applications using the same timelines under WAC 182-503-0060.
- (6) TSOA begins on the date the person is determined presumptively eligible for TSOA under WAC 182-513-1620, or on the date all eligibility requirements are established if the person is not found presumptively eligible.
- (7) When the person withdraws an application for TSOA, or is determined ineligible for TSOA services, the agency or the agency's designee denies the application under WAC 182-503-0080.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1625, filed 5/30/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-513-1635 Tailored supports for older adults (TSOA)—Income eligibility. (1) To determine income eligibility for the tailored supports for older adults (TSOA) program, the medicaid agency or

the agency's designee uses the following rules depending on whether the person is single or married.

(2) If the TSOA applicant is single, the agency or the agency's designee:

(a) Determines available income under WAC 182-513-1325;

(b) Excludes income under WAC 182-513-1340; and

(c) Compares remaining gross nonexcluded income to ~~((the special income level (SIL)))~~ 400 percent of the federal benefit rate (FBR). To be eligible, a person's gross income must be equal to or less than ~~((the SIL (three hundred percent)))~~ 400 percent of the ((federal benefit rate (FBR))) FBR.

(3) If the TSOA applicant is married, the agency or the agency's designee:

(a) Determines available income under WAC 182-513-1330 with the exception of subsections (5) and (6) of that section;

(b) Excludes income under WAC 182-513-1340; and

(c) Compares the applicant's remaining gross nonexcluded income to ~~((the SIL))~~ 400 percent of the FBR. To be eligible, a person's gross income must be equal to or less than ~~((the SIL (three hundred percent of the FBR)))~~ 400 percent of the FBR.

(4) The FBR changes annually on January 1st.

(5) The current TSOA income standard is found on the Washington apple health income and resource standards chart, institutional standards section; see www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1635, filed 5/30/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-513-1640 Tailored supports for older adults (TSOA)—Resource eligibility. (1) The resource standard for a single applicant for tailored supports for older adults (TSOA) is ~~((\$53,100))~~ six times the average monthly private nursing facility rate, as determined by the department of social and health services under chapter 74.46 RCW.

(2) The resource standard for a married couple is ~~((\$53,100))~~ six times the average monthly private nursing facility rate, as determined by the department of social and health services under chapter 74.46 RCW, for the TSOA applicant plus the state spousal resource standard for the spousal impoverishment protections community (SIPC) spouse. The state spousal resource standard may change annually on July 1st. ~~((The resource standards are found at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.)~~

(3) The medicaid agency or the agency's designee uses rules in WAC 182-513-1350 (1), (3) and (4) to determine general eligibility relating to resources, availability of resources, and which resources count.

(4) The TSOA recipient has one year from the date of initial eligibility of TSOA to transfer resources in excess of the TSOA standard to the SIPC spouse.

(5) The resource standard for TSOA changes annually on January 1st based on the current average private nursing facility rate, as determined by the department of social and health services under chapter 74.46 RCW.

(6) The current TSOA standards and the current average private nursing facility rate are found on the Washington apple health income and resource standards chart, institutional standards section; see www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2016 1st sp.s. c 36 § 213 (1)(e), section 1115 of the Social Security Act, and 42 C.F.R. §§ 431.400 through 431.428. WSR 17-12-019, § 182-513-1640, filed 5/30/17, effective 7/1/17.]

WSR 23-14-098
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed June 30, 2023, 2:03 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The department of children, youth, and families is amending this rule to increase the nonstandard hours bonus amount.

Citation of Rules Affected by this Order: Amending WAC 110-15-0249.

Statutory Authority for Adoption: RCW 74.04.050.

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: These changes are reflected in the governor's 2023 budget and must be in place by July 1, 2023.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 30, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4719.1

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0249 Nonstandard hours bonus. (1) Consumers' providers may receive a nonstandard hours bonus (NSHB) payments per child per month for care provided if:

- (a) The providers are licensed or certified;
- (b) They provide at least 30 hours of nonstandard hours care during one month; and
- (c) The total cost of the state's NSHB payments do not exceed the amount appropriated for this purpose by the legislature for the current fiscal year.

(2) Nonstandard hours are defined as:

- (a) Before 6 a.m. or after 6 p.m.;
- (b) Any hours on Saturdays and Sundays; and
- (c) Any hours on legal holidays, as defined in RCW 1.16.050.

