

WSR 20-16-012
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 23, 2020, 8:14 a.m., effective July 23, 2020, 8:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: 2019's Clean Energy Transformation Act amends RCW 82.08.962 and 82.12.962 related to sales and use tax remittances for machinery and equipment used in generating electricity (sections 18 and 19, chapter 288, Laws of 2019, E2SSB 5116). Under the amendments, the sales and use tax remittances are available for certain clean energy projects when certified by the department of labor and industries (department) that the developer of the project complied with specific labor standard requirements and the machinery and equipment is installed on or after January 1, 2020, and completed by December 31, 2029. The department is required to adopt emergency rules to define and set minimum requirements for all labor standards associated with the certification for tax remittance; set requirements for all good faith efforts; and set other requirements to documentation and the certification process.

The emergency rules address:

- Standards for certification for:
 - Procurement from and contracts with women-owned, minority-owned, and veteran-owned businesses;
 - Procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations;
 - Apprenticeship utilization;
 - Preferred entry for workers living in the area where the project is being constructed;
 - Payment of prevailing wages; and
 - Project labor agreements (PLA) and community workforce agreements (CWA).
- Requirements and processes related to application, records and documentation, and certification.

An initial emergency rule (WSR 19-24-061) and CR-101 Preproposal statement of inquiry (WSR 19-24-062) were filed on November 27, 2019. A second emergency rule (WSR 20-08-089) was filed on March 27, 2020. This rule making renews the emergency rules while the permanent rule-making process continues. Two definitions (CWA and PLA) are being renewed with changes in this filing. This emergency rule is adopted under new chapter 296-140 WAC, Clean energy labor standards certification. As directed by E2SSB 5116, the department is continuing work on permanent rule making for these requirements.

Citation of Rules Affected by this Order: New WAC 296-140-001, 296-140-002, 296-140-003, and 296-140-004.

Statutory Authority for Adoption: Sections 18 and 19, chapter 288, Laws of 2019; RCW 82.08.962 and 82.12.962 (E2SSB 5116), Laws of 2018.

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

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

Reasons for this Finding: An initial emergency rule (WSR 19-24-061) and CR-101 Preproposal statement of inquiry (WSR 19-24-062) were filed on November 27, 2019. A second emergency rule (WSR 20-08-089) was filed on March 27, 2020. This rule making renews the emergency rules while the permanent rule-making process continues.

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 4, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 23, 2020.

Joel Sacks
Director

Chapter 296-140 WAC

**CLEAN ENERGY LABOR STANDARDS
 CERTIFICATION**

NEW SECTION

WAC 296-140-001 Definitions. (1) "Category 1 clean energy project" means a project to:

(a) Construct a facility capable of generating not less than 1000 watts AC of electricity using any of the following principal sources of power: Fuel cells; wind; biomass energy; geothermal resource; tidal or wave energy; or technology that converts otherwise lost energy from exhaust; or

(b) Construct solar energy systems capable of generating not less than 500 kilowatts AC of electricity.

(2) "Category 2 clean energy project" means a project to construct solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.

(3) "Community workforce agreement (CWA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the CWA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

(4) "Department" means the department of labor and industries.

(5) "Good faith efforts" means the efforts by the project developer or its designated principle contractor that maximize the likelihood that the project will be built in compliance with the standards for certification. The totality of the circumstances and factors will be reviewed to determine good faith. Good faith efforts are not necessary when the standard requirements have been met.

(6) "Labor hours" means the total hours of laborers, workers, or mechanics receiving an hourly wage who are directly employed by the contractor and all subcontractors working upon the project. Labor hours does not include hours worked by foremen, superintendents, or owners except where the hours worked are counted in satisfying the required apprentice to journey supervision ratio as required by apprenticeship standards.

(7) "Local resident" means Washington laborers, workers, or mechanics receiving an hourly wage who live within fifty miles of the project being constructed unless the project is being constructed in a rural county, then it is defined as Washington workers who live within two hundred miles of the project.

(8) "Minority-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a minority business enterprise (MBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(9) "Project labor agreement (PLA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the PLA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

(10) "Registered apprentice" means an apprentice registered in an apprenticeship program approved by the Washington state apprenticeship and training council according to chapter 49.04 RCW.

(11) "Rural county" has the same definition as RCW 82.14.370(5).

(12) "Women-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a women business enterprise (WBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(13) "Veteran-owned business" means a business certified by the Washington state department of veteran affairs under RCW 43.60A.190 or a business considered a veteran-owned business under 38 C.F.R. Part 74.

NEW SECTION

WAC 296-140-002 Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962. (1) To qualify for the department certification for the fifty percent tax remittance for a Category 1 clean energy project, the project must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Have twenty-one percent of the contracts awarded to women-owned businesses, minority-owned businesses, or veteran-owned businesses; or

(ii) Good faith efforts which include, but are not limited to:

(A) Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(D) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(E) Apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation and where possible, establishing flexible time frames for performance to encourage participation;

(F) Adequately researching interested subcontractors and their capabilities before rejecting their proposals; and

(G) Not relying on price alone in the selection of subcontractors and considering reasonable quotes from women, minority, and veteran-owned businesses, even if other quotes are less expensive.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the twenty-four month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws.

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals.

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of fifteen percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is

expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of thirty-five percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of twenty percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington Work-Source office in advance of the start of the project or contract;

(B) Requesting the dispatch of local workers through union halls;

(C) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(D) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(E) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for the department certification for the seventy-five percent tax remittance for a Category 1 clean energy project, the project must meet the following minimum requirements:

(a) Meet the standards for certification for the fifty percent tax remittance under WAC 296-140-002(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for the department certification for the one hundred percent remittance for a Category 1 clean energy project, the project must have: A signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the fifty percent and seventy-five percent tax remittance under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

NEW SECTION

WAC 296-140-003 Labor standard certification for Category 2 clean energy projects under RCW 82.08.962 and 82.12.962. To qualify for the department certification for the fifty percent tax remittance for a Category 2 clean energy project, the project must meet the standards for procurement from and contracts with women, minority, or veteran-owned businesses, procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations, apprenticeship utilization, and preferred entry for workers living in the area where the project is being constructed under WAC 296-140-002 (1) and (4).

NEW SECTION

WAC 296-140-004 Application, records and documentation, and certification. (1) Businesses applying for the department certification must complete an application in a form required by the department prior to the start of the project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) Documentation and evidence to support good faith efforts as necessary; and

(iv) Other records and documentation requested by the department.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

(ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;

(iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;

(iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;

(v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;

(vi) Documentation and evidence to support good faith efforts as necessary; and

(vii) Other records and documentation requested by the department.

(d) Standard for preferred entry by local workers.

(i) The total number of workers performing labor hours on the project;

(ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;

(iii) Employment records that contain the address of individuals hired to work on the project;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(e) Standard for payment of prevailing wages.

(i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and

(ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.

(f) Records and documents for a standard for a PLA or CWA. A signed copy of the PLA or CWA for the project.

(3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.

(4) For Category 1 clean energy projects seeking certification for the fifty and seventy-five percent tax remittance and Category 2 clean energy projects seeking certification for the fifty percent tax remittance, businesses must submit notice of project completion in a form required by the department. After receiving the notice of competition, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For Category 1 clean energy projects seeking certification for the one hundred percent tax remittance, the department will issue certification upon the receipt of the required

application for certification and a signed copy of the PLA or CWA for the project.

WSR 20-16-013

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 23, 2020, 8:15 a.m., effective July 23, 2020, 8:15 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend WAC 110-15-0280 to align with the department of children, youth, and families' (DCYF) emergency administrative hearing rules, chapter 110-03 WAC.

Citation of Rules Affected by this Order: Amending WAC 110-15-0280.

Statutory Authority for Adoption: RCW 43.216.905, 43.216.906.

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: DCYF has conflicting WAC regarding an administrative appeal process that impacts the general welfare. Observing the time requirements for notice and comment would be contrary to the public interest.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: July 22, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0280 Right to request an administrative hearing. (1) WCCC consumers have a right to request ~~((a hearing under chapter 388-02 WAC))~~ administrative hearings on any action affecting WCCC benefits.

(2) Child care providers may request administrative hearings ~~((under chapter 388-02 WAC))~~ only for WCCC overpayments. A provider's burden of proof is a preponderance of the evidence.

(3) To request a hearing, a consumer or provider:

(a) Contacts the ((~~DSHS~~)) DCYF office which sent them the notice; or

(b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers; or

(ii) Twenty-eight days of the date a decision is received for providers.

(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in ((~~WAC 388-02-0217~~)) chapter 110-03 WAC. Initial orders may be appealed to a ((~~DSHS~~)) DCYF review judge under chapter ((~~388-02~~)) 110-03 WAC.

(5) To request a hearing under the seasonal child care program, see WAC ((~~170-290-3860 and 170-290-3865~~)) 110-15-3860 and 110-15-3865.

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

WSR 20-16-015
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 23, 2020, 8:35 a.m., effective July 25, 2020]

Effective Date of Rule: July 25, 2020.

Purpose: The department is extending emergency amendments to WAC 388-447-0005 What evidence do we consider to determine incapacity?, 388-447-0010 What medical evidence do I need to provide?, 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end?, 388-449-0010 What evidence do we consider to determine disability?, 388-449-0015 What medical evidence do I need to provide?, and 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?

These amendments are necessary to mitigate impacts (to ABD and HEN referral clients and medical providers) resulting from the ongoing COVID-19 virus (commonly referred to as the "coronavirus") public health crisis.

Citation of Rules Affected by this Order: Amending WAC 388-477-0005 [388-447-0005], 388-447-0010, 388-447-0110, 388-449-0010, 388-449-0015, and 388-449-0150.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.052, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.090, 74.08.043, 74.08.335, 74.09.530, 74.08.025, and 74.08A.100.

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

Reasons for this Finding: This filing is necessary to extend the existing emergency rules filed under WSR 20-08-074, which protect public health, safety, and welfare by mitigating client and medical provider impacts caused by the ongoing COVID-19 pandemic and associated State of Emergency in all Washington counties, as proclaimed by Governor Inslee's "Proclamation by the Governor 20-05."

The department filed notice of its intent to adopt the rules as permanent rules by filing a CR-101 Preproposal statement of inquiry under WSR 20-14-107, and is actively undertaking appropriate procedures to adopt the rules as permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 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 6, Repealed 0.

Date Adopted: July 21, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-05-075, filed 2/20/18, effective 3/23/18)

WAC 388-447-0005 What evidence do we consider to determine incapacity? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

(a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Medical doctor (MD);

(ii) Doctor of osteopathy (DO);

(iii) Doctor of optometry (OD) for visual disorders;

(iv) Doctor of podiatry (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice;

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments;

(ix) Doctor of dental surgery (DDS) or doctor of medical dentistry (DMD) for tooth abscesses or temporomandibular joint (TMJ) disorders; and

(x) Chief of staff of a U.S. Department of Veterans Affairs medical center, or their designee, as authorized in federal law.

(b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

- (i) Psychiatrist;
- (ii) Psychologist;
- (iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;
- (iv) Physician assistant (PA) for impairments within their licensed scope of practice;

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning;

- (vi) Clinical social worker;
 - (vii) Mental health professional (MHP); and
 - (viii) Physician treating you for a mental impairment.
- (2) "Supplemental medical evidence" means information from a licensed health professional who can provide supporting documentation for impairments established by an "acceptable medical source" listed in subsection (1) of this section. "Supplemental medical evidence" sources include, but are not limited to:

- (a) Naturopath;
- (b) Chiropractor;
- (c) Physical therapist; and
- (d) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

(3) "Other evidence" means information from sources not listed in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical source" in subsection (1) of this section. Sources of "other evidence" may include public and private agencies, schools, family members, friends, caregivers, and employers.

(4) In the event of a declared state of emergency related to COVID-19, the department may accept a diagnosis of a medically determinable impairment from a "supplemental medical evidence" source in subsection (2) of this section or the predictive risk intelligence system (PRISM).

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-447-0010 What medical evidence do I need to provide? You must provide medical evidence of your impairment(s) and how your impairment(s) affects your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective and complete.

- (1) Objective evidence for physical impairments means:
- (a) Laboratory test results;
 - (b) Pathology reports;
 - (c) Radiology findings including results of X-rays and diagnostic imaging scans;

(d) Clinical findings including, but not limited to, ranges of joint motion, blood pressure, temperature or pulse; and documentation of a physical examination; or

(e) Hospital history and physical reports and admission and discharge summaries; or

(f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

- (a) Clinical interview observations, including objective mental status exam results and interpretation.
- (b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).

(c) Hospital, outpatient and other treatment records related to your current impairments.

(d) Testing results, if any, including:

- (i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

- (ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for an incapacity determination must be from a medical professional described in WAC 388-447-0005 and must include:

- (a) A diagnosis for the impairment, or impairments, based on an examination performed within five years of application;

- (b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-447-0001; and

- (c) Documentation of how the impairment, or impairments, is currently limiting your ability to work based on an examination performed within ninety days of the date of application or incapacity review. In the event of a declared state of emergency related to COVID-19, the department may accept functional medical evidence beyond ninety days of the date of application or incapacity review, or otherwise waive this requirement in its entirety.

(4) We consider documentation in addition to objective evidence to support the medical evidence provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) If you can't obtain medical evidence sufficient for us to determine if you are incapacitated without cost to you, and you meet the other eligibility conditions defined in WAC 388-447-0001, we pay the costs to obtain objective evidence based on our published payment limits and fee schedules.

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end? (1) If we determine you are incapacitated and you meet the eligibility requirements in WAC 388-400-0070, you are eligible for referral to the housing and essential needs (HEN) program for a maximum period of twelve months. This is your incapacity authorization period.

(2) Your HEN referral eligibility stops at the end of your incapacity authorization period unless you provide current medical evidence that demonstrates there was no material improvement in your impairment. No material improvement means that your impairment continues to meet the incapacity criteria detailed in WAC 388-447-0001. In the event of a declared state of emergency related to COVID-19, the department may postpone review of your HEN referral program eligibility beyond the twelve month period if the department determines you are not eligible for the aged, blind, or disabled (ABD) program at the time of your incapacity review. The postponement of this review may occur retroactively to the date the governor declares a state of emergency related to COVID-19.

(3) The medical evidence must meet the criteria defined in WAC 388-447-0010.

(4) We use medical evidence received after your incapacity authorization period has ended when:

(a) The delay was not due to your failure to cooperate;

(b) We receive the evidence within thirty days of the end of your incapacity authorization period; and

(c) The evidence meets the incapacity criteria in WAC 388-447-0001.

(5) Even if your condition has not improved, you aren't eligible for referral to the HEN program when:

(a) We receive current medical evidence that doesn't meet the incapacity criteria in WAC 388-447-0001; or

(b) We determine the prior decision that your condition met incapacity requirements was incorrect because:

(i) The information we had was incorrect or not enough to show incapacity; or

(ii) We didn't apply the rules correctly to the information we had at that time.

AMENDATORY SECTION (Amending WSR 18-05-075, filed 2/20/18, effective 3/23/18)

WAC 388-449-0010 What evidence do we consider to determine disability? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

(a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Medical doctor (MD);

(ii) Doctor of osteopathy (DO);

(iii) Doctor of optometry (OD) for visual disorders;

(iv) Doctor of podiatry (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice; and

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments.

(b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Psychiatrist;

(ii) Psychologist;

(iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(iv) Physician assistant (PA) for impairments within their licensed scope of practice; and

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning.

(2) We accept medical evidence of how your impairment(s) affect your ability to function from "treating medical sources" once a diagnosis of a medically determinable impairment has been established by an "acceptable medical source" listed in subsection (1) of this section. "Treating medical sources" must be licensed to provide healthcare and include, but are not limited to:

(a) Physician treating you for a mental impairment;

(b) Clinical social worker;

(c) Mental health professional (MHP);

(d) Naturopath;

(e) Chiropractor;

(f) Physical therapist; and

(g) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

(3) "Other evidence" means information from sources not listed in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical source" in subsection (1) of this section. Sources of "other evidence" may include public and private agencies, schools, family members, friends, caregivers, and employers.

(4) In the event of a declared state of emergency related to COVID-19, the department may accept a diagnosis of a medically determinable impairment from a "treating medical source" in subsection (2) of this section or the predictive risk intelligence system (PRISM).

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0015 What medical evidence do I need to provide? You must give us medical evidence of your impairment(s) and how they affect your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective, and complete.

(1) Objective evidence for physical impairments means:

(a) Laboratory test results;

(b) Pathology reports;

(c) Radiology findings including results of X-rays and computer imaging scans;

(d) Clinical findings, including but not limited to ranges of joint motion, blood pressure, temperature or pulse, and documentation of a physical examination; and

(e) Hospital history and physical reports and admission and discharge summaries; or

(f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

(a) Clinical interview observations, including objective mental status exam results and interpretation.

