

**WSR 22-05-045**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed February 8, 2022, 4:05 p.m., effective February 8, 2022, 4:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend chapter 110-06 WAC to allow individuals to work supervised in the department of children, youth, and families (DCYF)-licensed early learning programs after submitting to the department their background check applications, allow license-exempt family, friend, and neighbor providers to be authorized for unsupervised access to children following name-based background checks while fingerprint-based background checks are pending, include an interstate background check for individuals who have lived outside of Washington state in the five years immediately preceding their application, and remove certain crimes that disqualify a subject individual from authorization.

Citation of Rules Affected by this Order: Amending WAC 110-06-0040, 110-06-0046, and 110-06-120.

Statutory Authority for Adoption: RCW 43.216.065.

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

Reasons for this Finding: Proclamation of the Governor 20-05 declared a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-31 amends Proclamation 20-05 and waives and suspends fingerprint-based background checks before a person may be approved to have unsupervised access to children during the COVID-19 pandemic due to the potential risk of exposure to COVID-19 resulting from face-to-face contact in submitting fingerprints, limited access to fingerprinting as entities that receive and process fingerprints limit or suspend operations in order to limit exposure to COVID-19, and the unavailability of law enforcement agencies to process fingerprints during the pandemic. The ability to issue background check clearance authorizations before completing fingerprint-based background checks better enables DCYF to ensure the availability of stable and quality child care during the COVID-19 pandemic. The amendment to WAC 110-06-120 removes crimes that account for 33 percent of family, friends, and neighbors being disqualified from participation in working connections child care. The amendment is in accord [accordance] with the federal disqualifying crimes list, significantly increases the number of individuals who may provide care, and will not pose a safety risk for children in care.

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

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

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

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

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

Date Adopted: February 8, 2022.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-21-064, filed 10/11/19, effective 11/11/19)

**WAC 110-06-0040 Background clearance requirements.** This section applies to all subject individuals (~~other than~~), except for in-home/relative providers.

(1) Subject individuals (~~associated with early learning services applying for a first-time background check~~) must complete the DCYF background check application process (~~including~~) on or before the dates described in WAC 110-06-0041, 110-06-0045, and at least once every three years thereafter. The background check process includes, but not limited to:

(a) (~~Submitting~~) Filing a completed background check application with the DCYF background check unit;

(b) Completing the required fingerprint process; (~~and~~)

(c) Completing the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application; and

(d) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals (~~qualified by the department to have unsupervised access to children in care~~) who are (~~renewing their applications~~) seeking renewals of their DCYF authorizations must:

(a) Submit (~~the~~) a new background check application (through) to DCYF;

(b) Submit payment of all required fees (~~as provided~~) described in WAC 110-06-0044; (and)

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section; and

(d) Complete the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application.

(3) Each subject individual (~~completing the DCYF~~) who submits a background check (process) application and is seeking a background check authorization, or reauthorization, must disclose whether they have:

(a) Been convicted of any crime;

(b) Any pending criminal charges; and

(c) Been or are the subject to any negative action(~~, as defined by WAC 110-06-0020.~~)

(4) Subject individuals must not have unsupervised access to children in care unless they have obtained DCYF authorization under this chapter.

(5) Applicants may be approved to work supervised after submitting their background check application.

(6) ((A)) Subject individuals who ((has)) have been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

[Statutory Authority: RCW 43.216.055, 43.216.065, 42 U.S.C. 9858, et seq. and 45 C.F.R. 98.43. WSR 19-21-064, § 110-06-0040, filed 10/11/19, effective 11/11/19. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0040, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0040, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0040, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0040, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0046 Requirements for license-exempt in-home/relative providers.** (1) This section applies to license-exempt in-home providers. The background check process must be completed for:

(a) All license-exempt in-home/relative providers who apply to care for a ((WCCC)) consumer's child who is eligible to receive WCCC benefits; ((and))

(b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider ((when)) if the provider cares for the child eligible to receive WCCC benefits in the provider's ((own)) home, and the home is not where the child ((does not reside.