(3) NSHB amounts are:

- (a) (~~Ninety~~) One hundred thirty-five dollars for family homes;
and
(b) (~~Seventy-five~~) One hundred thirty-five dollars for centers.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0249, filed 2/3/22, effective 3/6/22; WSR 19-12-058, § 110-15-0249, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0249, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0249, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0249, filed 10/28/09, effective 12/1/09.]

WSR 23-14-099
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed June 30, 2023, 2:10 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The department of children, youth, and families is amending these rules to extend the homeless grace period and to open child care up to more providers.

Citation of Rules Affected by this Order: Amending WAC 110-15-0023 and 110-15-0024.

Statutory Authority for Adoption: Chapters 43.215 and 43.216 RCW.

Other Authority: Chapter 199, Laws of 2021.

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: These changes must be in effect by July 1, 2023, as directed by the Fair Start for Kids Act legislation of 2021, chapter 199, Laws of 2021. These changes are also reflected in the governor's 2023 budget.

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 2, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: June 30, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4717.1

AMENDATORY SECTION (Amending WSR 20-15-161, filed 7/22/20, effective 8/22/20)

WAC 110-15-0023 Homeless grace period (HGP). (1) A homeless grace period (HGP) is established as described in this section.

(2) ~~((DCYF may grant a consumer experiencing homelessness a twelve-month grace period to submit the documentation described in this subsection. The children of the consumer experiencing homelessness may receive WCCC services during the HGP. Within twelve months of the child being authorized in the WCCC program, the consumer must submit to DCYF:~~

~~(i) Documentation verifying participation in an approved activity as described in WAC 110-15-0040, 110-15-0045, or 110-15-0050;~~

- ~~(ii) Third-party verification of employment; and~~
~~(iii) Verification that any outstanding copayment owed by the consumer has been paid or written verification of a payment plan agreed to by the child care provider who is owed the outstanding copayment.~~
- ~~(3) A consumer is eligible for HGP if the consumer:~~
- ~~(a) Is experiencing, and DCYF verifies, homelessness at the time of the consumer's application for benefits;~~
~~(b) Has not been approved for HGP within the previous twelve months; and~~
~~(c) Except for the requirements described in subsection (1) of this section, meets all eligibility requirements described in this chapter.~~
- ~~(4)) A family experiencing homelessness at the time the consumer applies for child care subsidy is eligible for HGP under this section when:~~
- ~~(a) They meet all eligibility requirements described in WAC 110-15-0005, except for WAC 110-15-0005 (1)(d) and (f); and~~
~~(b) Their household income is under 85 percent of the state median income (SMI).~~
- ~~(3) Consumers approved by DCYF for HGP are eligible to receive:~~
- ~~(a) A ((twelve)) 12-month certification period;~~
~~(b) A copayment waiver; and~~
~~(c) An authorization for full-time care as described in WAC 110-15-0190.~~
- ~~((5) Authorizations for HGP eligible consumers may only be authorized for licensed care, certified care, or DCYF contracted provider care.~~
- ~~(6) Consumers authorized care under HGP must provide required verification when reapplying at the end of their certification as described in WAC 110-15-0109.~~
- ~~(7)) (4) Consumers approved under HGP are not subject to overpayment unless the consumer obtained benefits by failing to report accurate information that resulted in an error in determining the consumer's eligibility for HGP.~~

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 20-15-161, § 110-15-0023, filed 7/22/20, effective 8/22/20. WSR 18-14-078, recodified as § 110-15-0023, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-013, § 170-290-0023, filed 5/26/17, effective 6/26/17.]

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0024 Categorical eligibility for families receiving child protective, child welfare, or family assessment response services. (1) Families with children who have received child protective services as defined and used by chapters 26.44 and 74.13 RCW, child welfare services as defined and used by chapter 74.13 RCW, or services through a family assessment response, as defined and used by chapter 26.44 RCW in the six months previous to application or reapplication for working connections child care (WCCC) benefits are eligible for WCCC benefits for a ((twelve)) 12-month period if, in addition the:

(a) Consumer is a Washington state resident;

(b) Family has been referred for child care as part of the family's case management as defined by RCW 74.13.020; and

(c) Child or children are residing with a biological parent or guardian.

