

WSR 21-13-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-83—Filed June 2, 2021, 4:06 p.m., effective June 4, 2021]

Effective Date of Rule: June 4, 2021.

Purpose: The purpose of this emergency rule is to open retention seasons for spring Chinook salmon in Snake River.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

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

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

Reasons for this Finding: The 2021 return of upriver spring Chinook salmon was upgraded by the *U.S. v. Oregon* technical advisory committee to eighty-seven thousand from seventy-five thousand two hundred. This allows for additional harvest within the Snake River based on Washington department of fish and wildlife commission Policy C-3630. The *U.S. v. Oregon* (2018-2027) Management Agreement provides Endangered Species Act coverage for this fishery.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 2, 2021.

Kelly Susewind
 Director

NEW SECTION

WAC 220-312-05000U Freshwater exceptions to statewide rules—Eastside. Effective the dates of June 4 and June 6, 2021 only, the following provisions of WAC 220-312-050, regarding salmon seasons in the Snake River shall be open as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

Snake River (Franklin/Walla Wall Counties): From Texas Rapids boat launch (south side of the river upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam and includ-

ing the rock and concrete area between the juvenile bypass return pipe and little Goose Dam along the shoreline of the facility:

Salmon:

(a) Open: Friday June 4, 2021 and Sunday June 6, 2021 only:

(b) Daily limit 4, up to 1 adult may be retained. Release all salmon other than hatchery Chinook.

(c) Night Closure.

(d) Barbless hooks required.

(e) Salmon may not be removed from the water unless retained as part of the daily limit.

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

WSR 21-13-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-85—Filed June 4, 2021, 8:05 a.m., effective June 5, 2021]

Effective Date of Rule: June 5, 2021.

Purpose: The purpose of this emergency rule is to open return salmon seasons in the Kalama and Klickitat rivers to permanent rules.

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

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

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

Reasons for this Finding: This rule is needed to return salmon and steelhead seasons and daily limits within the Kalama and Klickitat rivers to permanent rules. This rule also carries forward rules regarding salmon and steelhead seasons and daily limits for the Cowlitz River, Cispus River, and Cowlitz Falls Reservoir, previously put in place by emergency rule on March 3, 2021, in the filing of WSR 21-07-002 and 21-11-027. The previous rule for these waters is repealed by this filing in order to update the Kalama and Klickitat rivers.

The Washington department of fish and wildlife has managed the Kalama and Klickitat river fisheries to ensure that broodstock goals at Kalama Falls and Klickitat Salmon hatcheries would be achieved for 2021. Broodstock collection at these facilities is on track to be achieved. With broodstock collection at these facilities projected to be met, these fisheries can be reopened under permanent rules.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: June 4, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000Z Freshwater exceptions to statewide rules—Southwest. Effective June 5, 2021, the provisions of WAC 220-312-030 regarding salmon seasons for Cispus River, Cowlitz River, and Cowlitz Falls Reservoir, shall be modified during the dates and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

1. **Cispus River (Lewis Co.):** Salmon: Effective immediately, until further notice: Closed.

2. **Cowlitz River (Cowlitz/Lewis Co.):** Salmon: Effective immediately, until further notice: Closed.

3. **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Salmon: Effective immediately, until further notice: Closed.

REPEALER

The following section of Washington Administrative Code is repealed, effective June 5, 2021:

WAC 220-312-03000Y Freshwater exceptions to statewide rules—Southwest. (21-71)

WSR 21-13-009

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 21-86—Filed June 4, 2021, 2:13 p.m., effective June 4, 2021, 2:13 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open a portion of the Cascade River seven days per week.

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

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

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

Reasons for this Finding: This emergency rule is needed to open fishing on a portion of the Cascade River seven days per week. Closure days are no longer needed to avoid gear conflicts with tribal fishers as treaty fisheries for hatchery spring Chinook in this section of the river have concluded for the season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 4, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000C Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through July 15, 2021, the following provisions of WAC 220-312-040 regarding recreational fishing seasons for gamefish and salmon on the Cascade River, shall be open as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Cascade River (Skagit Co.) from the mouth to Rockport-Cascade Rd. Bridge:

Open Immediately through July 15, 2021, 7 days per week.

REPEALER

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

WAC 220-312-04000Z Freshwater exceptions to statewide rules—Puget Sound. (21-74)

WSR 21-13-010
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 4, 2021, 2:29 p.m., effective June 4, 2021, 2:29 p.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. The 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 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 pro-

gram, 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 21-13-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-87—Filed June 8, 2021, 2:59 p.m., effective June 8, 2021,
2:59 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: Amending WAC 220-359-020.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This rule opens the 2021 tribal spring and summer commercial fisheries above Bonneville Dam, and in accordance with state/tribal memorandums of understanding/agreement for below Bonneville Dam. This rule is consistent with actions of the Columbia River Compact on June 8, 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 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 8, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000M Columbia River salmon seasons. Effective 9:00 p.m. June 8, 2021, until further notice the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Seasons:

(i) 6:00 AM Wednesday June 16 to 6:00 PM Saturday, June 19, 2021

(ii) 6:00 AM Monday June 21 to 6:00 PM Thursday, June 24, 2021

(b) Gear: Set and Drift Gillnets with a 7" minimum mesh size restriction.

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

The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2021.

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

(a) Season: 9:00 PM Tuesday June 8 through 11:59 PM July 31, 2021.

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

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

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2021.

3) Open Areas: SMCRA 1E1 (Downstream of Bonneville Dam)

(a) Season: 9:00 PM Tuesday June 8 through 11:59 PM July 31, 2021, only during days and times opened under tribal rules.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in the fisheries downstream of Bonneville Dam.

4) Open Areas: Wind River, Drano Lake, and Klickitat River

(a) Season: 9:00 PM June 8 until further notice, only during those days and hours when the tributaries listed are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

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

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

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

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

WSR 21-13-021
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 8, 2021, 5:19 p.m., effective June 8, 2021, 5:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Consolidated Appropriations Act of 2021, P.L. 116-260, enacted December 27, 2020, increased the minimum allotment for Supplemental Nutrition Assistance Program (basic food) from \$16.00 to \$19.00. The American Rescue Plan Act of 2021, P.L. 117-2, enacted March 11, 2021, made this change effective through September 30, 2021.

Citation of Rules Affected by this Order: Amending WAC 388-412-0015.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050.

Other Authority: Consolidated Appropriations Act of 2021, P.L. 116-260, and American Rescue Plan of 2021, P.L. 117-2.

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

Reasons for this Finding: The Consolidated Appropriations Act, signed in December 2020, increased the minimum allotment from \$16.00 to \$19.00 temporarily, effective January 2021. The American Rescue Plan Act, signed in March 2021, extended this through the remainder of the federal fiscal year. This emergency rule is to codify this amount in WAC.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 25, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined

application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) **How we determine monthly allotments:**

(a) We calculate your monthly allotment for federally funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) **Maximum allotment:**

(a) The maximum allotment for the number of people in your AU eligible for federally funded basic food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) **Prorated benefits in the first month.** If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) **Combined allotment for first and second month's benefits.** If you apply for benefits on or after the sixteenth of the month and we determine you are eligible for food assistance for both the first and second month, we will issue both months' benefits in one allotment.

(6) **Minimum allotment.** Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) ((~~Sixteen~~)) Nineteen dollars if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) ((~~Sixteen~~)) Nineteen dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

(7) **Use of food assistance benefits.** Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

**WSR 21-13-030
EMERGENCY RULES
CLARK COLLEGE**

[Filed June 10, 2021, 7:24 a.m., effective June 10, 2021, 7:24 a.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 conduct to be compliant with federal regulations.

Citation of Rules Affected by this Order: New Discipline procedures for cases involving allegations of violation of Title IX, WAC 132N-125-300, 132N-125-305, 132N-125-310, 132N-125-315, 132N-125-320, 132N-125-325, 132N-125-330, 132N-125-335, and 132N-125-340.

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: Clark 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Bob Williamson
Special Projects Administrator

DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF TITLE IX

NEW SECTION

WAC 132N-125-300 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 Clark College's standard disciplinary procedures, WAC 132N-125-005 through 132N-125-225, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132N-125-305 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, Clark 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 Clark 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, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

NEW SECTION

WAC 132N-125-310 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Clark 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 Clark 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 Clark College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132N-125-200.

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

NEW SECTION

WAC 132N-125-315 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

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

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

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

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

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

(ii) An advisor may be an attorney; and

(iii) The 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 132N-125-320 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132N-125-125. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

NEW SECTION

WAC 132N-125-325 Rights of parties. (1) Clark College's student conduct procedures, WAC 132N-125-120, 132N-125-125, 132N-125-130, and 132N-125-200, 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 132N-125-330 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132N-125-335 Initial order. (1) In addition to complying with WAC 132N-125-135, 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 Clark College's education programs or activities; and

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

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

NEW SECTION

Katherine I. Vasquez
Rules Coordinator

WAC 132N-125-340 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132N-125-215.

(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 21-13-031
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed June 10, 2021, 9:56 a.m., effective June 15, 2021]

Effective Date of Rule: June 15, 2021.

Purpose: The department is amending WAC 388-310-0800 WorkFirst—Support services, to expand access of support services during the time of and recovery from the COVID-19 pandemic.

Citation of Rules Affected by this Order: Amending WAC 388-310-0800.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057.

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 expansion of support services will better help WorkFirst families meet their basic needs during the COVID-19 pandemic and recovery.

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

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

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

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

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

Date Adopted: June 10, 2021.

AMENDATORY SECTION (Amending WSR 15-18-024, filed 8/25/15, effective 9/25/15)

WAC 388-310-0800 WorkFirst—Support services.

(1) Who can get support services?

People who can get support services include:

(a) WorkFirst participants who receive a TANF cash grant;

(b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);

(c) TANF/SFA applicants as needed to meet the Work-First orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);

(d) Unmarried or pregnant minors who are income eligible to receive TANF and are:

(i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or

(ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement and/or meeting the school requirements.

(e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.

(2) Why do I receive support services?

Although not an entitlement, you may receive support services for the following reasons:

(a) To help you participate in work and WorkFirst activities that lead to independence.

(b) To help you to participate in job search, accept a job, keep working, advance in your job, and/or increase your wages.

(c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 170-290 WAC describes the rules for this child care assistance program.)

(3) What type of support services may I receive and what limits apply?

There is a limit of three thousand dollars per person per program year (July 1st to June 30th) for WorkFirst support services you may receive. Some types of support services have dollar limit restrictions.

The chart below shows the types of support services that are available for the different activities (as indicated by an "x") and the restrictions that apply.

Definitions:

- Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.

- Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.

••• Some support services are available if you need them for other required activities in your IRP.

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Reasonable accommodation for employment		x		
Clothing/uniforms		x		
Diapers		x	<u>x</u>	<u>x</u>
Haircut		x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene		x	<u>x</u>	<u>x</u>
Professional, trade, association, union and bonds		x		<u>x</u>
Relocation related to employment (can include rent, housing, and deposits)		x	<u>x</u>	
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	x		
Tools/equipment		x	<u>x</u>	<u>x</u>
Car repair needed to restore car to operable condition		x	x	<u>x</u>
License/fees		x	x	<u>x</u>
Mileage reimbursement	Same rate as established by OFM for state employees	x	x	<u>x</u>
Transportation allotment, <u>including gas support</u>		x	x	x
Counseling		x	x	x
Educational expenses		x	<u>x</u>	x
Medical exams (not covered by medicaid)		x	x	x
Public transportation		x	x	x
Testing-diagnostic		x	x	x

(4) What are the other requirements to receive support services?

