WSR 21-05-006
EMERGENCY RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 4, 2021, 11:24 a.m., effective February 4, 2021, 11:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule revision provides some necessary accommodations for youth reengagement programs as a result of the ongoing coronavirus (COVID-19) pandemic. First, the emergency rule provides necessary clarification regarding acceptable "face-to-face" engagements when a reengagement program is being administered in remote learning environments made necessary by the global COVID-19 pandemic. Second, the rule extends the reengagement programs apportionment count date for the month of September 2020 to allow schools to claim apportionment for students unable to enroll and begin school until later in the month due to the impact of the pandemic and wildfires. Third, the rule removes some "prior month" requirements for October 2020 apportionment to address the impact caused by late student enrollment and participation in September 2020 due to the COVID-19 pandemic.

Citation of Rules Affected by this Order: Amending WAC 392-700-015 and 392-700-160.

Statutory Authority for Adoption: RCW 28A.175.100.

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: Students being served through reengagement programs under chapter 392-700 WAC must still be able to receive educational services, including the face-to-face interaction time required under WAC 392-700-015, as school districts begin the school year by offering remote learning due to the global COVID-19 pandemic. Because face-to-face, in-person interaction is not feasible for all students participating in remote learning, this emergency rule amendment is necessary to ensure students will be able to access services through different means of contact in the 2020-21 school year. Office of superintendent of public instruction (OSPI) is initiating rule making to make this change permanent through the remainder of the school year. The pandemic and wildfire season also created situations where students were unable to enroll or participate until later in September. OSPI's school apportionment rules have been modified for the traditional learning environment to allow for later enrollment and participation for this month. This emergency rule revision aligns with those rules and removes the impacts that late enrollment would create to October enrollment apportionment. On September 16, 2020, OSPI initiated permanent rule making to amend the rule for the remainder of the 2020-21 school year.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: February 4, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month. For the 2020-21 school year, face-to-face interaction means reciprocal communication happening in real time through in-person, telephone, email, instant messaging, interactive video communication, or other means of digital communication, and in addition to the weekly status check.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

(5) **"College"** means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

(6) **"College level class"** is a class provided by a college that is one hundred level or above.

(7) **"Consortium"** means a regional group of organizations that consist of districts, tribal compact schools, charter schools and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts, tribal compact schools, and charter schools and reduce the administrative burden.

(8) **"Consortium agreement"** means the agreement that is signed by the authorized consortium lead and all district, tribal compact school, and charter school superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts, tribal compact schools, and charter schools.

(9) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

(10) **"Count day"** is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For September 2020, the count day is any day of that month. For the remaining months, the count day is the first instructional day.

(11) **"Credential"** is identified as one of the following:

(a) High school diploma; or

(b) Associate degree.

(12) **"Enrolled student"** is an eligible student whose enrollment and attendance meets the criteria outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding. An enrolled student can be further defined as one of the following:

(a) **New student** is an enrolled student who is being claimed for state funding for the first time by the program.

(b) **Continuing student** is an enrolled student who has continuously been enrolled in the program and claimed for state funding on at least one count day.

(c) **Returning student** is an enrolled student who has returned to the program after not receiving program services for a period of at least one count day and not more than ten count days.

(d) **Reenrolling student** is an enrolled student who has reenrolled in the program after not receiving program services for a period of eleven count days or more.

(13) **"ERDC"** refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(14) **"Full-time equivalent (FTE)"** is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

(15) **"Indicator of academic progress"** means a standard academic benchmark that demonstrates academic performance which is attained by a reengagement student. These indicators will be tracked and reported by the program and district, tribal compact school, or charter school for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

(a) Earns at minimum a 0.25 high school credit;

(b) Earns at minimum a whole college credit;

(c) Receives a college certificate after completion of a college program requiring at least forty hours of instruction;

(d) Receives an industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction;

(e) Passes one or more tests or benchmarks that would satisfy the state board of education's graduation requirements as provided in chapter 180-51 WAC;

(f) Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;

(g) Makes a significant gain in a core academic subject based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);

(h) Successfully completes a grade level curriculum in a core academic subject that does not earn high school or college credit;

(i) Successfully completes college readiness course work with documentation of competency attainment;

(j) Successfully completes job search and job retention course work with documentation of competency attainment;

(k) Successfully completes a paid or unpaid cooperative work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);

(l) Enrolls in a college level class for the first time (limited to be claimed once per enrolled student);

(m) Successfully completes an English as a second language (ESL) class;

(n) Successfully completes an adult basic education (ABE) class; or

(o) Successfully completes a series of short-term industry recognized certificates equaling at least forty hours.

(16) **"Instructional staff"** means the following:

(a) For programs operated by a district, tribal compact school, charter school, or agency, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205; and

(b) For programs operated by a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college.

(17) **"Letter of intent"** means the document signed by the district, tribal compact school, charter school, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, tribal compact school, charter school, college, or agency agree to implement.

(18) **"Noninstructional staff"** is any person employed in a position that is not an instructional staff as defined under subsection (16) of this section.

(19) **"OSPI"** means the office of superintendent of public instruction.

(20) **"Program"** means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

(21) **"School year"** is the twelve-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

(22) **"Scope of work"** means the document signed by district, tribal compact school, or charter school superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district, tribal compact school, or charter school, and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district, tribal compact school, or charter school agree to implement.

(23) **"Resident district"** means the district where the student resides or a district that has accepted full responsibility for a student who lives outside of the district through the choice transfer process pursuant to RCW 28A.225.200 through 28A.225.240. For students enrolled in a tribal compact school or charter school, the tribal compact school or charter school is the student's resident district.

(24) **"Weekly status check"** means individual communication from a designated program staff to a student. Weekly status check:

(a) Can be accomplished in person or through the use of telephone, email, instant messaging, interactive video communication, or other means of digital communication;

(b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;

(c) Must be documented; and

(d) Must occur at least once every week that has at least three days of instruction.

(25) **"Tribal compact school"** means a school that is the subject of a state-tribal education compact operated according to the terms of its compact executed in accordance with RCW 28A.715.010.

(26) **"Charter school"** means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school board, and operated according to the terms of a charter contract executed under chapter 28A.710 RCW.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-160 Reporting of student enrollment. (1) For all programs, the following will apply when reporting student enrollment for each monthly count day:

(a) Met all eligibility criteria pursuant to WAC 392-700-035;

(b) Been accepted for enrollment by the reporting district, tribal compact school, charter school, or the direct-funded technical college;

(c) Enrolled in an approved program pursuant to WAC 392-700-042;

(d) For continuing students, met the attendance period requirement pursuant to WAC 392-700-015(3), except for the October 2020 count, where this requirement is waived;

(e) For continuing students, met the weekly status check requirement pursuant to WAC 392-700-015(24), except for the October 2020 count, where this requirement is waived;

(f) Has not withdrawn or been dropped from the program on or before the monthly count day;

(g) Is not enrolled in course work that has been reported by a college for postsecondary funding;

(h) Is not eligible to be claimed by a state institution pursuant to WAC 392-122-221;

(i) Is not enrolled in a high school class, including alternative learning experience, college in the high school, or another reengagement program, excluding Jobs for Washington's Graduates, special education and/or transitional bilingual instructional program;

(j) If concurrently enrolled in a special education, transitional bilingual instruction, skills center, or running start program, does not exceed the FTE limitation pursuant to WAC 392-121-136; and

(k) A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined FTE does not exceed 1.0 FTE in any month.

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined AAFTE does not exceed 1.0 AAFTE for the school year.

(2) For all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress.

(a) Satisfactory progress is defined as the documented attainment of at least one indicator of academic progress identified in WAC 392-700-015(15).

(b) Continuing students and returning students who, after being claimed for state funding for three count days excluding the September count day, have not earned an indicator of academic progress cannot be claimed for state funding until an indicator of academic progress is earned.

(i) During this reporting funding exclusion period, the program may permit the student to continue to attend;

(ii) When the student achieves an indicator of academic progress, the student may be claimed for state funding on the following count day; and

(iii) Rules governing the calculation of the three count day period are:

(A) The September count day is excluded from the three count day period for the indicator of academic attainment. Students whose enrollment spans over the September count day have an additional month to earn an indicator of academic progress.

(B) The three count days may occur in two different school years, if the student is enrolled in consecutive school years; and

(C) The three count days are not limited to consecutive months, if there is a break in the student being claimed for state funding.

(3) For below one hundred level classes, student enrollment will be reported as 1.0 FTE on each monthly count day.

Enrollment in below one hundred level classes is limited to nonvocational funding and the FTE cannot be claimed as vocational.

(4) For college level classes, student enrollment will be reported as follows:

(a) The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;

(ii) A student enrolled in more than fifteen college credits is limited to be reported as 1.0 FTE for that month; and

(iii) If a student is enrolled for less than fifteen college credits, the FTE is calculated by dividing the enrolled college credits by fifteen.

(b) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be

claimed for enhanced vocational funding as a vocational FTE.

WSR 21-05-008
EMERGENCY RULES
SOUTH PUGET SOUND COMMUNITY COLLEGE

[Filed February 4, 2021, 12:49 p.m., effective February 4, 2021, 12:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's code of student rights and responsibilities to be compliant with federal regulations. Included will be language to update and clarify guidelines and procedural changes on the necessary supplemental Title IX procedures.

Citation of Rules Affected by this Order: New Supplemental Title IX Procedures, WAC 132X-60-200, 132X-60-210, 132X-60-220, 132X-60-230, 132X-60-240, 132X-60-250, 132X-60-260, 132X-60-270, and 132X-60-280.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

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: South Puget Sound Community College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, 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: February 4, 2021.