(2) Families eligible for WCCC under this section will:

(a) Have no copayment;

(b) Be authorized for full-time child care regardless of participation in an approved activity; and

(c) Be eligible to have benefits paid only to a (~~licensed, certified, or contracted child care~~) provider that meets the requirements in WAC 110-15-0125.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0024, filed 5/31/19, effective 7/1/19.]

WSR 23-14-100
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed June 30, 2023, 2:14 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The department of children, youth, and families (DCYF) is amending these rules to increase child care center and licensed family home provider rates to the 85th percentile of the current market and increasing family friends and neighbor rates to \$3.85 effective July 1, 2023, with delayed implementation for another increase to \$4 on July 1, 2024.

Citation of Rules Affected by this Order: Amending WAC 110-15-0200, 110-15-0205, and 110-15-0240.

Statutory Authority for Adoption: RCW 74.04.050.

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: These rules are needed to comply with E2SB 5237 and chapter 199, Laws of 2021.

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

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

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

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

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

Date Adopted: June 30, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4718.2

AMENDATORY SECTION (Amending WSR 22-16-081, filed 8/1/22, effective 9/1/22)

WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and DCYF contracted seasonal day camps. (1) **Base rate.** Effective July 1, ((2022)) 2023, the child care subsidy rates paid to licensed or certified child care centers or DCYF contracted seasonal day camps are:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	(\$48.02) \$62.05	(\$43.50) \$56.14	(\$39.67) \$53.18	(\$39.15) \$53.36
	Half-Day	(\$24.04) \$31.03	(\$21.75) \$28.07	(\$19.84) \$26.59	(\$19.58) \$26.68
Spokane County	Full-Day	\$68.54	(\$55.37) \$56.59	\$52.14	(\$40.59) \$49.00
	Half-Day	\$34.27	(\$27.69) \$28.30	\$26.07	(\$20.30) \$24.50
Region 2	Full-Day	(\$55.68) \$59.09	(\$42.44) \$49.09	(\$42.34) \$44.77	(\$31.74) \$32.73
	Half-Day	(\$27.84) \$29.55	(\$21.22) \$24.55	(\$21.17) \$22.39	(\$15.87) \$16.37
Region 3	Full-Day	\$88.58	(\$79.36) \$80.36	(\$66.89) \$72.50	(\$50.62) \$65.45
	Half-Day	\$44.29	(\$39.68) \$40.18	(\$33.45) \$36.25	(\$25.31) \$32.73
Region 4	Full-Day	(\$111.05) \$113.64	(\$92.28) \$101.59	(\$83.31) \$85.68	(\$52.20) \$90.64
	Half-Day	(\$55.53) \$56.82	(\$46.14) \$50.80	(\$41.66) \$42.84	(\$26.10) \$45.32
Region 5	Full-Day	\$72.56	(\$62.80) \$64.00	\$55.77	(\$40.60) \$54.18
	Half-Day	\$36.28	(\$31.40) \$32.00	\$27.89	(\$20.30) \$27.09
Region 6	Full-Day	(\$66.12) \$77.00	(\$59.16) \$67.50	(\$54.52) \$57.73	(\$41.66) \$50.23
	Half-Day	(\$33.06) \$38.50	(\$29.58) \$33.75	(\$27.26) \$28.87	(\$20.83) \$25.12

(a) Centers in Clark County are paid Region 3 rates.

(b) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) WAC 110-300-0005 and 110-300-0356 allow providers to care for children from birth up to and including the end of their eligibility period after their 13th birthday.

(3) Providers must obtain child-specific and time-limited exceptions from DCYF to provide care for children outside the age listed on the center's license.