(b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the diagnostic and statistical manual of mental disorders (DSM).

(c) Hospital, outpatient and other treatment records related to your current impairments.

(d) Testing results, if any, including:

(i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

(ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for a disability determination must be from a medical professional described in WAC 388-449-0010 and must include:

(a) A diagnosis for the impairment, or impairments, based on an examination performed by an acceptable medical source defined in WAC 388-449-0010 within five years of application;

(b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-449-0005;

(c) Documentation of how long a condition has impaired your ability to perform work related activities;

(d) A prognosis, or written statement of how long an impairment will impair your ability to perform work related activities; and

(e) A written statement from a medical professional (defined in WAC 388-449-0010) describing what you are capable of doing despite your impairment (medical source statement) based on an examination performed within ninety days of the date of application or forty-five days before the month of disability review. In the event of a declared state of emergency related to COVID-19, the department may accept functional medical evidence beyond ninety days of the date of application or forty-five days before the month of disability review, or otherwise waive this requirement in its entirety.

(4) We consider documentation in addition to objective evidence to support the acceptable medical source or treating provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) When making a disability decision, we don't use your report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.

(6) We don't use symptoms related to substance abuse or a diagnosis of chemical dependency when determining disability if we have evidence substance use is material to your impairment(s).

(7) We consider substance use to be material to your impairment(s) if you are disabled primarily because of drug or alcohol abuse or addiction.

(8) If your impairment will persist at least sixty days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment.

(9) If you can't obtain medical evidence sufficient for us to determine if you are likely to be disabled without cost to you, and you meet the other eligibility conditions in WAC 388-400-0060, we pay the costs to obtain objective evidence based on published payment limits and fee schedules.

(10) We determine the likelihood of disability based solely on the objective information we receive. We are not obligated to accept another agency's or person's decision that you are disabled or unemployable.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end? (1) The maximum period of eligibility for ABD cash is twenty-four months before we must review additional medical evidence. If you remain on ABD cash at the end of the twenty-four month period, we determine your eligibility using current medical evidence. In the event of a declared state of emergency related to COVID-19, the department may postpone review of your ABD cash eligibility beyond the twenty-four month period. The postponement of this review may occur retroactively to the date the governor declares a state of emergency related to COVID-19.

(2) If your application for SSI is denied:

(a) We review your eligibility for the ABD cash program;

(b) We stop your benefits if you do not provide proof you have filed an appeal with SSA within sixty days of a SSI denial for not being disabled.

(3) We stop your benefits after the final decision on your application for SSI/SSA benefits or if you fail to follow through with any part of the SSI/SSA application or appeals process.

WSR 20-16-018

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 23, 2020, 12:57 p.m., effective July 24, 2020]

Effective Date of Rule: July 24, 2020.

Purpose: Chapter 110-310 WAC, emergency child care and early learning licensing establishes emergency child care license requirements.

Citation of Rules Affected by this Order: New WAC 110-310-0001, 110-310-0005, 110-310-0010, 110-310-0015, 110-310-0020, 110-310-0025, 110-310-0030, and 110-310-0035.

Statutory Authority for Adoption: RCW 43.216.065.

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

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The department of children, youth, and families' ability to issue emergency child care licenses will better ensure a safe and healthy supply of child care services during the pandemic. Chapter 110-310 WAC was adopted on an emergency basis on March 25, 2020, under WSR 20-08-044. Circumstances changed under Proclamations 20-25 through 20-25.6 "Safe Start - Stay Health[y]" county-by-county phased reopening, but conditions prompting the state of emergency declaration still exist and justify the need for the chapter to remain in effect.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 8, 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: July 23, 2020.

Brenda Villarreal
Rules Coordinator

NEW SECTION

WAC 110-310-0001 Emergency child care license—Intent and authority. (1) The department of children, youth, and families (or "the department") was established under chapter 6, Laws of 2017. Chapter **43.216** RCW establishes the department's responsibility and authority to set and enforce licensing requirements and ECEAP standards, including the authority to adopt rules to implement chapter **43.216** RCW.

(2) On February 29, 2020, the governor proclaimed a state of emergency in Washington state in response to the first case of the novel coronavirus disease 2019 (COVID-19). See proclamation by the governor no. 20-05. As of March 11, 2020, the world health organization has classified COVID-19 as a pandemic. See proclamation by the governor no. 20-08. The pandemic spreads easily and rapidly from person-to-person and may result in serious illness or death. See proclamation by the governor no. 20-16.

(3) In response to this pandemic Washington's citizens including, but not limited to, first responders, healthcare workers, retail workers, public works employees, and other professionals in Washington state are working each day to:

curtail the spread of COVID-19, treat victims of this disease, supply citizens with goods to properly "social distance" themselves from others, and continue the regular operation of everyday services and utilities.

(4) As a result of this pandemic, and under the authority granted to the department under RCW 43.216.065 (2)(c) the department shall issue emergency child care licenses to ensure a safe and healthy supply of child care services during the pandemic.

NEW SECTION

WAC 110-310-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" shall have the same meaning as described in RCW 43.216.010.

(2) "Department" means the Washington state department of children, youth, and families.

(3) "Early learning" shall have the same meaning as described in RCW 43.216.010.

(4) "Emergency Child Care license" means a license authorized under this chapter that allows a person, firm, partnership, association, or corporation to provide child care in an approved home or residence that is occupied by the licensee, or in an approved facility that is not used as a home or residence.

(5) "Emergency license agreement" means the agreement described in WAC 110-310-0020.

(6) "Enforcement action" shall have the same meaning as described in RCW 43.216.010.

(7) "Seasonal camp" for the purposes of emergency child care licensing and the exemption listed in RCW 43.216.010 (2)(g) means a program of three months' or less duration engaged primarily in recreational or educational activities conducted on a closely supervised basis, owned by any person or persons, organization, association, corporation, or agency of federal, state, county or municipal government, and operated, maintained, or offered for use within the state of Washington either free of charge or by payment of a fee.

NEW SECTION

WAC 110-310-0010 Emergency child care license—License required. (1) Pursuant to RCW 43.216.250(6), any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's home must be licensed. Individuals and entities that may be exempt from licensing are described in RCW 43.216.010(2).

(2) Pursuant to RCW 43.216.365, an agency operating without an appropriate license shall be guilty of a misdemeanor. Under RCW 43.216.360 the department may issue a penalty of one hundred fifty dollars per day for each day a family day care home provided care without being licensed and two hundred fifty dollars for each day a child day care center provided care without being licensed.

NEW SECTION

WAC 110-310-0015 Emergency child care license—Application. (1) To be eligible for an emergency child care license, an applicant must:

- (a) Be at least 18 years of age;
 - (b) Submit a paper or electronic application to the department for an emergency child care license; and
 - (c) Sign and submit to the department an affidavit stating that upon the issuance of an emergency child care license the applicant will comply with the requirements described in chapter 43.216 RCW, this chapter, and emergency license agreement that is prepared and authorized by the department.
- (2) Pursuant to RCW 43.216.260, an application must include the following information:
- (a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;
 - (b) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children;
 - (c) The number of qualified persons required to render the type of care for which an agency seeks a license;
 - (d) The health, safety, cleanliness, and general adequacy of the premises to provide for the comfort, care, and well-being of children;
 - (e) The provision of necessary care and early learning, including food, supervision, and discipline; physical, mental, and social well-being; and educational and recreational opportunities for those served;
 - (f) The financial ability of an agency to comply with minimum requirements established under chapter 43.216 RCW and this chapter; and
 - (g) The maintenance of records pertaining to the care of children.

NEW SECTION

WAC 110-310-0020 Licensing rules. (1) To protect the health and safety of children in care as authorized under this chapter the provider must agree, enter into, and comply with the terms and conditions of an emergency license agreement prepared and authorized by the department.

(2) The Emergency license agreement shall require compliance with the following minimum terms and conditions:

- (a) Compliance with the requirements described in chapter 43.216 RCW;
- (b) Compliance with the requirements described in this chapter;
- (c) Compliance with the background check requirements described in chapter 43.43 RCW, chapter 43.216 RCW, and the regulations contained in chapter 110-06 WAC that are listed in section (3) of this section;
- (d) Compliance with the regulations contained in chapter 110-300 WAC that are listed in section (3) of this section; and
- (e) Compliance with all other requirements described in the emergency license agreement.

(3) The licensee must comply with the following regulations contained in chapter 110-06 WAC and chapter 110-300 WAC:

(a) WAC 110-06-0010, 110-06-0020, 110-06-0040, 110-06-0041, 110-06-0041, 110-06-0043, 110-06-0045, 110-06-0050, 110-06-0070, 110-06-0080, 110-06-0090, 110-06-0100, 110-06-0110, 110-06-0115, and 110-06-0120; and

(b) WAC 110-300-0005, 110-300-0147, 110-300-0165, 110-300-0166, 110-300-0175, 110-300-0185, 110-300-0200, 110-300-0205, 110-300-0210, 110-300-0215, 110-300-0221, 110-300-0230, 110-300-0236, 110-300-0240, 110-300-0241, 110-300-0245, 110-300-0260, 110-300-0270, 110-300-0280, 110-300-0281, 110-300-0290, 110-300-0291, 110-300-0295, 110-300-0296, 110-300-0330, 110-300-0331, 110-300-0350, 110-300-0354, 110-300-0420, 110-300-0435, 110-300-0436, 110-300-0440, 110-300-0443, 110-300-0455, 110-300-0475, and 110-300-0485.

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

NEW SECTION

WAC 110-310-0025 Denial, modification, suspension, and revocation of an emergency child care license—Right of review. (1) A license authorized to be issued under this chapter may be denied pursuant to chapter 43.216 RCW, this chapter, and chapter 110-06 WAC.

(2) A license issued under this chapter may be suspended, modified, or revoked if the licensee fails to comply with the requirements contained in chapter 43.216 RCW, this chapter, or chapter 110-06 WAC.

NEW SECTION

WAC 110-310-0030 Process for seeking review. (1) Pursuant to RCW 43.216.250 and RCW 43.216.325, the department is authorized to take enforcement action against an applicant or licensee if the licensee fails to comply with this chapter, chapter 110-06 WAC or chapter 43.216 RCW.

(2) An applicant or licensee has the right to appeal an enforcement action by requesting an adjudicative proceeding (or "hearing") pursuant to the hearing rules codified in chapter 110-03 WAC.

(3) The department must issue a notice of violation to an early learning provider when taking enforcement actions. A notice of violation must be sent certified mail or personal service and must include the following information:

- (a) The reason why the department is taking the action;
- (b) The rules the provider failed to comply with;
- (c) The provider's right to appeal enforcement actions; and
- (d) How the provider may appeal and request a hearing.

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

NEW SECTION

WAC 110-310-0035 Emergency rules and emergency child care license termination date. (1) This chapter shall expire:

(a) 180 days after the date the governor issues a proclamation declaring the termination of the state of emergency caused by COVID-19; or

(b) On the expiration date of the last emergency child care license issued under this chapter.

(2) An emergency child care license issued under this chapter shall expire six months after the date of issue.

WSR 20-16-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-141—Filed July 23, 2020, 4:01 p.m., effective July 27, 2020]

Effective Date of Rule: July 27, 2020.

Purpose: The purpose of this rule is to close ocean recreational salmon seasons in Marine Area 1, in state waters and in a manner consistent with federal salmon fishing regulations adopted by the National Marine Fisheries Service in response to actions taken by the Pacific Fishery Management Council (PFMC) and following annual salmon fishery harvest specifications and management measures; this action is intended to achieve regulatory consistency in federal and state waters for the ocean recreational salmon fishery, which operates in both areas.

This rule also repeals the previous emergency rule, WSR 20-13-095, that opened coastal salmon seasons in Catch Record Card Areas 1 through 4 as these rules become permanent July 26, 2020, under WSR 20-14-052 which was filed on June 25, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07000X and 220-313-07000Y; and amending WAC 220-313-070.

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

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

Reasons for this Finding: The purpose of this rule is to close recreational salmon seasons in Catch Record Card Area 1. Catch Area 1 is expected to reach its coho quota by the end of the day July 26; sufficient quota remains for both Chinook and coho in Catch Areas 2, 3, and 4 to remain open. These rules are adopted at the recommendation of the Pacific Fisheries Management Council.

The ocean recreational salmon fishing seasons are developed and considered through the annual PFMC process, which coincides with the North of Falcon salmon season setting process and is managed under the Pacific Coast Salmon Fishery Management Plan (FMP). By managing this fishery under the FMP, it is required to be consistent with National Standard Guidelines, which ensure conservation objectives are achieved as well as long-term fishery sustainability, and that the social and economic needs of fishing communities are taken into account.

Because the ocean recreational salmon fishery occurs in Pacific Ocean waters across multiple jurisdictions (states of Washington and Oregon, tribal, and federal), developing and considering ocean recreational salmon season options through PFMC ensures that fishing regulations are developed in a comprehensive, coordinated manner. Having consistent regulations in state and federal waters also promotes compliance with and enforcement of fishing regulations, particularly as anglers often fish in both state and federal waters on the same fishing trip.

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

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: July 23, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07000Y Coastal salmon—Saltwater seasons and daily limits. Effective July 27 through September 30, 2020 the provisions of WAC 220-313-070 regarding recreational salmon seasons for Marine Area 1 shall be as described below. All other provisions of WAC 220-313-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

Catch Record Card Area 1: Closed.

REPEALER

The following of the Washington Administrative Code is repealed effective July 27, 2020:

WAC 220-313-07000X Coastal salmon—Saltwater seasons and daily limits.

The following of the Washington Administrative Code is repealed effective October 1, 2020:

WAC 220-313-07000Y Coastal salmon—Saltwater seasons and daily limits.

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

WSR 20-16-042
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed July 27, 2020, 12:27 p.m.]

The department of children, youth, and families requests to withdraw WSR 20-09-140 filed on April 21, 2020.

Please contact Brenda Villarreal at 360-522-3691 if you have any questions or need anything further.

Brenda Villarreal
Rules Coordinator

WSR 20-16-043
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed July 27, 2020, 12:30 p.m., effective July 27, 2020, 12:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: **For working connections and seasonal child care:** Allow licensed child care providers to claim child care payment based on enrollment, rather than attendance, for the period March 16 through August 31, 2020.

Citation of Rules Affected by this Order: Amending WAC 110-15-0034.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. The emergency amendment to WAC 110-15-0034 addresses these challenges by establishing a more stable subsidy provider payment practice through the end of August 2020.

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

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

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

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

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

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

Date Adopted: July 27, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Licensed or certified child care providers who accept child care subsidies must comply with all child care licensing or certification requirements contained in this chapter, chapter 43.216 RCW and chapters 110-06, 110-300, ~~((110-300A, 110-300B, and))~~ 110-305, and 110-310 WAC.

(2) In-home/relative child care providers must comply with the requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(3) In-home/relative child care providers must not submit an invoice for more than six children for the same hours of care.

(4) All child care providers must use DCYF's electronic attendance recordkeeping system or a DCYF-approved electronic attendance recordkeeping system as required by WAC 110-15-0126. Providers must limit attendance system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(a) Providers using DCYF's electronic recordkeeping system must submit monthly attendance records prior to claiming payment. Providers using a DCYF-approved electronic recordkeeping system must finalize attendance records prior to claiming payment.

(b) Providers must not edit attendance records after making a claim for payment.

(5) All child care providers must complete and maintain accurate daily attendance records. If requested by DCYF or DSHS, the provider must provide to the requesting agency the following records:

(a) Attendance records must be provided to DCYF or DSHS within twenty-eight calendar days of the date of a written request from either department.

(b) Pursuant to WAC 110-15-0268, the attendance records delivered to DCYF or DSHS may be used to determine whether a provider overpayment has been made and may result in the establishment of an overpayment and in an immediate suspension of the provider's subsidy payment.

(6) All child care providers must maintain and provide receipts for billed field trip/quality enhancement fees as follows. If requested by DCYF or DSHS, the provider must provide the following receipts for billed field trip/quality enhancement fees:

(a) Receipts from the previous twelve months must be available immediately for review upon request by DCYF;

(b) Receipts from one to five years old must be provided within twenty-eight days of the date of a written request from either department.

(7) All child care providers must collect copayments directly from the consumer or the consumer's third-party (~~payer~~) payer, and report to DCYF if the consumer has not paid a copayment to the provider within the previous sixty days.

(8) All child care providers must follow the billing procedures required by DCYF.

(9) Child care providers who accept child care subsidies must not:

(a) Claim a payment in any month a child has not attended at least one day within the authorization period in that month(~~;~~ however,) except:

(i) A licensed provider eligible for payment under WAC 110-15-0106 may submit a claim for payment based on enrollment for the period March 16 through August 31, 2020; and

(ii) in the event a ten-day notice terminating a provider's authorization extends into the following month, the provider may claim a payment for any remaining days of the ten calendar day notice in that following month;

(b) Claim an invoice for payment later than six months after the month of service, or the date of the invoice, whichever is later; or

(c) Charge consumers the difference between the provider's customary rate and the maximum allowed state rate.