Dr. Timothy S. Stokes
College President

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132X-60-200 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 South Puget Sound Community College's standard disciplinary procedures in chapter 132X-60 WAC, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132X-60-210 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, South Puget Sound Community College 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 college employee conditioning the provision of an aid, benefit, or service of the college 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 college's 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, sex-

ual 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 132X-60-220 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college 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 college 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 college.

(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 college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code in chapter 132X-60 WAC.

(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 vice president for student services or their designee 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 132X-60-230 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the vice president for student services or their designee 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 vice president for student services or their designee determines that there are sufficient grounds to proceed under these supplemental procedures, the vice president for student services or their designee 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 college will appoint the party an advisor of the college's 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 132X-60-240 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 chapter 132X-60 WAC. In no event will the hearing date be set less than ten business 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 business 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 college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132X-60-250 Rights of parties. (1) The college's standard student conduct procedures in chapter 132X-60 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college 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 college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132X-60-260 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 132X-60-270 Initial order. (1) In addition to complying with chapter 132X-60 WAC, 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 college's education programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

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

NEW SECTION

WAC 132X-60-280 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 chapter 132X-60 WAC.

(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 21-05-011
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed February 4, 2021, 3:27 p.m., effective February 4, 2021, 3:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of social and health services division of child support (DCS) files this CR-103E Rulemaking order to adopt emergency rules amending chapter 388-14A WAC in order to implement SHB 2302 (chapter 227, Laws of 2020) regarding abatement. Relevant provisions of SHB 2302 took effect February 1, 2021.

Citation of Rules Affected by this Order: New WAC 388-14A-3935, 388-14A-3940, 388-14A-3945, 388-14A-3950, 388-14A-3955, 388-14A-3960, 388-14A-3965, 388-14A-3970 and 388-14A-3975; and amending WAC 388-14A-1020, 388-14A-3800, 388-14A-3900, 388-14A-3901, 388-14A-3903, 388-14A-3925, and 388-14A-6100.

Statutory Authority for Adoption: Emergency rule making is authorized under RCW 34.05.350 (1)(a) and (b) in order to implement SHB 2302 (chapter 227, Laws of 2020) regarding incarceration abatement, which took effect on Feb-

ruary 1, 2021. Further authority is found in RCW 26.09.105, 26.18.170, 26.19.011, 26.19.071, 26.23.050, 26.23.110, 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20A.055, and 74.20A.056.

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

Reasons for this Finding: The legislature enacted SHB 2302 during the 2020 legislative session. Several provisions required to implement incarceration abatement have a February 1, 2021, effective date. These provisions direct DCS to abate child support payments for certain incarcerated individuals. Emergency rule making is necessary to effectuate these statutory changes.

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 9, Amended 7, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 7, 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 9, Amended 7, Repealed 0.

Date Adopted: February 4, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-02-017, filed 12/21/18, effective 1/21/19)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Abatement" means the temporary reduction of child support obligations of an incarcerated person who is required to pay support.

"Absence of a court order" means that there is no court order either setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health care coverage which provides primary care services to the children with reasonable effort by the custodial parent.

"Accrued debt" means past-due child support which has not been paid.

"Acknowledged father" means a man who has established a father-child relationship by:

(1) Signing a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 prior to January 1, 2019;

(2) Signing a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265 on or after January 1, 2019; or

(3) Signing a valid acknowledgment of paternity or parentage under another jurisdiction's laws.

"Acknowledged parent" means an individual who, after January 1, 2019, has established a parent-child relationship by signing a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265.

"Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by the agency of an Indian tribe or another state or country's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

(1) An order entered under chapter 34.05 RCW;

(2) An agreed settlement or consent order entered under WAC 388-14A-3600; and

(3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state or tribe, or the central authority of another country. For the state of Washington, the Title IV-D provider is the division of child support (DCS) within the department of social and health services (DSHS).

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC) program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the fee charged on never-assistance cases based on the amount of collections between October 1 and September 30 each year, required by the Federal Deficit Reduction Act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and **"recipient"** means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"Birth costs" means medical expenses incurred by the custodial parent or the state, tribe, or country for the birth of a child.

"Cash medical support" means a combination of:

(1) A parent's monthly payment toward the premium paid for coverage provided by a public entity or by another parent, which represents the obligated parent's proportionate share of the premium paid, but this amount is limited to no more than twenty-five percent of the obligated parent's basic support obligation; and

(2) A parent's proportionate share of uninsured medical expenses.

"Central authority" means the agency designated by a government to facilitate support enforcement with a foreign reciprocating country (FRC) pursuant to section 459A of the federal Social Security Act.

"Child," for the purposes of this chapter, means:

(a) An individual for whom a child support obligation is being established or enforced; or

(b) A dependent child as defined in RCW 74.20A.020 (3); and

(c) Unless the context or the facts of a particular case clearly requires otherwise, "child" may be used interchangeably with the term "children."

"Children," for the purpose of this chapter, means more than one child, unless the context or the facts of a particular case clearly requires the term to refer to only one child.

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Controlling order" means the only order issued or, where multiple orders exist, the order determined by a tribunal to control prospective current support pursuant to the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

"Controlling order state" means the state in which the only order was issued or, where multiple orders exist, the state in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued.

"Country" means a foreign country (or a political subdivision thereof) declared to be a Foreign Reciprocating Country (FRC) under 42 U.S.C. 659A and any foreign country (or political subdivision thereof) with which the state has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with federal law pursuant to 42 U.S.C. 659A.

"Court order" means a judgment, decree or order of a Washington state superior court, or a court of comparable jurisdiction of an Indian tribe or another state or country.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

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

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Determination of parentage" means the establishment of the parent-child relationship by:

(1) A judicial proceeding;

(2) The signing of a valid acknowledgment of paternity under:

(a) RCW 26.26.300 through 26.26.375 prior to January 1, 2019; or

(b) Another jurisdiction's laws dealing with the acknowledgment or affidavit of paternity or the acknowledgment of parentage; or

(3) The signing of a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265 on or after January 1, 2019.

"Differentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child and may justifiably be divided into "per child" amounts for each child covered by the support order, based on information contained in the support order.

"Differentiated support order" means a child support order which provides a monthly amount of child support for two or more children, and either provides a specific support obligation for each child or provides enough information in the order so that the monthly amount may justifiably be

divided into a "per child" amount for each child covered by the support order.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

"Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Benefits under the family and medical leave insurance program under Title 50A RCW;

(7) Gains from capital, labor, or a combination of the two; and

(8) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or one or more children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the child or children, and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington, including an order entered by a tribunal in an Indian tribe or another state or country.

"Foreign reciprocating country" or FRC means a country which the federal government has declared to be a foreign reciprocating country, which means that the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to custodial parents who are residents of the United States, and that such procedures are substantially in conformity with the standards prescribed under title IV-D of the federal Social Security Act.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the department of children, youth, and families (DCYF).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

(1) The representation of the existence or the nonexistence of a fact;

(2) The representation's materiality;

(3) The representation's falsity;

(4) The speaker's knowledge that the representation is false;

(5) The speaker's intent that the representation should be acted on by the person to whom it is made;

(6) Ignorance of the falsity on the part of the person to whom it is made;

(7) The latter's:

(a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs" means medical expenses. Certain statutes in chapter 26.19 RCW refer to medical expenses as health care costs.

"Health care coverage" means fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which medical services could be provided to a dependent child or children. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. The term "health care coverage" includes, but is not limited to, health insurance coverage.

"Health insurance" or **"health insurance coverage"** is included in the definition of "health care coverage." Health insurance coverage includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a

commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or a health maintenance organization pursuant to chapter 48.46 RCW, and the state through chapter 41.05 RCW.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

(1) All gains in real or personal property;

(2) Net proceeds from the sale or exchange of real or personal property;

(3) Earnings;

(4) Interest and dividends;

(5) Proceeds of insurance policies;

(6) Other periodic entitlement to money from any source; and

(7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

(1) Asserting liens under RCW 74.20A.060;

(2) Serving and enforcing liens under chapter 74.20A RCW;

(3) Issuing orders to withhold and deliver under chapter 74.20A RCW;

(4) Issuing notices of payroll deduction under chapter 26.23 RCW; and

(5) Obtaining wage assignment orders under RCW 26.18.080.

"Initiating agency" or **"initiating jurisdiction"** means a state or Tribal IV-D agency or the central authority of another country, as defined in this rule, in which an individual has applied for or is receiving services.

"Intergovernmental IV-D case" means a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and children that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between states, tribes, and countries. An intergovernmental IV-D case also may include cases in which a state agency is seeking only to collect support arrearages, whether owed to the family or assigned to the state.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF. This term includes public health care coverage, which is called apple health in Washington state.

"Medical expenses," for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.18, 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical costs incurred on behalf of a child, which include:

• Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and

• Prescribed medical equipment and prescribed pharmacy products;

• Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;

• Dental, orthodontic, and optometrical costs incurred on behalf of a child; and

• Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" consists of:

(1) Health care coverage, which may be health insurance coverage or public health care coverage; and

(2) Cash medical support, which consists of:

(a) A parent's monthly payment toward the premium paid for coverage provided by a public entity or by another parent, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and

(b) A parent's proportionate share of uninsured medical expenses.

"Monthly payment toward the premium" means a parent's contribution toward premiums paid for coverage provided by a public entity or by another parent, which is based on the obligated parent's proportionate share of the premium paid, but is limited to no more than twenty-five percent of the obligated parent's basic support obligation.

"National Medical Support Notice" or **"NMSN"** is a federally mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural or biological parent, adoptive parent, adjudicated parent, presumed parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity or parentage, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Nonmedical expenses" means amounts incurred on behalf of a child which are not medical expenses as defined in this chapter. Nonmedical expenses include, but are not limited to, day care or other special childrearing expenses such as tuition and long-distance transportation costs to and from the parents for visitation purposes.