(4) If providers are granted an exception to care for a child who is 13 years old or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section, and the five through 12 year age range column is used for comparison; and

(b) The children must meet the special needs requirement described in WAC 110-15-0220.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-16-081, § 110-15-0200, filed 8/1/22, effective 9/1/22; WSR 22-05-007, § 110-15-0200, filed 2/3/22, effective 3/6/22; WSR 20-15-161, § 110-15-0200, filed 7/22/20, effective 8/22/20; WSR 19-12-058, § 110-15-0200, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1. WSR 17-21-077, § 170-290-0200, filed 10/16/17, effective 11/16/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0200, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0200, filed 4/15/16, effective 5/16/16; WSR 14-24-070, § 170-290-0200, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0200, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0200, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0200, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0200, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0200, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0200, filed

10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0200, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0200, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0200, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0200, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0200, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Monthly unit.** DCYF authorizes care as monthly units as described in WAC 110-15-0190, the calculation of which is based on the full-day, partial-day, and half-day rates in subsection (2) of this section.

(2) Effective July 1, (~~2021~~) 2023, DCYF calculates licensed or certified family home providers' monthly units based on the following child care subsidy rates:

	Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
<u>((Region</u> Full-Day	\$40.00	\$40.00	\$35.00	\$32.00	\$30.00
<u>†</u> Half-Day	\$20.00	\$20.00	\$17.50	\$16.00	\$15.00
Partial-Day	\$30.00	\$30.00	\$26.25	\$24.00	\$22.50
Spokane Full-Day	\$42.00	\$42.00	\$40.00	\$37.00	\$36.00
County Half-Day	\$21.00	\$21.00	\$20.00	\$18.50	\$18.00
Partial-Day	\$31.50	\$31.50	\$30.00	\$27.75	\$27.00
Region 2 Full-Day	\$45.00	\$45.00	\$37.50	\$35.00	\$32.00
Half-Day	\$22.50	\$22.50	\$18.75	\$17.50	\$16.00
Partial-Day	\$33.75	\$33.75	\$28.13	\$26.25	\$24.00
Region 3 Full-Day	\$55.00	\$55.00	\$48.86	\$48.00	\$40.00
Half-Day	\$27.50	\$27.50	\$24.43	\$24.00	\$20.00
Partial-Day	\$41.25	\$41.25	\$36.65	\$36.00	\$30.00
Region 4 Full-Day	\$68.18	\$68.18	\$63.64	\$59.09	\$40.00
Half-Day	\$34.09	\$34.09	\$31.82	\$29.55	\$20.00
Partial-Day	\$51.14	\$51.14	\$47.73	\$44.32	\$30.00
Region 5 Full-Day	\$48.86	\$48.86	\$42.00	\$39.09	\$35.71
Half-Day	\$24.43	\$24.43	\$21.00	\$19.55	\$17.86
Partial-Day	\$36.65	\$36.65	\$31.50	\$29.32	\$26.78
Region 6 Full-Day	\$45.00	\$45.00	\$43.18	\$38.00	\$32.50
Half-Day	\$22.50	\$22.50	\$21.59	\$19.00	\$16.25
Partial-Day	\$33.75	\$33.75	\$32.39	\$28.50	(\$24.38))
<u>Region 1</u> Full-Day	<u>\$49.23</u>	<u>\$49.23</u>	<u>\$47.09</u>	<u>\$40.00</u>	<u>\$36.59</u>
Half-Day	<u>\$24.62</u>	<u>\$24.62</u>	<u>\$23.55</u>	<u>\$20.00</u>	<u>\$18.30</u>
Partial-Day	<u>\$36.92</u>	<u>\$36.92</u>	<u>\$35.32</u>	<u>\$30.00</u>	<u>\$27.44</u>
Spokane Full-Day	\$48.00	\$48.00	\$48.00	\$45.00	\$45.00
County Half-Day	\$24.00	\$24.00	\$24.00	\$22.50	\$22.50
Partial-Day	\$36.00	\$36.00	\$36.00	\$33.75	\$33.75

	Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
<u>Region 2 Full-Day</u>	<u>\$66.00</u>	<u>\$66.00</u>	<u>\$59.09</u>	<u>\$48.00</u>	<u>\$40.00</u>
<u>Half-Day</u>	<u>\$33.00</u>	<u>\$33.00</u>	<u>\$29.55</u>	<u>\$24.00</u>	<u>\$20.00</u>
<u>Partial-Day</u>	<u>\$49.50</u>	<u>\$49.50</u>	<u>\$44.32</u>	<u>\$36.00</u>	<u>\$30.00</u>
<u>Region 3 Full-Day</u>	<u>\$65.00</u>	<u>\$65.00</u>	<u>\$59.09</u>	<u>\$54.18</u>	<u>\$49.23</u>
<u>Half-Day</u>	<u>\$32.50</u>	<u>\$32.50</u>	<u>\$29.55</u>	<u>\$27.09</u>	<u>\$24.62</u>
<u>Partial-Day</u>	<u>\$48.75</u>	<u>\$48.75</u>	<u>\$44.32</u>	<u>\$40.64</u>	<u>\$36.92</u>
<u>Region 4 Full-Day</u>	<u>\$81.82</u>	<u>\$81.82</u>	<u>\$75.00</u>	<u>\$68.95</u>	<u>\$60.00</u>
<u>Half-Day</u>	<u>\$40.91</u>	<u>\$40.91</u>	<u>\$37.50</u>	<u>\$34.48</u>	<u>\$30.00</u>
<u>Partial-Day</u>	<u>\$61.37</u>	<u>\$61.37</u>	<u>\$56.25</u>	<u>\$51.71</u>	<u>\$45.00</u>
<u>Region 5 Full-Day</u>	<u>\$59.09</u>	<u>\$59.09</u>	<u>\$59.09</u>	<u>\$49.23</u>	<u>\$44.32</u>
<u>Half-Day</u>	<u>\$29.55</u>	<u>\$29.55</u>	<u>\$29.55</u>	<u>\$24.62</u>	<u>\$22.16</u>
<u>Partial-Day</u>	<u>\$44.32</u>	<u>\$44.32</u>	<u>\$44.32</u>	<u>\$36.92</u>	<u>\$33.24</u>
<u>Region 6 Full-Day</u>	<u>\$59.09</u>	<u>\$59.09</u>	<u>\$55.00</u>	<u>\$53.00</u>	<u>\$45.00</u>
<u>Half-Day</u>	<u>\$29.55</u>	<u>\$29.55</u>	<u>\$27.50</u>	<u>\$26.50</u>	<u>\$22.50</u>
<u>Partial-Day</u>	<u>\$44.32</u>	<u>\$44.32</u>	<u>\$41.25</u>	<u>\$39.75</u>	<u>\$33.75</u>

(3) The monthly unit for family home providers in all regions and for all ages will include a partial-day rate that is 75 percent of the full-day rate when:

(a) Providers provide child care services for a child during a morning session and an afternoon session. A morning session begins at any time after 12:00 a.m. and ends before 12:00 p.m. An afternoon session begins at any time after 12:00 p.m. and ends before 12:00 a.m.;

(b) The child is absent from care in order to attend school or preschool; and

(c) Family home providers are not entitled to payment at the full-day rate.

(4) Monthly units for school age children will be adjusted for the months of July and August based on the consumers' approved activities and the children's schedules for care during the summer.

(5) School age children will be authorized for 22 full days in July and August when:

(a) They are authorized for a full-time, full-time partial-day, monthly unit; or

(b) They are authorized for a part-time, part-time partial-day, monthly unit;

(c) Are scheduled for child care with a single provider at least 110 hours per month; and

(d) The consumer participates in an approved activity at least 110 hours per month.

(6) Monthly units will be prorated for partial months of authorization.

(7) The monthly unit amount is averaged over all months of authorized care. Supplemental payments will not be made for calendar months with more than the average number of care days.

(8) Supplemental authorization for payment may be requested by consumers for unexpected hours of care needed for allowable activities or changes in their schedules.

(9) WAC 110-300-0005 and 110-300-0355 allow providers to care for children from birth up to and including the end of their eligibility period after their 13th birthday.

(10) Providers must obtain a child-specific and time-limited exception from DCYF to provide care for children outside the age listed on their licenses.

(11) For providers who are granted an exception to care for a child who is 13 years of age or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section and the five through 12 year age range column is used for comparison; and

(b) The child must meet the special needs requirement as described in WAC 110-15-0220.

(12) DCYF pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (13) of this section).