(10) Licensed and certified providers must not charge consumers for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) Days for which the child is scheduled and authorized for care but absent;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

(11) Providers who care for children in states bordering Washington state must verify they are in compliance with their state's licensing regulations and notify DCYF within ten days of any suspension, revocation, or changes to their license.

Purpose: The agency is replacing the list of covered generic products for the treatment of cough and cold. Under the amended rule, the agency instead covers only those products with a preferred status on the medicaid preferred drug list on the date a prescription is dispensed.

Citation of Rules Affected by this Order: Amending WAC 182-530-2000.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: In response to the current public health emergency surrounding the outbreak of the coronavirus disease (COVID-19), this rule making is necessary to immediately allow the agency the ability to make specific products for the treatment of cough and cold covered by simply updating publications, rather than by changing WAC. This flexibility is necessary to ensure that when products are determined to have evidence of efficacy in treating COVID-19 or its symptoms, they are made available to clients as a covered benefit as quickly as possible. The current emergency rule, filed under WSR 20-08-118, will expire on July 29, 2020. The agency filed a Preproposal statement of inquiry under WSR 20-15-034 to begin 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 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 28, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-22-016, filed 10/25/19, effective 11/25/19)

WAC 182-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies. (1) The medicaid agency covers:

(a) Outpatient drugs, including over-the-counter (OTC) drugs, as defined in WAC 182-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

WSR 20-16-048

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed July 28, 2020, 8:11 a.m., effective July 28, 2020, 8:11 a.m.]

Effective Date of Rule: Immediately upon filing.

(ii) The drug is for a medically accepted indication as defined in WAC 182-530-1050;

(iii) The drug is not excluded from coverage under WAC 182-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 182-530-7500; and

(v) The drug is prescribed by a provider with prescriptive authority. Exceptions to the prescription requirement exist for family planning and emergency contraception in (b) of this subsection.

(b) Family planning drugs, devices, and drug-related supplies per chapter 182-532 WAC and as follows:

(i) OTC family planning drugs, devices, and drug-related supplies without a prescription when the agency determines it necessary for client access and safety;

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 182-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, excluding emergency contraception, when dispensed in a one-year supply only, unless:

(A) A smaller supply is directed by the prescriber;

(B) A smaller supply is requested by the client;

(C) The pharmacy does not have adequate stock.

(c) Vitamins, minerals, and enzymes when prescribed for:

(i) Prenatal vitamins, when prescribed and dispensed to pregnant women;

(ii) A medical condition caused by a clinically documented deficiency;

(iii) A United States Preventive Services Task Force recommendation with an A or B rating;

(iv) Fluoride for clients under age twenty-one; or

(v) A clinically documented medical condition that causes vitamin, mineral, or enzyme deficiencies, and the deficiency cannot be treated through other dietary interventions.

(d) OTC drugs, vitamins, and minerals when determined by the agency to be the least costly therapeutic alternative for a medically accepted indication. All covered OTC products determined to be the least costly therapeutic alternatives for medically accepted indications will be included on the agency's published apple health preferred drug list. This subsection does not apply to products prescribed for the treatment of cough or cold symptoms. See this subsection (1) (h) of this section and WAC 182-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 182-530-2100; and

(iv) Determined by the agency that a product covered under chapter 182-543 WAC related to durable medical equipment and supplies should be available at retail pharmacies.

(f) Preservatives, flavoring, or coloring agents, only when used as a suspending agent in a compound.

(g) OTC and prescription drugs to promote tobacco/nicotine cessation.

(h) ~~((The following generic products))~~ For the treatment of cough and cold(~~(:~~

~~(i) Dextromethorphan 15 mg/5 ml liquid or syrup;~~

~~(ii) Dextromethorphan/Guaifenesin 10 mg/100/5 ml liquid or syrup, including sugar free formulations;~~

~~(iii) Guaifenesin 100 mg/5 ml liquid or syrup;~~

~~(iv) Phenylephrine 10 mg tablets;~~

~~(v) Phenylephrine 2.5 mg/ml liquid or syrup;~~

~~(vi) Pseudoephedrine 30 mg and 60 mg tablets;~~

~~(vii) Pseudoephedrine 15 mg/5 ml liquid or syrup; and~~

~~(viii) Saline 0.65% nasal spray)),~~ only those products

included with a preferred status on the medicaid preferred drug list (PDL), as described in WAC 182-530-4100, on the date a client's prescription is dispensed.

(2) The agency does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

WSR 20-16-049

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed July 28, 2020, 8:14 a.m., effective July 28, 2020, 8:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is temporarily removing the requirement to obtain a signature from the medicaid client or the client's designee upon receipt of pharmacy products dispensed and delivered directly to a client.

Citation of Rules Affected by this Order: Amending WAC 182-530-5000.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: In response to the current public health emergency surrounding the outbreak of the coronavirus disease (COVID-19), along with the Governor of Washington's emergency proclamations related to COVID-19, this rule making is necessary to immediately allow delivery of pharmacy products without the required signature from the client or the client's designee in order to avoid contact between the client and the delivery person. The current emergency rule, filed under WSR 20-08-106, expires on July 29, 2020. The agency filed a Preproposal statement of inquiry under WSR 20-15-036 to begin the 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 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 28, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

WAC 182-530-5000 Billing requirements—Pharmacy claim payment. (1) When billing the medicaid agency for pharmacy services, providers must:

(a) Use the appropriate agency claim form or electronic billing specifications;

(b) Include the actual eleven-digit national drug code (NDC) number of the product dispensed from a rebate eligible manufacturer;

(c) Bill the agency using metric decimal quantities which is the National Council for Prescription Drug Programs (NCPDP) billing unit standard;

(d) Meet the general provider documentation and record retention requirements in WAC 182-502-0020; and

(e) Maintain proof of delivery receipts.

(i) When a provider delivers an item directly to the client or the client's authorized representative, the provider must be able to furnish proof of delivery, including ((signature,)) the client's name and a detailed description of the item or items delivered.

(ii) When a provider mails an item to the client, the provider must be able to furnish proof of delivery including a mail log.

(iii) When a provider uses a delivery or shipping service to deliver items, the provider must be able to furnish proof of delivery and it must:

(A) Include the delivery service tracking slip with the client's name or a reference to the client's package or packages; the delivery service package identification number; and the delivery address.

(B) Include the supplier's shipping invoice, with the client's name; the shipping service package identification number; and a detailed description.

(iv) Make proof of delivery receipts available to the agency upon request.

(2) When billing drugs under the expedited authorization process, providers must insert the authorization number which includes the corresponding criteria code or codes in the appropriate data field on the drug claim.

(3) Pharmacy services for clients on restriction under WAC 182-501-0135 must be prescribed by the client's primary care provider and are paid only to the client's primary pharmacy, except in cases of:

- (a) Emergency;
- (b) Family planning services; or
- (c) Services properly referred from the client's assigned pharmacy or physician/ARNP.

WSR 20-16-054
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 28, 2020, 10:50 a.m., effective July 28, 2020, 10:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) is responding to the coronavirus disease 2019 (COVID-19) pandemic by amending WAC 296-800-14035 related to prohibited business activities and compliance with conditions for operations under emergency proclamations and their amendments issued under RCW 43.06.220.

Under the emergency rule:

- Employers must not allow employees to perform work where a business activity is prohibited by an emergency proclamation.
- Employers must comply with all conditions for operation required by emergency proclamation, including Safe Start phased reopening requirements for all business and any industry specific requirements.

Citation of Rules Affected by this Order: Amending WAC 296-800-14035.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

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 making supersedes the emergency rule adopted on July 8, 2020, filed as WSR 20-15-046, as conditions have changed due to a new governor's proclamation being in effect (Proclamation 20-25.7).

L&I is taking action to help prevent the spread of COVID-19 and respond to the governor's proclamations allowing a phased-in reopening of businesses and establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how businesses may reopen without increasing the risk of COVID-19 spreading.

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state,

referred to as "Safe Start Washington." The recent orders further build on these by continuing the Safe Start plan for county-by-county phased reopening.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID-19 from person-to-person interactions, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees. In setting the phases and conditions for businesses, statewide and county level data was considered.

The conditions of businesses reopening and operating in the governor's orders are also consistent with the social/physical distancing and health and sanitation requirements of chapter 49.17 RCW and the Center[s] for Disease Control and Prevention. Chapter 49.17 RCW and L&I rule require employers to provide a safe and healthy workplace free from recognized hazards, and an employer can be cited for a violation of the "safe place" rule where there are no specific rules to address the particular hazard. And, for COVID-19, lack of social distancing or failure to address symptomatic employees can be cited under the safe place standard. This emergency rule ensures clarity that restrictions and conditions on business under the emergency proclamations are also health and safety requirements under chapter 49.17 RCW and that employers can be subject to a citation and monetary penalties for violations.

This emergency rule is necessary for the preservation of public health, safety, and general welfare of all employees. Emergency rule making is necessary here because providing for a full notice and comment time period will allow businesses to reopen or reopen without following all conditions for reopening, endangering employees and the public during the public comment time period. The governor's proclamation has found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The governor's proclamation is currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 28, 2020.

Joel Sacks
Director

NEW SECTION

WAC 296-800-14035 2019 Novel coronavirus prohibited business activities and compliance with conditions for operations. (1) Where a business activity is prohibited by an emergency proclamation an employer shall not allow employees to perform work.

(2) Employers must comply with all conditions for operation required by emergency proclamation issued under RCW 43.06.220, including Safe Start phased reopening requirements for all business and any industry specific requirements.

(3) An "emergency proclamation" means a proclamation that is in effect, including proclamation amendments and conditions, and issued under RCW 43.06.220 and is in effect at the time the emergency rule was adopted.

WSR 20-16-055
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed July 28, 2020, 11:03 a.m., effective July 28, 2020, 11:03 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-10-109 and 246-11-080, second emergency rule responding to the coronavirus disease 2019 (COVID-19) pandemic. Amending the procedural rules applicable to adjudicative proceedings conducted by the department of health (department) and health professions boards and commissions in order to facilitate filing and serving documents during the restrictions put in place by the governor in response to the pandemic. Chapter 246-10 WAC applies to all adjudicative proceedings conducted by the department. Chapter 246-11 WAC applies to adjudicative proceedings conducted by health professions boards and commissions having disciplining authority under the Uniform Disciplinary Act, chapter 18.130 RCW.

This emergency rule continues, without change, the emergency rules filed as WSR 20-08-096 on March 30, 2020. This emergency rule will continue to allow for the option of e-filing at a particular email address and recognizes that the parties may agree to electronic service of documents. It removes the options of filing with the department's adjudicative clerk's office (ACO) by hand delivery, and serving documents on a party or a party's designated representative by personal service. It retains the options of filing documents by mailing hard copies to or faxing to the ACO, or serving a party by mail or fax, but removes the requirement to mail copies at the same time as faxing them.

Citation of Rules Affected by this Order: Amending WAC 246-10-109 and 246-11-080.

Statutory Authority for Adoption: RCW 43.70.040 and 34.05.220 (1)(a).

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

Reasons for this Finding: In response to COVID-19, the department continues to take action to help prevent the spread of COVID-19, follow social distancing practices and respond to the Governor's Stay Home, Stay Healthy order. This emergency rule removes the option of hand delivering documents to ACO or personally serving documents on a party or a party's designated representative. Hand delivery of documents can defy the principles of social distancing practices, and can put individuals at risk of spreading COVID-19. The buildings at the department are temporarily closed, making hand delivery difficult. This emergency rule includes the options of e-filing at a particular email address, and recognizes that the parties can agree to electronic service of documents, better options to help prevent the spread of COVID-19. It retains the options of mailing hard copies to or faxing to ACO, or serving a party by mail or fax, but removes the requirement to mail copies at the same time as faxing them. The emergency rules filed as WSR 20-08-096 on March 30, 2020, will expire on July 28, 2020. To continue to help prevent the spread of COVID-19 and safely continue the essential functions during these unprecedented times, it is necessary to file a second emergency rule.

The department has filed a CR-101 (WSR 20-15-095) to consider permanently adopting these emergency rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, 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: July 28, 2020.

Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

WAC 246-10-109 Filing and service of documents.

(1) For purposes of this section "documents" means pleadings, briefs, exhibits, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law, documents must be filed by:

(i) ~~((Hand delivery to the adjudicative clerk's office; (ii) First class, registered, or certified mail; (iii) (i) Fax transmission (where copies are mailed simultaneously); or~~

(ii) Electronic mail sent to ACOfax@doh.wa.gov.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

(i) ~~((Personal service; (ii) First class, registered, or certified mail; or (iii) (i) Fax transmission (where copies are mailed simultaneously)).~~

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

(i) ~~((Personally served; (ii) Properly stamped, addressed, and deposited in the United States mail; or~~

((iii) (i) Successfully transmitted by fax (and properly stamped and addressed copies are deposited in the United States mail)).

(d) A party may prove service by filing in compliance with this chapter any of the following:

(i) An acknowledgment of service; or

(ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree to service of initial or final orders via electronic mail.

AMENDATORY SECTION (Amending WSR 18-18-050, filed 8/29/18, effective 9/29/18)

WAC 246-11-080 Filing and service of documents.

(1) For purposes of this section "document" means pleadings, briefs, exhibits, or other materials requested or relevant to an adjudicative proceeding.

(2) Filing. Filing is the act of delivering documents to the adjudicative clerk's office.

(a) A party must file with the adjudicative clerk's office documents required or allowed pursuant to this chapter.

(b) Unless otherwise provided by law, documents must be filed by:

- (i) ~~((Hand delivery to the adjudicative clerk's office; (ii)))~~ First class, registered, or certified mail; ~~((or (iii)))~~ (ii) Fax transmission ((where copies are mailed simultaneously)); or
(iii) Electronic mail sent to ACOfax@doh.wa.gov.

(c) The date of filing is the date the documents are received by the adjudicative clerk's office.

(d) Filing is effective when the documents are received by the adjudicative clerk's office during normal business hours. For documents received after 5:00 p.m. on a business day or on a Saturday, Sunday, or legal holiday, the filing is effective the next business day.

(3) Service. Service is the act of delivering a document to a party or a party's designated representative.

(a) Unless otherwise provided by law, documents must be served by:

- (i) ~~((Personal service; (ii)))~~ First class, registered, or certified mail; ~~((or (iii)))~~ (ii) Fax transmission ((where copies are mailed simultaneously)).

(b) A party must serve copies of documents required or allowed by this chapter prior to or simultaneously with filing the original document with the adjudicative clerk's office.

(c) Service is complete when the documents are:

- (i) ~~((Personally served; (ii)))~~ Properly stamped, addressed, and deposited in the United States mail; or
~~((or (iii)))~~ (ii) Successfully transmitted by fax ((and properly stamped and addressed copies are deposited in the United States mail)).

(d) A party may prove service by filing in compliance with this chapter any of the following:

- (i) An acknowledgment of service; or
 (ii) A certificate of service including the date the documents were served, the parties upon whom served, the signature of the serving party, and a statement specifying which type of service was used.

(e) Service on a licensee, applicant, or a person requesting an adjudicative proceeding will be made at the last known address provided to the department in accordance with WAC 246-12-310, unless the program has actual knowledge of a different correct address for the person being served.

(4) The parties may agree to use electronic mail for service of documents.

(5) A party may agree to service of initial or final orders via electronic mail.

Purpose: Update our student rules to be in compliance with new Title IX federal regulations from the department of education. The new rules need to go in [to] effect by August 14, 2020.

Citation of Rules Affected by this Order: New 9.

Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

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: Federal Title IX regulations require this be implemented by August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 23, 2020.

Jennie Chen, Director
Legal Compliance

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-005 Statement of values. The Seattle College District is a diverse and dynamic learning community. As such, the college district maintains a strong commitment to our values. We value students: We promote programs, services and activities that address students' needs and interests; student success through accessibility and support services; and student development through activities both inside and outside the classroom. We value diversity: We promote respect for the abilities and interests of each individual; awareness and understanding of all people; and appreciation of the unique cultures of our campuses. We are committed to the concept and practice of equal opportunity for all, and do not tolerate discrimination or retaliation against any member of the college community because of ~~((her/his))~~ their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status, religion; creed; genetic information; sexual orientation; age; gender identity; gender expression; veteran's status; or any other legally protected classification, in accordance with WAC 132F-121-110(1).