~~(2) Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing)~~ resides; and

(c) Any individual sixteen years of age or older who begins to reside with a license-exempt in-home/relative provider ((when the provider)) after the date the provider begins to care((s)) for the child eligible to receive WCCC benefits in the provider's ((own)) home, and the home is not where the child ((does not)) resides.

~~((3) The background check process for license-exempt in-home/relative providers requires:))~~ (2) A subject individual who is seeking a background check authorization must complete the background check application process by:

(a) Submitting a completed background check application; ((and))

(b) Completing the required fingerprint process; and

(c) Completing the required interstate background check process for each state the subject individual has lived outside of Washington State in the five years preceding the background check application.

~~((4))~~ (3) Each subject individual completing the DCYF background check process must disclose whether they have:

- (a) ~~((Whether he or she has))~~ Been convicted of any crime;
- (b) ~~((Whether he or she has))~~ Any pending criminal charges; and
- (c) ~~((Whether he or she has))~~ Been or are the subject ~~((to))~~ of any negative actions ~~((, as defined by WAC 110-06-0020)).~~

~~((5))~~ (4) A subject individual must not have unsupervised access to children in care ~~((unless he or she has obtained))~~ before obtaining DCYF background check ~~((clearance))~~ authorization under this chapter.

(5) Applicants may be approved to have unsupervised access to children before the fingerprint-based background check is conducted.

(6) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

(7) DCYF ~~((pays for))~~ will pay the cost of the background check process. The fees include:

- (a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation, DSHS, and the DCYF fingerprint contractor; and
- (b) The DCYF administrative fee.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0046, filed 12/18/18, effective 1/18/19.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 19-01-011 [19-01-111], filed 12/18/18, effective 1/18/19)

**WAC 110-06-0120 Secretary's list.** ~~((1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services.~~

~~((2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services for a period of five years from the date of conviction.~~

<b>(a) Crimes that permanently disqualify a subject individual</b>	<b>(b) Crimes that disqualify a subject individual for five years from date of conviction</b>
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion

<b>(a) Crimes that permanently disqualify a subject individual</b>	<b>(b) Crimes that disqualify a subject individual for five years from date of conviction</b>
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)

<b>(a) Crimes that permanently disqualify a subject individual</b>	<b>(b) Crimes that disqualify a subject individual for five years from date of conviction</b>
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism))	

(1) The crimes and conduct described in this section constitute the secretary's list.

(2) Subject to the requirements described in this chapter, the department must permanently disqualify a subject individual who has a conviction for any of the crimes listed in this subsection.

<b>Citation</b>	<b>Description</b>
<u>RCW 9A.42.060</u>	<u>Abandonment of a dependent person in the first degree (if the victim is a child)</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is a child)</u>
<u>RCW 10.95.020</u>	<u>Aggravated murder</u>
<u>RCW 9A.48.020</u>	<u>Arson in the first degree</u>
<u>RCW 9A.48.030</u>	<u>Arson in the second degree</u>
<u>RCW 9A.36.011</u>	<u>Assault in the first degree</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.36.021</u>	<u>Assault in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if causes bodily harm)</u>
<u>RCW 9A.36.120</u>	<u>Assault of a child in the first degree</u>
<u>RCW 9A.36.130</u>	<u>Assault of a child in the second degree</u>
<u>RCW 9A.36.140</u>	<u>Assault of a child in the third degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if child or spouse is assaulted)</u>
<u>RCW 9A.44.083</u>	<u>Child molestation in the first degree</u>
<u>RCW 9A.44.086</u>	<u>Child molestation in the second degree</u>
<u>RCW 9A.44.089</u>	<u>Child molestation in the third degree</u>
<u>RCW 9A.64.030</u>	<u>Child buying or selling</u>
<u>RCW 9.68A.100</u>	<u>Commercial sexual abuse of a minor</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a felony)</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is a child)</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is a child)</u>
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if causes bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is a child; and the conviction is the subject individual's second or subsequent conviction of custodial interference in the second degree)</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is a child)</u>
<u>RCW 9.68A.050</u>	<u>Dealing in depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is a child)</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if a felony and the victim is a child)</u>
<u>RCW 9A.44.100</u>	<u>Indecent liberties</u>
<u>RCW 9A.40.020</u>	<u>Kidnapping in the first degree</u>
<u>RCW 9A.40.030</u>	<u>Kidnapping in the second degree</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is a child)</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is a child)</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is a child)</u>
<u>RCW 9A.32.030</u>	<u>Murder in the first degree</u>
<u>RCW 9A.32.050</u>	<u>Murder in the second degree</u>
<u>RCW 9.68A.070</u>	<u>Possession of depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.101</u>	<u>Promoting commercial sexual abuse of a minor</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is a child)</u>
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is a child)</u>
<u>RCW 9.68A.102</u>	<u>Promoting travel for commercial sexual abuse of a minor</u>
<u>RCW 9A.44.040</u>	<u>Rape in the first degree</u>
<u>RCW 9A.44.050</u>	<u>Rape in the second degree</u>
<u>RCW 9A.44.060</u>	<u>Rape in the third degree</u>
<u>RCW 9A.44.073</u>	<u>Rape of a child in the first degree</u>
<u>RCW 9A.44.076</u>	<u>Rape of a child in the second degree</u>