(13) DCYF cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0205, filed 2/3/22, effective 3/6/22; WSR 20-15-161, § 110-15-0205, filed 7/22/20, effective 8/22/20; WSR 20-08-077, § 110-15-0205, filed 3/26/20, effective 4/26/20; WSR 19-12-058, § 110-15-0205, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0205, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0205, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0205, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0205, filed 4/15/16, effective 5/16/16; WSR 14-24-070, § 170-290-0205, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0205, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0205, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0205, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0205, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0205, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0205, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0205, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0205, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0205, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0205, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0205, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0240 Child care subsidy rates—In-home/relative providers. (1) **Base rate.** When consumers employ in-home/relative providers, DCYF pays (~~(\$2.65)~~) \$3.85 per hour per child. Beginning July 1, (~~(2022)~~) 2024, the maximum child care subsidy rate is (~~(\$3.00)~~) \$4.00 per hour per child.

(2) DCYF may pay above the maximum hourly rate for children who have special needs pursuant to WAC 110-15-0235.

(3) DCYF makes the WCCC payment directly to consumers' eligible providers.

(4) When applicable, DCYF pays the employer's share of the following:

(a) Social Security and medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA).

(5) For in-home/relative providers who receive less than the wage base limit per family in a calendar year, DCYF refunds all withheld taxes to them.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0240, filed 2/3/22, effective 3/6/22; WSR 19-12-058, § 110-15-0240, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0240, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0240, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0240, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 14-24-070, § 170-290-0240, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0240, filed 9/29/14, effective 10/30/14; WSR 13-21-113, § 170-290-0240, filed 10/22/13, effective 11/22/13. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0240, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0240, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0240, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. WSR 05-22-078, § 388-290-0240, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0240, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0240, filed 12/19/01, effective 1/19/02.]

WSR 23-14-102
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed June 30, 2023, 2:47 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The department of children, youth, and families (DCYF) is amending rules governing the transfer of individuals to the department of corrections (DOC).

Citation of Rules Affected by this Order: Amending WAC 110-745-0020, 110-745-0030, 110-745-0040, 110-745-0050, and 110-745-0060.

Statutory Authority for Adoption: RCW 13.40.280, 72.01.410.

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: For individuals in DCYF custody convicted as adults, RCW 72.01.410 (1) (a), coupled with RCW 13.40.280, requires a review hearing process for transfer to DOC where an individual presents a threat to the security of the institution. Transfer for individuals convicted as adults are already occurring without rules providing guidance for those review hearings, which will comply with due process requirements. Emergency rules are required to ensure the individual has notice of the procedures and rights they are afforded during the hearings.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: June 30, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4727.3

Chapter 110-745 WAC
TRANSFER OF ((~~JUVENILE OFFENDER~~)) INDIVIDUAL TO THE DEPARTMENT OF CORRECTIONS

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-745-0020 Notification to ((juvenile)) proposed transferred individual. ~~((A juvenile))~~ Any individual in the custody of the department being considered for transfer to DOC ((shall)) must be notified in writing at least five days in advance of the review board hearing convened to consider the matter. Notification ~~((to the juvenile offender))~~ will include the reasons the transfer is being considered and a copy of the rules pertaining to the review board hearing. Prior to any review board hearing, the ~~((juvenile))~~ individual being considered for transfer to DOC, or the ~~((juvenile's))~~ individual's attorney, ~~((shall))~~ will have the right of access to, and adequate opportunity to examine any files or records of the department pertaining to the proposed transfer of the ~~((juvenile))~~ individual to the ~~((department of corrections))~~ DOC.

[WSR 19-14-079, recodified as § 110-745-0020, filed 7/1/19, effective 7/1/19. WSR 00-16-078, recodified as § 388-745-020, filed 7/28/00, effective 7/28/00. Statutory Authority: RCW 13.40.280. WSR 84-10-032 (Order 2097), § 275-33-020, filed 4/30/84.]

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-745-0030 Composition of board. The review board will be composed of the ~~((director of DJR))~~ assistant secretary of juvenile rehabilitation division or designee who will serve as the chairperson, and two other juvenile rehabilitation administrators appointed by the ~~((chairman))~~ chairperson. The chairperson may appoint one or more members of the department's legal office to serve on the review board.

[WSR 19-14-079, recodified as § 110-745-0030, filed 7/1/19, effective 7/1/19. WSR 00-16-078, recodified as § 388-745-030, filed 7/28/00, effective 7/28/00. Statutory Authority: RCW 13.40.280. WSR 84-10-032 (Order 2097), § 275-33-030, filed 4/30/84.]