WSR 20-16-056

EMERGENCY RULES SEATTLE COLLEGES

[Filed July 28, 2020, 1:56 p.m., effective August 14, 2020]

Effective Date of Rule: August 14, 2020.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-010 Definitions and general provisions. For purposes of this chapter~~((:)), except for the Title IX supplemental procedures, the following definitions apply. The definition of "consent," however, will apply to the whole chapter.~~

(1)(a) **Bullying.** Bullying is defined as the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at another student or staff that:

(i) Intentionally causes physical or emotional imminent harm to the student or damage to the student's property;

(ii) Places the student in reasonable fear of harm to ~~((her-self or himself))~~ themselves or of damage to the student's property;

(iii) Creates an unlawful hostile environment at school for the student;

(iv) Infringes on the rights of the student at school; or

(v) Is conduct that is sufficiently severe or pervasive to cause material disruption to the ability of a student to participate or benefit in the education program.

(b) **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, including images or videos of a sexual nature, and nonconsensual distribution of such material.

(c) **Stalking.** Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(2) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, sexual violence, and domestic violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that 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 limited 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 is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, 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 is any intentional sexual touching, however slight, with any 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) Domestic violence as defined in (d) of this subsection.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim, and includes conduct that causes emotional, psychological, physical, and sexual trauma. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking as defined in subsection (1)(c) of this section.

(vi) Consent: 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))~~ they are 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.

(d) **Domestic violence.** Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law, and, includes conduct that causes emotional, psychological, physical, and sexual trauma.

(3) The terms "college" and "campus" are used interchangeably, and each refers to any of the district's three colleges, North Seattle College, Seattle Central College, and South Seattle College. The Seattle Vocational Institute is considered to be part of Seattle Central College.

(4) "Day" means calendar day, unless specified otherwise, and deadlines shall be computed in accordance with WAC 10-08-080.

(5) "District" means the sixth state college district, the district administrative offices (Siegal Center), North Seattle College, Seattle Central College, South Seattle College, ~~(the Seattle Vocational Institute,)~~ and/or every other District VI educational facility, each separately and all together.

(6) "District community" includes, but is not limited to, the district itself and all enrolled students, employees, officers, and invitees of the district.

(7) "District property" includes all real property, buildings, and other facilities that are owned, leased, or controlled by the district or by the state for district purposes.

(8) "Vice president for student services" means the person whom a college president has appointed to that position or has otherwise designated to perform the functions ascribed to that position in this chapter.

(9) An action or activity that may be authorized or taken by the district chancellor, a vice chancellor, a campus president, or a campus vice president may also be authorized or taken by any other person whom that officer has specifically designated to perform that function on ~~(his/her)~~ their behalf, but this officer retains responsibility for the function.

(10) After the adoption of these rules, if a statute or rule to which they refer is renumbered or otherwise amended, these rules shall be interpreted to the fullest extent possible to incorporate such amendment while still giving effect to their original purposes.

(11) Service of any document, notice, or copy under this chapter shall be made (a) by personal delivery, (b) by mailing to the recipient's last known address, which service shall be regarded as complete upon deposit in the U.S. mail properly stamped and addressed, or (c) as otherwise authorized by law or rule.

(12) The term "student" includes all persons taking courses at the district, either full-time or part-time. Persons who withdraw after allegedly violating the student code, who are not officially enrolled for a particular term but who have a continuing relationship with the district, or who have been notified of their acceptance for admission are considered "students" as are persons who are living in district resident halls, although not enrolled at the district.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-020 Student rights, freedoms, and responsibilities. (1) Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(a) Academic freedom.

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3) (b).

(iii) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

(iv) Sexual misconduct investigations. Both the respondent and the ~~((complainant))~~ claimant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(2) Classroom freedom of expression. The district recognizes the rights of students to freedom of discussion and free expression of views. However, students' rights of classroom expression do not include expressions or conduct which create a hostile educational environment or violate chapter 49.60 RCW or other applicable law. It is the responsibility of the instructor to insure and encourage the realization not only of the fact but of the spirit of free inquiry. Instructors have the responsibility to maintain order, but this authority shall not be used to inhibit the expression of views contrary to their own. Students have the right to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they cannot do so in a disruptive manner that interferes with the educational process. Students are responsible for learning the content of any course of study for which they are enrolled. It also is the responsibility of the student to comply with the instructor's efforts to assure freedom of expression and to maintain order.

(3) Protection against improper evaluation. Instructors shall give their students fair and consistent evaluations of the students' course performance. Toward this end, instructors are also responsible for establishing appropriate standards of academic performance for each course. Fair and consistent grading is a legitimate classroom experience.

(4) Protection against improper disclosure. Information about student views, beliefs, and political associations which is acquired by instructors in the course of their work as fac-

ulty or advisors, under circumstances which clearly indicate that it is intended to be confidential, shall be treated as confidential and shall not be disclosed to others, unless it relates to the apparent or intended commission of a crime or disclosure is required by law. Protection against improper disclosure of student education record information is a serious professional obligation incurred by the teaching profession and district administrators. However, evaluations of student ability and character may be provided to third parties with the student's consent or in accordance with applicable law.

(5) Nonacademic expression and inquiry. Students and student organizations are free to examine and to discuss all questions of interest to them and to express opinions publicly and privately, in accordance with law. They are free to support causes by orderly and lawful means which do not disrupt the operation of the institution and which comply with the district's policies regarding these activities.

(6) The district shall respect students' right to privacy. It will not inquire into the off-campus activities of its students without legal justification.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-030 Student organizations. (1) Student organizations may be established and recognized whether their aims are educational, cultural, recreational, social, athletic, religious, political, or economic. Affiliation with an external organization shall not in and of itself disqualify a campus-based student organization from recognition. Membership in a student organization shall be open to any student who subscribes to the stated aims of the organization. To operate as such, a student organization must be recognized by the approved student government organization. The student organization shall abide by all governing federal and state laws and district and campus rules, policies and procedures.

(2) A college may require, as a condition of access to campus funds and/or facilities, demonstration or proof of the student enrollments of a student organization's members. However, any list of members compiled for such purposes shall not be publicly disclosed except in accordance with applicable law. A college may, in its discretion, permit others, such as students' spouses, to participate in a student organization's activities under appropriate conditions.

(3) Each year, before a student organization may be recognized or function as such, or may use services and activities funds, a college employee must be identified to serve as its advisor and (~~his/her~~) **their** name must be approved by the vice president for student services or designee.

(4) Where funds are allocated to a student organization, financial accountability is required. Student organizations' funds shall be maintained at the college, in college accounts. The organizations shall keep detailed written records of their income and expenditures and shall assure that these can be reconciled with the campus budget and accounting system. Student organizations' financial records must be made available upon request to the student government organization and to any administrative officer designated by the college president.

(5) A college president may withdraw a student organization's recognition and funding for good cause. Such cause shall include, but not be limited to, (a) failure to comply with this rule or other district requirements or (b) hazing.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-050 Student use of the district/college name. (1) No individual student, student group, or student organization may act or make any representation in the name of the district or of any campus without specific authorization from the vice president for student services or designee.

(2) No individual student, student group or student organization shall falsely indicate or represent that (~~his, her, or its~~) **their** own position on any policy or issue is that of the district or of any campus.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-080 Formal processing of complaints. (1) To be considered under the formal process, a complaint must be filed in writing with the campus complaints officer by the final day of the quarter following the quarter in which the problem occurred, except as otherwise provided in WAC 132F-121-090 for a grade complaint. For purposes of complaints, the quarter which follows spring quarter is fall quarter. The written document should fully specify the facts and other grounds on which the complaint is based, and should include copies of relevant supporting documents when feasible. The complaints officer may extend any deadline herein for good cause.

(2) If the complaints officer determines that the complaint does not qualify to be addressed through the formal process, that officer must inform the student, explaining the reasons in writing within five working days. The student complainant may obtain review of that notice of complaint disqualification by filing a written request with the complaints officer under subsection (9) of this section.

(3) If the complaints officer determines that the complaint does qualify as such, that officer must serve copies of the complaint and the supporting documents on the individual named in the complaint (the respondent) and the respondent's supervisor, within five working days.

(4) The respondent, upon receiving notice of the formal complaint, shall provide a response in writing to the complaints officer, and to the respondent's supervisor, within ten working days.

(5) The complaints officer must forward the written response, or the information that no response was received, to the student complainant within five working days of receipt of the response, or five working days from when a response was due.

(6) If the student complainant finds that the response or lack thereof is unsatisfactory she/he has five working days in which to submit a written request for the complaints officer to schedule a conference with the respondent to discuss the matter.

(7) Upon receipt of such request, the complaints officer has five working days to schedule the conference which must be convened within ten working days of receipt of the students' request or as soon thereafter as feasible. This conference will include the student, the respondent, and ~~((his or her))~~ their supervisor, and be moderated by the complaints officer.

(8) During this conference the complaints officer shall try to facilitate resolution. The complaints officer shall produce a written statement summarizing the conference and provide copies to all parties within ten working days of the conference.

(9) The student complainant may request a review of the outcome of the complaint conference (or of a complaint disqualification) by submitting a written request for administrative review to the complaints officer within five working days of receiving the conference summary.

(10) The complaints officer shall forward, within five working days, the request for administrative review, the complaint, supporting documents, and the conference summary either to the vice president of instruction (if the officer determines that the complaint is predominantly an instructional matter), or to the vice president for student services (if the officer determines that the complaint is predominantly noninstructional in nature).

(11) This administrator shall review the complaint and documentation, and may also interview knowledgeable persons as appropriate. The administrator should render a written decision within ten working days after receiving the complaint and documents, or as soon thereafter as feasible. The administrator may accept, reject, or modify any of the previous action(s) in the matter, and/or take other action(s). This decision shall be in writing and shall be served on the student complainant and others deemed appropriate.

(12) This decision of the reviewing administrator shall be the final decision of the district on that complaint.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-110 Student misconduct. Misconduct for which the campuses may impose sanctions includes, but is not limited to, any of the following:

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

(2) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence as defined in WAC 132F-121-010(2).

(3) 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 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; genetic information; sexual orientation; gender identity; gender expression; veteran's status; or any other legally protected classification, and includes sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic forms of communication.

(4) Any act of course-related dishonesty, including but not limited to cheating or plagiarism.

(a) Cheating includes, but is not limited to, using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining, without authorization, test questions or answers or other academic material that belong to another.

(b) Plagiarism includes, but is not limited to, using another person's ideas, words, or other work in an instructional course without properly crediting that person.

(c) Academic dishonesty also includes, but is not limited to, submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(5) Any other act of college-related dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, or misuse of any district document, record, or instrument of identification;

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

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

(6) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activity that is authorized to occur on district property, whether or not actually conducted by the district.

(7) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, cyberbullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(8) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization, or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

(9) Failure to comply with the direction of a district officer or employee who is acting in the legitimate performance of ~~((his or her))~~ their duties, or failure to properly identify oneself to such a person when requested to do so.

(10) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

(11) Weapons. Carrying, holding, wearing, exhibiting, displaying or drawing 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 firearm in ~~((his or her))~~ their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or the president's designee may authorize possession of a weapon on campus upon a showing 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 therein.

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

(12) 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.

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

(14) Drugs.

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

(b) Drugs. The use, possession, delivery, sale or being 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.

(15) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

(16) Conduct which is disorderly, lewd, or obscene.

(17) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

(18) The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased or operated by the college, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of such buildings, and where otherwise prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(19) Theft or other misuse of computer time or other electronic information resources of the district. 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 district'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 district's electronic information resources without authorization; or

(i) Failure to comply with the district's electronic use policy.

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

(21) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(22) Safety violations. The operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person. Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(23) Violation of any other district rule, requirement, or procedure including, but not limited to, any that is posted in electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

(24) Violation of any federal, state, or local law, rule, or regulation, including any hate crime.

(25) 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 proceeding 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 shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(26) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

(27) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-120 Instructor sanctions for course work dishonesty or classroom misconduct. (1) An instructor need not give credit for course work that is the product of cheating, plagiarism, or other dishonesty. For any act of dishonesty that occurs during an instructional course, the instructor may adjust the student's grade accordingly for the particular examination, paper, or other work product where that dishonesty occurred. Any such grade adjustment shall not limit or preclude disciplinary sanction(s) for the same act of dishonesty.

(2) An instructor may take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course. If a student is so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum, that action may include removing that student from that day's class session.

(3) With regard to any act of course-related dishonesty, classroom misconduct, or other academic misconduct, the faculty member involved may notify ~~((his/her))~~ their dean, with supporting documentation. The dean shall then determine whether to refer the matter to the vice president for student services for possible disciplinary action.

(4) A student who has received a grade adjustment by the instructor on the basis of dishonesty may grieve that adjustment under the student complaint procedure. However, any disciplinary sanction that is imposed instead of or in addition to an instructor's grade adjustment may be imposed and reviewed only under the student disciplinary procedure.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-140 Initiation of discipline. (1) The vice president for student services or designee at each campus is responsible for investigating possible violations of this student conduct code at that campus and initiating any appropriate disciplinary actions. If that officer is a respondent in a complaint initiated by the subject student, the college president shall, upon request and when feasible, designate another

person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) Any member of the district community may make a complaint against a student whom she/he believes has violated this student conduct code. Such a complaint should ordinarily be filed in writing with the vice president for student services. However, no such complaint is required in order for that vice president to take action on any matter that comes to ~~((his/her))~~ their attention.

AMENDATORY SECTION (Amending WSR 16-04-025, filed 1/25/16, effective 2/25/16)

WAC 132F-121-170 Appeals and referrals generally.

(1) Except as otherwise provided herein, a respondent who has received notice of disciplinary sanction(s) imposed by the vice president for student services may appeal such sanction(s) by filing a written notice of appeal with that officer within ten days. The notice of appeal may include any statement that the respondent wishes to make of the grounds for ~~((her/his))~~ their appeal.

(2) If the vice president has referred the matter to the student conduct committee for action, no appeal is required, but the student may file a written response with the vice president within twenty days of service of that referral.

(3) Except for conduct matters referred for brief adjudicative proceedings, the vice president shall promptly transmit any notice of appeal or response to referral, together with a copy of any notification of discipline, to the chair of the student conduct committee, described below. The vice president should serve a copy of that transmittal on the respondent.

(4) Except through a summary suspension under WAC 132F-121-250, a respondent's enrollment status and rights as an enrolled student shall not be altered, on the basis of a disciplinary sanction imposed by the vice president, until (a) the appeal period has run without a proper appeal being filed or (b) if there is an appeal, either that appeal has been withdrawn or the final order has been entered.

(5) If a respondent files a timely appeal of a probation or suspension that includes restrictions on contacts, communications, or campus access, the vice president will ordinarily modify those restrictions as necessary to facilitate the respondent's preparation for the hearing.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-180 Student conduct committee. (1)

A student conduct committee at each college will hear all disciplinary cases at that college which are referred to it by the vice president for student services or appealed to it by a student. For purposes of WAC 132F-108-020 and any other requirements, the district trustees and chancellor and each college president designate (a) the committee provided for herein to serve as presiding officer to hear the described student disciplinary matters and (b) the committee chair both to handle and decide procedural matters (as provided herein) and to preside at the hearing.

(2) This committee shall be composed of the following three members:

(a) One administrator or exempt employee, appointed by the college president;

(b) One member of the faculty, appointed by the college president; and

(c) One student, appointed by the president of the recognized student government organization.

(3) Each appointment shall be accompanied by the appointment of two alternates. Each member and alternate shall serve for the academic year or until a replacement is appointed, whichever is longer. When a member is not available for a hearing, the committee chair shall designate an alternate to replace ~~((him/her))~~ them for that hearing. If a member or alternate ceases to serve, a successor shall be promptly appointed. A member or alternate may be reappointed in any role.

(4) The administrator or exempt employee shall be the committee chair.

(5) A committee member is subject to disqualification for bias, prejudice, interest, or as further provided in RCW 34.05.425.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-190 Student conduct committee hearings—In general. (1) A respondent student has a right to a prompt, fair, and impartial hearing before the student conduct committee on a referral for, or timely appeal of, a disciplinary sanction, except as otherwise provided in these rules.

(2) Chapter 34.05 RCW and chapter 10-08 WAC govern committee proceedings and control in the event of any conflict with these rules. The district's chapter 132F-108 WAC also governs committee proceedings.

(3) The chair of the committee shall give not less than seven days advance written notice of the hearing to all parties, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause.

(4) The committee chair may provide to the committee members in advance of the hearing copies of (a) the vice president for student service's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(5) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions, except as overridden by majority vote of the committee, concerning the extent and forms of any discovery, issuance of protective orders, and similar procedural matters.

(6) Upon request made at least five days before the hearing by either the respondent or the vice president, the two of them shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present in their respective cases, except impeachment or rebuttal evidence. Failure to participate in good faith in such a requested exchange may

be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(7) The respondent and the vice president may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(8) The vice president shall provide reasonable assistance to the respondent, upon request, in obtaining relevant and admissible evidence that is within the college's control.