"Obligated parent" means a parent who is required under a child support order to provide medical support, which could include health care coverage or to reimburse the other parent for his or her share of uninsured medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

(1) Directly benefits the dependent child; and

(2) Relates to the parent's residential time or visitation with the child.

"Parent" means an individual who has established a parent-child relationship under:

(1) RCW 26.26.101 prior to January 1, 2019;

(2) RCW 26.26A.100 on or after January 1, 2019; or

(3) Under the laws of another jurisdiction.

"Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrears" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 U.S.C. 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Premium" means the amount paid for coverage provided by a public entity or by another parent for a child covered by a child support order. This term may also mean "cost of coverage."

"Presumed parent" means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

"Private insurance" is a term used in this chapter to refer to accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include public health care coverage provided by the state.

"Proportionate share" or **"proportional share"** means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

"Public health care coverage," sometimes called "state purchased health care," means state-financed or federally financed medical coverage, whether or not there is an assignment of rights. For children residing in Washington state, public health care coverage is called apple health; this includes coverage through the department of social and health services or the health care authority, except for coverage under chapter 41.05 RCW. For children residing outside of Washington, this includes coverage through another state's agencies that administer state purchased health care programs.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responding agency" or **"responding jurisdiction"** means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support," depending on the context in which it is used, can mean one of the following:

(1) An amount paid directly to the custodial parent by the noncustodial parent during a time when there is an open TANF grant, which the custodial parent does not immediately report or turn over to the department;

(2) A debt owed to the division of child support by anyone other than a noncustodial parent; or

(3) Amounts collected and retained by the division of child support which are applied to current or past due child support obligations which have been assigned to the state.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

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

"Self-support reserve" or **"self support reserve"** means an amount equal to one hundred twenty-five percent of the federal poverty guideline for a one-person family.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of a court of comparable jurisdiction in an Indian tribe or another state or country.

"Support debt" means support which was due under a support order but has not been paid. This includes:

(1) Delinquent support;

(2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including uninsured medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;

(3) A debt under RCW 74.20A.100 or 74.20A.270; or

(4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, reimbursement for uninsured medical expenses, health care coverage, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health care coverage, uninsured medical expenses, birth costs, and child care or special child rearing expenses.

"Support order" means a court order, administrative order or tribal court order which contains a determination, finding, decree or order that sets a child support obligation (including medical support) and orders either the payment of a set or determinable amount of money for current support and/or a support debt, or the provision of medical support, or both. For purposes of abatement under this chapter, a support order includes the child support obligation and the obligations based on the terms of the basic child support order, such as those determined by notices of support owed.

"Temporarily assigned arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-D agency" or **"IV-D agency"** means the agency responsible for carrying out the Title IV-D plan in a state or tribe. For the state of Washington, this is the division of child support (DCS) within the department of social and health services (DSHS).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage, and includes such courts, agencies or entities in other states or countries.

"Underlying order" means an existing child support order for which DCS serves a notice of support owed under RCW 26.23.110 to determine a sum certain support obligation.

"Undifferentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child which cannot justifiably be divided into "per child" amounts for each child covered by the support order.

"Undifferentiated support order" means a child support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child or does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

"Uninsured medical expenses," for the purpose of establishing or enforcing support obligations, means:

(1) Medical expenses not paid by insurance for medical, dental, orthodontic, prescription, and optometrical costs incurred on behalf of a child; and

(2) Premiums, copayments, or deductibles incurred on behalf of a child.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"Washington State Support Registry" or **"WSSR"** is the entity created under RCW 26.23.030 within the division of child support (DCS) which, among other duties, contains a central unit for the collection, accounting and disbursement of support payments.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3800 Once a support order is entered, can it be changed? (1) A support order entered by a superior court may only be modified by a superior court or a court of comparable jurisdiction of an Indian tribe or another state or country. The Uniform Interstate Family Support Act (UIFSA, adopted in Washington as chapter 26.21A RCW) determines which state, tribe or country may modify the order.

(2) If the order specifically states how the amount of support may be adjusted, the division of child support (DCS) may bring an administrative action under RCW 26.23.110 and WAC 388-14A-3310.

(3) As provided in WAC 388-14A-3900, DCS may review any support order to determine whether DCS should petition to modify the support provisions of the order.

(4) Either DCS, the CP or the NCP may petition to modify an administrative order under WAC 388-14A-3925. Acting as a responding jurisdiction, DCS may petition to modify an administrative order at the request of the initiating jurisdiction.

(5) Under appropriate circumstances, an administrative support order may be vacated. See WAC 388-14A-3700.

(6) Child support orders may be changed under WAC 388-14A-3940 to include abatement language for purposes of abatement as required by this chapter.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3900 Does DCS review my support order to see if it should be modified? (1) When the division of child support (DCS) is providing support enforcement services under Title IV-D of the Social Security Act, DCS must:

(a) Review a superior court or administrative order for child support to determine whether DCS will petition to modify the child support provisions of the order; or

(b) Evaluate an intergovernmental case to determine whether to refer the case to an Indian tribe or another state or country for review of the support order for modification.

(2) Recipients of payment services only under WAC 388-14A-2000(1) are not eligible for a review of their support order under this section until they have submitted an application for support enforcement services.

(3) DCS reviews a child support order for the limited purpose of referring the order to the appropriate tribunal to add abatement language under WAC 388-14A-3940.

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3901 Under what circumstances does DCS review a support order for modification? (1) The division of child support (DCS) reviews child support orders under WAC 388-14A-3900 when DCS has enough locate information to obtain personal service on both parties to the order; and:

(a) The department is paying public assistance or has determined that the children are eligible for medical assistance, and thirty-five months have passed since:

(i) DCS last reviewed the order under this section;

(ii) The order was last modified; or

(iii) The order was entered; or

(b) A party to the order, the IV-D agency of a tribe or another state, or the central authority of another country, submits a request for review to DCS and thirty-five months have passed since:

(i) DCS or another state or tribe's IV-D agency last reviewed the order under this section;

(ii) The order was last modified; or

(iii) The order was entered.

(2) DCS may refer a request for review to another state or tribe's IV-D agency for action.

(3) DCS reviews a child support order for the limited purpose of referring the order to the appropriate tribunal to add abatement language under WAC 388-14A-3940. A review under this subsection does not impact reviews conducted under subsections (1) or (2) of this section.

AMENDATORY SECTION (Amending WSR 20-04-032, filed 1/28/20, effective 2/28/20)

WAC 388-14A-3903 How does DCS decide whether to petition for modification of a support order? (1) The

division of child support (DCS) petitions to modify a support order when DCS finds during the review that each of the following conditions are present:

(a) The proposed change in child support based on the Washington state child support schedule:

(i) Is at least fifteen percent above or below the current support obligation;

(ii) Is at least one hundred dollars per month above or below the current support obligation; and

(iii) Is at least a two thousand four hundred dollar change over the remaining life of the support order; or

(iv) Will provide enough income to:

(A) Make the family ineligible for public assistance if the noncustodial parent (NCP) pays the full amount due under the proposed order; or

(B) Allow a family, otherwise eligible for public assistance, to remain off of assistance.

(b) The case meets the legal requirements for modification under RCW 26.09.170, 74.20A.059, or WAC 388-14A-3925.

(2) DCS may petition to modify the order without regard to subsection (1)(a)(i) of this section if the reason DCS reviewed the order is the noncustodial parent's incarceration.

(3) DCS may petition to modify the order without regard to subsection (1)(a) of this section when:

(a) The order does not require the NCP to provide health insurance coverage for the children; and

(b) Health insurance coverage is available through the NCP's employer or union at a reasonable cost; or

(c) Both parties agree to an order modifying the support amount; or

(d) DCS learns that an NCP is incarcerated and qualifies for abatement under this chapter and the child support order does not include abatement language.

AMENDATORY SECTION (Amending WSR 19-02-017, filed 12/21/18, effective 1/21/19)

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may file a petition and request a hearing to prospectively modify an administrative order for child support. The request must be in writing and must state:

(a) Any circumstances that have changed;

(b) Any relief requested; and

(c) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) Acting as a responding jurisdiction, DCS may file a petition to prospectively modify an administrative order for child support on behalf of an initiating jurisdiction in an intergovernmental case.

(4) DCS serves a copy of the request for modification and notice of hearing on all other parties by first class mail at their address last known to DCS.

(5) DCS((~~,~~)) or the administrative law judge (ALJ)((~~, or the department review judge~~)):

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21A.550.

(6) A request to add a requirement for the custodial parent (CP) to provide health care coverage, or to add a provision in the order to include the CP's share of uninsured medical expenses, is not by itself a sufficient basis for modification of the order.

(7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

(8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

(9) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

(a) Dismiss the petition; or

(b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

(10) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

(11) For purposes of abatement under this chapter, DCS, the CP, or the NCP may seek changes to a child support order to add abatement language under WAC 388-14A-3940.

NEW SECTION

WAC 388-14A-3935 What does DCS do with respect to abatement when it learns the noncustodial parent is an incarcerated parent? (1) If the child support order contains abatement language, the division of child support (DCS) administers the abatement under WAC 388-14A-3945.

(2) If the child support order was entered in Washington state and does not contain abatement language, DCS refers the child support order to the appropriate tribunal for the limited purpose of adding abatement language under WAC 388-14A-3940, except as provided in subsection (3) of this section.

(3) DCS may review for modification under WAC 388-14A-3901 when the child support order does not contain abatement language and the department is paying public assistance for the child or children.

NEW SECTION

WAC 388-14A-3940 Who can ask to add abatement language to an administrative support order? (1) The division of child support (DCS), the custodial parent (CP), or the noncustodial parent (NCP) may file a petition and request a hearing under chapter 26.09 RCW for the limited purpose of adding abatement language to an administrative order for child support.

(2) The petitioning party must submit the request to add abatement language to DCS.