Other restrictions on receiving support services are determined by the department or its agents. They will consider whether:

- (a) It is within available funds; and
- (b) It does not assist, promote, or deter religious activity; and
- (c) There is no other way to meet the cost.

(5) What happens to my support services if I do not participate as required?

The department will give you ten days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

**WSR 21-13-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-88—Filed June 10, 2021, 2:47 p.m., effective June 10, 2021]

Effective Date of Rule: June 10, 2021.

Purpose: The purpose of this emergency rule is to modify recreational Pacific halibut seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000A; and amending WAC 220-312-050.

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

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

Reasons for this Finding: Prior to the start of the recreational halibut season, additional days were identified that could be opened if recreational catch in Marine Area 2 (Westport) was tracking slower than expected. Those days were June 17, 20, 24, and 27. Quota remaining in the Marine Area 2 quota is sufficient to cover much of the expected catch through June 24. Similarly, in Marine Area 1 (Ilwaco/Chinook), there is quota remaining to support keeping the all

depth and nearshore areas open through June 24. Washington sport allocation will be used to ensure that the fishery can remain open in these areas through June 24 without exceeding the overall statewide sport allocation. This approach provides some certainty relative to expected fishing days and allows recreational anglers to make plans to participate in the remaining June fishing dates.

The National Marine Fisheries Service has approved these rules for Pacific halibut fisheries. Halibut catch will continue to be closely monitored by Washington department of fish and wildlife staff, the season could close earlier if quotas are achieved. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 10, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000E Halibut—Seasons—Daily possession limits. Notwithstanding the provisions of WAC 220-314-040, and 220-314-010, June 10 through September 24, 2021, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-040, and 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

(1) Catch Record Card Area 1 (All depth fishery):

Open June 10, 13, 17, 20, and 24, 2021. (Thursdays and Sundays June 10 through 24.)

(2) Catch Record Card Area 1 (Nearshore fishery):

Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

Open June 14, 15, 16, 21, 22, and 23, 2021. (Mondays through Wednesdays through June 23.)

(3) Catch Record Card Area 2:

Open June 17, 20, and 24, 2021. (Thursdays and Sundays June 17 through 24.)

(4) Card Areas 3 and 4:

Open June 10, 12, 17, 19, 24, 26. (Thursdays and Saturdays June 10 through 26, 2021.)

(5) Catch Record Card Areas 5 through 10:

Open June 10, 11, 12, 17, 18, 19, 24, 25, 26. (Thursdays, Fridays, Saturdays, June 10 through 26, 2021.)

(6) Catch Record Card Areas 11, 12 and 13: Closed.

REPEALER

The following section of Washington Administrative Code is repealed, effective June 10, 2021:

WAC 220-314-03000A Halibut—Seasons—Daily and possession limits.

WSR 21-13-038

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 21-92—Filed June 10, 2021, 4:16 p.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The purpose of this emergency rule is to open summer recreational crab seasons in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000A; and amending WAC 220-330-040.

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational crab harvest in the marine areas listed to achieve the 50/50 harvest defined by the Federal Court Order. Recreational crab fisheries will open at 12:01 a.m. on the first day instead of 7:00 a.m. in each of the marine areas as stipulated by the permanent rule. Marine Area 12 south of a line projected due east from Ayock Point and Marine Area 13 will be closed. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 10, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000A Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective immediately through September 30, 2021, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein:

(1) Marine Areas 4 east of the Bonilla-Tatoosh line, 5, 6, 8-1, 8-2, and 9: Effective 12:01 a.m. July 1, 2020 through 11:59 p.m. September 6, 2021, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(2) Marine Area 10: Effective 12:01 a.m. July 11, 2021, through 11:59 p.m. September 6, 2021, it is permissible to fish for crab for personal use on Sundays and Mondays.

(3) Marine Area 11: Effective 12:01 a.m. July 11, 2021, through 11:59 p.m. August 30, 2021, it is permissible to fish for crab for personal use on Sundays and Mondays.

(4) The portion of Marine Area 12 north of a line projected due east from Ayock Point: Effective 12:01 a.m. July 1, 2021, through 11:59 p.m. September 6, 2021, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(5) The portion of Marine Area 12 south of a line projected due east from Ayock Point: Closed until further notice.

(6) Those waters of Marine Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence true west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective 12:01 a.m. July 15, 2020, through 11:59 p.m. September 30, 2021, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(7) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island true west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective 12:01 a.m. August 19, 2021, through 11:59 p.m. September 30, 2021, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(8) Marine Area 13: Closed until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective September 30, 2021:

WAC 220-330-04000A Crab—Areas and seasons—Personal use.

WSR 21-13-040

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed June 10, 2021, 4:22 p.m., effective June 23, 2021]

Effective Date of Rule: June 23, 2021.

Purpose: Developmental disabilities administration (DDA) is enacting these changes to align chapter 388-845 WAC with home and community based services waiver amendments approved by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: New WAC 388-845-0920, 388-845-0930, 388-845-0940, 388-845-1101, 388-845-1161, 388-845-1162, 388-845-1163, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2145, 388-845-2150 and 388-845-2155; repealing WAC 388-845-0300, 388-845-0305, 388-845-0310, 388-845-0400, 388-845-0405, 388-845-0410, 388-845-0700, 388-845-0705, 388-845-0710, 388-845-1300, 388-845-1305, 388-845-1310, 388-845-1400, 388-845-1405, 388-845-1410, 388-845-1900, 388-845-1905, 388-845-1910, 388-845-2160, 388-845-2165 and 388-845-2170; and amending WAC 388-845-0001, 388-845-0055, 388-845-0060, 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0510, 388-845-0515, 388-845-0520, 388-845-0525, 388-845-0650, 388-845-0800, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0905, 388-845-0910, 388-845-1100, 388-845-1105, 388-845-1110, 388-845-1150, 388-845-1155, 388-845-1160, 388-845-1505, 388-845-1607, 388-845-1700, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-2000, 388-845-2005, 388-845-2010, and 388-845-3070.

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

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

Reasons for this Finding: Filing these amendments on an emergency basis is necessary to ensure federal compliance and maintain federal funding for the state. This is the fourth filing on these sections and the text is identical to that in the third filing. (The rule text in the second filing differed from the rule text in the first filing.) This fourth filing is necessary to keep the emergency rule in place until DDA completes the permanent rule-making process. (DDA is currently at the public hearing phase of the permanent rule-making process. The public rules hearing is scheduled for July 27, 2021.)

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 30, Repealed 15.

Date Adopted: June 10, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0001 Definitions. "Aggregate services" means a combination of services subject to the dollar limits in the basic plus waiver.

"Allocation" means the amount of individual and family services (IFS) waiver funding available to a client for a maximum of twelve months.

"CARE" means comprehensive assessment and reporting evaluation.

"Client" means a person who has a developmental disability under RCW 71A.10.020(5) and has been determined eligible to receive services from the administration under chapter 71A.16 RCW.

"Community crisis stabilization services" or "CCSS" means a state-operated program that provides short-term supports to clients who are in crisis, or who are at risk of hospitalization or institutional placement.

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

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

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

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

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your family live.

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

"HCBS waiver" is a DDA 1915(c) home and community based services waiver program.

"Home" means present (~~or intended~~) place of residence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"You" means the client or participant.

"Waiver year" means the twelve-month period starting from the initial or annual plan effective date in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0055 How do I remain eligible for the waiver? (1) Once you are enrolled in a DDA 1915(c) HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

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

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

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

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

(a) Be under age twenty-one;

(b) Live with your family; ~~(and)~~

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

(d) Continue to participate in the program as outlined in the annual participation agreement.

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

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

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

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

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

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

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

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

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

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

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

(e) You choose to unenroll from the waiver;

(f) You reside out-of-state;

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

(h) You refuse to participate with DDA in:

(i) Service planning;

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

(iii) Accepting services agreed to in your person-centered service plan ~~((individual support plan))~~ as necessary to meet your health and welfare needs;

(i) You are ~~((residing))~~ in a hospital, jail, prison, nursing facility, ICF/IID, or other institution ~~((and remain in residence))~~ for at least one full calendar month, and ((are still in residence)) are under the care of that setting:

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

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

(iii) At the end of the waiver fiscal year, whichever date occurs first;

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

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

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0110 What are the limits to the waiver services you may receive? The following limits apply to the waiver services you may receive:

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

(2) ~~((Behavioral health))~~ Stabilization services may be added to your person-centered service plan after the services have been provided.

(3) Waiver services are limited to services required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

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

(5) Waiver services must not replace or duplicate other available paid or unpaid supports or services. Before DDA will cover a service through waiver services, you must first request and be denied all applicable services through private insurance, medicare, the medicaid state plan, and other resources.

(6) Waiver funding must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0050.

(7) For the individual and family services (IFS) ~~((and))~~ waiver, basic plus ((waivers)) waiver, and children's intensive in-home behavior support waiver, services must not

exceed the yearly limits specified in these programs for specific services or combinations of services.

(8) Your choice of qualified providers and services is limited to the most cost-effective option that meets your unmet need identified in your person-centered service plan.

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

(10) You may receive services in a recognized out-of-state bordering city under WAC 182-501-0175.

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

(12) Waiver services do not cover:

- (a) Copays;
- (b) Deductibles;
- (c) Dues;
- (d) Membership fees; or
- (e) Subscriptions.

(13) Waiver services do not cover a product unless the product is:

- (a) Necessary to meet a basic health and safety need; ~~(and)~~
- (b) The least restrictive means for meeting that need; and
- (c) Requested by the waiver participant.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0210 What services are available under the basic plus waiver? The following services are available under the basic plus waiver:

SERVICE	YEARLY LIMIT
AGGREGATE SERVICES: ((Chemical)) Extermination of cimex lectularius (bedbugs) Community ((guide)) <u>engagement</u> Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Skilled nursing Specialized ((medical)) equipment and supplies Specialized ((psychiatric services)) <u>habilitation</u> Speech, hearing, and language services	Total costs must not exceed six thousand one hundred ninety-two dollars per year per participant

SERVICE	YEARLY LIMIT
Staff and family consultation ((and training)) Transportation Wellness education	
<u>Therapeutic adaptations</u>	<u>Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding</u>
EMPLOYMENT SERVICES: Individual technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevocational services after September 1, 2015))
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services Positive behavior support and consultation) Specialized habilitation Staff and family consultation ((Specialized psychiatric services))	Limits determined by a ((behavioral health professional or DDA)) <u>the person-centered service plan</u>
((Personal care))	((Limits determined by the CARE tool used as part of the DDA assessment))
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA
((Emergency assistance is only for basic plus waiver aggregate services)) <u>Community engagement</u> <u>Environmental adaptations</u> <u>Occupational therapy</u> <u>Physical therapy</u>	Six thousand dollars per year ((; preauthorization required)) <u>for emergency assistance funding</u>

SERVICE	YEARLY LIMIT
<u>Positive behavior support</u> <u>Specialized equipment and supplies</u> <u>Speech, hearing, and language services</u> <u>Skilled nursing</u> <u>Staff and family consultation</u> <u>Transportation</u>	

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0215 What services are available under the core waiver? (1) The following services are available under the core waiver:

SERVICE	YEARLY LIMIT
((Chemical)) <u>Extermination of cimex lectularius (bedbugs)</u> ((guide)) <u>Community engagement</u> Community transition ((adaptions)) <u>Environmental adaptations</u> Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation Risk assessment Skilled nursing ((medical)) <u>Specialized equipment and supplies</u> ((Specialized psychiatric services)) Speech, hearing, and language services ((and training)) <u>Staff and family consultation</u> Transportation Wellness education	Determined by the person-centered service plan