<u>Citation</u>	<u>Description</u>
<u>RCW 9A.44.079</u>	<u>Rape of a child in the third degree</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is a child)</u>
<u>RCW 9.68A.060</u>	<u>Sending, bringing into state depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.040</u>	<u>Sexual exploitation of a minor</u>
<u>RCW 9A.44.093</u>	<u>Sexual misconduct with a minor in the first degree</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is a child)</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is a child)</u>

(3) Subject to the requirements described in this chapter, the department may disqualify a subject individual who has a conviction for a crime listed in this subsection.

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.060</u>	<u>Abandonment of a dependent person in the first degree (if the victim is not a child)</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.080</u>	<u>Abandonment of a dependent person in the third degree</u>
<u>RCW 16.52.205</u>	<u>Animal cruelty in the first degree</u>
<u>RCW 16.52.207</u>	<u>Animal cruelty in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if no bodily harm)</u>
<u>RCW 9A.36.041</u>	<u>Assault in the fourth degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if a child or spouse is not assaulted)</u>
<u>RCW 9A.52.030</u>	<u>Burglary in the second degree</u>
<u>RCW 9A.36.070</u>	<u>Coercion</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a gross misdemeanor)</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is not a child)</u>
<u>RCW 9A.46.120</u>	<u>Criminal gang intimidation</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.60.040</u>	<u>Criminal impersonation in the first degree</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is not a child)</u>
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.035</u>	<u>Criminal mistreatment in the third degree</u>
<u>RCW 9A.42.037</u>	<u>Criminal mistreatment in the fourth degree</u>
<u>RCW 9.05.060</u>	<u>Criminal sabotage</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if no bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is not a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is not a child)</u>
<u>RCW 9A.44.170</u>	<u>Custodial sexual misconduct in the second degree</u>
<u>RCW 9.61.260</u>	<u>Cyberstalking</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is not a child)</u>
<u>RCW 46.61.502</u>	<u>Driving under the influence of intoxicating liquor, marijuana, or any drug (if the conviction was for a felony or the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.52.020</u>	<u>Duty in case of personal injury or death or damage to attended vehicle or other property—Penalties (if a felony)</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is not a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is not a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.132</u>	<u>Failure to register as sex offender or kidnapping offender</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 66.44.270</u>	<u>Furnishing liquor to minors (only if the subject individual sells, gives, or otherwise supplies liquor to a person under the age of twenty-one years; or permits any person under that age to consume liquor on the subject individual's property or on any property under the subject individual's control)</u>
<u>RCW 9A.46.020</u>	<u>Harassment</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is not a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is not a child)</u>
<u>RCW 9A.60.050</u>	<u>Homicide by watercraft</u>
<u>RCW 9.40.120</u>	<u>Incendiary devices</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is not a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if felony and victim is not a child, or if a misdemeanor)</u>
<u>RCW 9A.82.060</u>	<u>Leading organized crime</u>
<u>RCW 46.61.685</u>	<u>Leaving children unattended in standing vehicle with motor running</u>
<u>RCW 9.91.060</u>	<u>Leaving children unattended in parked automobile</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is not a child)</u>
<u>RCW 70.74.270</u>	<u>Malicious placement of an explosive in the first, second, or third degree</u>