(3) Acting as a responding jurisdiction, DCS may file a petition for the limited purposes of adding abatement language to an administrative order for child support on behalf of an initiating jurisdiction in an intergovernmental case.

(4) OAH serves a copy of the request to add abatement language and notice of hearing on all other parties by regular mail at their last known address.

(5) A hearing under this section:

(a) Is for the limited purpose of determining whether statutorily required abatement language under RCW 26.09.335 should be added to the administrative support order;

(b) Is separate from the administration of the abatement by DCS under WAC 388-14A-3945;

(c) Does not otherwise modify or adjust the administrative support order; and

(d) Does not impact DCS's or any party's right to request a prospective modification of the administrative support order under WAC 388-14A-3925.

(e) Does not impact when DCS reviews a support order for modification under WAC 388-14A-3901.

(6) DCS may enter into an agreed settlement or consent order with the parties under WAC 388-14A-3600 to add abatement language to an administrative support order.

(7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order against that party.

(8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition.

NEW SECTION

WAC 388-14A-3945 How does DCS administer abatement of an incarcerated person's child support order? (1) The division of child support (DCS) abates a noncustodial parent's (NCP's) child support order under this chapter when it learns that the NCP is an incarcerated person and all of the following are true:

(a) The NCP is incarcerated for or begins serving a sentence of at least six months in confinement;

(b) The child support order contains abatement language; and

(c) DCS has reviewed its records and determines the NCP has no access to or possession of income or assets to pay child support while incarcerated.

(2) There is a rebuttable presumption that an incarcerated person has no access to or possession of income or assets to pay child support while incarcerated. DCS may assert it has rebutted the presumption. See WAC 388-14A-3955.

(3) When the requirements of subsection (1) of this section are met, the child support order is abated to ten dollars per month without regard to the number of children covered by that order.

(4) The first month support is abated is the date the NCP became confined or February 1, 2021, whichever is later.

(5) The abatement ends on the last day of the third full month following the NCP's release from confinement, unless an order entered in the court or administrative forum specifies a different date.

(6) DCS sends a notice of abatement to notify the custodial parent (CP) by regular mail to their last known address, with a copy to the NCP, that the abatement has been applied.

(7) If the CP disagrees with the notice of abatement, the CP may:

(a) Request a timely hearing within twenty days of the date of the notice of abatement (see WAC 388-14A-3965);

(b) Request an untimely hearing within one year of the date of the notice of abatement (see WAC 388-14A-3965); or

(c) Request in writing to terminate or reverse the abatement at any time during the period of abatement (see WAC 388-14A-3970).

(8) If the NCP disagrees with the notice of abatement, the NCP may request in writing to terminate or reverse the abatement at any time during the period of abatement (see WAC 388-14A-3960).

(9) If the abatement results in an overpayment by the NCP:

(a) Neither DCS nor the CP is required to refund any support collections or payments received by DCS prior to the date on which DCS learned of the incarceration; and

(b) The NCP is not entitled to a refund of any support collections or payments received by DCS prior to the date on which DCS learned of the incarceration.

(10) Abatement of a child support obligation of an incarcerated person does not constitute modification or adjustment of the order.

NEW SECTION

WAC 388-14A-3950 What does DCS do to reinstate the support order when the NCP is released from confinement? (1) Unless otherwise specified in a court or administrative order, the support order is automatically reinstated as follows:

(a) Effective the first day of the fourth full month after the NCP is released from confinement, support is reinstated at fifty percent of the support amount provided in the underlying order, but not less than the presumed minimum obligation of $50 per month per child; and

(b) Effective one year after release from confinement, support is reinstated at one hundred percent of the support amount provided in the underlying order.

(2) DCS informs the parties in writing at their last known address when reinstating support at fifty percent and one hundred percent.

(3) If the support order is modified under RCW 26.09.170 or RCW 74.20A.059 during the period of abatement, this provision regarding reinstatement of support at fifty percent in subsection (1) of this section does not apply. DCS enforces the modified support obligation.

NEW SECTION

WAC 388-14A-3955 What does DCS do when it determines an incarcerated person's support order should not be abated? (1) If DCS reviews its records and determines the NCP has access to or possession of income or assets to pay child support while incarcerated, DCS sends a notice regarding non-abatement of child support, sometimes called the notice regarding non-abatement, to the NCP and a copy to the custodial parent (CP).

(a) There is a rebuttable presumption that an incarcerated person has no access to or possession of income or assets available to pay child support while incarcerated.

(b) The notice regarding non-abatement includes the reason or reasons DCS believes it has rebutted the presumption that the NCP is unable to pay their child support obligation while incarcerated.

(2) The parties may request an adjudicative proceeding if they disagree with the notice regarding non-abatement.

(a) The parties may request a timely hearing within twenty days of the date of the notice regarding non-abatement.

(b) The parties may request an untimely hearing within one year of the date of the notice regarding non-abatement.

(c) The parties may request a late hearing one year or more after the after the date of the notice regarding non-abatement but must demonstrate good cause.

(3) For purposes of this chapter, correctional industries compensation does not count as income or assets to pay child support.

NEW SECTION

WAC 388-14A-3960 What happens at a hearing on a notice regarding non-abatement of child support? (1) The noncustodial parent (NCP) or custodial parent (CP) may request a hearing on a notice regarding non-abatement of child support, sometimes called the notice regarding non-abatement.

(2) The purpose of the hearing is for the administrative law judge (ALJ) to determine whether DCS's notice is upheld or dismissed.

(3) The ALJ must allow DCS to orally amend the notice regarding non-abatement at the hearing to conform to the evidence. The ALJ may grant a continuance, if necessary, to allow the parties additional time to present evidence or argument in response to the amendment.

(4) The administrative law judge issues an order:

(a) Upholding DCS's determination that support should not be abated because the NCP has access to or possession of income or assets to pay child support while incarcerated; or

(b) Dismissing the notice regarding non-abatement because the NCP does not have access to or possession of income or assets to pay child support while incarcerated.

(5) If the order says child support should be abated, DCS abates and sends a notice of abatement to the parties. See WAC 388-14A-3940.

NEW SECTION

WAC 388-14A-3965 What happens at a hearing on a notice of abatement? (1) The custodial parent (CP) has the burden of proof to demonstrate to the administrative law judge (ALJ) that the NCP has access to or possession of income or assets to pay child support while incarcerated.

(2) Any party to the hearing may show good cause why the abatement should end and support reinstate at a date other than what is specified in WAC 388-14A-3945.

(3) The ALJ must allow DCS to orally amend the notice of abatement at the hearing to conform to the evidence. The ALJ may grant a continuance, if necessary, to allow the parties additional time to present evidence or argument in response to the amendment.

(4) The administrative law judge issues an order:

(a) Upholding the notice of abatement;

(b) Upholding the notice of abatement and, upon a finding of good cause, specifying the date abatement ends; or

(c) Dismissing the notice of abatement because the objecting party met the burden of proof to show that NCP has access to or possession of income or assets to pay child support while incarcerated.

NEW SECTION

WAC 388-14A-3970 Who may request to terminate or reverse an abatement? (1) The division of child support (DCS), the custodial parent (CP), or the noncustodial parent (NCP) may submit a request to terminate or reverse an abatement at any time during the period of abatement. The request must be in writing.

(a) If DCS or the CP is the requesting party, they must include documents or other evidence demonstrating that the NCP has access to or possession of income or assets to pay child support while incarcerated.

(b) If the NCP is the requesting party, no supporting documents are required.

(2) The requesting party must file the request to terminate or reverse the abatement with DCS or the office of administrative hearings (OAH).

(3) Acting as a responding jurisdiction, DCS may file a request to terminate or reverse an abatement on behalf of an initiating jurisdiction in an intergovernmental case.

NEW SECTION

WAC 388-14A-3975 What happens at a hearing to terminate or reverse an abatement? (1) If the requesting party was required to submit supporting documents and did not do so, any other party may file a motion to dismiss. The requesting party may ask for a continuance to provide supporting documents.

(2) If the hearing is dismissed because supporting documents were not submitted, the requesting party may file a petition to vacate the dismissal.

(3) If a hearing is held, the ALJ may reverse the abatement or terminate the abatement on a specific date upon a finding that the NCP has access to or possession of assets or income to provide support while incarcerated.

(4) If the requesting party fails to appear after being sent a notice of hearing, the request must be dismissed.

(5) Depending on the type of evidence provided at the hearing, the ALJ may order that the abatement of the support order be:

(a) Reversed, meaning that the determination that support should be abated is vacated and all amounts owed under the support order are reinstated; or

(b) Terminated, meaning that the abatement of support ends as of the date specified in the order.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-6100 The division of child support accepts oral requests for hearing or conference board. (1) Except for the instances listed in subsections (8) and (9), the division of child support (DCS) accepts either a written or an oral request for hearing or conference board, even though other sections of this chapter or the relevant statutes may provide that objections and hearing requests should be in writing.

(2) The subject matter of the objection determines whether the matter is set as a conference board or hearing, unless there is a specific request for an administrative hearing under chapter 34.05 RCW.

(3) DCS processes oral and written requests for hearing in the same manner.

(4) An oral request for hearing is complete if it contains enough information to identify the person making the request, the DCS action, and the case or cases involved in the hearing request.

(5) The effective date of an oral request for hearing is the date that someone makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) When making an oral request, you do not need to specify whether you want a hearing under chapter 34.05 RCW or a conference board under WAC 388-14A-6400.

(7) You can make an oral request for hearing or conference board on behalf of another person, if you have written authorization to act on their behalf. The effective date of an oral request for hearing or conference board made on behalf of another person is the later of the date of the complete oral request for hearing or the date that DCS receives the written authorization.