SERVICE	YEARLY LIMIT
<u>Specialized habilitation</u>	<u>Limited to four thousand dollars per waiver year</u>
EMPLOYMENT SERVICES: Individualized technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status (no new enrollment in prevocational services after September 1, 2015)
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) <u>Crisis diversion bed</u> ((services)) ((Positive behavior support and consultation)) ((psychiatric services)) <u>Specialized habilitation</u> ((and training)) <u>Staff and family consultation</u>	Limits determined by ((a-behavioral health professional or DDA)) <u>the person-centered service plan</u>
Respite care	Limits determined by DDA assessment

(2) A participant's core waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's core waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0220 What services are available under the community protection waiver? (1) The following services are available under the community protection waiver:

SERVICE	YEARLY LIMIT
((Chemical)) <u>Extermination of cimex lectularius (bedbugs)</u> Community transition Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation	Determined by the person-centered service plan

SERVICE	YEARLY LIMIT
Risk assessment Skilled nursing Specialized ((medical)) equipment and supplies ((Specialized psychiatric services)) Speech, hearing, and language services Staff and family consultation ((and training)) Transportation	
EMPLOYMENT SERVICES: Individual technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevocational services after September 1, 2015))
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((a behavioral health professional or DDA)) <u>the person-centered service plan</u>

(2) A participant's community protection waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's community protection waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0225 What services are available under the children's intensive in-home behavioral support (CIIBS) waiver? (1) The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Environmental adaptations Nurse delegation ((Positive behavior support and consultation)) Specialized clothing Specialized ((medical)) equipment and supplies <u>Specialized habilitation</u> Staff and family consultation ((and training)) ((Therapeutic equipment and supplies)) Transportation Vehicle modifications	((Determined by the person-centered service plan. Total cost of waiver services must not exceed the average cost of four thousand dollars per month per participant.)) <u>Fifteen thousand dollars per year for any combination of services</u>
Respite care	Limits determined by the DDA assessment. ((Costs are included in the total average cost of four thousand dollars per month per participant for all waiver services.))
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion ((bed services <u>Positive behavior support and consultation</u>)) <u>Specialized habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((behavioral health professional or DDA)) <u>the person-centered service plan</u>
Risk assessment <u>Positive behavior support</u>	Limits determined by DDA
<u>Environmental adaptations (Accessibility and repairs)</u> <u>Specialized habilitation</u> <u>Staff and family consultation</u> <u>Vehicle modifications</u>	<u>Six thousand dollars per year for emergency assistance funding</u>
<u>Music therapy</u> <u>Equine therapy</u>	<u>Five thousand dollars per year for combination of services</u>

SERVICE	YEARLY LIMIT
<u>Therapeutic adaptations</u>	<u>Limited to a single, one-time authorization not to exceed fifteen thousand dollars every five waiver years</u>

(2) A participant's CIIBS waiver services are subject to additional limits under this chapter.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0230 What services are available under the individual and family services (IFS) waiver? (1) The following services are available under the individual and family services (IFS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan
Community engagement	
Environmental ((adap- tions)) <u>adaptations</u>	
Occupational therapy	
Peer mentoring	
Person-centered plan facilitation	
Physical therapy	
Positive behavior support and consultation	
Respite care	
Skilled nursing	
Specialized clothing	
Specialized ((medical)) equipment and supplies	
Specialized ((psychiatric services)) <u>habilitation</u>	
Speech, hearing, and language services	
Staff and family consultation ((and training))	
Supported parenting services	
Transportation	
Vehicle modifications	
Wellness education	

SERVICE	YEARLY LIMIT
<u>Therapeutic adaptations</u>	<u>Limited to a one-time authorization every five years and limited to funds available in the client's aggregate and emergency services</u>
Risk assessment	Limits determined by ((DDA- Costs are excluded from the annual allocation-)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH- STABILIZATION SERVICES-)) Crisis diversion bed ((ser- vices)) ((Positive behavior sup- port and consultation))	Limits determined by ((behavioral health profes- sional or DDA)) <u>the person-centered service plan</u> . Costs are excluded from the annual allocation.
Specialized ((psychiatric services)) <u>habilitation</u>	
<u>Staff and family consulta- tion</u>	

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

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

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

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

(1) Assistive technology is limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(2) Clinical and support needs for assistive technology must be identified in your DDA assessment and documented in the person-centered service plan.

(3) DDA requires ~~((your))~~ a treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

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

(4) Assistive technology requires prior approval by the DDA regional administrator or designee.

(5) DDA may require a written second opinion from a DDA-selected professional.

(6) The dollar amounts for your individual and family services (IFS) waiver annual allocation limit the amount of assistive technology you are authorized to receive.

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0500 What is positive behavior support and consultation? (1) Positive behavior support and consultation ~~((may be provided to persons on any))~~ is available on all of the DDA HCBS waivers ((and)). A participant is eligible for positive behavior support and consultation if the participant is:

(a) Under age 21 and currently authorized to receive positive behavior support and consultation for the support of behavioral health or autism treatment when unable to access through the medicaid state plan; or

(b) On the community protection waiver and require behavior support to address sexual aggression, arson, or assaultive behaviors which make the client eligible for the community protection waiver.

(2) Positive behavior support and consultation includes the development and implementation of programs designed to support waiver participants using:

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

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

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

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

(2) DDA determines the amount of positive behavior support and consultation you may receive based on your needs and information from your treating professional.

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

(4) DDA may require a second opinion from a DDA-selected provider.

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

(a) Basic plus;

(b) Core;

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

(d) IFS.

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

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

(b) Not otherwise covered under the medicaid state plan.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

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

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

(a) Receive residential habilitation services; or

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

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

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

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

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

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

(b) Application of chemical-based pesticide; and

(c) One follow-up visit.

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

(3) ~~((Chemical))~~ Extermination of bedbugs excludes:

(a) Lodging during the ~~((chemical))~~ extermination process; and

(b) Preparatory housework associated with the extermination process.

(4) DDA does not cover ~~((chemical))~~ extermination of bedbugs for a participant who lives:

(a) With their family; or

(b) In an adult family home, assisted living, group home, group training home, licensed staffed residential home, or other facility contractually obligated to provide housing.

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

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

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

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

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

(4) Participants are supported to develop identified skills that will facilitate integration into their community as described in the person-centered service plan.

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

~~((6))~~ This service is available ~~((in))~~ on the:

(a) IFS waiver;

(b) Basic plus waiver; and

(c) Core waiver when the participant is not receiving residential habilitation services.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0800 What is emergency assistance funding? Emergency assistance funding is a temporary increase, ninety days or less, to the yearly basic plus or CIIBS waiver aggregate dollar limit when additional waiver aggregate services are required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

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

WAC 388-845-0810 How do I qualify for emergency assistance funding? You qualify for emergency assistance only if you have used all of your waiver aggregate funding and your current situation meets one of the following criteria:

(1) You involuntarily lose your present residence for any reason either temporary or permanent;

(2) You lose your present caregiver for any reason, including death;

(3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or

(4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0820 Are there limits to your use of emergency assistance funding? All of the following limits apply to the emergency assistance you may receive~~((s))~~.

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

(2) Payment authorizations are reviewed every thirty days and must not exceed six thousand dollars per twelve months based on the effective date of your current person-centered service plan~~((s))~~.

(3) Emergency assistance ~~((services are))~~ funding is limited to the following ~~((basic plus waiver))~~ aggregate services when on the basic plus waivers:

(a) Community ~~((guide))~~ engagement;

(b) Environmental adaptations;

(c) Occupational therapy;

(d) Physical therapy;

(e) Positive behavior support and consultation;

(f) Skilled nursing;

(g) Specialized ~~((medical))~~ equipment and supplies;

(h) ~~((Specialized psychiatric services;~~

~~((s)))~~ Speech, hearing, and language services;

~~((s)))~~ (i) Staff and family consultation ((and training)), which excludes individual and family counseling;

~~((s)))~~ (j) Transportation; and

(k) Therapeutic adaptations.

(4) Emergency assistance funding is limited to the following services when on the CIIBS waiver:

(a) Environmental adaptations;

(b) Specialized habilitation;

(c) Staff and family consultation; and

(d) Vehicle modifications.

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

(a) The emergency situation has been resolved;

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0900 What are environmental adaptations? (1) Environmental adaptations provide basic physical adaptations to the ~~((dwelling))~~ existing home and existing rooms within the home required by the individual's person-centered service plan needed to:

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

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the dwelling; and

(c) Increase the individual's independence inside ~~((the dwelling))~~ or outside the dwelling to ~~((provide access to the dwelling))~~ allow the individual to physically enter and move within the home.

(2) Examples of environmental ~~((adaptions))~~ adaptations include installing stair lifts, installing ramps and grab bars, widening doorways, modifying the individual's primary bathroom, or installing specialized electrical or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Environmental ~~((adaptions))~~ adaptations are available in all of the DDA HCBS waivers.

(4) Only the children's intensive in-home behavioral support (CIIBS) and individual and family services (IFS) waivers may include adaptations to the dwelling necessary to prevent or repair ~~((property destruction))~~ damage to the structure of the home caused by the participant's behavior, as addressed in the participant's ~~((positive))~~ behavior support plan.

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

WAC 388-845-0905 Who is a qualified provider for environmental adaptations? ~~((1) For adaptations that do not require installation, qualified providers are retail vendors with a valid business license contracted with DDA to provide this service.~~

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

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

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0910 What limits apply to environmental adaptations? The following service limits apply to environmental adaptations:

(1) Clinical and support needs for an environmental adaptation must be identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) One thousand five hundred dollars or less, one bid is required;

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

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

(3) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

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

(5) Environmental adaptations to the home are excluded if they are of general utility without direct benefit to the individual as related to the individual's developmental disability, such as cosmetic improvements to the dwelling, or general home improvements, such as carpeting, roof repair, or central air conditioning.

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

~~((The condition of the dwelling or other projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA.))~~ Environmental adaptations must not be performed while other adaptations or remodeling projects are in process.

(8) Environmental adaptations must not be approved if the existing residence condition is impacted by mold, asbestos, or dwelling dilapidation.

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

~~((9))~~ (10) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

~~((10))~~ (11) Environmental adaptations must not add to the total square footage of the dwelling, convert nonliving space to living space, or create a new room.

~~((11))~~ (12) The dollar amounts for aggregate services in your basic plus, CIIBS waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

~~((12))~~ (13) For core, community protection, ~~((and CIIBS waivers,))~~ annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

~~((13))~~ (14) Damage prevention and repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original function;

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

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

(d) Repairs to personal property such as furniture and appliances are excluded; and

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

~~((14))~~ (15) The following adaptations are not covered as an environmental adaptation:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement;

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

(d) Roof repair or siding;

(e) Deck construction or repair; and

(f) Jetted tubs or saunas.

~~((15))~~ (16) Environmental ~~((adaptions))~~ adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

NEW SECTION

WAC 388-845-0920 What is equine therapy? (1)

Equine therapy is the use of horses to provide experiences that support mental health and emotional well-being.

(2) Services may include horsemanship as part of a therapeutic team and participation in other activities associated with preparing a horse for a client's riding lesson.

(3) Equine therapy is available in the CIIBS waiver.

NEW SECTION

WAC 388-845-0930 Who are qualified providers of equine therapy? (1) The provider of equine therapy must be a certified therapeutic horseback riding instructor and contracted with DDA to provide this service.

(2) The provider of equine therapy must have one year of experience working with individuals with developmental disabilities.