<u>RCW 70.74.272</u>	<u>Malicious placement of an imitation device in the first degree or second degree</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is not a child)</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is not a child)</u>
<u>RCW 46.61.5249</u>	<u>Negligent driving in the first degree (if the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.61.504</u>	<u>Physical control of vehicle under the influence (if felony)</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is not a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is not a child)</u>
<u>RCW 9A.88.080</u>	<u>Promoting prostitution in the second degree</u>
<u>RCW 9A.36.060</u>	<u>Promoting a suicide attempt</u>
<u>RCW 9A.36.050</u>	<u>Reckless endangerment</u>
<u>RCW 9A.76.070</u>	<u>Rendering criminal assistance in the first degree</u>
<u>RCW 9A.52.025</u>	<u>Residential burglary</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is not a child)</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.096</u>	<u>Sexual misconduct with a minor in the second degree</u>
<u>RCW 9A.44.105</u>	<u>Sexually violating human remains</u>
<u>RCW 9A.46.110</u>	<u>Stalking</u>
<u>RCW 9.61.230</u>	<u>Telephone harassment (if felony)</u>
<u>RCW 9A.40.100</u>	<u>Trafficking in the first degree or second degree</u>
<u>RCW 13.32A.080</u>	<u>Unlawful harboring of a minor</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is not a child)</u>
<u>RCW 69.53.010</u>	<u>Unlawful use of a building for drug abuse purposes</u>
<u>RCW 9.41.225</u>	<u>Use of machine gun or bump-fire stock in felony</u>
<u>RCW 46.61.522</u>	<u>Vehicular assault</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is not a child)</u>
<u>RCW 9.68A.075</u>	<u>Viewing depictions of minor engaged in sexually explicit conduct in the first or second degree</u>
<u>RCW 26.50.110</u>	<u>Violation of sexual assault protection order under chapter 7.90 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of stalking no-contact order or stalking protection order under chapter 7.92 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of human trafficking no-contact order under chapter 9A.40 if a felony under RCW 26.50.110.</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 26.50.110</u>	<u>Violation of an order restricting contact under RCW 9A.46.080.</u>
<u>RCW 26.50.110</u>	<u>Violation of promoting prostitution no-contact order under chapter 9A.88 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of domestic violence no-contact order under chapter 10.99 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of dissolution proceeding restraining order under chapter 26.09 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of paternity proceeding restraining order under chapter 26.26A or 26.26B RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of a domestic violence order for protection under chapter 26.50 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of an order for protection of a vulnerable adult under chapter 74.34 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 10.14.170</u>	<u>Violation of civil antiharassment protection order</u>
<u>RCW 69.52.030</u>	<u>Violation of the Uniform Controlled Substances Act (manufacture, distribute, or possess with intent to distribute)</u>
<u>Chapter 69.50 RCW (Article IV Offenses and penalties)</u>	<u>Except for controlled substance homicide if the child is a victim (RCW 69.50.415), any violation of the Uniform Controlled Substances Act</u>
<u>RCW 69.41.020</u>	<u>The unlawful obtaining or attempting to obtain a legend drug, or procure or attempt to procure the administration of a legend drug</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 69.43.070</u>	<u>Sale, transfer, or furnishing of any substance listed in RCW 69.43.010 with knowledge or intent the recipient will use the substance to unlawfully manufacture a controlled substance; or the receipt of any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance.</u>
<u>RCW 9A.44.115</u>	<u>Voyeurism</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>

(4) Subject to the requirements described in this chapter, the department may disqualify a subject individual who has a background that includes any negative action that is based on the conduct described in this subsection.