(8) There are ((~~two~~)) three types of hearing requests which must be in writing:

(a) A petition for prospective modification under WAC 388-14A-3925; ((~~and~~))

(b) A petition for reimbursement for day care expenses under WAC 388-14A-4300; and

(c) A request to terminate or reverse an abatement under WAC 388-14A-3960.

(9) You must also make the following requests in writing:

(a) A request for a determination of controlling order under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW, as described in WAC 388-14A-7305; and

(b) An objection to the determination of controlling order contained in a notice of support debt and registration issued by DCS under WAC 388-14A-7325. WAC 388-14A-7335 describes how to make this objection.

WSR 21-05-018
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 21-10—Filed February 5, 2021, 5:29 p.m., effective February 9, 2021, 11:59 p.m.]

Effective Date of Rule: February 9, 2021, 11:59 p.m.

Purpose: Amends rules for Puget Sound commercial crab fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500T; and amending WAC 220-340-455.

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

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

Reasons for this Finding: The provisions of this emergency rule:

(1) Permits commercial crab harvest in Puget Sound within Crab Management Regions 1, 2 West, 3-2, and 3-3.

(2) Closes Region 2 East.

(3) Closes Region 2 West effective 11:59 p.m., February 15.

(4) Maintains current pot limits in Regions 1, 2 West, 3-2, and 3-3.

(5) Commercial crab harvest in Crab Management Region 3-1 remains closed until further notice.

Region 2 East will close because the remaining quota has been attained. Region 2 West will close on February 15 based on the hard closure date outlined in the comanagement harvest agreement. In Regions 1, 2 West, 3-2, and 3-3 the available quota is sufficient to accommodate continued commercial harvest. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound Dungeness crab commercial fishing season is structured to meet harvest allocation objectives negotiated between state and tribal comanagers and outlined in related management plans. WSR 21-01-079 requiring fishers to declare intent to participate in Region 1 and 2E fisheries, remains in effect.

There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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

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

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

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

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

Date Adopted: February 5, 2021.

Kelly Susewind
Director

NEW SECTION

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

Effective 11:59 p.m. on February 9, 2021 until further notice:

(1) It is illegal to harvest Dungeness crab for commercial purposes in Crab Management Regions 2 East and 3-1.

(2) It is permissible to harvest Dungeness crab for commercial purposes in Crab Management Regions 1, 2 West, 3-2, and 3-3.

(3) It is permissible to harvest Dungeness crab for commercial purposes in the following areas in Crab Management Region 1:

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

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

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

(2) It is permissible to harvest Dungeness crab for commercial purposes in the following area in Crab Management Region 2 West:

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

(3) The following areas are closed to commercial crab fishing:

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

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

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

(d) That portion of catch area 26AE east of a line from the spiral staircase at Howarth Park due north to the southernmost end of Gedney Island and that portion of 24B east of a line from the northernmost end of Gedney Island to the southern tip of Camano Head and south of a line drawn from the southern tip of Camano Head to Hermosa Point on the Tulalip reservation.

(4) It is unlawful for any person to deploy more than 75 pots per license per buoy tag number in Crab Management Regions 2W, 3-2, and 3-3 with the intent of harvesting Dungeness crab for commercial purposes.

(5) It is unlawful for any person to deploy more than 50 pots per license per buoy tag number in Crab Management Region 1 with the intent of harvesting Dungeness crab for commercial purposes.

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

Effective 11:59 p.m. on February 15, 2021 until further notice:

(1) It is illegal to harvest Dungeness crab for commercial purposes in Crab Management Region 2 West.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. February 9, 2021:

WAC 220-340-45500T Commercial crab fishery—Seasons and areas—Puget Sound. (21-03)

WSR 21-05-027
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 21-11—Filed February 9, 2021, 11:26 a.m., effective February 9, 2021, 11:26 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for coastal commercial crab fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000E and 220-340-45000U; and amending WAC 220-340-420 and 220-340-450.

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: Mandatory, minimum meat recovery requirements for coastal crab will be achieved by the opening dates contained herein. The Washington department of health has determined that while the meat in Dungeness crab in all areas of the Washington coast is safe for human consumption, the viscera from crab caught between the Washington/Oregon border and Point Chehalis, Washing-

ton including Willapa Bay are unsafe for human consumption and have issued a recommendation requiring evisceration of all crab caught in this area. To strengthen the enforcement of an evisceration requirement needed to protect public health, all crab landed into WA from any west coast area south of Point Chehalis, Washington must be eviscerated. Domoic acid levels in the crab viscera in the area north of Point Chehalis, Washington are below federal action levels and are considered safe for human consumption, landings of crab from this area do not require similar processing restrictions to remove the viscera necessary to protect public health. However, restrictions on where fishermen may fish their gear are needed to ensure that crab are not harvested from areas with high domoic acid in the viscera (south of Point Chehalis, Washington) and reported as landings from areas where domoic acid in viscera are low (north of Point Chehalis, Washington). Further delaying the opening of the coastal commercial Dungeness crab fishery until domoic acid in crab viscera is below federal action levels, which could take several months, would cause significant economic harm to the coastal crab industry and to the coastal communities dependent on this highly valuable fishery. In addition, delaying the season into spring poses an additional risk to marine mammals including Endangered Species Act listed humpback whales and Marine Mammal Protection Act Gray whales which are more abundant off the Washington coast in the spring by increasing the risk of entanglement with commercial crab gear. Emergency rules are necessary to implement a longer gear set period which will allow for safer fishing conditions and improved enforceability of area restrictions when gear is set. A delay due to elevated marine toxins aligns with the Tri-State Crab Agreement and similar rules in Oregon and California. Tribal special management area descriptions conform with recent state/tribal agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 9, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000F Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful to land, or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel hold inspection certificate numbers are recorded on all shellfish fish receiving tickets completed for coastal Dungeness crab landings until further notice and;

(b) The vessel has a valid Oregon vessel inspection certificate or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with an individual inspection number that includes the letters "EVS" indicating that evisceration is required for all crab sold by this license or the letters "NOR" indicating north of Point Chehalis, WA (46°53.18 N. Lat) and evisceration is not required.

(c) A Washington vessel inspection certificate is only valid when signed by an authorized WDFW employee.

(2) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) All crab caught north of Point Arena, CA and south of Point Chehalis, WA (46°53.18 N. Lat) including Willapa Bay must be delivered to a processing facility with an approved Hazard Analysis and Critical Control Point (HACCP) plan and eviscerated or;

(b) Dungeness crab are delivered to a Washington Department of Fish and Wildlife licensed Fish Dealer and/or Wholesale Fish Buyer and transported or sold to a facility with an approved HACCP plan and eviscerated. The vessel inspection number must accompany the crab to the final designation where it will be eviscerated.

(3) It is unlawful to donate, sell or attempt to sell to retailers or consumers live or whole Dungeness crab when caught north of Cape Falcon, OR (45°46'00" N. Lat) and south of Point Chehalis, WA (46°53.18 N. Lat).

(4) It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and;

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(5) Unless otherwise amended all other provisions of the permanent rule remain in effect

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

NEW SECTION

WAC 220-340-45000V Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450, effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from the WA/OR border (46°15.00) to the US-Canadian border.

(a) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(b) It is permissible to set crab gear beginning at 8:00 a.m., February 13, 2021.

(c) It is permissible to pull crab gear beginning at 9:00 a.m., February 16, 2021.

(2) No license or vessel may set gear south of Point Chehalis, WA (46°53.18 N. Lat) unless they have been issued a valid Oregon vessel inspection certificate dated on or after February 15, 2021 or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "EVS" indicating that evisceration is required for all crab landed by this license or vessel until further notice.

(3) Licenses or vessels issued a valid Washington crab vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "NOR" may land crab for live, whole cooked or evisceration.

(4) It unlawful for licenses and vessels with a vessel inspection number that includes the letters "NOR" to deploy or operate shellfish pots south of Point Chehalis, WA (46°53. 18 N. Lat).

(5) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine biotoxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(6) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00' N. Lat. 124°20.70' W. Lon.

(b) Northwest Corner: 47°28.00' N. Lat. 124°34.00' W. Lon.

(c) Southwest Corner: 47°08.00' N. Lat. 124°25.50' W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00' N. Lat. 124°11.20' W. Lon.

(4) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(5) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner (Tatoosh Island)

(b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.

(c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.

(d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

(6) Unless otherwise amended all other provisions of the permanent rule remain in effect.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-42000E	Commercial crab fishery—Unlawful acts. (20-257)
WAC 220-340-45000U	Commercial crab fishery—Seasons and areas—Coastal. (20-255)

WSR 21-05-028

RECISSION OF EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed February 9, 2021, 12:04 p.m., effective February 9, 2021, 12:04 p.m.]

On Monday, February 8, 2021, Governor Inslee signed SSB 5061 (2021) which provided multiple updates to the state's unemployment insurance program. With the updates provided in SSB 5061, the employment security department hereby rescinds the following emergency rules, effective immediately:

1. WAC 192-320-078 Catastrophic occurrence, adopted on March 9, 2020, as WSR 20-07-039, effective March 9, 2020.

2. WAC 192-320-079 Charging and reimbursement of the first week of benefits while the waiting week is waived by emergency proclamation, adopted on June 8, 2020, as WSR 20-13-019, effective June 8, 2020.

If you have any questions regarding the department's rule making, please visit our rule-making web page at https://www.esd.wa.gov/newsroom/rulemaking or contact us at rules@esd.wa.gov.

Scott Michael
Legal Services
Coordination Manager

WSR 21-05-030
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed February 10, 2021, 8:32 a.m., effective February 10, 2021, 8:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-843-130 Continuing education requirements for nursing home administrators. The board of nursing home administrators (board) is adopting an emergency rule to continue to allow continuing education credit for pandemic related training and experience. This is a continuance of the emergency rule filed on October 12, 2020, under WSR 20-21-035. While this emergency rule allows continuing education credit for training and experience related to coronavirus disease 2019 (COVID-19), it also allows for other pandemic related trainings. This emergency rule also, for a limited time, allows nursing home administrators to attest to such trainings acquired under self-study methods if proof of course completion isn't otherwise provided.