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-745-0040 Attendance at hearing. Attendance at a review board ~~((shall))~~ will be limited to parties directly concerned. The chairperson may exclude unauthorized persons unless the parties agree to their presence. Parties ~~((shall))~~ will have the right to present evidence, cross-examine witnesses and make recommendations to the board. All relevant and material evidence is admissible which, in the opinion of the chairperson, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness.

[WSR 19-14-079, recodified as § 110-745-0040, filed 7/1/19, effective 7/1/19. WSR 00-16-078, recodified as § 388-745-040, filed 7/28/00, ef-

fective 7/28/00. Statutory Authority: RCW 13.40.280. WSR 84-10-032 (Order 2097), § 275-33-040, filed 4/30/84.]

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-745-0050 Consideration of evidence. At the conclusion of the hearing, the review board will consider all evidence presented and make a decision whether continued placement of the ~~((juvenile offender in an))~~ individual in a juvenile rehabilitation institution ~~((for juvenile offenders))~~ presents a continuing and serious threat to the safety of others in the institution.

[WSR 19-14-079, recodified as § 110-745-0050, filed 7/1/19, effective 7/1/19. WSR 00-16-078, recodified as § 388-745-050, filed 7/28/00, effective 7/28/00. Statutory Authority: RCW 13.40.280. WSR 84-10-032 (Order 2097), § 275-33-050, filed 4/30/84.]

AMENDATORY SECTION (Amending WSR 19-14-079, filed 7/1/19, effective 7/1/19)

WAC 110-745-0060 Record of decision. The ~~((chair of the))~~ review board will prepare a written record of the decision and reasons ~~((therefore))~~ no later than five business days after the hearing, unless extended by the secretary. The hearing must be recorded manually or by a suitable recording device. ~~((The review board shall be recorded manually, or by mechanical, electronic, or other device capable of transcription.))~~

[WSR 19-14-079, recodified as § 110-745-0060, filed 7/1/19, effective 7/1/19. WSR 00-16-078, recodified as § 388-745-060, filed 7/28/00, effective 7/28/00. Statutory Authority: RCW 13.40.280. WSR 84-10-032 (Order 2097), § 275-33-060, filed 4/30/84.]

WSR 23-14-104
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-113—Filed June 30, 2023, 4:43 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The purpose of this emergency rule is to reduce the salmon daily limit in the Bogachiel, Calawah, Dickey, Quillayute, and Sol Duc rivers.

Citation of Rules Affected by this Order: 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 rule is needed to reduce the salmon daily limits in the areas listed.

Low hatchery rack returns to the Sol Duc Hatchery indicate that Chinook salmon in the Quillayute watershed are returning below the preseason forecast. A reduced salmon daily limit is necessary to meet broodstock collection goals while providing fishing opportunity.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 30, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000C Freshwater exceptions to statewide rules—Coast. Effective July 1 through August 31, 2023, the following provisions of WAC 220-312-020, regarding recreational salmon daily limits for Bogachiel, Calawah, Dickey, Quillayute, and Sol Duc rivers shall be modified as described below. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Bogachiel River (Clallam Co.), from mouth to Hwy 101 Bridge: Salmon: Daily limit 2 including no more than 1 adult hatchery Chinook. Release wild adult Chinook, wild adult coho, and sockeye.

(2) Calawah River (Clallam Co.), from the mouth to Hwy 101 Bridge: Salmon: Daily limit 2 including no more than 1 adult hatchery Chinook. Release wild adult Chinook, wild adult coho, and sockeye.

(3) Dickey River (Clallam Co.), from Olympic National Park boundary upstream to the confluence of the East and West Forks: Salmon: Daily limit 2 including no more than 1 adult hatchery Chinook. Release wild adult Chinook, wild adult coho, and sockeye.

(4) Quillayute River (Clallam Co.), from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers: Salmon: Daily limit 2 including no more than 1 adult hatchery Chinook. Release wild adult Chinook, wild adult coho, and sockeye.

(5) Sol Duc River (Clallam Co.), from mouth to the concrete pump station at the Sol Duc Hatchery: Salmon: Daily limit 2 including no more than 1 adult hatchery Chinook. Release wild adult Chinook, wild adult coho, and sockeye.

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