NEW SECTION

WAC 388-845-0940 Are there limits to the equine therapy I may receive? The following limits apply to your receipt of equine therapy:

(1) Support needs for equine therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

(3) Equine therapy requires prior approval by the DDA regional administrator or designee.

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

(5) Equine therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per plan year.

(6) Equine therapy services must not be used to provide hippotherapy, which is an occupational therapy service.

(7) The department reserves the right to terminate the authorization for service if there is not a demonstrable improvement in behavior as documented by the contracted equine therapist or other treatment provider.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1100 What are ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~? ~~((Behavioral health))~~ (1) Crisis diversion ~~((bed services))~~ beds are ~~((short-term emergent residential services that may be provided in a client's home, licensed or certified setting, or state operated setting. These services are available to eligible clients whose current living situation is disrupted and the client is at risk of institutionalization. These services are))~~ available in all five HCBS waivers administered by DDA as ~~((behavioral health))~~ a stabilization ~~((services))~~ service in accordance with WAC 388-845-1150 through 388-845-1160.

(2) Crisis diversion beds are short-term residential habilitative supports provided by trained specialists and include direct care, supervision or monitoring, habilitative supports, referrals, and consultation. Crisis diversion beds are available to individuals determined by DDA to be at risk of institutionalization.

NEW SECTION

WAC 388-845-1101 Where may stabilization services - crisis diversion be provided? Stabilization services - crisis diversion beds may be provided in a client's home or a licensed or certified setting.

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

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

(1) DDA certified residential agencies per chapter 388-101 WAC;

(2) Other department licensed or certified agencies; or

(3) State-operated ~~((agency))~~ agencies.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

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

(2) ~~((Behavioral health))~~ Stabilization services - crisis diversion ~~((bed services))~~ beds are intermittent and temporary. A behavioral health professional may make a recommendation about your need for ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~ beds. DDA determines the duration and amount of ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~ beds you will receive.

(3) The costs of ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~ beds do not count

toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the individual and family services waiver.

(4) Stabilization services - crisis diversion beds are limited to additional services not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1150 What are ~~((behavioral health))~~ stabilization services? (1) ~~((Behavioral health))~~ Stabilization services assist persons who are experiencing a behavioral health crisis.

(2) ~~((Behavioral health))~~ Stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers.

(3) A participant may be eligible for ~~((behavioral health))~~ stabilization services if:

(a) A behavioral health professional ~~((or))~~ and DDA has determined the participant is at risk of institutionalization or hospitalization; and

(b) The participant needs:

(i) ~~((Positive behavior support and consultation))~~ Specialized habilitation;

(ii) ~~((Specialized psychiatric services for people age twenty-one and older))~~ Staff and family consultation; or

(iii) ~~((Behavioral health))~~ Crisis diversion ~~((bed services available to participants on the individual and family services, basic plus, core, CIIBS, and community protection waivers))~~ beds.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1155 Who are qualified providers of ~~((behavioral health))~~ stabilization services? Providers of these ~~((behavioral health))~~ stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

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

WAC 388-845-1160 Are there ~~((limitations))~~ limits to the ~~((behavioral health))~~ stabilization services that you can receive? (1) ~~((Clinical and support needs for behavioral health))~~ Stabilization services are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

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

(3) The costs of ~~((behavioral health))~~ stabilization services do not count toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the IFS waiver.

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

NEW SECTION

WAC 388-845-1161 What is music therapy?

(1) Music therapy is the use of musical interventions to promote the accomplishment of individualized goals within a therapeutic relationship.

(2) Services may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, or other expressive musical forms.

(3) Music therapy is available in the CIIBS waiver.

NEW SECTION

WAC 388-845-1162 Who are qualified providers of music therapy?

(1) Qualified providers of music therapy are agencies or individuals who are or employ board certified music therapists (MT-BC) as defined by the certification board for music therapists;

(2) Are contracted with DDA to provide this service; and

(3) Have one year of experience working with individuals with developmental disabilities.

NEW SECTION

WAC 388-845-1163 Are there limits to the music therapy I may receive? The following limits apply to your receipt of music therapy:

(1) Support needs for music therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

(3) Music therapy requires prior approval by the DDA regional administrator or designee.

(4) DDA may require a second opinion by a department-selected provider.

(5) Music therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per year.

(6) The department reserves the right to terminate the authorization for service if there is not a demonstrable improvement in behavior as documented by the certified music therapist or other treatment provider.

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

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

(1) Individuals contracted with DDA to provide residential support as a "companion home" provider;

(2) Individuals contracted with DDA to provide training as an "alternative living provider";

(3) Agencies contracted with DDA and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA);

(5) Licensed and contracted group care homes, foster homes, child (~~placement~~) placement agencies or staffed residential homes per chapter (~~388-148~~) 110-148 WAC.

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

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

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1700 What is waiver skilled nursing?

(1) Waiver skilled nursing means long-term, intermittent, and hourly skilled nursing services consistent with waiver objectives of avoiding institutionalization.

(2) Waiver skilled nursing services are available in the basic plus, community protection (CP), core, and individual and family services (IFS) waivers, and are limited to participants age twenty-one and older unless skilled nursing is authorized as nurse delegation.

(3) Waiver skilled nursing services include nurse delegation services provided by a registered nurse under WAC 388-845-1170.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

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

(a) To increase their abilities to perform their activities of daily living;

(b) To perceive, control, or communicate with the environment in which they live; or

(c) On the IFS and CIIBS waiver only, to improve daily functioning through sensory integration when prescribed in a written therapeutic plan by the current treating professional.

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

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

(~~3~~) (4) Also included are items necessary for life support and ancillary supplies and equipment necessary to the

proper functioning of the equipment and supplies described in subsection (1) of this section.

(~~4~~) (5) Specialized (~~medical~~) equipment and supplies include the maintenance and repair of specialized (~~medical~~) equipment not covered through the medicaid state plan.

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

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1805 Who are the qualified providers of specialized (~~medical~~) equipment and supplies? (1) The provider of specialized (~~medical~~) equipment and supplies must be a medical equipment supplier contracted with DDA or (~~have~~) having a state contract as a Title XIX vendor(~~-~~);

(2) (~~For IFS only~~) A provider contracted with DDA as a goods and services shopper; or

(3) The provider of specialized (~~medical~~) equipment and supplies under WAC 388-845-1800 (1)(c) (~~must~~) may be contracted with DDA as a provider of specialized goods and services or specialized equipment and supplies for IFS and CIIBS waiver clients only.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1810 Are there limits to the specialized (~~medical~~) equipment and supplies you may receive? The following limits apply to the specialized (~~medical~~) equipment and supplies you may receive:

(1) Habilitative support needs for specialized (~~medical~~) equipment and supplies are limited to those identified in your DDA person-centered assessment and documented in your person-centered service plan.

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

(3) DDA may require a second opinion by a DDA-selected provider.

(4) Items must be of direct medical or remedial benefit to you and necessary as a result of your disability.

(5) Medications, personal hygiene products, supplements, and vitamins are excluded.

(6) The dollar amounts for aggregate services in your basic plus waiver limit the amount of service you may receive.

(7) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

(8) Items excluded from specialized equipment and supplies include nonspecialized recreational or exercise equipment, (~~such as~~) including but not limited to trampolines, treadmills, swing sets, and hot tubs.

(9) Specialized equipment and supplies are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(10) For a participant on the IFS or CIIBS waiver, specialized equipment and supplies are limited to those items

needed to improve daily functioning through sensory integration. The item must be in a written therapeutic plan by the participant's current treating professional.

NEW SECTION

WAC 388-845-1870 What are specialized habilitation services? (1) Specialized habilitation services provide community-based and individualized support with the intent of reaching an identified habilitative goal in the person-centered service plan.

(2) Service must assist a client to learn or maintain skills in the category of self-empowerment, safety awareness, self-advocacy, interpersonal effectiveness, effective social communication, appropriate, coping strategies for everyday life changes, managing daily tasks, or adaptive skills.

(3) Specialized habilitation must promote inclusion in the community

(4) Specialized habilitation services are available on the basic plus, IFS, core and CIIBS waivers.

(5) Specialized habilitation, when authorized as a stabilization service, is available on all five HCBS waivers.

NEW SECTION

WAC 388-845-1880 Who are qualified providers of specialized habilitation services? To provide specialized habilitation services, a provider must be contracted with DDA for this service, have one year of experience working with people with a developmental or intellectual disability, and be one of the following licensed, registered, or certified professionals:

- (1) Certified life skills coach;
- (2) Individuals with bachelor's, master's, or doctoral degrees in social work, sociology, psychology, education; child development, gerontology, nursing or other related field; or
- (3) In a university internship program for social work, sociology, psychology, education, child development, gerontology, sociology, gerontology, or nursing.

NEW SECTION

WAC 388-845-1890 Are there limits to the specialized habilitation services I may receive? The following limits apply to your receipt of specialized habilitation services:

- (1) Specialized habilitation services are limited to address a maximum of three goals at a time.
- (2) Support needs for specialized habilitation, and must be identified in your DDA assessment and documented in the person-centered service plan.
- (3) Specialized habilitation services must not exceed:
 - (a) Four-thousand dollars of your basic plus aggregate funding;
 - (b) Your IFS annual allocation in combination with other waiver services;
 - (c) Fifteen thousand dollars within your total CIIBS aggregate budget and six thousand dollars emergency funding when eligible per WAC 388-845-0800 and 388-845-0820.

(4) Specialized habilitation services do not cover education, vocational, skills acquisition training through community first choice, behavioral health, ABA, skilled nursing, occupational therapy, physical therapy, or speech, language, and hearing services that are covered benefits through the medicaid state plan, including early and periodic screening, diagnosis, and treatment and part B special education services.

(5) Specialized habilitation must not be authorized to clients enrolled in residential habilitation.

(6) Habilitation plans must be documented as formal plans as outlined in the provider's contract.

(7) Specialized habilitation services, not provided as a stabilization service, require prior approval by the DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2000 What is staff and family consultation ((and training))? (1) Staff and family consultation ((and training)) is ((professional)) assistance, not covered by the medicaid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation ((and training)) is available in all DDA HCBS waivers.

(3) Staff and family consultation ((and training)) is consultation and guidance to a staff member or family member about one or more of the following:

- (a) Health and medication monitoring to track and report to healthcare provider;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) ((Positive behavior support)) Consultation with potential referral resources;
- (e) Augmentative communication systems;
- (f) Diet and ((nutrition)) nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;
- (i) Environmental ((safety)) consultation;
- (j) Assistive technology safety; ((and))
- (k) Consultation to an existing plan of care; and
- (l) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

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

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;

- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech-language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only);
- (19) Psychiatrist;
- (20) Professional advocacy organization; or
- (21) Teacher certified under chapter 181-79A WAC.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-2010 Are there limits to the staff and family consultation ((and training)) you may receive? (1) Staff and family consultation ((and training)) are limited to supports identified in your DDA assessment and documented in the person-centered service plan.

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

(3) The dollar amounts for aggregate service in your basic plus waiver or the dollar amount of the annual allocation in your individual and family services (IFS) waiver limit the amount of staff and family consultation ((and training)) you may receive.

(4) Under the basic plus waiver, individual and family counseling is limited to family members who:

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

(5) Staff and family consultation ((and training)) does not provide training or consultation necessary to meet a provider's or staff's contractual licensing or certification requirements or to complete the necessary functions of their job.

NEW SECTION

WAC 388-845-2145 What are therapeutic adaptations? (1) Therapeutic adaptations are modifications to an existing room in the waiver participant's current home and are necessary to reduce or eliminate environmental sensory stressors, enable effective social support, or give a sense of control to the waiver participant in order for a therapeutic plan to be implemented.