(9) Communications between committee members and other persons regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(10) Each party may be accompanied at the hearing by a nonattorney assistant of ~~((his/her))~~ their choice. A respondent may elect to be represented by an attorney, but will be deemed to have waived that right unless, at least four days before the hearing, written notice of the attorney's identity and participation is served on both the chair and the vice president. If the respondent is represented by an attorney, the vice president may also be represented by an attorney. If both the respondent and vice president have counsel, the committee will ordinarily be advised by a separate assistant attorney general.

(11) Minor disciplinary actions imposing probation or suspension of ten instructional days or less and any conditions or terms placed on the student may be conducted by a brief adjudicative proceeding in accordance with RCW 34.05.482 through 34.05.494.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-220 President's review and final college order. (1) The college president shall review the record and enter the final college order, in accordance with RCW 34.05.461(2) and 34.05.464.

(2) If either the respondent or the vice president for student services wishes to file written argument with the president, she/he must file that argument and serve a copy on the other within fifteen days after service of the committee's order. Within seven days after service of any such argument, the other party may file and serve a written response. The president shall have discretion to modify these deadlines and/or to allow oral arguments. However no new evidence, not already part of the record, may be introduced in any argument, except as expressly authorized by the president upon a showing of compelling legal justification and after any appropriate fact-finding.

(3) The president shall personally consider the whole record or such portions of it as may be cited by the parties. A party's failure to present any argument shall mean that the party is citing "none" of the record.

(4) If the committee's order includes a provision for expulsion, the president must consult with and obtain the

agreement of the district chancellor. If the committee's order includes a provision for suspension from any other college(s) of the district, the president must consult with and obtain the agreement of the president(s) of such college(s).

(5) Within ninety days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the president shall either remand the matter for further proceedings, with instructions to the committee, or enter a final order in the matter. The president shall have all of decision-making power that he/she would have had if presiding over the hearing, including the power to affirm, reverse, or modify any disciplinary sanction.

(6) The president's final order shall include, or incorporate by reference to the committee's initial order, all matters required by RCW 34.05.461, in accordance with RCW 34.05.464. It shall also include notice to the respondent of ((his/her)) their right to seek judicial review under RCW 34.05.510 et seq.

(7) Copies of the final order shall be served on the respondent, the vice president, any legal counsel who have appeared, and the committee chair.

(8) The decision of the president shall be the final district action in the matter.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-121-230 Reestablishment of academic standing after successful appeal. When a student has missed classes and/or course work due to a disciplinary suspension or expulsion, but that disciplinary sanction was appealed and not upheld, the student shall be given a reasonable opportunity to reestablish ((his/her)) their academic standing and the alternative of a withdrawal and refund of tuition and fees. Depending on the circumstances, reestablishing academic standing may include opportunities to take examinations and otherwise complete course offerings that were missed due to the disciplinary sanction or to retake the class(es).

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-250 Summary suspensions. (1) A summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which the student might otherwise be eligible, during which an investigation and/or formal disciplinary procedures are pending.

Suspension may be imposed, if the vice president for student services or ((his/her)) their designee(s) has cause to believe that any student:

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety or welfare of members of the college community; or
- (c) If the student poses an ongoing threat of disruption of, or interference with, the operations of the college, that student may be summarily suspended.

(2) Notice. Any student who has been summarily suspended shall be served with written notice or verbal notice of

the summary suspension. If such notice is made in writing, it shall be provided by certified mail and first class mail delivered to the student's last known address.

(3) The oral or written notice to the student shall include the reasons for summary suspension, duration of the summary suspension, and any possible additional disciplinary or corrective action that may be taken. The notification shall indicate that the student must appear before the vice president of student services or designee for a summary suspension hearing at a time specified in the notice. If oral notice is given, written notice shall follow within two calendar days. In addition, the vice president for student services or designee shall set a date for summary suspension hearing as soon as practicable.

(4) The student shall be given the opportunity to present written and/or oral evidence. The issue before the vice president for student services or designee shall be whether probable cause exists to support and to continue the summary suspension.

(5) The vice president for student services or designee shall issue a written order within two days of the informal hearing, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision to justify the determination of an immediate danger and the vice president's decision to take the specific action.

(6) If a student who has been summarily suspended fails to appear for a summary suspension hearing, the vice president for student services may order the suspension to remain in place pending the final disposition of the disciplinary process as provided in this section.

(7) The student may request a de novo review of the informal hearing decision before the student conduct committee. The review will be scheduled promptly. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

(8) Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order in the classroom and/or prevent substantial disruption to the educational process. Such summary action in the form of removal from the classroom may not exceed one day per episode. Any such summary action may be appealed to the vice president for student services for a brief adjudicative proceeding.

NEW SECTION

WAC 132F-121-270 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Seattle Colleges' standard disciplinary procedures, WAC 132F-121-110 through 132F-121-260, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132F-121-280 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681,

the Seattle Colleges may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A Seattle Colleges' student conditioning the provision of an aid, benefit, or service of the Seattle Colleges on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Seattle Colleges' educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) 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.

(b) 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.

(c) 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.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) 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.

(5) 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.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132F-121-290 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Seattle Colleges' educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Seattle Colleges exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Seattle Colleges.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the Seattle Colleges from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Seattle Colleges' student conduct code, WAC 132F-121-110.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132F-121-300 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) The Seattle Colleges will appoint the party an advisor of the Seattle Colleges' choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132F-121-310 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132F-121-180. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the Seattle Colleges intends to offer the evidence at the hearing.

NEW SECTION

WAC 132F-121-320 Rights of parties. (1) The Seattle Colleges' student conduct procedures, WAC 132F-121-110, and this supplemental procedure shall apply equally to all parties.

(2) The Seattle Colleges bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the Seattle Colleges' choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132F-121-330 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) **Relevance** means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) **Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) **Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132F-121-340 Initial order. (1) In addition to complying with WAC 132F-121-210 the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the Seattle Colleges' education programs or activities; and

(h) Describes the process for appealing the initial order to the Seattle Colleges' president.

(2) The committee chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132F-121-350 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132F-121-170.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

WSR 20-16-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-143—Filed July 28, 2020, 2:27 p.m., effective August 3, 2020]

Effective Date of Rule: August 3, 2020.

Purpose: The purpose of this rule is to open sockeye seasons in Lake Wenatchee and increase the daily sockeye limit in the upper mainstem Columbia River from Priest Rapids Dam upstream.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000N, 220-312-06000T and 220-312-05000E; and amending WAC 220-312-060 and 220-312-050.

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 open sockeye seasons in Lake Wenatchee and increase sockeye daily limits in the upper Columbia River. The *U.S. v. Oregon* technical advisory committee (TAC) updated the sockeye salmon run to approximately three hundred forty thousand. At this updated run size there are additional surplus sockeye available for harvest in both Lake Wenatchee and the mainstem Columbia River. The TAC is comprised of representatives from Washington, Oregon, Idaho, national oceanic and atmosphere association, and the treaty tribes and are responsible for developing pre-season and in-season run forecast that salmon season[s] are based on.

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

There is insufficient time to adopt permanent rules.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 3.

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

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

Date Adopted: July 28, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000T Freshwater exceptions to statewide rules—Columbia Effective August 3 through October 15, 2020, provisions of WAC 220-312-060 and 220-220-160 regarding Columbia River salmon seasons and the use of the Two-pole Endorsement from Priest Rapids Dam upstream are modified as described below. All other provisions of WAC 220-312-060 and WAC 220-220-160 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) From Priest Rapids Dam to Rock Island Dam:

Salmon: Effective August 3 through August 31, 2020: Daily limit is 6; of which, up to 2 adult hatchery Chinook and up to 4 sockeye may be retained. Release coho and wild adult Chinook.

(2) From Rock Island Dam to Wells Dam:

(a) Salmon: Effective August 3 through October 15, 2020: Daily limit is 6; of which, up to 2 adult hatchery Chinook and up to 4 sockeye may be retained. Release coho and wild adult Chinook.

(b) Anglers who possess a valid two-pole endorsement may fish with two lines through October 15, 2020.

(3) From Wells Dam to the Highway 173 Bridge at Brewster:

(a) Salmon: Effective August 3 through September 15: Daily limit is 6; of which, up to 2 adult hatchery Chinook and up to 4 sockeye may be retained. Release coho and wild adult Chinook.

(b) Anglers who possess a valid two-pole endorsement may fish with two lines through September 15, 2020.

(4) From the Highway 173 Bridge at Brewster to the rock jetty at the upstream shoreline of Foster Creek (Douglas County side):

(a) Salmon: Effective August 3 through October 15, 2020: Daily limit is 6; of which, up to 2 adult hatchery Chinook and up to 4 sockeye may be retained. Release coho and wild adult Chinook.

(b) Anglers who possess a valid two-pole endorsement may fish with two lines through October 15, 2020.

NEW SECTION

WAC 220-312-05000E Freshwater exceptions to statewide rules—Eastside Effective August 3 through September 7, 2020, provisions of WAC 220-312-050 regarding salmon seasons in Lake Wenatchee are as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

Lake Wenatchee (Chelan County):

- (a) Salmon:
 - (i) Daily limit 4 sockeye only. Release all other salmon.
 - (ii) Selective Gear Rules in effect.
 - (iii) Night Closure in effect.
- (b) Release bull trout, steelhead and Chinook unharmed without removing the fish from the water.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 3, 2020:

WAC 220-312-06000N Freshwater exceptions to statewide rules—Columbia. (20-122)

The following section of the Washington Administrative Code is repealed effective October 16, 2020:

WAC 220-312-06000T Freshwater exceptions to statewide rules—Columbia. (20-143)

The following section of the Washington Administrative Code is repealed effective September 8, 2020:

WAC 220-312-05000E Freshwater exceptions to statewide rules—Eastside. (20-143)

**WSR 20-16-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-136—Filed July 28, 2020, 2:56 p.m., effective July 31, 2020]

Effective Date of Rule: July 31, 2020.

Purpose: The purpose of this rule is to close recreational Chinook harvest in Marine Area 5, beginning July 31, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000S and 220-313-06000T; 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 needed to close retention of Chinook in Marine Area 5 as Chinook encounters are expected to reach the preseason agreed to

threshold of seven thousand thirty-two by the end of the day July 30, 2020. Current encounter estimates, as of July 26, 2020, are at six thousand six hundred sixty-two fish (ninety-five percent of threshold). Hatchery coho retention will remain open.

This rule also repeals emergency rules for Puget Sound recreational salmon fishing that were filed under WSR 20-14-031 as interim rules until such time as they became permanent. These rules became permanent July 26, 2020, under WSR 20-14-052.

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

There is insufficient time to file permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: July 28, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000T Puget Sound salmon—Saltwater seasons and daily limits. Effective July 31 through August 15, 2020, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 5 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:

Catch Record Card Area 5: Daily limit 2. Release Chinook, chum, and wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 31, 2020:

WAC 220-313-06000S Puget Sound salmon—Saltwater seasons and daily limits. (20-115)

The following section of the Washington Administrative Code is repealed effective August 16, 2020:

WAC 220-313-06000T Puget Sound salmon—Saltwater seasons and daily limits. (20-136)

WSR 20-16-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-142—Filed July 28, 2020, 3:07 p.m., effective July 28, 2020, 3:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule is needed for two reasons:

(1) To adjust the second spot shrimp accounting period to allow harvesters to take two thousand five hundred pounds of spot shrimp from July 15 to August 25, 2020.

(2) To close harvest of nonspot shrimp species in Region 2E, which is composed of Catch Areas 24A, 24B, 24C, 24D, and 26AE, effective August 4, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000R; and amending WAC 220-340-520.

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) defines the shrimp management areas and regions open to spot and non-spot commercial harvest; (2) sets harvest restrictions for the nonspot commercial pot fishery; (3) sets harvest restrictions for the spot commercial pot fishery; (4) sets the harvest and gear limitations for the Puget Sound shrimp trawl fishery; (5) requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers; (6) closes Shrimp Management Area 1A to state commercial harvest of spot shrimp due to the attainment of quota (7137 pounds); (7) amends the second spot shrimp accounting period to allow two thousand five hundred pounds of spot shrimp harvest between July 15, 2020, and August 25, 2020; and (8) closes the harvest of nonspot shrimp via pots in Region 2E. The adjustment to the catch accounting period provides greater flexibility to allow commercial harvesters to respond to softening market conditions. Additionally, this adjustment streamlines Washington department of fish and wildlife staff workflow and optimizes the economic utility of the commercial share of the resource. The closure of Region 2E is due to the coordinated attainment of the 2020 harvest share.

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

There is not sufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 28, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000S Puget Sound shrimp pot and trawl fishery—Season. Effective immediately and until further notice, or until this rule expires on August 28, 2020 pursuant to RCW 34.05.350, the following provisions of WAC 220-340-520 regarding Puget Sound commercial shrimp pot harvest, non-spot shrimp harvest, spot shrimp harvest, trawl shrimp harvest and sales shall be described below. All other provisions of WAC 220-340-520 not addressed herein, and unless otherwise amended, remain in effect:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W and 3 are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Areas) 23A-E, 23A-W, 23A-C, and 23A-S are closed to the harvest of non-spot shrimp until the spot quota is attained in all sub-areas of 23A. Catch Areas 23A-E, 23A-W, 23A-C, and 23A-S AE are within Shrimp Management Area 3 and comprise Catch Area 23A.

(ii) Effective immediately it is unlawful to harvest spot shrimp from sub-area 23A-E.

(iii) Effective immediately it is unlawful to harvest spot shrimp from Shrimp Management Area 1A.

(iv) Shrimp Management Area 1A is closed to harvest of non-spot shrimp until the spot shrimp quota is attained in all Catch Areas of 1A.

(v) Effective August 4, 2020 at 11:59 p.m. it is unlawful to harvest non-spot shrimp from Region 2E. Region 2E is composed of Catch Areas 24A, 24B, 24C, 24D, and 26AE.

(vi) Discovery Bay Shrimp District is closed to the harvest of all shrimp species.

(vii) Shrimp Management Areas 1B, 2E, and 2W are closed to the harvest of spot shrimp.

(b) It is unlawful to harvest non-spot and spot shrimp in the same day.

(c) It is unlawful to harvest shrimp in more than one Shrimp Management Area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly from Wednesday through Tuesday, totaling 7 days in length.

(b) It is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from Shrimp Management Areas 1B, 1C, 2E, and 2W combined.

(c) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Region 2W. Region 2W is comprised of Catch Areas 25B, 25C, 25D, and 26AW.

(d) Harvest of non-spot shrimp is not permitted deeper than 150 feet in Region 2E. Region 2E is comprised of Catch Areas 24A, 24B, 24C, 24D, and 26AE (26A northerly of a line drawn from the southern tip of Possession Point on Whidbey Island 110° true to the shipwreck on the opposite shore).

(3) Shrimp Spot Pot Harvest Restrictions:

(a) The second spot shrimp catch accounting period is from July 15, 2020 through 11:59 p.m. on August 25, 2020.

(b) It is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 2500 pounds for the second catch accounting period from Shrimp Management Areas 1A, 1C, and 3 combined.

(c) For the catch accounting period defined in 3(a.) of this rule each fisher or alternate operator is required to report their intended catch area of harvest prior to the deployment of any spot shrimp gear to either shrimp.report@dfw.wa.gov or by text message to 360-302-6372.

(4) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) The remaining portion of Catch Area 22A within SMA 1B is open effective immediately, until further notice, or until this expire on August 28, 2020.

(5) All shrimp taken under this section must be sold to licensed Washington State wholesale fish dealers.

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

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

REPEALER

The following section of Washington Administrative Code is repealed:

WAC 220-340-52000R Puget Sound shrimp pot and trawl fishery—Season. (20-134)

**WSR 20-16-072
EMERGENCY RULES
DEPARTMENT OF**

CHILDREN, YOUTH, AND FAMILIES

[Filed July 29, 2020, 9:37 a.m., effective July 29, 2020, 9:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Modify the early achievers quality rating and improvement system requirements during the COVID-19 pandemic. More specifically, remove the deadline by which a provider must enroll in the program and the requirement to reach quality rating levels. Child care and early learning providers who participate in working connections and seasonal child care must still enroll in the early achievers program, follow its operating guidelines, submit attendance records electronically, and renew their facility ratings every three years.

Citation of Rules Affected by this Order: Amending WAC 110-15-0125 and 110-15-3750.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. The emergency amendments to WAC 110-15-0125 and 110-15-3750 address these challenges by waving and suspending some of the regulatory system requirements that delay child care providers from making child care available to the children of essential staff who are from low income families who require child care services during the COVID-19 pandemic. WAC 110-15-0125 and 110-15-3750 were amended on an emergency basis on March 30, 2020, under WSR 20-08-098. Proclamation 20-31.5 was issued on July 2, 2020, and continues through August 1 [for] the relief granted to providers from meeting certain early achievers program deadlines. This change in circumstances makes it necessary for the emergency rules filed under WSR 20-08-098 to remain in force.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, 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: July 29, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-15-0125 Approved child care providers.