The board is adopting this rule to allow licensees to continue to perform their job of protecting residents and focus on the immediate patient needs during the COVID-19 response, which continues to be overwhelming for many nursing homes and long-term care facilities. The rules need to continue to be in effect to allow licensees who are currently affected by the COVID-19 pandemic more trainings in the subject, and to assist in avoiding a lapse in licensing.

Citation of Rules Affected by this Order: Amending WAC 246-843-130.

Statutory Authority for Adoption: RCW 18.52.061.

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 amendment of the existing rule is necessary for the preservation of public health, safety, and general welfare. It is essential that nursing home administrators be able to continue to perform vital work within the nursing home setting, both during the initial COVID-19 response and during the ongoing pandemic. Nursing home administrators are already working overtime to learn and implement new additional state and federal regulatory requirements. They must write and adopt new policies, and adopt new treatment measures to help residents and health care personnel assure the safety and well-being of nursing home residents. Allowing nursing home administrators to apply towards continuing education the training and learning acquired in responding to the pandemic in the long-term care environment will allow them to continue to be licensed through these earned credits and to continue to protect residents.

The board is in the process of filing a Preproposal statement of inquiry (CR-101) to consider adopting the allowance for continuing education credits for pandemic relating [related] training and experience permanently in 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 10, 2021.

Ann B. Zell, Chair
Board of Nursing Home Administrators

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

WAC 246-843-130 Continuing education requirements. (1) A licensed nursing home administrator shall demonstrate completion of thirty-six hours of continuing education every two years and comply with chapter 246-12 WAC, Part 7.

(2) Continuing education approved by the National Continuing Education Review Service (NCERS) is acceptable for continuing education credit.

(3) Continuing education that is not approved by NCERS must meet the following requirements:

(a) The basic methods of continuing education learning are:

(i) Seminars;

(ii) Teleconferencing;

(iii) Webinars; and

(iv) Self-study programs.

(b) Continuing education courses shall consist of a minimum of one hour of instruction. Hours are based upon clock hours and are calculated in half hour increments. College courses are rated at fifteen hours per each semester unit and ten hours per each quarter credit.

(c) Continuing education must relate to nursing home administration, be designed to promote continued knowledge and skills with nursing home administration standards, and improve and enhance professional competencies. Continuing education must fit within the following subjects:

(i) Resident centered care;

(ii) Human resources;

(iii) Finance;

(iv) Environment;

(v) Leadership and management;

(vi) Suicide prevention;

(vii) Cultural competency training;

(viii) Laws relating to Washington state nursing homes;

(ix) Pandemic response and compliance measures. Examples include, but are not limited to, infections control measures, resident engagement, personal protective equipment procurement and training, emergency staffing, writing and updating policies and procedures pertaining to pandemic management, and other pandemic-related training.

(d) The licensee shall retain proof of course completion. To receive full credit, attendees shall attend the full program. The maximum number of hours allowed for continuing education is twelve hours per day.

(e) Until December 31, 2022, licensees due to demonstrate completion of continuing education may accrue up to thirty-six of those hours in pandemic response and compliance measure subjects described in (c)(ix) of this subsection. During this time, if proof of course completion is not provided for pandemic response and compliance measure courses earned under self-study programs as allowed under (a)(iv) of this subsection, the licensee may sign an attestation on a form provided by the department.

(4) Continuing education credit of two hours per month may be granted to a preceptor of an administrator-in-training program.

(5) Continuing education credit of a maximum of two hours per month may be granted for serving as a board member for the board of nursing home administrators.

(6) Within one hundred eighty days after becoming licensed, a nursing home administrator shall attend a board approved course on laws relating to nursing homes in Washington. The board will grant retroactive credit to those licensees who obtain the required training as administrators-in-training under WAC 246-843-090. The state law training course consists of a minimum of a six-hour program, with formal training objectives, that covers the requirements of chapter 18.52 RCW and essential areas of laws that apply to nursing homes regulated by the department of social and health services under chapter 388-97 WAC to include:

(a) Resident services, medical and social;

(b) Resident rights, including resident decision making, informed consent, advance directives and notices to residents;

(c) Enforcement;

(d) Criminal history inquiries;

(e) Differences between federal and state law.

WSR 21-05-034
EMERGENCY RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed February 11, 2021, 9:00 a.m., effective February 11, 2021, 9:00 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making is proposed to address the charging of unemployment benefits under RCW 50.29.021 (2)(j) for non-Washington combined-wage claims. RCW 50.29.021 (2)(j) relieves all employers of benefit charges for benefits paid during all weeks starting with the week ending March 28, 2020, and ending with the week ending May 30, 2020. However, for combined-wage claims filed in states other than Washington, where Washington is the transferring state, Washington is only given notice of benefits charges by the other states on a quarterly basis, not a weekly basis. Therefore, rule making is required to address the employment security department's (ESD) inability to calculate benefit charges on a weekly basis for this specific type of unemployment claim. Therefore, for purposes of RCW 50.29.021 (2)(j), and for the purposes of this specific type of unemployment claim, ESD will not charge the employer for benefits paid during the second quarter of the combined-wage claim, and all other benefits paid under the combined-wage claim will be charged to the employer, unless the employer qualifies for relief of charges under a different law.

Citation of Rules Affected by this Order: New WAC 192-320-072.

Statutory Authority for Adoption: RCW 50.12.040.

Other Authority: RCW 50.12.050; 20 C.F.R. Part 616.

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: On February 8, 2021, Governor Inslee signed ESSB 5061, which requires ESD to make numerous changes to how it calculates the 2021 tax rates of Washington employers. The changes and recalculations must be completed in less than one month so that employers may take advantage of the updated voluntary contribution program under RCW 50.29.026, for which applications and payments are due by March 30, 2021, and so that employers can adequately prepare to accurately pay their unemployment taxes for the first quarter of 2021, which are due by April 30, 2021.

Section 16 of ESSB 5061 amends RCW 50.29.021 by adding new subsection (2)(j), which relieves all employers of benefit charges for benefits paid during all weeks starting with the week ending March 28, 2020, and ending with the week ending May 30, 2020. However, for purposes of combined-wage claims filed in other states, ESD does not have access to benefit charges broken down on a weekly basis. A combined-wage claim is where an unemployment claimant combines wages they earned in two or more different states into one unemployment claim filed in one state. If the combined-wage claim is filed in Washington, Washington is known as the paying state, as Washington is the state actually paying the benefits. If the combined-wage claim is filed in another state, and the combined-wage claim uses wages earned working in Washington for a Washington employer, then Washington is known as the transferring state. When Washington is the transferring state, ESD receives notices from the other state regarding how much money in unemployment benefits was paid by the other state, and then ESD charges the Washington employers proportionately for the benefits paid by the other state. Pursuant to 20 C.F.R. § 616.8(f), the other state is only required to notify ESD about the benefits it paid on a quarterly basis.

ESD must balance the need to timely calculate the 2021 tax rates for Washington employers, against the command to relieve Washington employers of benefit charges for all weeks starting with the week ending March 28, 2020, through the week ending May 30, 2020, against the reality that ESD only has quarterly benefit charging information for combined-wage claims filed in other states. Therefore, ESD will relieve benefit charges for the second quarter of 2020 on combined-wage claims filed in other states where Washington is the transferring state, since of the ten weeks of benefit charge relief mandated by RCW 50.29.021 (2)(j), nine of

those weeks are in the second quarter of 2020. While ESD could request that other states provide the benefit charge information on a weekly basis, such other states are not required to fulfill that request. Further, making such a request would delay tax rate calculations for Washington employers. ESD also considered dividing the quarterly benefit charges on a pro-rata basis, but doing so would require extensive technological changes, which would also delay tax rate calculations for Washington employers.

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

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

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

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

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

Date Adopted: February 11, 2021.

Dan Zeitlin
Policy Director

NEW SECTION

WAC 192-320-072 Charging non-Washington combined-wage claims under RCW 50.29.021 (2)(j). For purposes of RCW 50.29.021 (2)(j), the benefits paid under a combined-wage claim, as that term is defined by 20 C.F.R. Sec. 616.6, filed in a state other than Washington, and Washington is the transferring state, as that term is defined by 20 C.F.R. Sec. 616.6, will be charged as follows:

(1) All benefits paid under the combined-wage claim in the second quarter of 2020 will not be charged to the claimant's base year employer;

(2) All other benefits paid under the combined-wage claim in all other quarters will be charged to the claimant's base year employer, unless the employer is eligible for relief of benefit charges for reasons other than RCW 50.29.021 (2)(j).

WSR 21-05-042
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 21-12—Filed February 11, 2021, 3:03 p.m., effective February 11, 2021, 3:03 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 220-359-02000K; 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: This rule is consistent with actions of Columbia River Compact on February 11, 2021. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 11, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000L Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1H (John Day pool only)

(a) Season: 6 AM Friday, February 12, 2021 to 6 PM Monday, February 15, 2021

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length in John Day pool may be sold or kept for subsistence purposes.

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

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

(a) Season: Immediately to 6 PM Friday, March 19, 2021.

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

(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 and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be sold or kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery.

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

(3) 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).