- (2) Therapeutic adaptations include on-time room modifications not related to physical accessibility such as:
 - (a) Noise reduction or enhancement;
 - (b) Lighting adjustment;
 - (c) Wall softening;
 - (d) Anchored and nonremovable tactile accents; or
 - (e) Anchored and nonremovable visual accents.

NEW SECTION

WAC 388-845-2150 Who is a qualified provider of therapeutic adaptations? (1) A qualified provider of therapeutic adaptations is a person who is contracted with DDA and:

(a) A registered contractor per chapter 18.27 RCW and licensed and bonded to perform the specific type of work they are providing; or

(b) A medical equipment supplier with a state contract as a Title XIX vendor.

(2) A qualified provider of therapeutic adaptations may also be someone who is contracted with DDA as:

- (a) A purchasing goods and services contractor; or
- (b) A CIIBS goods and services contractor.

NEW SECTION

WAC 388-845-2155 Are there limits to the therapeutic adaptations I may receive? The following limits apply to your receipt of therapeutic adaptations:

(1) Therapeutic adaptations are limited to one adaptation request every five waiver years.

(2) Funding is limited to the aggregate budget in the basic plus and IFS waiver or fifteen thousand dollars on the CIIBS waiver.

(3) Modifications may not add square footage to the home or convert nonliving space into living space.

(4) The department requires a written recommendation by a behavioral health provider, occupational therapist, or physical therapist within the waiver participant's current therapeutic plan.

(5) Therapeutic adaptations are limited to items not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(6) Therapeutic adaptations require prior approval by the DDA regional administrator or designee.

(7) Therapeutic adaptations are limited to those identified in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-3070 What happens if you do not sign your person-centered service plan? (1) If you do not sign your initial person-centered service plan (PCSP), DDA must not provide waiver services to you until you sign the PCSP.

(2) If you do not sign your PCSP and it is a reassessment or review, DDA will:

- (a) Continue providing services identified in your current PCSP until the end of the notice period under WAC 388-825-105; and

(b) Return your PCSP to you for your signature.

(3) If you do not return your signed PCSP within two months of your reassessment or review, DDA (~~(must)~~) may terminate your services.

(4) Your appeal rights are under:

(a) WAC 388-845-4000; and

(b) WAC 388-825-120 through 388-825-165.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-845-0300 What are adult family home (AFH) services?
- WAC 388-845-0305 Who is a qualified provider of AFH services?
- WAC 388-845-0310 Are there limits to the AFH services I can receive?
- WAC 388-845-0400 What are adult residential care (ARC) services?
- WAC 388-845-0405 Who is a qualified provider of ARC services?
- WAC 388-845-0410 Are there limits to the ARC services I can receive?
- WAC 388-845-0700 What are community guide services?
- WAC 388-845-0705 Who may be a qualified provider of community guide services?
- WAC 388-845-0710 Are there limits to the community guide services I may receive?
- WAC 388-845-1300 What are personal care services?
- WAC 388-845-1305 Who are the qualified providers of personal care services?
- WAC 388-845-1310 Are there limits to the personal care services you can receive?
- WAC 388-845-1400 What are prevocational services?
- WAC 388-845-1405 Who are the qualified providers of prevocational services?
- WAC 388-845-1410 Are there limits to the prevocational services you may receive?
- WAC 388-845-1900 What are specialized psychiatric services?
- WAC 388-845-1905 Who are qualified providers of specialized psychiatric services?
- WAC 388-845-1910 Are there limitations to the specialized psychiatric services you can receive?
- WAC 388-845-2160 What is therapeutic equipment and supplies?
- WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies?

WAC 388-845-2170 Are there limits to your receipt of therapeutic equipment and supplies?

**WSR 21-13-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-96—Filed June 10, 2021, 4:41 p.m., effective June 11, 2021]

Effective Date of Rule: June 11, 2021.

Purpose: The purpose of this emergency rule is to close salmon seasons in the North Fork Nooksack River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000A.

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: Fishery monitoring data indicates that maximum encounters wild Chinook will be reached by the end of the day, June 10, 2021.

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

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

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

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

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

Date Adopted: June 10, 2021.

Kelly Susewind
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective June 11, 2021:

WAC 220-312-04000A Freshwater exceptions to statewide rules—Puget Sound.

WSR 21-13-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-89—Filed June 10, 2021, 4:45 p.m., effective June 10, 2021,
4:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to modify salmon and hatchery steelhead seasons and daily limits in the lower Columbia River (from the Megler-Astoria Bridge to the Highway 395 Bridge at Pasco).

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

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

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

Reasons for this Finding: The *U.S. v. Oregon* Technical Advisory Committee recently updated the 2021 Columbia River spring Chinook return to ninety-one thousand eight hundred, which was previously forecasted to be eighty-seven thousand. The upriver Skamania stock steelhead passage at Bonneville Dam is currently the lowest cumulative count to date. Additional spring Chinook directed angling opportunities are available while providing additional protection for steelhead with a reduced steelhead daily limit. Modifications are in conjunction with the Columbia River Compact hearing held at 1:00 p.m. on June 10, 2021. This action also applies summer fishery regulations developed through the 2021 North of Falcon season setting process. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

Date Adopted: June 10, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000Q Freshwater exceptions to statewide rules—Columbia River. Effective immediately through July 31, 2021, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Megler-Astoria Bridge to the Hwy. 395 Bridge at Pasco, shall be as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From the Megler-Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), and including Youngs Bay: Salmon and steelhead:

(a) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(b) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(2) From the Rocky Point/Tongue Point line to a line starting from a point on the Washington shore projected through Dolphin Marker J (near Shipping Terminal 9), southerly across the Columbia River to Columbia Park Boat Ramp in Rainier, Oregon: Salmon and steelhead:

(a) Effective immediately through June 11, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective June 12 through June 15, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 2 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(c) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(d) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(3) From line starting from a point on the Washington shore projected through Dolphin Marker J (near Shipping Terminal 9), southerly across the Columbia River to Columbia Park Boat Ramp in Rainier, Oregon upstream to a line projected from a point on the Washington shore projected through Cottonwood Island Dike Light "31", southerly across the Columbia River to a deadline marker on the Oregon shore and including the waters of Carrolls Channel (waters beginning at the upstream end of Cottonwood Island downstream to the confluence of the Cowlitz River): Salmon and steelhead:

(a) Effective immediately through June 11, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may

be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead. Fishing from a vessel is prohibited.

(b) Effective June 12 through June 15, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 2 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead. Fishing from a vessel is prohibited.

(c) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(d) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(4) From a line starting from a point on the Washington shore projected through Cottonwood Island Dike Light "31", southerly across the Columbia River to a deadline marker on the Oregon shore and including the waters of Carrolls Channel (waters beginning at the upstream end of Cottonwood Island downstream to the confluence of the Cowlitz River) upstream to the I-5 Bridge: Salmon and steelhead:

(a) Effective immediately through June 11, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective June 12 through June 15, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 2 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(c) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(d) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(5) From the I-5 Bridge to Bonneville Dam: Salmon and steelhead:

(a) Effective immediately through June 11, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective June 12 through June 15, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 2 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead. Effective June 12 through June 15, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 2 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(c) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a

sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(d) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(6) From Bonneville Dam to The Dalles Dam: Salmon and steelhead:

(a) Effective June 12 through June 15, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 2 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective June 16 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(7) From The Dalles Dam to a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected southeasterly across the Columbia River to a boundary sign on the Washington southern shore located approximately 200' above the fish ladder exit: Salmon and steelhead:

Effective June 10, 2021, until further notice: Closed to fishing for and retention of salmon and steelhead.

(8) From a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of the The Dalles Dam and Lock boat ramp projected southeasterly across the Columbia River to a boundary sign on the Washington south shore located approximately 200' above the fish ladder exit to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

(a) Effective June 12 through June 15, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 2 may be a Chinook and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective June 16 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(9) From Hwy. 730 at the Washington/Oregon border to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

Effective June 16 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

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

REPEALER

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

WAC 220-312-06000M Freshwater exceptions to statewide rules—Columbia River (21-79).

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

WSR 21-13-044
EMERGENCY RULES
DEPARTMENT OF HEALTH

(Board of Nursing Home Administrators)

[Filed June 11, 2021, 7:57 a.m., effective June 11, 2021, 7:57 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 and on February 10, 2021, under WSR 21-05-030. 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 a factor 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 [ensure] 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 will hold a hearing for permanent rules on May 27, 2021, and, if the board votes to adopt the rules, will then work on the process of filing a rule making order (CR-103) to adopt 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 10, 2021.

Carl Christensen, Ph.D., RN, 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.

ment 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 third emergency rule for these amendments. It continues without change [changing] the emergency rule that was filed on February 12, 2021, under WSR 21-05-048 and the prior filing 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 non-reporting. 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 rule-making process later this summer, taking into consideration any changes in notifiable conditions rules from the state board of health as well as federal requirements that might impact the requirements in this 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: June 9, 2021.

WSR 21-13-045
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed June 11, 2021, 8:17 a.m., effective June 11, 2021, 8:17 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 depart-

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	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • Complaint • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • When indicated
(2) PPMP	<ul style="list-style-type: none"> • Restrict testing to tests classified as PPMP or waived. 	<ul style="list-style-type: none"> • Complaint 	<ul style="list-style-type: none"> • When indicated

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	
<p>(3) Moderate/High Complexity</p>			
<p>(a) Low Volume, Category A-J</p>	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • Initial • Routine • Complaint • On-site follow-up • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • First 6 months of license • Every 2 years • When indicated • When indicated • When indicated
<p>(b) Accredited: Low Volume, Category A-J</p>	<ul style="list-style-type: none"> • 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 the test. 	<ul style="list-style-type: none"> • Validation • Complaint • On-site follow-up • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • 2.5% of accredited sites annually • When indicated • When indicated • When indicated

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
	<ul style="list-style-type: none"> • 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 21-13-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-91—Filed June 11, 2021, 8:44 a.m., effective June 12, 2021]

Effective Date of Rule: June 12, 2021.

Purpose: The purpose of this emergency rule is to open retention seasons for white sturgeon in the Columbia River estuary.

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

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

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

Reasons for this Finding: This rule is needed to allow a limited harvest of white sturgeon in the Columbia River estuary. The remaining quota balance for legal-size sturgeon retention is large enough to allow for a one-day retention fishery within the lower Columbia River. This action is consistent with decisions made by the states of Washington and

Oregon on June 10, 2021. There is insufficient time to adopt permanent regulations.

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

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

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

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

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

Date Adopted: June 10, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia River. Effective June 12, 2021, until further notice, the provisions of WAC 220-312-060 and WAC 220-316-110 regarding white sturgeon retention seasons from Buoy 10 upstream to McNary Dam are as follows. All other provisions of WAC 220-312-060 and WAC 220-316-110 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) **From Buoy 10 upstream to Wauna Powerlines, including Youngs Bay, and all adjacent Washington tributaries:**

a. It is permissible to retain white sturgeon on the following date: June 12, 2021.

b. On days open to white sturgeon retention the daily limit of white sturgeon is one fish between 44-inches minimum and 50-inches maximum fork length.

c. Closed to angling for sturgeon at 2:00 pm daily on dates open to sturgeon retention.

d. Catch and release angling is permissible on days not open to sturgeon retention.

(2) **From Bonneville Dam to McNary Dam:** Sturgeon retention is prohibited.