(1) In-home/relative providers. To be approved to receive benefits under the WCCC program, an in-home/relative provider must comply with the applicable requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(2) Licensed providers.

(a) To be approved to receive payment under the WCCC program, a licensed provider must comply with the requirements of this chapter, chapter 43.216 RCW, ~~((and))~~ chapter ~~((s))~~ 110-06, and chapter 110-300 ~~((, 110-300A, 110-300B, and))~~ or 110-305 WAC.

(b) A provider who cares for a child who is a Washington resident in a state that borders Washington must:

- (i) Be licensed to provide care in the bordering state;
- (ii) Comply with the bordering state's licensing regulations;
- (iii) Comply with the electronic attendance requirements contained in WAC 110-15-0126.

(c) The lesser of the following will be paid to a qualified, licensed child care provider in a state that borders Washington:

- (i) The provider's private pay rate for that child; or
- (ii) The DCYF maximum WCCC subsidy daily rate for the DCYF region where the child resides.

(d) A licensed provider in a state that borders Washington that receives WCCC subsidy payment to care for a child who is a Washington resident is not required or eligible to participate in the early achievers program or to receive quality improvement awards, tiered reimbursements, or other awards and incentives associated with the early achievers program.

(3) Certified providers. To be approved to receive payment under the WCCC program, a certified provider must comply with the certification requirements contained in this chapter, chapter 43.216 RCW, ~~((and))~~ chapter ~~((s))~~ 110-06, and chapter 110-300 ~~((, 110-300A, 110-300B, and))~~ or 110-305 WAC. Certified providers include:

- (a) Tribal child care facilities that meet the requirements of tribal law;
- (b) Child care facilities on a military installation;
- (c) Child care facilities operated on public school property by a school district; and
- (d) Seasonal day camps that contract with DCYF to provide subsidized child care.

~~(4) ((Early achievers program requirements for licensed and certified child care providers that)) To be eligible to receive WCCC payments, licensed or certified Early Achiever program participants who receive their first WCCC payment on or after July 1, 2016 must:~~

~~(a) ((A licensed or certified child care provider that first receives a WCCC subsidy payment on or after July 1, 2016, for providing nonschool age child care must complete the following activities to be eligible to receive additional WCCC payments:~~

~~((i)) Enroll in the early achievers program; and ((within thirty days of receiving the first WCCC subsidy payment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program within twelve months of enrollment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive DCYF subsidy payments for providing nonschool age child care;~~

~~(iii) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. A licensed or certified provider that fails to meet this requirement within thirty months of enrollment in the early achievers program, must complete remedial activities with DCYF and rate at a level 3 or higher within six months of beginning remedial activities. A licensed or certified provider that fails to rate at a level 3 or higher within six months of beginning remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care; and~~

~~((iv)) (b) Renew their facility rating every three years ((and maintain a rating level 3 or higher)). If a licensed or certified provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), the licensed or certified provider will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.~~

~~((b)) (c) Licensed and certified providers must comply with the provisions for participation as outlined in the early achievers operating guidelines. Failure to comply with these guidelines may result in a licensed or certified provider's loss of DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.~~

~~(5) ((Early achievers program requirements for licensed and certified child care providers that received a WCCC payment on or between July 1, 2015, and June 30, 2016:~~

~~(a)) A licensed or certified child care provider that received a WCCC subsidy payment on or between July 1, 2015, and June 30, 2016, ((for providing nonschool age child care, must complete the following activities to be eligible to receive additional WCCC subsidy payments:~~

~~(i) Enroll in the early achievers program by August 1, 2016. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who failed to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for nonschool age child care; and~~

~~(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019. A licensed or certified provider~~

that fails to meet this requirement by December 31, 2019, must complete remedial activities with DCYF and rate at a level 3 or higher by June 30, 2020. A licensed or certified provider that fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(b) Licensed and certified providers)) must renew their facility rating every three years. ((and maintain a rating level 3 or higher)). If a licensed or certified provider fails to renew their facility rating or maintain a rating level 3 or higher, licensed or certified providers)) they will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(6) If a licensed or certified child care provider receiving WCCC subsidy payment for providing nonschool age has successfully completed all level 2 activities and is waiting to be rated, the licensed or certified provider may continue to receive WCCC subsidy payments ((pending the successful completion of the level 3 rating activity)).

(7) DCYF-contracted seasonal day camps must have a contract with DEL to provide subsidized child care.

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

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Department of Children, Youth, and Families and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3750 Eligible child care providers. To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter ((43.215)) 43.216 RCW and ((170-295, 170-296A, or 170-297)) chapters 110-300 or 110-305 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

(a) The provider's private pay rate for that child; or

(b) The state maximum child care subsidy rate for the ((DSHS)) DCYF region where the child resides; or

(3) Exempt from licensing but certified by ((DEL)) DCYF, such as:

(a) Tribal child care facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation; and

(c) Child care facilities operated on public school property by a school district.

(4) ((New child care providers, as defined in WAC 170-290-0003, who are)) To be eligible to receive a state subsidy payment, an agency as defined in RCW 43.217.010 that is subject to licensure, or ((are certified)) a person or facility authorized to receive state subsidy ((as required by chapter

43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC)) under chapter 43.216 RCW, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:

(a) Enroll in the early achievers program; ((within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(i) Out of state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(ii) Out of state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers;))

(b) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care; and

(c) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(d) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

((e)) (c) Maintain an up to date rating by renewing their facility rating every three years ((and maintaining a rating level 3 or higher)). If a provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), they will lose eligibility to receive state subsidy payments nonschool age child care.

(5) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter ((43.215)) 43.216 RCW ((and as described by chapter 170-295, 170-296A, or 170-297 WAC)), who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:

(a) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(i) Out of state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and

(ii) Out of state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.

(b) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;

(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019;

(d) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and

(e) Maintain an up to date rating by renewing their facility rating every three years ((and maintaining a rating level 3 or higher)). If a provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), they will lose eligibility to receive state subsidy payments nonschool age child care.

(6) If a child care provider ((serving nonschool age children, as defined in WAC 170-290-0003, and)) receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy. ((pending the successful completion of the level 3 rating activity.))

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

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Department of Children, Youth, and Families and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 20-16-074
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 29, 2020, 9:51 a.m., effective July 29, 2020, 9:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: During the COVID-19 pandemic, relieve the department of children, youth, and families (DCYF) from (1) in-person contact for the purpose of receiving or fulfilling public records requests, copying public records, or allowing inspection of public records, and (2) the requirement to respond to a request for public records within five days of receiving the request.

Citation of Rules Affected by this Order: Amending WAC 110-01-0100 and 110-01-0200.

Statutory Authority for Adoption: RCW 43.216.065; and chapter 42.56 RCW.

Other Authority: Proclamations of the Governor 20-05 and 20-28.

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

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-28 amends Proclamation 20-05 and directs state agencies to limit personal contact through social distancing and limit person-to-person contact. Proclamation 20-28 waives and suspends any in-person contact related to public records requests and the requirement that a state agency respond to requests within five days of receipt.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, 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: July 29, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-01-0100 Availability of public records.
Pursuant to proclamation 20-28 and any subsequent proclamation, or other gubernatorial or legislative action suspending the requirements of RCW 42.56.080, .090, or .100, public inspection is not permitted. ((Public records are available for inspection and copying during the department's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required, but significantly help the department provide prompt and efficient service. Some department records may be stored in other locations, in computer storage systems, or the state records warehouse, and may take time to identify and gather. Other records may be exempt from disclosure. Original records cannot be removed from the inspection location. If required by law, department staff must redact information in a record before making it available for inspection. Department staff will make copies of records on request.))

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-01-0200 How the department responds to public records requests. The department will respond to public record requests in a reasonable amount of time given the unique circumstances of the COVID-19 pandemic. ((Within five business days of receiving the request,)) When the department receives a request for records the department will either:

- (1) Provide the record;
- (2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;
- (3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or
- (4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that the department relied upon in its denial.

At his or her discretion, the public records officer may send the requested records by email, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

WSR 20-16-079

EMERGENCY RULES DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 29, 2020, 2:00 p.m., effective July 29, 2020, 2:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Encourage petitions for review of initial administrative hearings orders and petitions for judicial review of final agency orders to be served by United States mail or email on either the secretary of the department of children, youth, and families (DCYF) or DCYF board of appeals instead of personal delivery while state agency buildings are closed to the public in response to the COVID-19 pandemic.

Citation of Rules Affected by this Order: Amending WAC 110-03-0530 and 110-03-0590.

Statutory Authority for Adoption: RCW 34.05.220 and 43.216.065.

Other Authority: Proclamations of the Governor 20-05 and 20-28.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-25 established the "Safe Start, Stay Healthy" county-by-county

phased reopening plan that prohibits government buildings from opening to the public until such time as approved by the state department of health.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, 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: July 29, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0530 Requesting review of the initial order. (1) A party must file the review request (petition for review) in writing and it must:

- (a) Clearly identify the parts of the initial order with which the party disagrees; and
- (b) Clearly present arguments and refer to evidence in the record supporting the party's position.

(2) The petition for review must be filed with the BOA and the party requesting review must serve copies on the other parties and their representatives and OAH at the same time the petition is filed.

(3)(a) The petition for review must be filed with the BOA at the address stated in the instructions for obtaining review sent with the initial order or using the following contact information appropriate to the method of filing used:

(i) Mailing address:
DCYF Board of Appeals
P.O. Box 40982
Olympia, WA 98504-0982;

~~((Physical address:
DCYF Board of Appeals
1115 Washington Street Southeast
Olympia, WA 98501))~~

(ii) Fax: 360-586-5934; or

(iii) The petition or other documents related to your case may be sent to the DCYF BOA using secure email. Call the BOA prior to sending documents by email to request access to the secure email portal.

(b) This information is current as of the effective date of these rules; however, parties should file documents using the address or fax information received with the initial order if it is different from the information provided here.

(4) The DCYF board of appeals can be contacted by phone at: 360-902-0278.

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

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0590 Judicial review. (1) Judicial review is the process of appealing a final agency order to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing a written petition for judicial review in superior court pursuant to RCW 34.05.514 that meets the requirements of RCW 34.05.546. The petition must be properly filed and served, as required by RCW 34.05.542, within thirty calendar days of the date the review judge serves the final order in the case. However, as provided by RCW 34.05.470, if a petition for reconsideration has been properly filed, the thirty-day period does not commence until the agency disposes of the petition for reconsideration. Copies of the petition must be served on DCYF, the office of the attorney general, and all other parties at the same time the petition is filed.

(3) To serve DCYF, a copy of the petition must be delivered to the secretary of DCYF or to the DCYF BOA.

(a) The petition ~~((must))~~ may be ~~((hand-delivered or))~~ mailed with proof of receipt to:

DCYF Office of the Secretary
P.O. Box 40982
Olympia, WA 98504-0982; or

~~((a)) The physical location of the secretary is:~~

~~DCYF Office of the Secretary
1500 Jefferson Street Southeast
Olympia, WA 98504~~

~~The mailing address of the secretary is:~~

~~DCYF Office of the Secretary
P.O. Box 40975
Olympia, WA 98504-0975
Fax: 360-586-5934))~~

(b) The petition and other documents related to your case may be sent to the DCYF BOA using secure email. Call the BOA prior to sending documents by email to request access to the secure email portal.

(4) The ~~((physical location))~~ telephone number, fax number, and mailing address for the DCYF BOA are as stated in WAC 110-03-0530.

~~((4))~~ (5) Service on the office of the attorney general and other parties of a copy of the petition for judicial review may be made at the following locations:

(a) The office of the attorney general may be served personally or by delivery at:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

(b) Each party must be served at each party's address of record.

~~((5))~~ (6) A party may file a petition for judicial review only after it has exhausted administrative remedies, as provided under RCW 34.05.534.

~~((6))~~ (7) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

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

WSR 20-16-082
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 30, 2020, 8:17 a.m., effective July 31, 2020]

Effective Date of Rule: July 31, 2020.

Purpose: The department is extending emergency amendments to WAC 388-484-0006 TANF/SFA time limit extensions, that add a temporary assistance for needy families (TANF) time limit extension hardship category related to impacts of the COVID-19 pandemic (commonly known as the "coronavirus").

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

Statutory Authority for Adoption: 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.

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

Reasons for this Finding: This filing is necessary to extend existing emergency rules originally filed under WSR 20-09-001, which provide relief in response to health and economic impacts of COVID-19. The department filed notice of its intent to adopt the rule as a permanent rule by filing a CR-101 Preproposal statement of inquiry under WSR 20-15-122, and is actively undertaking appropriate procedures to adopt the rule as a permanent rule.

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

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

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

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

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

Date Adopted: July 27, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-046, filed 2/13/20, effective 3/15/20)

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

After you receive sixty 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 sixty cumulative months of TANF and:

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

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

(iii) 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) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) 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) Are homeless as described in RCW 43.185C-.010(12); or

(vii) A resident of Washington state during a declared state of emergency related to COVID-19.

(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 fifty-two 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 twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), (v), or (vi) 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.

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 30, 2020.

Wendy Barcus
Rules Coordinator

WSR 20-16-083
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed July 30, 2020, 8:21 a.m., effective July 30, 2020, 8:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending WAC 182-543-0500 and 182-551-2040 to allow ordering of home health services, including medical supplies, by nonphysician practitioners.

Citation of Rules Affected by this Order: Amending WAC 182-543-0500 and 182-551-2040.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Not applicable.

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 making is in response to the Governor's Proclamation 20-05 declaring a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) and the secretary of the federal Department of Health and Human Services declaration of a public health emergency related to COVID-19. This emergency rule making is necessary to preserve the public health, safety, and general welfare by immediately allowing nonphysician practitioners the ability to order home health services, including medical supplies. This flexibility is necessary to ensure that when products and services are determined to have evidence of efficacy in treating COVID-19 or its symptoms, they are made available to clients as a covered benefit as quickly as possible.

Since the emergency rule making filed under WSR 20-09-016, the agency filed the CR-101 Preproposal statement of inquiry under WSR 20-11-075 on May 20, 2020, to begin the permanent rule-making process. The agency conducted its internal review on the draft rules and anticipates sending the draft version to external stakeholders in August.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-0500 General. (1) The federal government considers medical equipment, supplies, and appliances, which the medicaid agency refers to throughout this chapter as medical equipment, services under the medicaid program.

(2) The agency pays for medical equipment, including modifications, accessories, and repairs, according to agency rules and subject to the limitations and requirements in this chapter when the medical equipment is:

(a) Medically necessary, as defined in WAC 182-500-0070;

(b) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices; and

(c) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices.

(3) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no later than six months prior to the start of services.

(4) The face-to-face encounter must be conducted by the ordering physician, a nonphysician practitioner as described in WAC 182-500-0075, or the attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

(5) ~~(If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician.)~~ Physicians, advanced registered nurse practitioners (ARNPs), and physician assistants (PAs) may complete the face-to-face encounter. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record.

(6) The agency requires prior authorization for covered medical equipment when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The agency evaluates requests requiring prior authorization on a case-by-case basis to determine medical necessity as defined in WAC 182-500-0070, according to the process found in WAC 182-501-0165.

(b) Refer to WAC 182-543-7000, 182-543-7100, 182-543-7200, and 182-543-7300 for specific details regarding authorization.

(7) The agency bases its determination about which medical equipment requires prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC

182-543-7100 for PA and WAC 182-543-7300 for EPA). The agency considers all of the following when establishing utilization criteria:

- (a) Cost;
- (b) The potential for utilization abuse;
- (c) A narrow therapeutic indication; and
- (d) Safety.

(8) The agency evaluates a request for equipment that does not meet the definition of medical equipment or that is determined not medically necessary under the provisions of WAC 182-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 182-543-0100 for EPSDT rules).

(9) The agency may terminate a provider's participation with the agency according to WAC 182-502-0030 and 182-502-0040.

(10) The agency evaluates a request for a service that meets the definition of medical equipment but has been determined to be experimental or investigational, under the provisions of WAC 182-501-0165.

(11) If the agency denies a requested service, the agency notifies the client in writing that the client may request an administrative hearing under chapter 182-526 WAC. (For MCO enrollees, see WAC 182-538-110.)

AMENDATORY SECTION (Amending WSR 18-24-023, filed 11/27/18, effective 1/1/19)

WAC 182-551-2040 Face-to-face encounter requirements. (1) During the current COVID-19 public health emergency, the face-to-face requirements of this section may be met using telemedicine or telehealth services. See WAC 182-551-2125.

(2) The medicaid agency pays for home health services provided under this chapter only when the face-to-face encounter requirements in this section are met.

~~((2))~~ (3) For initiation of home health services, with the exception of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires home health services and must occur within ninety days before or within the thirty days after the start of the services.