(4) 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 220-359-02000K Columbia River salmon seasons above Bonneville Dam. (21-08)

WSR 21-05-048
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed February 12, 2021, 9:32 a.m., effective February 12, 2021, 9:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-338-020 and 246-338-026, medical test site licensure and notification requirements. The department of health (department) is adopting an emergency rule to amend WAC 246-338-026 mandating reporting of test results intended to detect SARS-CoV-2 or diagnose a possible case of the coronavirus disease 2019 (COVID-19) in alignment with the federal changes published in 85 F.R. 54820. WAC 246-338-020 is amended to add language referencing the new subsection in WAC 246-338-026. These changes will allow the new reporting, inspection, and fining processes in compliance with the new federal requirements which will ensure the current Clinical Laboratory Improvement Amendments (CLIA) exempt status is not threatened and will respond to the current public health emergency created by the COVID-19 pandemic. This is the second emergency rule for these amendments, and it continues, without change, the emergency rule that was filed on October 15, 2020, under WSR 20-21-062.

Citation of Rules Affected by this Order: Amending WAC 246-338-020 and 246-338-026.

Statutory Authority for Adoption: RCW 70.42.060.

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

Reasons for this Finding: This emergency rule updates Washington rule to align with the recently updated federal requirements published in 85 F.R. 54820 which include new reporting and inspection requirements and fines for nonreporting. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and federal compliance requirements which could threaten the current CLIA exempt status. The department will begin a permanent rulemaking 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 2, Repealed 0.

Date Adopted: February 9, 2021.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

AMENDATORY SECTION (Amending WSR 02-12-105, filed 6/5/02, effective 7/6/02)

WAC 246-338-020 Licensure—Types of medical test site licenses. After July 1, 1990, any person advertising, operating, managing, owning, conducting, opening, or maintaining a medical test site must first obtain a license from the department. License types are described in Table 020-1.

(1) **Certificate of waiver.**

Applicable if the medical test site performs only the tests classified as waived.

(2) **Provider performed microscopic procedures (PPMP).**

Applicable if the medical test site restricts its testing performance to one or more of the following moderate complexity tests performed by one of the licensed professionals listed, in conjunction with a patient's visit. In addition, the medical test site can perform tests classified as waived with this type of license.

(a) PPMP may be performed only by one of the following licensed professionals:

(i) Physician licensed under chapter 18.71 RCW, Physicians; chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery; or chapter 18.22 RCW, Podiatric medicine and surgery;

(ii) Advanced registered nurse practitioner, licensed under chapter 18.79 RCW, Nursing care;

(iii) Midwife licensed under chapter 18.50 RCW, Midwifery;

(iv) Physician assistant licensed under chapter 18.71A RCW, Physician assistants;

(v) Naturopath licensed under chapter 18.36A RCW, Naturopathy; or

(vi) Dentist licensed under chapter 18.32 RCW, Dentistry.

(b) Microscopic procedures authorized under a PPMP license are:

(i) All direct wet mount preparations for the presence or absence of bacteria, fungi, parasites, and human cellular elements;

(ii) All potassium hydroxide (KOH) preparations;

(iii) Pinworm examinations;

(iv) Fern tests;

(v) Postcoital direct, qualitative examinations of vaginal or cervical mucous;

(vi) Urine sediment examinations;

(vii) Nasal smears for granulocytes;

(viii) Fecal leukocyte examinations;

(ix) Qualitative semen analysis (limited to the presence or absence of sperm and detection of motility); and

(x) Any other tests subsequently categorized under CLIA as provider-performed microscopy procedures.

(3) **Moderate/high complexity.**

(a) **Low volume, Category A-J,** as described in Table 990-1.

Applicable if the medical test site performs any tests that are not classified as waived or qualified as PPMP under subsection (2) of this section. Under this type of license, the medical test site may also perform tests classified as waived.

(b) **Accredited: Low volume, Category A-J,** as described in Table 990-1.

Applicable if the medical test site performs any tests that are not classified as waived, and is accredited **and** inspected by an accreditation organization approved by the department under WAC 246-338-040. Under this type of license, the medical test site may also perform tests classified as waived.

020-1 Table of Requirements for Each License Type

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
(1) **Certificate of Waiver**	• Restrict testing to tests classified as waived. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections. • Follow manufacturers' instructions for performing the test.	• Complaint • Technical assistance • As required to assess compliance with WAC 246-338-026(7)	• When indicated

LICENSE TYPE		REQUIREMENTS	INSPECTIONS	
			TYPE	FREQUENCY
(2)	**PPMP**	• Restrict testing to tests classified as PPMP or waived. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. • Follow manufacturers' instructions for performing the test.	• Complaint • Technical assistance • As required to assess compliance with WAC 246-338-026(7)	• When indicated
(3)	**Moderate/High Complexity**			
(a)	**Low Volume, Category A-J**	• Perform tests classified as moderate or high complexity. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. • Follow manufacturers' instructions for performing test.	• Initial • Routine • Complaint • On-site follow-up • Technical assistance • As required to assess compliance with WAC 246-338-026(7)	• First 6 months of license • Every 2 years • When indicated • When indicated • When indicated
(b)	**Accredited: Low Volume,** **Category A-J**	• Perform tests classified as moderate or high complexity. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control.	• Validation • Complaint • On-site follow-up • Technical assistance • As required to assess compliance with WAC 246-338-026(7)	• 2.5% of accredited sites annually • When indicated • When indicated • When indicated

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
	• Follow manufacturers' instructions for performing the test. • Submit to the department upon request, or authorize the accreditation organization to submit: • Proof of accreditation; • On-site inspection results; • Statement of deficiencies; • Plan of correction for the deficiencies cited; • Any disciplinary action and results of any disciplinary action taken by the accreditation organization against the medical test site.		

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

WAC 246-338-026 Notification requirements. (1) The owner must notify the department in writing at least thirty days prior to the date of opening or closing the medical test site.

(2) The owner must notify the department in writing within thirty days of any changes in:

(a) Name of site;

(b) Director;

(c) Location of site;

(d) Tests, specialties, and subspecialties; and

(e) Test methodologies.

(3) Proposed change of ownership. Transfer or reassignment of a license is prohibited without the department's approval, and must be initiated by the current owner sending a written notice to the department thirty days prior to transfer.

(a) The current owner of a medical test site must notify the department, in writing at least thirty days prior to the change and provide the following information:

(i) Name, address, and federal tax ID number of the medical test site;

(ii) Full name, address, and location of the current owner and prospective new owner; and

(iii) The date of the proposed change of ownership.

(b) The prospective new owner must submit the following information at least thirty days prior to the change of ownership:

(i) New name and federal tax ID number of the medical test site;

(ii) Changes in technical personnel and supervisors;

(iii) Any changes in tests, specialties, and subspecialties; and

(iv) Other information as requested by the department.

(4) The medical test site must authorize an approved accreditation organization to notify the department of the test site's compliance with the standards of the accreditation organization.

(5) The owner of an accredited license must notify the department in writing within thirty days of the medical test site having its accreditation denied or terminated by the accreditation organization or voluntarily dropping its accreditation status.

(6) The owner must notify the department in writing within thirty days of any convictions of fraud and abuse, false billing, or kickbacks under state or federal law.

(7) During the public health emergency, as defined in 42 C.F.R. 400.200, each medical test site that performs a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19 must report SARS-CoV-2 test results to HHS in such form and manner, and at such timing and frequency, as the department may prescribe. For the purposes of this subsection, "SARS-CoV-2 test" means any test that is intended to detect SARS-CoV-2 or diagnose a possible case of COVID-19.

WSR 21-05-059
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed February 16, 2021, 10:16 a.m., effective February 18, 2021]

Effective Date of Rule: February 18, 2021.

Purpose: The department is extending the amendment of the rules listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic.

(1) The federal rules related to quality assurance activities were amended to narrow the scope of the quality assurance program to reviewing and taking action on adverse events and infection control. Current state rules require the nursing facility to identify issues that may adversely affect residents, including resident input from grievances. The state amendment continues to require quality assurance activities,

but mandatory review in quality assurance would be limited to adverse events and infection control.

(2) The federal rules suspended fire drills to reduce grouping of staff and residents that might increase the likelihood of transmitting COVID-19. Current state rules require periodic fire drills. The state amendment removes the requirement to have fire drills, but continues to require staff training on the fire plan.

(3) The federal rules requiring a window in each resident room were waived to permit use of space not normally used for resident care to be utilized as a resident room. Current state rules require each resident room have a transparent glass window located on an exterior wall, with additional size and location requirements for new construction. The state amendment removes the requirement to have a window in each resident room.

The department filed a CR-101 Preproposal statement of inquiry as WSR 20-21-034 on October 12, 2020, to begin the permanent rule-making process. In addition, under the rule development phase of permanent rule making, the department is in discussions with stakeholders about amending the rules to explain the circumstances and time periods under which suspension of rules due to COVID-19 is necessary.

Citation of Rules Affected by this Order: Amending WAC 388-97-1740, 388-97-1760, and 388-97-2400.

Statutory Authority for Adoption: RCW 74.42.620, 18.51.070.

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 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.

Fire drills (WAC 388-97-1740): Recent federal waivers suspended the requirement for nursing facilities to conduct fire drills. The majority of the rules around fire drills are in the federal life safety code, and under the jurisdiction of the office of the state fire marshal. Nursing home rules also contain language requiring periodic drills. Amendment of WAC 388-97-1740 will remove the requirement for conducting periodic fire drills, but does not remove the requirement to have an emergency plan that includes fire procedures and staff training on that plan.

Quality assessment and assurance (WAC 388-97-1760): Current nursing home rules require facilities to maintain a process for quality assurance that seeks out and incorporates input from resident and family groups, and individual residents. The rule also requires review of grievances and expressed concerns. The amended rule requires facilities to seek out and incorporate resident and resident representative input, but removes the reference to resident or family groups, as those groups are not currently permitted to meet. The amendment also sets a standard that, at a minimum, requires review of adverse events and infection control. These changes permit facilities to focus quality assurance efforts on issues that will assist them in managing COVID-19, and will align the state rule with federal waivers related to quality assurance.