REPEALER

The following section of Washington Administrative Code is repealed, effective June 12, 2021:

WAC 220-312-06000J Freshwater exceptions to statewide rules—Columbia River. (21-37)

WSR 21-13-048 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 21-97—Filed June 11, 2021, 10:42 a.m., effective June 11, 2021, 10:42 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to:

(1) Close harvest of spot shrimp in Marine Fish/Shellfish Management and Catch Reporting Area 23A-E due to quota attainment.

(2) Opens harvest of nonspot shrimp in Marine Fish/Shellfish Management and Catch Reporting Area 23A-E.

(3) Define rules regarding concurrent deployment of spot and nonspot gear within Catch Reporting Areas.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000D and 220-340-03000H; and amending WAC 220-340-520 and 220-340-03000I.

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: Permanent rules regulating State Commercial Shrimp Harvest in Puget Sound and the Strait of Juan de Fuca require adoption of harvest seasons contained in this emergency rule. This emergency rule:

(1) Defines the shrimp management areas and regions open to spot and nonspot commercial harvest.

(2) Defines spot pot gear requirements.

(3) Defines nonspot gear requirements.

(4) Implements labeling requirements for groundline pot gear.

(5) Implements restrictions for the concurrent use of spot shrimp and on-spot [nonspot] shrimp pot gear.

(6) Implements a fishing declaration requirement for all shrimp pot fisheries in Puget Sound.

(7) Sets harvest restrictions for and opens the nonspot commercial pot fishery.

(8) Sets harvest restrictions for and opens the spot commercial pot fishery.

(9) Sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery.

(10) Requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

The emergency regulation closes spot shrimp pot harvest in Marine Fish/Shellfish Management and Catch Reporting Area 23A-E due to quota attainment. Sections of this regulation define open areas to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and nonspot shares while also achieving the 50/50 harvest defined by the federal court order. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort and to limit interaction between the state commercial

harvesters and recreational users. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 11, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000E Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp Pot Harvests:

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

(i) Sub-areas 23A-W, 23A-C, and 23A-S of Marine Fish/Shellfish Management and Catch Reporting Area 23A are closed to the commercial harvest of non-spot shrimp until the commercial spot shrimp share is taken.

(ii) Shrimp Management Area 1A is closed to the commercial harvest of non-spot shrimp until the commercial spot shrimp share is taken.

(iii) Discovery Bay Shrimp District is open to the commercial harvest of non-spot shrimp.

(iv) Shrimp Management Areas 1B, 2E, and 2W and Sub-area 23A-E of Catch Reporting Area 23A are closed to the commercial harvest of spot shrimp.

(b) There is no minimum size limit for spot shrimp or non-spot shrimp.

(c) Shrimp pot gear used for commercial harvest must meet the following requirements:

(i) A shrimp pot may not exceed a maximum 153 inch bottom perimeter and a maximum of 24 inch height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths

of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(iv) Spot shrimp may only be harvested using pots with a minimum mesh size of 1 inch. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(v) Non-spot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(d) Buoys must have the number of pots deployed per groundline recorded on each end-buoy of a groundline.

(e) It is lawful to concurrently deploy spot shrimp pots and non-spot pots with the following restrictions:

(i) Spot pots and non-spot pots may not be deployed concurrently within the same Catch Reporting Area, with the following exceptions:

Spot and non-pot pots may be concurrently deployed in Catch Area is 23A but not within the same sub-area (23A-E, 23A-W, 23A-C, or 23A-S).

Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Area 25A south of a line true west from Travis Spit to the Miller Peninsula, concurrently with spot shrimp pots in the remaining portion of 25A outside of Sequim Bay.

(ii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.

(f) Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and the amount of pounds that are being targeted prior to the deployment of any shrimp gear to either shrimp.report@dfw.wa.gov or by text message to 360-302-6372.

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

(h) It is unlawful to harvest shrimp in more than one catch area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

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

(b) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 600 pounds per non-spot shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

(c) Harvest of non-spot shrimp is not permitted deeper than 150 feet in Region 2E. Region 2E is comprised of Catch Areas 24A, 24B, 24C, 24D, and 26AE (26A northerly of a line drawn from the southern tip of Possession Point on

Whidbey Island 110° true to the shipwreck on the opposite shore).

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

(3) Shrimp Spot Pot Harvest Restrictions:

(a) The spot shrimp catch accounting period starts May 1, 2021 at 12:00 a.m. through August 10, 2021 at 11:59 p.m.

(b) It is unlawful for the total harvest within the spot shrimp accounting period to exceed 4,500 pounds of spot shrimp per license from Shrimp Management Areas 1A, 1C, and 3 combined.

(c) It is unlawful for more than 3,000 pounds of spot shrimp per license to be landed prior to Tuesday, July 13, 2021 at 11:59 p.m.

(4) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open effective immediately, until further notice.

(c) The waters of south Lopez Sound (the portion of Catch Area 22A south of a line projected east and west from the northern tip of Trump Island) will open at 12:00 a.m. on July 10, 2021.

(d) The remaining portion of Shrimp Management Area 1B and Catch Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until further notice.

(e) Catch Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) will open at 12:00 a.m. on July 1, 2021.

(f) Catch Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) will open at 12:00 a.m. on August 1, 2021

(g) Trawling is allowed only in waters deeper than 120 feet in Catch Area 20A.

(5) All shrimp taken under this section must be sold to licensed Washington State wholesale fish dealers.

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

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

NEW SECTION

WAC 220-340-03000I Shellfish harvest logs. Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day

after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to shrimp.report@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

REPEALER

The following sections of Washington Administrative Code are repealed, effective immediately:

WAC 220-340-52000D Puget Sound shrimp pot and trawl fishery—Season. (21-56)

WAC 220-340-03000H Shellfish harvest logs. (21-56)

WSR 21-13-069

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed June 14, 2021, 10:12 a.m., effective June 16, 2021]

Effective Date of Rule: June 16, 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/or 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 as WSR 20-21-034. 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 and 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 14, 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~~

~~(e)))~~ 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 21-13-070

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 14, 2021, 1:10 p.m., effective June 14, 2021, 1:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To allow the employment security department to process "blanket waivers" of overpayments of pandemic emergency unemployment compensation (PEUC) and pandemic unemployment assistance (PUA) benefits if a claimant was paid PEUC or PUA benefits when they should have been paid a different type of unemployment benefit, such as state unemployment insurance benefits, instead, and the weekly benefit amount on the PEUC or PUA claim was higher than the weekly benefit amount on the claim the claimant should have been paid.

In addition, the purpose to clarify the priority between PUA benefits, PEUC benefits, extended benefits and regular unemployment insurance benefits. Finally, the purpose is to clarify that PUA benefits will be deducted from the maximum benefits payable on an individual's new claim if the weekly benefit amount between the two claims is equal.

Citation of Rules Affected by this Order: Amending WAC 192-240-070.

Other Authority: Public Law No. 116-136, §§ 2102, 2107; Public Law No. 116-260, § 201; Unemployment Insurance Program Letter No. 20-21, Change 1 (May 5, 2021).

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 March 27, 2020, the employment security department signed an agreement with the United States Department of Labor to administer the PEUC and PUA programs. The PEUC program provides additional weeks of federally funded unemployment benefits to unemployed individuals who have exhausted their unemployment claim. The PUA program provides unemployment benefits for individuals who do not qualify for a regular unemployment claim, but are nonetheless unemployed or not available for work due to a COVID-19 reason.

Under previous guidance issued by the United States Department of Labor in Unemployment Insurance Program Letter No. 17-20, Change 1 (May 13, 2020) and Unemployment Insurance Program Letter No. 16-20, Change 4 (January 8, 2021), states were not allowed to waive any PEUC or PUA benefit overpayments on a "blanket" basis, but instead had to determine if a claimant was entitled to have their overpayment waived on an individual, case-by-case basis. The United States Department of Labor has since issued new guidance in Unemployment Insurance Program Letter No. 20-21 (May 5, 2021) that permits states to issue a "blanket waiver" of overpayments of PEUC and PUA benefits if a claimant was paid PUA or PEUC benefits by a state when they should have been paid a different type of unemployment benefit, such as state unemployment insurance benefits, instead, and the weekly benefit amount on the PEUC or PUA claim was higher than the weekly benefit amount on the claim the claimant should have received.

The employment security department has chosen to waive PEUC and PUA overpayments on a blanket basis under the limited circumstances permitted by the new federal guidance. Therefore, WAC 192-240-070 is being amended to reflect this new blanket waiver authority. Immediate amendment of the rule is necessary to bring immediate economic relief to Washingtonians who were overpaid PEUC and PUA benefits by allowing them to keep those federal benefits, rather than pay those benefits back.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 14, 2021.

Daniel Zeitlin
Employment Security
Policy Director

AMENDATORY SECTION (Amending WSR 09-24-011, filed 11/20/09, effective 12/21/09)

WAC 192-240-070 What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim? If you are paid pandemic unemployment assistance established under Sec. 2102 of Public Law No. 116-136, as amended, emergency unemployment compensation (which includes pandemic emergency unemployment compensation under Sec. 2107 of Public Law No. 166-136, as amended), state extended benefits, or any similar state or federal extension, and it is later discovered that you were eligible for a regular unemployment claim during all or part of the period in which you received such benefits, the regular unemployment claim takes priority. If you were paid pandemic unemployment assistance, and it is later discovered that you were eligible for pandemic unemployment compensation or extended benefits, a claim for pandemic emergency unemployment compensation or extended benefits takes priority. The balance on your new unemployment claim will be adjusted for any week(s) at issue, meaning those weeks in which you should have received regular unemployment benefits, subject to the following:

(1) Except as provided in subsection (4) of this section, you may not be paid twice for the same week

(2) If your new weekly benefit amount is equal to the amount you were paid for the weeks at issue, the amount you were paid in pandemic unemployment assistance, emergency unemployment compensation or extended benefits will be deducted from the maximum benefits payable on your new claim.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. The five hundred dollars paid for eight weeks will be deducted from the maximum benefits payable on your new claim.

(3) If your new weekly benefit amount is lower than the amount you were paid for the weeks at issue, the amount you were paid in pandemic unemployment assistance, emergency unemployment compensation or extended benefits that is equivalent to the weekly benefit amount on your new claim will be deducted from the maximum benefits payable on your new claim. The difference between the amounts paid in pandemic unemployment assistance, emergency unemployment compensation or extended benefits for the week(s) at issue and the weekly benefit amount on your new claim will be waived as provided in RCW 50.20.190.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment

compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of three hundred-fifty dollars. The three hundred-fifty dollars for eight weeks will be deducted from the maximum benefits payable on your new claim. The one hundred-fifty dollar difference between your previous weekly benefit amount and your new weekly benefit amount will be waived.

(4) If your new weekly benefit amount is higher than the amount you were paid for the week(s) at issue, the amount you were paid in emergency unemployment compensation or extended benefits will be supplemented so that you receive your new weekly benefit amount for the weeks at issue and the total deducted from the maximum benefits payable on your new claim.

For example: Your previous weekly benefit amount was three hundred-fifty dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. You will be paid an additional one hundred-fifty dollars for each of the eight weeks at issue and the total deducted from the maximum benefits payable on your new claim.

WSR 21-13-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-98—Filed June 15, 2021, 8:30 a.m., effective June 16, 2021]

Effective Date of Rule: June 16, 2021.

Purpose: The purpose of this emergency rule is to modify recreational salmon seasons in Marine Area 11.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

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

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

Reasons for this Finding: This emergency rule is necessary to modify salmon seasons in Marine Area 11, to conform to seasons agreed to with comanagers during the 2021 North of Falcon season setting process. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 15, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000C Puget Sound salmon—Salt-water seasons and daily limits. Effective June 16, 2021 through September 30, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 11 shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 11: Salmon:

- (a) Daily limit 2, of which up to 1 may be a Chinook.
- (b) Chinook minimum size 22"
- (c) Release chum and wild Chinook.