~~((3))~~ (4) For the initiation of medical equipment under WAC 182-551-2122, the face-to-face encounter must be related to the primary reason the client requires medical equipment and must occur no later than six months prior to the start of services.

~~((4))~~ (5) The face-to-face encounter may be conducted by the ordering physician, a nonphysician practitioner as described in WAC 182-500-0075, or the attending acute, or post-acute physician, for beneficiaries admitted to home health immediately after an acute or post-acute stay.

~~((5) If a nonphysician practitioner as described in WAC 182-500-0075 (or the attending physician when a client is discharged from an acute hospital stay) performs the face-to-face encounter, the nonphysician practitioner (or attending~~

~~physician) must communicate the clinical findings of that face-to-face encounter to the ordering physician.))~~

(6) Physicians, advanced registered nurse practitioners (ARNPs), and physician assistants (PAs) may complete the face-to-face encounter. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record.

~~((6))~~ (7) For all home health services except medical equipment under WAC 182-551-2122, the physician, ARNP, or PA responsible for ordering the services must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((2))~~ (3) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((7))~~ (8) For medical equipment under WAC 182-551-2122, except as provided in (b) of this subsection, an ordering physician, a nonphysician practitioner as described in WAC 182-500-0075, except for certified nurse midwives, or the attending physician when a client is discharged from an acute hospital stay, must:

(a) Document that the face-to-face encounter, which is related to the primary reason the client requires home health services, occurred within the required time frames described in subsection ~~((3))~~ (4) of this section prior to the start of home health services; and

(b) Indicate the practitioner who conducted the encounter, and the date of the encounter.

~~((8) The face-to-face encounter may occur through telemedicine. See WAC 182-551-2125.))~~

WSR 20-16-084

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 30, 2020, 8:21 a.m., effective July 30, 2020, 8:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is adopting new WAC 388-437-0015 Good cause extension of Social Security number (SSN) requirement for Basic Food applicants during COVID-19, to comply with approval from the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) to extend the amount of time good cause for failure to provide the SSN is allowed during the COVID-19 pandemic. The department is also amending WAC 388-476-0005 Social Security number requirements, to align rule language more closely with federal regulation governing the Supplemental Nutrition Assistance Program (SNAP).

Citation of Rules Affected by this Order: New WAC 388-437-0015; and amending WAC 388-476-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

Other Authority: 7 C.F.R. 273.6(d).

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: Under current federal law, all Basic Food applicants and recipients must have a valid SSN to receive benefits. Due to the conditions of the COVID-19 pandemic, FNS approved a waiver allowing Washington state to extend the good cause period for failure to provide the SSN. This filing aligns rule with this waiver approval, which supports access to Basic Food benefits.

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

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

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

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

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

Date Adopted: July 28, 2020.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-437-0015 Good cause extension of Social Security number (SSN) requirement for Basic Food applicants during COVID-19. Applicants for food benefits must provide an SSN under WAC 388-476-0005(1) in order to qualify. For those who do not have an SSN, they must apply for one and provide it to DSHS when issued.

(1) For applicants with an initial application date of March 1, 2020, or later, who have established good cause for failure to provide an SSN, the good cause period is extended for three months, in addition to the application month and the next month under WAC 388-476-0005 (5)(a), for a total of up to five months.

(2) To continue receiving benefits beyond the five month good cause period, the applicant must show good cause for failure to apply for an SSN on a monthly basis in accordance with WAC 388-476-0005 (5)(b).

(3) Adjustments under subsection (1) will continue each month until the U.S. department of agriculture, food and nutrition service no longer approves these adjustments.

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-476-0005 Social Security number requirements. (1) With certain exceptions, each person who applies

for or receives cash or food assistance benefits must provide to the department a Social Security number (SSN), or numbers if more than one has been issued. For SSN requirements for immigrants, see WAC 388-424-0009.

(2) If the person is unable to provide the SSN, either because it is not known or has not been issued, the person must:

- (a) Apply for the SSN;
- (b) Provide proof that the SSN has been applied for; and
- (c) Provide the SSN when it is received.

(3) Assistance will not be delayed, denied or terminated pending the issuance of an SSN by the Social Security Administration. However, a person who does not comply with these requirements is not eligible for assistance.

(4) For cash and food assistance benefits, a person cannot be disqualified from receiving benefits for refusing to apply for or supply an SSN based on religious grounds.

(5) For food assistance programs:

(a) A person can receive benefits for the month of application and the following month if the person attempted to apply for the SSN and made every effort to provide the needed information to the Social Security Administration.

(b) In order for a person to receive benefits after the time period provided in subsection (5)(a), good cause for failure to apply for the SSN must be shown monthly.

(c) If a person is unable to provide proof of application for a SSN for a newborn:

(i) The newborn can receive Basic Food with the household while effort is being made to get the SSN.

(ii) For the newborn to continue receiving Basic Food benefits; the household must provide proof of application for SSN or the SSN for the newborn, at the next recertification, or within six months following the month the baby is born, whichever is later.

(6) There is no SSN requirement for the following programs:

- (a) The consolidated emergency assistance program; and
- (b) The refugee cash assistance program.

WSR 20-16-093

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-146—Filed July 30, 2020, 2:56 p.m., effective August 3, 2020]

Effective Date of Rule: August 3, 2020.

Purpose: The purpose of this rule is to open Puget Sound commercial sea cucumber harvest seasons in Districts 1, 2-1, 2-2, and 5.

Citation of Rules Affected by this Order: Amending WAC 220-340-730.

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 open commercial sea cucumber harvest seasons in some Puget Sound areas. Open sea cucumber harvest seasons are only provided by emergency rule.

Precautionary management actions adopted in 2014, including a reduction of the harvest rate to five percent of the biomass, a spring spawning closure period, and established areas closed to harvest, are part of the current management strategy that has indicated to be sustainable while promoting recovery from harvest pressure. Harvestable surpluses of sea cucumbers exist in Districts 1, 2-1, 2-2, and 5 under current management guidelines.

Immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 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: July 30, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000U Commercial sea cucumber fishery. Effective August 3, 2020 and until further notice, or until this rule expires on November 26, 2020 pursuant to RCW 34.05.350, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest and sales shall be described below. All other provisions of WAC 220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1, Monday through Sunday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following catch record areas of Sea Cucumber District 2, Monday through Sunday of each week: 29, 25A, 25B, 25C, 25D, 25E, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north

from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) Sea cucumber harvest using shellfish diver gear is allowed in the following catch record areas of Sea Cucumber District 5, Monday through Sunday of each week: 28B, 28C, 28D, and 28A except for all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(4) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license.

WSR 20-16-095 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 20-148—Filed July 30, 2020, 3:58 p.m., effective July 30, 2020, 3:58 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 220-359-02000B; and amending WAC 220-359-020.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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: Allowable harvest on Columbia River salmonids remains available to extend the period of tribal commercial fisheries. This rule is consistent with actions of the Columbia River compacts on June 8, June 30, July 8, July 15, and July 30, 2020. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River

and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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 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.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: July 30, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000C Columbia River salmon seasons Effective immediately until further notice, the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Season: Immediately until further notice.

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

(c) Allowable sale: Salmon (any species) and 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 may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs through July 31, 2020.

2) Open Areas: SMCRA 1E1 (Downstream of Bonneville Dam)

(a) Season: Immediately through 11:59 PM October 31, 2020, only during days and times opened under tribal rules. Enrolled members of the Yakama, Warm Springs, Nez Perce, and Umatilla tribes when lawfully permitted by Treaty regulations under provisions of the agreements with the states of Oregon and Washington. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

(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 may be sold or retained for subsistence. Sturgeon may not be retained in the fisheries downstream of Bonneville Dam.

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

(a) Season: Wind River open immediately until further notice and Drano Lake and Klickitat River from 12:01 AM August 1, 2020 until further notice, only during those days and hours when the tributaries listed 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.

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

4) 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).

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000B Columbia River salmon seasons.
(20-138)

WSR 20-16-102
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
[Filed July 31, 2020, 9:57 a.m., effective July 31, 2020, 9:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is extending the emergency rules listed below to assure [ensure] long-term care programs are not significantly impeded during the hiring process due to inability to access the tuberculosis (TB) testing required as a part of the hiring process. This will help to increase the number of long-term care workers necessary to provide essential services to some of Washington's most vulnerable adults during the outbreak of COVID-19. The situation continues that currently clinics providing TB testing are short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state.

The department filed a CR-101 Preproposal statement of inquiry as WSR 20-16-069 on July 29, 2020, to begin the permanent rule-making process.

Citation of Rules Affected by this Order: Repealing WAC 388-76-10265, 388-76-10285, 388-78A-2484 and 388-107-0490; and amending WAC 388-76-10290(1), 388-78A-2480(1), 388-78A-2485(1), 388-101D-0650(1), 388-101D-0660(3), and 388-107-0460(1).

Statutory Authority for Adoption: RCW 70.128.040, 71A.12.030; chapters 18.20, 70.97 RCW.

Other Authority: Chapters 70.128, 71A.12, 74.34 RCW.

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

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Although the state has a phased reopening plan, the situation continues that currently clinics providing TB testing are short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 4.

Date Adopted: July 29, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10290 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the adult family home must:

(1) (~~Ensure that the person has a chest X-ray within seven days;~~

(2)) Ensure each resident or employee with a positive test result is evaluated for signs and symptoms of tuberculosis; and

((~~3~~)) (2) Follow the recommendation of the person's health care provider.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2480 Tuberculosis—Testing—Required. (~~((1) The assisted living facility must develop and implement a system to ensure each staff person is screened for tuberculosis within three days of employment.~~

(2)) For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any assisted living facility employee or temporary employee of the assisted living facility, excluding volunteers and contractors.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2485 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the assisted living facility must:

(1) (~~Ensure that the staff person has a chest X-ray within seven days;~~

(2)) Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and

((~~3~~)) (2) Follow the recommendation of the resident or staff person's health care provider.

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0650 What must a group training home do to detect and manage tuberculosis? To detect and manage tuberculosis, a group training home must:

(1) ~~((Ensure each employee has a tuberculin test no more than three days after beginning to work with clients unless otherwise exempt under this chapter;~~

(2)) Implement policies and procedures that comply with tuberculosis standards set by the Centers for Disease Control and Prevention and applicable state laws;

~~((3))~~ (2) Comply with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection; and

~~((4))~~ (3) Comply with chapter 296-842 WAC requirements to protect the health and safety of clients who may come into contact with people who have infectious tuberculosis.

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0660 When is a group training home employee not required to complete a tuberculin test? (1) A group training home employee is not required to complete a tuberculin test if the employee:

(a) Has documentation of an FDA-approved tuberculin test with negative results from within the last twelve months;

(b) Has documentation of a positive FDA-approved tuberculin test with documented evidence of:

(i) Adequate therapy for active disease; or

(ii) Completion of treatment for latent tuberculosis infection preventive therapy;

(c) Self-reports a history of positive test results under subsection (2) or (3) of this section.

(2) If a group training home employee self-reports a history of positive test results with chest X-ray results from the last twelve months, the employee must:

(a) Provide a copy of the normal X-ray results to the group training home; and

(b) Be evaluated for signs and symptoms of tuberculosis.

(3) ~~((If a group training home employee self-reports a history of positive test results without chest X-ray results, the employee must:~~

~~(a) Be referred to a medical provider;~~

~~(b) Complete a chest X-ray within seven days; and~~

~~(c) Be cleared by a medical professional before returning to work if the X-ray is abnormal and consistent with tuberculosis.~~

(4)) A group training home volunteer working less than four hours a month is exempt from tuberculin test requirements.

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

WAC 388-107-0460 Tuberculosis (TB)—Testing—Required. The enhanced services facility must:

~~((1) Develop and implement a system to ensure staff have TB testing upon employment or starting service; and~~

~~(2)) Ensure that staff have an annual risk assessment completed using the Washington state department of health approved criteria.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10265 Tuberculosis—Testing—Required.

WAC 388-76-10285 Tuberculosis—Two step skin testing.

WAC 388-78A-2484 Tuberculosis—Two step skin testing.

WAC 388-107-0490 Tuberculosis (TB)—Two-step skin testing.

WSR 20-16-111

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-149—Filed July 31, 2020, 1:29 p.m., effective August 3, 2020]

Effective Date of Rule: August 3, 2020.

Purpose: The purpose of this rule is to close sockeye retention seasons in Baker Lake, effective August 3, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000Q.

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

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

Reasons for this Finding: This emergency rule is needed to close sockeye retention seasons in Baker Lake. The recreational sockeye fishery in Baker Lake opened when the Washington department of fish and wildlife and treaty comanagers agreed to a limited Baker Lake sockeye fishery provided catch did not exceed a level where less than one thousand five hundred sockeye remained in the lake to spawn naturally. Based on total catch, the number of fish remaining in the lake is approaching the escapement floor of one thousand five hundred fish and trap returns have slowed. Current estimates show that the escapement floor will be met by the end of the day August 2. The fishery is being closed to ensure conservation objectives are met.

Immediate repeal of WSR 20-15-082 is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 31, 2020.

Kelly Susewind
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective August 3, 2020:

WAC 220-312-04000Q Freshwater exceptions to statewide rules—Puget Sound.

WSR 20-16-119

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed July 31, 2020, 4:26 p.m., effective July 31, 2020, 4:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Due to cosmetology testing being closed from March 18, 2020, until July 27, 2020, and to account for the reduced testing capacity when testing resumes, the department of licensing will allow any cosmetology students hours that expired between March 18, 2020, and September 30, 2020, to be set to expire on September 30, 2020. This will allow students to test before their hours expire.

Citation of Rules Affected by this Order: Amending WAC 308-20-090, 308-20-091, and 308-20-101.

Statutory Authority for Adoption: RCW 18.16.030 and 43.24.023.

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 change is to remove barriers for students who were unable to test due to COVID-19 exam center closures.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, 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: July 31, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-02-033, filed 12/29/15, effective 1/29/16)

WAC 308-20-090 Student credit for training in a licensed school. (1) A maximum of twenty students per instructor is required within a licensed school.

(2) Only those hours of instruction a student is given under the direction of a licensed instructor of the licensed school in which the student is enrolled and in the courses listed in WAC 308-20-080 and 308-20-105 or hours earned under WAC 308-20-091 shall be credited toward completion of the course of study required in RCW 18.16.100.

(3) When all of a school's requirements have been met by a student and within thirty days of a student leaving a school, the school shall provide to the student a certified copy of the student's final report and refer the student for examination(s) in a manner and format prescribed by the department.

(4) Students may transfer between the schools and apprenticeship salon/shops licensed under chapter 18.16 RCW and may receive credit toward completion of the curriculum in the new school or apprenticeship salon/shop. In order to enroll a transfer student or apprentice, the new school or apprentice salon/shop shall do the following:

(a) Confirm that the student is available for transfer through the student registration process in a manner and format prescribed by the department;

(b) Evaluate the certified final student report provided by the student or apprentice and compare the report with the new school or apprentice salon/shop curriculum requirements; and

(c) The new school or apprentice salon/shop may accept or reject the final student or apprentice report in part or in total from the previous school or salon/shop and shall prepare a monthly report that documents the amount of instructions being accepted.

(5) Both the transferring and receiving school or salon/shop shall maintain student or apprentice records including the transfer record as required in WAC 308-20-040(4).

(6) Licensed instructors must be physically present where the students are training with the exception of approved online theory training.

(7) Certified training hours expire three years after the last day of attendance. Any hours earned by a student that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure. All certified training hours that expire between March 18, 2020, through September 30, 2020, will expire September 30, 2020.

(8) **Documentation** providing evidence of experience as a licensed cosmetologist, hair designer, barber, manicurist, esthetician or master esthetician credited towards instructor training shall be included in the student record as required in WAC 308-20-040(4).

AMENDATORY SECTION (Amending WSR 17-19-049, filed 9/12/17, effective 10/13/17)

WAC 308-20-091 Student credit for training in a licensed salon/shop. (1) A maximum ten percent of the total curriculum hours required may be earned by a student in a licensed salon/shop under a contract approved by the department signed by the student, the school owner, and the salon/shop manager.

(2) A copy of the signed contract shall be kept in the student file, kept on file at the salon shop and given to the student and shall be made available to the department on request.

(3) Only those hours of instruction a student is given under the direction of an operator licensed in the curriculum in which the student is enrolled in the contracted licensed salon/shop, and in the subjects agreed to in the contract shall be credited towards completion of the course of study required in RCW 18.16.100.

(4) Students will not receive any wages or commission for hours of credit earned in a salon/shop.

(5) Salon/shops shall provide weekly reports to the school and student with hours the student earned in each area of agreed training.

(6) Weekly reports provided by salon/shops verifying hours student earns in salon training must be included in student's records and recorded on student's monthly and final reports.

(7) Licensed operators must be physically present where students are training.

(8) Students in training must wear identification visible to the public that states that they are students in training.