Windows in resident rooms (WAC 388-97-2400): Current state nursing home rules require each resident room have a transparent glass window on an exterior wall. Federal rules also require a resident sleeping room to have a window. The federal rules were recently waived to accommodate facilities wanting to increase room capacity, and need to utilize spaces not normally used as a resident room as a resident room. Amendment of WAC 388-97-2400 removes the requirement to have a window in each resident room to align the state rule with the recently waived federal rule. This will provide nursing facilities with additional flexibility in redesigning their space to accommodate additional residents.

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

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

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

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

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

Date Adopted: February 3, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1740 Disaster and emergency preparedness. (1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

(a) Fire or smoke;
(b) Severe weather;
(c) Loss of power;
(d) Earthquake;
(e) Explosion;
(f) Missing resident, elopement;
(g) Loss of normal water supply;
(h) Bomb threats;
(i) Armed individuals;
(j) Gas leak, or loss of service; and
(k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, and periodically review emergency procedures with existing staff((~~, and carry out unannounced staff drills using those procedures~~)).

(3) The nursing home must ensure emergency plans:

(a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;

(b) Are reviewed annually; and

(c) Include evacuation routes prominently posted on each unit.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1760 Quality assessment and assurance. (1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

(a) Seeks out and incorporates input from the ((~~resident and family councils, if any, or individual~~)) residents and ((~~support groups~~)) resident representatives; and

(b) At a minimum, reviews ((~~expressed concerns and grievances~~)) adverse events and infection control.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2400 Resident rooms. (1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor; and

(b) ((~~Is located on an exterior wall with a transparent glass window; and~~

~~(c)~~)) Is located to prevent through traffic.

(2) **In a new building or addition,** unless otherwise necessary for infection control, each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least one-tenth of the bedroom usable floor area;

(ii) Located twenty-four feet or more from another building or the opposite wall of a court, or ten feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least ten feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

WSR 21-05-063
EMERGENCY RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 16, 2021, 11:58 a.m., effective February 16, 2021, 11:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule revision is to (1) define student absence in the 2020-21 school year for school districts across the state to collect and use daily attendance data during the COVID-19 epidemic, and (2) establish the minimum criteria of the attendance system that each school district must implement as required under WAC 180-16-200 (4)(c). These rules continue to support the state and school districts in addressing the challenge of chronic absenteeism, improving learning outcomes and success in school for all students, and supporting the whole child.

Citation of Rules Affected by this Order: New chapter 392-401A WAC.

Statutory Authority for Adoption: RCW 28A.300.046.

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 COVID-19 pandemic has required that many school districts provide instruction remotely in school year 2020-21, either completely or partially, in order to ensure the safety of their students, staff, and communities. The immediate adoption of this emergency rule is therefore necessary for the preservation of the public health, safety, and general welfare in order to support districts in defining absence for students participating in remote learning and supporting students to access learning. The extension of the nontruancy remote learning absence for the remainder of the school year is based on data received by the office of superintendent of public instruction (OSPI) from school districts and court partners, both quantitative and qualitative data, that demonstrates the unique circumstances of this school year and remote learning are resulting in a high number of absences and data quality concerns.

On October 21, 2020, OSPI initiated permanent rule making to amend chapter 392-401 WAC to adjust the statewide definition of absence to, among other things, reflect districts' ongoing need to provide remote learning for the 2020-21 school year and beyond.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 13, 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: February 16, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

Chapter 392-401A WAC

STATEWIDE DEFINITION OF ABSENCE FOR THE 2020-21 SCHOOL YEAR

NEW SECTION

WAC 392-401A-005 Purpose. Attendance is a critical building block for student learning. If students are not present, they cannot engage in learning. Attendance is a leading indicator of equity that signals when students might need additional support and areas for system and school improvement.

The purpose of this chapter is to:

(1) Define student absence in the 2020-21 school year for school districts across the state to collect and use daily attendance data during the COVID-19 epidemic; and

(2) Establish the minimum criteria of the attendance system that each school district must implement as required under WAC 180-16-200 (4)(c).

These rules continue to support the state and school districts in addressing the challenge of chronic absenteeism, improving learning outcomes and success in school for all students, and supporting the whole child.

NEW SECTION

WAC 392-401A-010 Authority. The authority for this chapter is RCW 28A.300.046, which requires the superintendent of public instruction to adopt rules establishing a standard definition of student absence from school.

NEW SECTION

WAC 392-401A-011 Scope and application. (1) While in effect, this chapter supersedes chapter 392-401 WAC.

(2) This chapter applies to common school districts, charter public schools, and state-tribal education compact schools.

(3) This chapter does not apply to students enrolled in an alternative learning experience and claimed for state funding pursuant to WAC 392-121-182.

(4) This chapter shall be effective only during the 2020-21 school year.

NEW SECTION

WAC 392-401A-012 General definitions. (1) "Parent" has the same meaning as in WAC 392-172A-01125.

(2) "In-person learning" is when instructional activity is planned and delivered under the supervision of school district staff and on school grounds.

(3) "Remote learning" is when daily learning activities are delivered through remote learning modalities including, but not limited to, distance learning, hybrid classrooms, rotating schedules, and other methods that allow for the delivery of basic education services during the COVID-19 epidemic. Remote learning activities may be synchronous or asynchronous.

NEW SECTION

WAC 392-401A-015 Definition of absence from in-person learning. (1) A student is absent from in-person learning when the student is:

(a) Not physically present on school grounds; and

(b) Not participating in the following activities at an approved location during a scheduled in-person learning day:

(i) Instruction;

(ii) Any instruction-related activity; or

(iii) Any other district- or school-approved activity that is regulated by an instructional/academic accountability system, such as participation in district-sponsored sports.

(2) A full day absence from in-person learning is when a student is absent for fifty percent or more of their scheduled day.

NEW SECTION

WAC 392-401A-016 Definition of absence from remote learning. (1) A student is absent from remote learning when the student is not participating in planned instructional activities on a scheduled remote learning day.

(2) Evidence of student participation in remote learning may include, but is not limited to:

(a) Daily logins to learning management systems;

(b) Daily interactions with the teacher to acknowledge attendance (including messages, emails, phone calls or video chats); or

(c) Evidence of participation in a task or assignment.

NEW SECTION

WAC 392-401A-018 Daily attendance taking. School districts must take daily attendance for all enrolled students participating in remote learning and in-person learning.

NEW SECTION

WAC 392-401A-020 Excused absences from in-person learning or remote learning. (1) Absences due to the following reasons must be excused:

(a) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental, optometry, pregnancy, and in-patient or out-patient treatment for chemical dependency or mental health) for the student or person for whom the student is legally responsible;

(b) Family emergency including, but not limited to, a death or illness in the family;

(c) Religious or cultural purpose, including observance of a religious or cultural holiday or participation in religious or cultural instruction;

(d) Court, judicial proceeding, court-ordered activity, or jury service;

(e) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;

(f) State-recognized search and rescue activities consistent with RCW 28A.225.055;

(g) Absence directly related to the student's homeless or foster care/dependency status;

(h) Absences related to deployment activities of a parent who is an active duty member consistent with RCW 28A.705.010;

(i) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;

(j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;

(k) Absences due to a student's migrant status;

(l) An approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent or emancipated youth;

(m) Absences related to the student's illness, health condition, or medical appointments due to COVID-19;

(n) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19;

(o) Absences related to the student's employment or other family obligations during regularly scheduled school hours that are temporarily necessary due to COVID-19 until other arrangements can be made, including placement in a more flexible education program;

(p) Absences due to the student's parent's work schedule or other obligations during regularly scheduled school hours, until other arrangements can be made;

(q) Absences due to the student's lack of necessary instructional tools, including internet broadband access or connectivity; and

(r) Other COVID-19 related circumstances as determined between school and parent or emancipated youth.

(2) A school principal or designee has the authority to determine if an absence meets the above criteria for an excused absence.

(3) School districts may define additional categories or criteria for excused absences.

NEW SECTION

WAC 392-401A-030 Unexcused absences from in-person learning. Any absence from in-person learning is unexcused unless it meets one of the criteria provided in WAC 392-401A-020.

NEW SECTION

WAC 392-401A-035 Unexcused absences from remote learning. Absences from remote learning must be considered a "nontruancy remote learning absence" starting October 5, 2020, through the end of the 2020-21 school year, unless they meet the criteria for an excused absence in WAC 392-401A-020. Absences from remote learning shall not be treated as unexcused.

NEW SECTION

WAC 392-401A-038 Data reporting. School districts must report student absences to the office of superintendent of public instruction through the comprehensive education and data research system (CEDARS) as provided in the CEDARS data manual.

NEW SECTION

WAC 392-401A-040 Student absences—General requirements. (1) Students shall not be absent if:

(a) They have been suspended, expelled, or emergency expelled pursuant to chapter 392-400 WAC;

(b) Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and

(c) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.

(2) A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.

NEW SECTION

WAC 392-401A-045 Tiered response system for student absences. (1) School districts must implement a tiered response system to reduce chronic absenteeism and address barriers to student engagement in learning during the COVID epidemic.

(2) Tiered response systems under this section must include:

(a) Monitoring daily attendance data for all students who are absent from in-person or remote learning, whether excused, unexcused, or nontruancy remote learning;

(b) A process to contact families and verify current contact information for each enrolled student that includes multiple attempts and modalities in the parent's home language;

(c) Daily notification of absences to parents;

(d) A process for outreach from the school to determine student needs, such as basic needs, connectivity and hardware, connection with health and social services as necessary;

(e) Differentiated supports that address the barriers to attendance and participation that includes universal supports for all students and tiered interventions for students at-risk of and experiencing chronic absence, including school and district engagement teams, community truancy boards, and referral to community resources; and

(f) When feasible and appropriate, transitioning the students to full-time in-person learning or other program to accommodate the student's needs.