**WSR 21-13-080
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-90—Filed June 15, 2021, 5:59 p.m., effective June 19, 2021]

Effective Date of Rule: June 19, 2021.

Purpose: The purpose of this emergency rule is to summer coastal recreational salmon seasons.

Citation of Rules Affected by this Order: Amending WAC 220-313-075.

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

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

Reasons for this Finding: The purpose of this rule is to open ocean recreational salmon seasons in Marine Areas 1-4 in state waters in a manner consistent with federal salmon fishing regulations adopted by the National Marine Fisheries Service (NMFS) in response to actions taken by the Pacific Fishery Management Council (PFMC) to set annual salmon fishery harvest specifications and management measures; this action is intended to achieve regulatory consistency in federal and state waters for the ocean recreational salmon fishery, which operates in both areas.

The ocean recreational salmon fishing seasons are developed and considered through the annual PFMC process, which coincides with the North of Falcon salmon season setting process and is managed under the Pacific Coast Salmon

Fishery Management Plan (FMP). By managing this fishery under the FMP, it is required to be consistent with National Standard Guidelines, which ensure conservation objectives are achieved as well as long-term fishery sustainability, and that the social and economic needs of fishing communities are taken into account.

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

While these regulations are being adopted through an emergency rule, the seasons described in these rules were developed and considered through an extensive open public process, which began in late December 2020. The process includes multiple opportunities for public engagement—throughout the course of a three-month process, the public may: Submit written comments, provide testimony at the March and/or April PFMC meetings, attend public hearings held in each West Coast state, or provide comment through representation on the PFMC's Salmon Advisory Subpanel.

Following the April PFMC meeting, which is when these seasons were adopted, PFMC formally transmits these regulations to the NMFS for consistency determination. This transmittal typically occurred on April 22, 2021, for fishing seasons that were scheduled to open on May 16. State regulations can be more, but not less, restrictive than federal regulations. Therefore, the ocean recreational salmon fishery remains closed and the state's annual rule-making process is delayed until such time the federal regulations are in effect. Given that the NMFS final rule that opened this fishery was published on May 14, 2021, there was insufficient time for Washington department of fish and wildlife to adopt consistent regulations through the permanent rule-making process.

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

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

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

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

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

Date Adopted: June 15, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500A Pacific Ocean salmon—Seasons—Closed areas. Effective June 19 through September 15, 2021 the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

- (1) **Catch Record Card Area 1:**
- (a) Open June 19, 2021 through June 26, 2021:
- (i) Daily limit of 1 salmon.
- (ii) Release all coho.
- (iii) Chinook minimum length 22 inches.
- (b) Open June 27, 2021 through September 15, 2021:
- (i) Daily limit of 2 salmon; no more than one may be a Chinook.
- (ii) Release wild coho.
- (iii) Chinook minimum length 22 inches.
- (iv) Coho minimum length 16 inches.
- (2) **Catch Record Card Area 2:**
- (a) Open June 19, 2021 through June 26, 2021:
- (i) Daily limit of 1 salmon.
- (ii) Release all coho.
- (iii) Chinook minimum length 22 inches.
- (b) Open June 27, 2021 through September 15, 2021:
- (i) Open Sundays through Thursdays only (closed Fridays and Saturdays).
- (ii) Daily limit of 2 salmon; no more than one may be a Chinook.
- (iii) Release wild coho.
- (iv) Chinook minimum length 22 inches.
- (v) Coho minimum length 16 inches.
- (vi) June 19, 2021 through August 8, 2021 the Grays Harbor Control Zone is open. See WAC 220-306-040
- (5) **Catch Record Card Area 3:**
- (a) Open June 19, 2021 through July 3, 2021:
- (i) Daily limit of 2 salmon.
- (ii) Release all coho.
- (iii) Chinook minimum length 24 inches.
- (b) Open July 4, 2021 until through September 15, 2021:
- (i) Daily limit of 2 salmon.
- (ii) Release wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.
- (6) **Catch Record Card Area 4:**
- (a) Waters east of a true north-south line through Sail Rock are closed through July 31.
- (b) Open June 19, 2021 through July 3, 2021:
- (i) Daily limit of 1 salmon.
- (ii) Release all coho.
- (iii) Chinook minimum length 24 inches.
- (c) Open July 4, 2021 through September 15, 2021:
- (i) Daily limit of 2 salmon.
- (ii) Release wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.
- (v) No chinook retention in waters east of the Bonilla-Tatoosh line beginning August 1.
- (vi) Release chum salmon beginning August 1.

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

WSR 21-13-084
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 16, 2021, 12:08 p.m., effective June 16, 2021, 12:08 p.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 state-wide 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 Non-governmental 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: June 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.

WSR 21-13-090
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-99—Filed June 17, 2021, 5:00 p.m., effective June 18, 2021]

Effective Date of Rule: June 18, 2021.

Purpose: The purpose of this emergency rule is to open retention seasons for spring Chinook salmon in the North Fork Nooksack River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000C [220-312-04000D]; and amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is needed to open a hatchery spring Chinook fishery in a portion of the North Fork Nooksack River. One tribal comanager had completed their spring Chinook fishery with unused wild Chinook impacts and offered those unused impacts to the state. This transaction has been approved by NOAA and all comanagers. With additional allowable encounters, the recreational fishery can reopen. This fishery will be actively monitored. Should total encounters reach the agreed to threshold, the fishery may close earlier than scheduled. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 17, 2021.

Kelly Susewind
 Director

NEW SECTION

WAC 220-312-04000D Freshwater exceptions to statewide rules—Puget Sound. Effective June 18 through June 30, 2021, the following provisions of WAC 220-312-040 regarding salmon seasons for the Nooksack River, North Fork, shall be as described below. All other provisions of

WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Nooksack River, North Fork (Whatcom Co.) from the Hwy. 9 Bridge to the yellow marker at the upstream side of Kendall Hatchery:

Salmon: Daily limit 2. Release all salmon other than hatchery Chinook. Night Closure and Anti-snagging rule in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2021:

WAC 220-312-04000D Freshwater exceptions to statewide rules—Puget Sound.

WSR 21-13-091
EMERGENCY RULES
DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed June 18, 2021, 7:18 a.m., effective June 18, 2021, 7:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-817-581 Novel coronavirus disease 2019 vaccination, the dental quality assurance commission (commission) is extending the emergency rule that allows dentists to delegate administration of novel coronavirus disease 2019 (COVID-19) vaccination to licensed dental hygienists with close supervision and demonstration of competency. This emergency rule will extend WSR 21-06-012 filed on February 19, 2021.

Citation of Rules Affected by this Order: New WAC 246-817-581.

Statutory Authority for Adoption: RCW 18.29.050 and 18.32.0365.

Other Authority: RCW 18.32.002.

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

Reasons for this Finding: In response to the COVID-19 pandemic, dentists are among the essential healthcare providers who can safely administer vaccinations and help address this public health emergency. Mass vaccination across the state will take cooperation and coordination across the entire health system. Dentists and delegated dental hygienists are able to increase capacity for priority populations who may not otherwise be connected to traditional health care systems during the pandemic. Increased capacity to administer the COVID-19 vaccine will help Washington end this pandemic. Allowing delegation of COVID-19 vaccination to dental hygienists assists dentists by reducing their workload to effectively continue dental care to patients while increasing the number of health care professionals who can administer the vaccine.

Standard rule making takes approximately nine to twelve months. The CR-101 (WSR 21-07-020) was filed on February 19 [March 8], 2021.

Allowing dentists to delegate COVID-19 vaccinations to dental hygienists under close supervision increases the number of health care workers permitted to administer the vaccine and provides safer access to dental care for more patients.

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

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

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

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

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

Date Adopted: June 16, 2021.

Aaron Stevens, DMD, Chairperson
Dental Quality Assurance Commission

NEW SECTION

WAC 246-817-581 Novel coronavirus disease 2019 vaccination. (1) A supervising dentist may delegate the administration of a vaccination of novel coronavirus disease 2019 to a licensed dental hygienist under the dentist's close supervision, provided the licensed dental hygienist has demonstrated skills necessary to perform the task competently.

(2) For the purpose of administering vaccination for the novel coronavirus disease 2019, a dentist's approval of the vaccination protocol and screening meets the dentist's requirement to diagnose the condition to be treated and personal authorization of the procedure as required by close supervision under WAC 246-817-510(1).

**WSR 21-13-094
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 18, 2021, 12:34 p.m., effective June 22, 2021]

Effective Date of Rule: June 22, 2021.

Purpose: The department of social and health services (DSHS) division of child support (DCS) files this CR-103E [Emergency] rule-making order to extend emergency rules amending chapter 388-14A WAC in order to implement SHB 2302 (chapter 227, Laws of 2020) regarding abatement of child support obligations for certain incarcerated individuals as well as other administrative provisions regarding service

and mailing of modification requests and hearing notices. 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 and administrative provisions regarding service and mailing of modification requests and hearing notices, which took effect on February 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, 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 and service/mailing procedures for modification requests and hearing notices have a February 1, 2021, effective date. These provisions direct DCS to abate child support payments for certain incarcerated individuals and also direct the office of administrative hearings to send certain mailings and notices instead of DCS. Emergency rule making is necessary to effectuate these statutory changes. This is a subsequent emergency filing. The department filed a CR-101 under WSR 21-05-061 and has been working closely with the department of corrections, continuing regular discussions with stakeholders, prosecutor partners, and field staff on a number of implementation questions and procedural issues that need to be addressed in the final 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 9, Amended 7, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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: June 18, 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 custo-

dial 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 inter-governmental case.

(4) (~~(DCS)~~) Office of Administrative Hearings serves a copy of the request for modification and notice of hearing on all other parties by (~~(first class)~~) regular mail at their last known 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 non-custodial 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 21-13-098

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 21-100—Filed June 18, 2021, 1:20 p.m., effective June 20, 2021]

Effective Date of Rule: June 20, 2021.

Purpose: Opens the recreational nonspot shrimp fisheries for Marine Area 7 East.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000G; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. This regulation opens the recreational nonspot shrimp fisheries for Marine Area 7 East and previously announced seasons in 8-1, 8-2, 9, 11, and 13 only. The nonspot shrimp fisheries have maximum depth restrictions specific to each area to limit capture and handling of spot shrimp. Spot shrimp must be immediately released unharmed during nonspot shrimp seasons. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 18, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000H Shrimp—Areas and seasons.

Notwithstanding the provisions of WAC 220-330-070, effective immediately it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Area 5:

Open through September 15, 2021 for all shrimp species.

(2) Marine Areas 6 (excluding the Discovery Bay Shrimp District) and 7 West:

Open through June 19 for all shrimp species.

(3) Marine Area 7 East:

a. Open through June 19, 2021 for all shrimp species.

b. Open June 20 through October 15, 2021 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(4) Marine Areas 8-1 and 8-2:

Open through October 15, 2021 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(5) Marine Area 9:

Open through October 15, 2021 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(6) Marine Area 11:

Open through October 15, 2021 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(7) Marine Area 13:

Open through October 15, 2021 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot

shrimp caught must be immediately returned to the water unharmed.

Kelly Susewind
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-330-07000G Shrimp—Areas and seasons. (21-81)

WSR 21-13-108
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-101—Filed June 18, 2021, 5:03 p.m., effective July 10, 2021]

Effective Date of Rule: July 10, 2021.