(a) The abuse, neglect, exploitation, or abandonment of a vulnerable, child, or juvenile.

(b) The suspension, termination, revocation, denial, or restriction of a license, professional license, or certification.

(c) The suspension, termination, or revocation of a state or federal contract.

(d) The relinquishment of a license, certification, or contract in lieu of an agency negative action.

(5) Under 42 U.S.C. § 9858F (C)(1)(B) a subject individual must be disqualified and not authorized for employment at a licensed or certified child care facility, if the subject individual knowingly makes a materially false statement in connection with their criminal background check.

(6) Under 42 U.S.C. § 9858F (C)(1)(C) a subject individual must be disqualified and not authorized for employment at a licensed or certified child care facility, if the subject individual is registered, or is required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.)

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0120, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0120, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0120, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 14-13-002, § 170-06-0120, filed 6/4/14, effective 7/5/14. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0120, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0120, filed 4/30/08, effective 5/31/08.]

**WSR 22-06-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-22—Filed February 16, 2022, 4:09 p.m., effective February 16, 2022, 4:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000G; and amending WAC 220-358-030.

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: Sets 2022 winter, spring, and summer select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 15, 2022. The general public welfare is protected with the immediate opening of nontreaty select area fisheries. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: February 16, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000H Columbia River seasons below Bonneville.**

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**(1) Tongue Point and South Channel areas:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 17 - Mar 11	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	10 nights
Apr 18 - Apr 19	Mon (night)	8:30 pm - 12:30 am	4 hrs
Apr 21 - Apr 22	Fri (morning)	11:00 pm - 3:00 am	4 hrs
Apr 25 - Apr 29	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
May 2 - Jun 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	19 nights

**Tongue Point Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 14	Mon (night)	5:30 pm - 9:30 pm	4 hrs
Mar 16	Wed (night)	7:00 pm - 11:00 pm	4 hrs
Mar 17	Thu (night)	7:30 pm - 11:30 pm	4 hrs



Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 21 - Mar 22	Mon (night)	9:30 pm - 1:30 am	4 hrs

**South Channel Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 14 - Mar 18	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
Mar 21 - Mar 25	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Mar 28	Mon (night)	6:00 pm - 10:00 pm	4 hrs
Mar 31 - Apr 1	Thu (night)	8:00 pm - 12:00 am	4 hrs
Apr 4 - Apr 5	Mon (night)	10:30 pm - 2:30 am	4 hrs
Apr 8	Fri (morning)	12:30 am - 4:30 am	4 hrs
Apr 11	Mon (night)	5:00 pm - 9:00 pm	4 hrs
Apr 14	Thu (night)	7:00 pm - 11:00 pm	4 hrs

(a) Area definitions:

(i) Immediately through April 14, 2022:

(A) Tongue Point: Waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

(B) South Channel: Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(ii) April 18 through June 15, 2022:

(A) Tongue Point: Area as described in OAR 635-042-0170 (1)(a) and WAC 220-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) South Channel: Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) Gear: Gillnets:

(i) Immediately through April 14, 2022: 7-inch minimum mesh size.

(ii) April 18 through June 15, 2022: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 1,500 feet (250 fathoms).

(iv) In the Tongue Point Area, the lead line weight may not exceed two pounds per any one fathom.

(v) In the South Channel Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

**(2) Blind Slough and Knappa Slough areas:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 17 - Mar 18	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	13 nights
Mar 21 - Apr 1	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights
Apr 18 - Apr 29	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights
May 2 - Jun 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	19 nights

**Blind Slough Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 4 - Apr 15	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights

**Knappa Slough Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 4 - Apr 5	Mon (night)	10:20 pm - 2:30 am	4 hrs
Apr 8	Fri (Morning)	12:30 am - 4:30 am	4 hrs
Apr 11	Mon (night)	5:00 pm - 9:00 pm	4 hrs
Apr 14	Thu (night)	7:00 pm - 11:00 pm	4 hrs

**(a) Areas:**

(i) The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

(ii) The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed. Prior to May 3, 2022, the western (downstream) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

**(b) Gear: Gillnets:**

(i) Immediately through April 15, 2022: 7-inch minimum mesh size.