(9) Certified training hours expire three years after the last day of attendance. Any hours earned by a student that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure. All certified training hours that expire between March 18, 2020, through September 30, 2020, will expire September 30, 2020.

AMENDATORY SECTION (Amending WSR 17-19-049, filed 9/12/17, effective 10/13/17)

WAC 308-20-101 Apprentice credit for training in an approved apprentice salon/shop. (1) A minimum of one trainer per apprentice is required.

(2) Only those hours of theory instruction given under the direction of an instructor licensed under chapter 18.16 RCW shall be credited towards completion of the apprentice curriculum requirements for theory hours. Cosmetologist, hair design, barber, manicurist, esthetician and master esthetician theory hours must be taught in a classroom setting under the supervision of an instructor licensed in the curriculum for which he or she is providing theory instruction.

(3) With the exception of theory hours, only those hours of instruction an apprentice is given under the direction of an apprentice trainer as defined in WAC 308-20-010 and in the standards developed by the apprenticeship program shall be credited toward completion of the apprenticeship training.

(4) When all of the apprenticeship program requirements have been met by the apprentice and within thirty days of an apprentice's completed training, the committee shall provide to the apprentice a copy of the apprentice's final report.

(5) An apprentice may transfer between shops only when the Washington state apprenticeship council or the Washington state department of labor and industries approves the transfer.

(6) Apprentice trainers and instructors must be physically present where apprentices are receiving practical training.

(7) Certified training hours expire three years from last date of attendance. Any hours earned by an apprentice that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure. All certified training hours that expire between March 18, 2020, through September 30, 2020, will expire September 30, 2020.

WSR 20-16-121

EMERGENCY RULES

STATE BOARD OF HEALTH

[Filed July 31, 2020, 5:10 p.m., effective July 31, 2020, 5:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-101-017 Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. The Washington state board of health has adopted an emergency rule to create a new section of rule that designates novel coronavirus (SARS-CoV-2), also known as coronavirus disease 2019 (COVID-19) as a notifiable condition and requires health care providers, health care facilities, laboratories, and local health jurisdictions to report race, ethnicity, and other demographic data for cases of COVID-19.

Citation of Rules Affected by this Order: New WAC 246-101-017.

Statutory Authority for Adoption: RCW 43.20.050.

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 immediate adoption of a rule designating COVID-19 as a notifiable condition, and requiring the reporting of race, ethnicity, and other demographic data by health care providers, health care facilities, laboratories, and local health jurisdictions related to cases of COVID-19 is necessary to comply with federal law and related guidance. Immediate adoption of this rule is necessary for the preservation of the public health, safety and general welfare of the state of Washington during this pandemic.

Public Law 116-136, § 18115(a), the Coronavirus Aid, Relief, and Economic Security (CARES) Act, requires

"every laboratory that performs or analyzes a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19" to report the results from each such test to the Secretary of the United States Department of Health and Human Services (HHS). In addition, the statute authorizes the secretary of HHS to prescribe the form and manner, and timing and frequency, of such reporting. On June 4, 2020, the secretary of HHS finalized and published guidance on COVID-19 CARES Act reporting requirements. The guidance required that all data be reported through existing public health data reporting methods. Of these requirements, demographic information such as the patient's age, race, ethnicity, and sex must be collected and reported to state or local public health departments using existing reporting channels in accordance with state law or policies.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 1, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 30, 2020.

Michelle A. Davis
Executive Director

NEW SECTION

WAC 246-101-017 Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. (1) Designating coronavirus disease 2019 (COVID-19), and the novel coronavirus (SARS-CoV-2) that causes it, as a notifiable condition, and requiring the reporting of race and ethnicity and other essential data by health care providers, health care facilities, laboratories, and local health departments related to cases of COVID-19 are necessary to ensure that public health agencies receive complete notice of COVID-19 cases and to address racial and ethnic inequities in morbidity and mortality among individuals with the disease. This rule is also necessary to align with the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and the U.S. Department of Health and Human Services laboratory data reporting requirements for COVID-19 testing, which require reporting of COVID-19 data to the appropriate state or local health department and the U.S. Department of Health and Human Services, and further, that any person or entity ordering a diagnostic or serologic test, collecting a specimen, or performing a test should make every reasonable effort to collect complete demographic information and include such data when ordering a laboratory test to enable the entities performing the test to report these data to state and local public

health departments. In the midst of this global pandemic, immediate adoption of a rule requiring notice of novel coronavirus (SARS-CoV-2) as a notifiable condition and reporting of race, ethnicity, and other essential data is necessary for the preservation of public health, safety, and general welfare.

(2) For the purpose of this section:

(a) "Health care facility" means:

(i) Any assisted living facility licensed under chapter 18.20 RCW; birthing center licensed under chapter 18.46 RCW; nursing home licensed under chapter 18.51 RCW; hospital licensed under chapter 70.41 RCW; adult family home licensed under chapter 70.128 RCW; ambulatory surgical facility licensed under chapter 70.230 RCW; private establishment licensed under chapter 71.12 RCW; or enhanced service facility licensed under chapter 70.97 RCW; and

(ii) Clinics, or other settings where one or more health care providers practice.

(b) "Immediately" means without delay, twenty-four hours a day, seven days a week.

(c) "Secure electronic data transmission" means electronic communication and accounts developed and maintained to prevent unauthorized access, loss, or compromise of sensitive information including, but not limited to, secure file transfer, secure facsimile, a health information exchange authorized under RCW 41.05.039, and secure electronic disease surveillance system.

(d) "Secure electronic disease surveillance system" means the secure electronic data transmission system maintained by the department and used by local health departments to submit notifications, investigation reports, and outbreak reports under this chapter.

(e) Patient's race shall be reported using one or more of the following categories:

(i) Afro-Caribbean;

(ii) American Indian or Alaska Native;

(iii) Asian Indian;

(iv) Black or African American;

(v) Chinese;

(vi) Congolese;

(vii) Eritrean;

(viii) Ethiopian;

(ix) Filipino;

(x) Guamanian or Chamorro;

(xi) Japanese;

(xii) Kenyan;

(xiii) Korean;

(xiv) Middle Eastern/North African;

(xv) Native Hawaiian;

(xvi) Other African Immigrant;

(xvii) Other Asian;

(xviii) Other Pacific Islander;

(xix) Samoan;

(xx) Somali;

(xxi) South African;

(xxii) Ugandan;

(xxiii) Vietnamese;

(xxiv) White; and

(xxv) Refused to answer.

(f) Patient's ethnicity shall be reported using one or more of the following categories:

- (i) Cuban;
- (ii) Mexican, Mexican American, Chicano/a;
- (iii) Not of Hispanic, Latino/a, or Spanish origin;
- (iv) Other Hispanic, Latino/a, or Spanish origin;
- (v) Puerto Rican; and
- (vi) Refused to answer.

(g) Patient's preferred language shall be reported using one of the following categories:

- (i) Amharic;
- (ii) Arabic;
- (iii) Burmese;
- (iv) Chinese;
- (v) Chuukese;
- (vi) English;
- (vii) Filipino/Pilipino;
- (viii) French;
- (ix) German;
- (x) Hindi;
- (xi) Hmong;
- (xii) Japanese;
- (xiii) Karen languages;
- (xiv) Korean;
- (xv) Lao;
- (xvi) Marshallese;
- (xvii) Nepali;
- (xviii) Oromo;
- (xix) Persian;
- (xx) Portuguese;
- (xxi) Punjabi;
- (xxii) Romanian;
- (xxiii) Russian;
- (xxiv) Samoan;
- (xxv) Somali;
- (xxvi) Spanish;
- (xxvii) Swahili;
- (xxviii) Tagalog;
- (xxix) Tamil;
- (xxx) Telugu;
- (xxxi) Thai;
- (xxxii) Tigrinya;
- (xxxiii) Urdu;
- (xxxiv) Ukrainian;
- (xxxv) Vietnamese;
- (xxxvi) Other language; and
- (xxxvii) Refused to answer.

(h) Ask on order entry questions are:

(i) Is this the patient's first novel coronavirus (SARS-CoV-2) test? (yes, no, unknown);

(ii) Is the patient employed in health care? (yes, no, unknown);

(iii) Is the patient symptomatic as defined by the Centers for Disease Control and Prevention (CDC)? (yes, no, unknown). If yes, then provide date of symptom onset (mm/dd/yy);

(iv) Is the patient hospitalized for novel coronavirus (SARS-CoV-2)? (yes, no, unknown);

(v) Is the patient in the intensive care unit (ICU)? (yes, no, unknown);

(vi) Is the patient a resident in a congregate care setting (including, but not limited to, nursing homes, residential care for people with intellectual and developmental disabilities, psychiatric treatment facilities, group homes, board and care homes, homeless shelter, foster care, correctional facilities, farmworker housing)? (yes, no, unknown); and

(vii) Is the patient pregnant? (yes, no, unknown).

(3) Unless a health care facility has assumed the notification duties of the principal health care provider under subsection (8) of this section, or a laboratory director in a health care facility where laboratory point of care testing occurs under a certificate of waiver as described in WAC 246-338-020 has fulfilled the laboratory notification requirements as described in subsection (10) of this section, the principal health care provider shall submit individual case reports of novel coronavirus (SARS-CoV-19) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within twenty-four hours of receiving a laboratory confirmed positive test result; and

(b) Following the requirements of this section, WAC 246-101-105 and 246-101-120; excluding the requirements in WAC 246-101-105(10).

(4) The local health officer may waive or partially waive subsection (3) of this section if the local health officer determines individual case reports of novel coronavirus (SARS-CoV-19) submitted by health care providers are not needed and are not promoting public health for any reason including, but not limited to, the local health department being unable to process the volume of case reports. The local health officer shall notify health care providers upon their determination.

(5) A health care facility shall submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within twenty-four hours of receiving a laboratory confirmed positive test result; and

(b) Following the requirements of this section, WAC 246-101-305 and 246-101-320; excluding the requirement in WAC 246-101-305(4).

(6) Health care providers and health care facilities shall provide the local health department with the information identified in Column A of Table 1 in this section for individual case reports concerning novel coronavirus (SARS-CoV-2).

(7) The local health officer may waive or partially waive subsection (5) of this section if the local health officer determines individual case reports of novel coronavirus (SARS-CoV-19) submitted by health care facilities are not needed and are not promoting public health for any reason including, but not limited to, the local health department being unable to process the volume of case reports. The local health officer shall notify health care facilities upon their determination.

(8) A health care facility may assume the notification requirements established in this section for a health care provider practicing within the health care facility.

(9) A health care facility shall not assume the notification requirements established in this section for a laboratory that is a component of the health care facility.

(10) A principal health care provider is not required to submit individual case reports of novel coronavirus (SARS-CoV-19) to the local health department when the provider practices in a health care facility where laboratory point of care testing occurs under a certificate of waiver as described in WAC 246-338-020 and the laboratory director has fulfilled the laboratory notification requirements under subsections (12), (13), (14), (15), and (16) of this section.

(11) Health care providers and health care facilities shall provide the laboratory with the information identified in Column A of Table 1 in this section for each test ordered for novel coronavirus (SARS-CoV-2).

(12) For specimens associated with novel coronavirus (SARS-CoV-2) sent to a laboratory outside of Washington state, health care providers, health care facilities, and laboratories shall provide the out-of-state laboratory with a copy of chapter 246-101 WAC if they arrange for the out-of-state laboratory to report the test results consistent with WAC 246-101-105 (5)(a), 246-101-205 (1)(f)(i), or 246-101-305 (1)(e) (i) to the local health department as required under this subsection.

(13) A laboratory director shall submit individual case reports of positive, negative, and indeterminate test results for novel coronavirus (SARS-CoV-2) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within twenty-four hours; and

(b) Following the requirements of this section, WAC 246-101-205 and 246-101-230; excluding the requirements in WAC 246-101-205(3).

(14) A laboratory director shall provide the information identified in Column B of Table 1 in this section to the local health department with each novel coronavirus (SARS-CoV-2) laboratory report.

(15) A laboratory director, upon request by the local health department or the department, shall submit novel coronavirus (SARS-CoV-2) presumptive positive isolates or, if no isolate is available, the specimen associated with the presumptive positive result to the Washington state public health laboratories within two business days of request. Specimens shall be sent to:

Washington State Public Health Laboratories
Washington State Department of Health
1610 N.E. 150th Street
Shoreline, WA 98155

(16) If the local health department or the department requests a specimen under subsection (14) of this section, a laboratory director shall provide the Washington state public health laboratories with the information identified in Column C of Table 1 in this section with each specimen submitted.

(17) When referring a specimen to another laboratory for a test for novel coronavirus (SARS-CoV-2), a laboratory director shall provide the reference laboratory with the information identified in Column D of Table 1 in this section for each test referral.

(18) A local health department shall, using a secure electronic disease surveillance system:

(a) Notify the department immediately upon receiving a case report of positive, negative, or indeterminate test results for novel coronavirus (SARS-CoV-2); and

(b) Submit individual investigation reports of novel coronavirus (SARS-CoV-2) to the department immediately upon completing the case investigation.

(19) Notifications required under subsection (18)(a) of this section must include the information identified in Column E of Table 1 in this section.

(20) Investigation reports required under subsection (18)(b) of this section must include the information identified in Column F of Table 1 of this section.

(21) A local health department shall immediately reassign cases to the department upon determining the patient who is the subject of the case:

(a) Is a resident of another local health department; or

(b) Resides outside Washington state.

(22) A local health department, upon consultation with the department, may forward novel coronavirus (SARS-CoV-2) individual case reports submitted by laboratories, health care providers, and health care facilities to the department for data entry and processing.

(23) The local health officer or the state health officer may request additional information of epidemiological or public health value when conducting a case investigation or otherwise for prevention and control of a specific notifiable condition.

Table 1

Required Reporting for Health Care Providers, Health Care Facilities, Laboratories, and Local Health Departments

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory director shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory director shall provide the department with the following information with each specimen submitted:	Column D: Laboratory director shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Patient's name	X	X	X	X	X	X
Patient's notifiable condition	X	X	X	X	X	X
Patient's date of birth, or if not available, patient's age	X	X	X	X	X	X
Patient's sex	X	X	X	X	X	X
Patient's race, using the categories described in subsection (2)(e) of this section	X	X	X	X	X	X
Patient's ethnicity, using the categories described in subsection (2)(f) of this section	X	X	X	X	X	X
Patient's preferred language, using the categories described in subsection (2)(g) of this section	X	X	X	X	X	X
Patient's full physical address including zip code	X	X	X	X	X	X
Patient's telephone number	X	X	X	X	X	X
Telephone number of patient's emergency contact	X	X	X	X	X	X
Initial notification source					X	X
Patient's diagnosis of disease or condition	X					

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory director shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory director shall provide the department with the following information with each specimen submitted:	Column D: Laboratory director shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Pertinent laboratory data	X					
Test ordered, using harmonized LOINC codes provided by the CDC		X	X	X	X*	X*
Date test ordered		X	X	X	X*	X*
Device identifier		X	X		X*	X*
Type of specimen tested	X	X	X	X	X*	X*
Specimen source, using appropriate SNOMED-CT, or equivalently detailed laboratory local codes, or a specimen-specific LOINC code for test performed		X	X	X	X*	X*
Date of specimen collection	X	X	X	X	X	X
Date specimen received by reporting laboratory		X	X		X*	X*
Accession number or specimen ID		X	X		X*	X*
Test performed and result, using appropriate LOINC and SNOMED codes, as defined by the Laboratory in Vitro Diagnostics (LIVD) Test Code Mapping for SARS-CoV-2 tests provided by the CDC		X	X		X*	X*
Test result date		X	X		X*	X*

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory director shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory director shall provide the department with the following information with each specimen submitted:	Column D: Laboratory director shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Condition symptom onset date (preferred), or alternatively, diagnosis date						X
Answers to the ask on order entry questions under subsection (2)(h) of this section	X	X		X	X	X
Ordering health care provider's name	X	X	X	X	X	X
Ordering health care provider's National Provider Identifier (as applicable)	X	X	X	X	X	X
Ordering health care provider's telephone number	X	X	X	X	X	X
Ordering health care provider's address including zip code	X	X	X	X	X	X
Name and telephone number of the person providing the report	X					
Performing laboratory's name		X	X		X*	X*
Performing laboratory's CLIA number, if known		X	X		X*	X*
Performing laboratory's zip code		X	X		X*	X*
Performing laboratory's phone number		X	X		X*	X*
Date local health department was notified					X	X

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory director shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory director shall provide the department with the following information with each specimen submitted:	Column D: Laboratory director shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Hospitalization status of the patient						X
Whether the patient died during this illness						X
Source or suspected source						X

* Local health departments are not required to submit this information if the notification came from a health care provider or health care facility. All other information indicated in Columns E and F is still required in these instances.