Purpose: The purpose of this emergency rule is to open retention seasons for sockeye salmon in Baker Lake.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is needed to open seasons for sockeye salmon in Baker Lake. The 2021 Baker Lake sockeye pre-season forecast is sufficient to allow for a targeted harvest season.

The Washington department of fish and wildlife plans to closely monitor the fishery to ensure the allowable harvest is not exceeded. As of June 17, 2021, the harvest limit has been set at one thousand sixty-eight sockeye. The harvest limit is subject to change based on in-season run size updates from test fisheries and trap count data.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 18, 2021.

NEW SECTION

WAC 220-312-04000E Freshwater exceptions to statewide rules—Puget Sound. Effective July 10, 2021, until further notice, the following provisions of WAC 220-312-040, regarding recreational salmon seasons fishing for Baker Lake, shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Baker Lake (Whatcom Co.): Salmon:

(a) Daily limit 1 sockeye only. Minimum size 18 inches.

(b) Each angler aboard a vessel may deploy salmon angling gear until the daily salmon limit for all anglers aboard has been achieved.

WSR 21-13-114
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 21, 2021, 11:56 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The department is amending WAC 388-478-0020 Payment standards for TANF, SFA and RCA, 388-478-0027 What is the payment standard for pregnant women assistance (PWA)?, 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA?, and 388-436-0050 Determining financial need and benefit amount for CEAP.

These amendments are necessary to support the operating budget ESSB 5092 (chapter 334, Laws of 2021) which includes a fifteen percent increase to the temporary assistance for needy families grant standard effective July 1, 2021.

This emergency rule adoption cancels and supersedes the emergency filed as WSR 21-09-062.

Citation of Rules Affected by this Order: Amending WAC 388-478-0020, 388-478-0027, 388-478-0035, and 388-436-0050.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.660, 74.08.090, 74.08A.230.

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: This rule filing increases cash payment standards thereby providing essential supports to individuals and families necessary for the preservation of public welfare. It would be contrary to the public welfare to observe the notice and public comment requirements because

there is not enough time between now and July 1, 2021, to complete that process.

Operating budget ESSB 5092 (chapter 334, Laws of 2021) also supports immediate adoption of this rule.

The department filed a Preproposal statement of inquiry (CR-101) under WSR 21-13-014 to incorporate these amendments and is actively undertaking appropriate procedures to adopt the rule as permanent.

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 4, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: June 21, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than or equal to ninety percent of the temporary assistance for needy families (TANF) payment standard (~~for households with shelter costs~~). The net income limit for CEAP assistance units is:

Assistance unit members	Net income limit
1	((\$327)) <u>\$375</u>
2	((413)) <u>475</u>
3	((512)) <u>589</u>
4	((603)) <u>694</u>
5	((695)) <u>799</u>
6	((789)) <u>908</u>
7	((912)) <u>1,049</u>
8 or more	((1,009)) <u>1,160</u>

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, (~~for households with shelter costs~~) as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 or more
Food	((\$220)) <u>\$253</u>	((\$280)) <u>\$322</u>	((\$345)) <u>\$397</u>	((\$408)) <u>\$469</u>	((\$469)) <u>\$539</u>	((\$532)) <u>\$612</u>	((\$608)) <u>\$699</u>	((\$672)) <u>\$773</u>
Shelter	((268)) <u>308</u>	((339)) <u>390</u>	((422)) <u>485</u>	((497)) <u>572</u>	((571)) <u>657</u>	((647)) <u>744</u>	((750)) <u>863</u>	((828)) <u>952</u>
Clothing	((31)) <u>36</u>	((39)) <u>45</u>	((49)) <u>56</u>	((57)) <u>66</u>	((66)) <u>76</u>	((77)) <u>89</u>	((85)) <u>98</u>	((97)) <u>112</u>
Minor medical care	((186)) <u>214</u>	((237)) <u>273</u>	((294)) <u>338</u>	((345)) <u>397</u>	((398)) <u>458</u>	((449)) <u>516</u>	((524)) <u>603</u>	((578)) <u>665</u>
Utilities	((91)) <u>105</u>	((115)) <u>132</u>	((142)) <u>163</u>	((166)) <u>191</u>	((191)) <u>220</u>	((220)) <u>253</u>	((254)) <u>292</u>	((280)) <u>322</u>
Household maintenance	((66)) <u>76</u>	((84)) <u>97</u>	((105)) <u>121</u>	((122)) <u>140</u>	((142)) <u>163</u>	((161)) <u>185</u>	((186)) <u>214</u>	((204)) <u>235</u>
Job related transportation	((363)) <u>417</u>	((459)) <u>528</u>	((569)) <u>654</u>	((670)) <u>771</u>	((772)) <u>888</u>	((877)) <u>1,009</u>	((1,013)) <u>1,165</u>	((1,121)) <u>1,289</u>
Child related transportation	((363)) <u>417</u>	((459)) <u>528</u>	((569)) <u>654</u>	((670)) <u>771</u>	((772)) <u>888</u>	((877)) <u>1,009</u>	((1,013)) <u>1,165</u>	((1,121)) <u>1,289</u>

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

(a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;

(b) Cash on hand, if not already counted as income; and

(c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

WAC 388-478-0020 Payment standards for TANF, SFA, and RCA. The maximum monthly payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) assistance units are:

Assistance unit size	Payment standard	Assistance unit size	Payment standard
1	((363)) <u>\$417</u>	6	((877)) <u>\$1,009</u>
2	((459)) <u>528</u>	7	((1,013)) <u>1,165</u>
3	((569)) <u>654</u>	8	((1,121)) <u>1,289</u>
4	((670)) <u>771</u>	9	((1,231)) <u>1,416</u>
5	((772)) <u>888</u>	10 or more	((1,338)) <u>1,539</u>

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

WAC 388-478-0027 What is the payment standard for pregnant women assistance (PWA)? The payment standard for a PWA cash assistance unit is:

Assistance Unit Size	Payment Standard
1	((363)) <u>\$417</u>

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA? To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), refugee cash assistance (RCA), or a pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of family members	Maximum earned income level	Number of family members	Maximum monthly earned income level
1	((726)) <u>\$834</u>	6	((1,754)) <u>\$2,018</u>
2	((918)) <u>1,056</u>	7	((2,026)) <u>2,330</u>

Number of family members	Maximum earned income level	Number of family members	Maximum monthly earned income level
3	((1,138)) <u>1,308</u>	8	((2,242)) <u>2,578</u>
4	((1,340)) <u>1,542</u>	9	((2,462)) <u>2,832</u>
5	((1,544)) <u>1,776</u>	10 or more	((2,676)) <u>3,078</u>

**WSR 21-13-123
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES**

[Filed June 21, 2021, 2:27 p.m.]

The department of children, youth, and families requests to rescind WAC 110-03-0530 and 110-03-0590 filed under WSR 21-08-013 on March 26, 2021.

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

Brenda Villarreal
Rules Coordinator

**WSR 21-13-156
EMERGENCY RULES
BUILDING CODE COUNCIL**

[Filed June 22, 2021, 2:59 p.m., effective June 22, 2021, 2:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To modify requirements in WAC 51-11R-40310 to temporarily rescind the prohibition for gas fireplaces with continuously burning pilot lights.

Citation of Rules Affected by this Order: Amending WAC 51-11R-40310.

Statutory Authority for Adoption: RCW 19.27A.045.

Other Authority: RCW 19.27A.020.

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 state building code council was notified by the industry that because of the current global microchip shortage, they are not able to meet this new requirement in the energy code.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: June 18, 2021.

Diane Glenn
Council Chair

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40310 Section R403.1—Controls.

R403.1 Controls. At least one thermostat shall be provided for each separate heating and cooling system.

R403.1.1 Programmable or connected thermostat. Where the primary heating system is a forced-air furnace, at least one thermostat per dwelling unit shall be Energy Star certified and capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day. The thermostat shall allow for, at a minimum, a 5-2 programmable schedule (weekdays/weekends) and be capable of providing at least two programmable setback/setup periods per day. This thermostat shall include the capability to set back, set up or temporarily operate the system to maintain *zone* temperatures down to 55°F (13°C) or up to 85°F (29°C). The thermostat shall initially be programmed by the manufacturer with a heating temperature set point no higher than 70°F (21°C) and a cooling temperature set point no lower than 78°F (26°C). The thermostat and/or control system shall have an adjustable deadband of not less than 10°F.

EXCEPTIONS:

1. Systems controlled by an occupant sensor that is capable of shutting the system off when no occupant is sensed for a period of up to 30 minutes.
2. Systems controlled solely by a manually operated timer capable of operating the system for no more than two hours.
3. Ductless mini-split heat pump systems that have an integral proprietary thermostat.

R403.1.2 Heat pump supplementary heat. Unitary air cooled heat pumps shall include controls that minimize supplemental heat usage during start-up, set-up, and defrost conditions. These controls shall anticipate need for heat and use compression heating as the first stage of heat. Controls shall indicate when supplemental heating is being used through visual means (e.g., LED indicators). Heat pumps equipped with supplementary heaters shall be installed with controls that prevent supplemental heater operation above 40°F. At final inspection the auxiliary heat lock out control shall be set to 35°F or less.

R403.1.3 Continuously burning pilot lights. The natural gas systems and equipment listed below are not permitted to be equipped with continuously burning pilot lights.

1. Fan-type central furnaces.
2. Household cooking appliances.

EXCEPTION: Household cooking appliances without electrical supply voltage connections and in which each pilot light consumes less than 150 Btu/hr.

3. Pool heaters.
4. Spa heaters.
- ~~5. Fireplaces.~~

EXCEPTION: Any fireplace with on-demand, intermittent or interrupted ignition (as defined in ANSI Z21.20) is not considered continuous.

WSR 21-13-160

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 21-102—Filed June 22, 2021, 4:08 p.m., effective June 22, 2021, 4:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open recreational sea cucumber harvest in Marine Areas 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 9 north of a line from Foulweather Bluff to Double Bluff on Whidbey Island, 11, and 13; while keeping Marine Areas 8-1, 8-2, and that portion of 9 south of a line from Foulweather Bluff to Double Bluff on Whidbey Island closed.

Citation of Rules Affected by this Order: Amending WAC 220-330-090.

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

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

Reasons for this Finding: This emergency rule is needed to align the personal use sea cucumber regulation with provisions of the 2020-21 Puget Sound Sea Cucumber Management Plan. This regulation will extend the closure of the personal use sea cucumber fishery in Marine Areas 8-1, 8-2, 9 (southern half), and 10, until further notice, and to reopen harvest in all other marine areas. This regulation is needed to manage the fishery within court-ordered sharing requirements and ensure conservation. July 1, 2021, through February 28, 2022, harvest of sea cucumbers is allowed in Marine Areas 1, 2, 3, 4, 5, 6, 7, 9 north of line projected from Foulweather Bluff continuing to Double Bluff on Whidbey Island, 11, and 13. Permanent rule making regarding recreational sea cucumber seasons is anticipated to occur during 2021.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: June 21, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-09000B Sea cucumbers Effective immediately, until further notice the provisions of WAC 220-330-090 are modified as described below. All other provisions of WAC 220-330-090 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(a) Immediately through June 30, 2021, it is unlawful to take or possess sea cucumbers taken for personal use in all waters of Puget Sound; Marine Areas 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, and 13.

(b) July 1, 2021 until further notice, it is unlawful to take or possess sea cucumbers taken for personal use in Marine Areas 8-1, 8-2, 10, and that portion of Marine Area 9 south of line projected from Foulweather Bluff continuing to Double Bluff on Whidbey Island.