(ii) April 18 through June 15, 2022: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

**(c) Miscellaneous:**

Permanent transportation rules in effect. In accordance with WACs 220-352-040 (1) (i) and 220-301-010 (11) (a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately us-

ing appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

**(3) Deep River Select Area:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 17 - Mar 18	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	13 nights
Mar 21 - Apr 15	Mon, Thu (nights)	7:00 pm - 7:00 am	8 nights
Apr 18 - Apr 29	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights
May 2 - Jun 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	19 nights

(a) Area:

From the mouth of Deep River defined as a line from USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(b) Gear: Gillnets:

(i) Immediately through April 15, 2022: 7-inch minimum mesh size.

(ii) April 18 through June 14, 2022: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(v) Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream, or channel any net longer than three-fourths the width of the stream (WAC 220-354-010(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of nets, whether fishing singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided by department rule (WAC 220-353-060(1)).

(c) Miscellaneous:

(i) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff.

(ii) Immediately through April 15, 2022: fishers are required to call 360-846-5268 or 360-795-0319 to confirm the place and time of sampling.

(iii) April 18 through June 14, 2022: a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

**(4) Allowable Sales:** Salmon (except Chum) and shad.

**(5) 24-hour quick reporting** is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

**(6) Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

**(7) Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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**WSR 22-06-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-24—Filed February 18, 2022, 5:17 p.m., effective February 18, 2022, 5:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to implement tribal special management areas per state/tribal agreement.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45000I; and amending WAC 220-340-450.

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

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

Reasons for this Finding: Tribal special management area descriptions conform with recent state/tribal agreements and recent state/tribal discussions regarding in-season modifications.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 18, 2022.

Kelly Susewind  
Director

NEW SECTION

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

(1) Open area: The area from the WA/OR border (46°15.00) to the US/Canada border, except for Quinalt Secondary Special Management Area (SSMA) and Quileute Special Management (SMA) during times and as described below. For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(2) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at 8:00 a.m., March 4, 2022, until further notice. The SSMA is defined by the following points:

- (a) Northeast Corner: 47°28.00' N. Lat. 124°20.70' W. Lon.
- (b) Northwest Corner: 47°28.00' N. Lat. 124°36.00' W. Lon.
- (c) Southwest Corner: 47°06.00' N. Lat. 124°27.10' W. Lon.
- (d) Southeast Corner: 47°06.00' N. Lat. 124°11.00' W. Lon.

(3) The Quileute Special Management Area (SMA) is closed to fishing for Dungeness crab until 8:00 a.m. May 1, 2022. The SMA includes the area shoreward the 30-fathom depth curve line at the coordinates below, between Destruction Island and Cape Johnson according to the following points:

- (a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.
- (b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- (c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- (d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

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

[]

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-45000I Commercial crab fishery—Seasons and areas—Coastal. (22-16)

**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 22-06-016**  
**EMERGENCY RULES**  
**SECRETARY OF STATE**

[Filed February 21, 2022, 2:07 p.m., effective February 21, 2022, 2:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to preserve transparency in Washington's election process while preventing the disclosure of information that may increase risk to the integrity of election operations.

Citation of Rules Affected by this Order: New WAC 434-250-380.

Statutory Authority for Adoption: RCW 29A.04.230, 29A.04.611, 29A.08.710, 42.56.420.

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 transparency and integrity of elections are at the heart of self-governance and the general welfare. Immediate adoption of this rule is necessary to preserve the transparency and integrity of elections. Under Washington's vote-by-mail system, signature verification is a key means of verifying the authenticity of a ballot. Widespread disclosure of images of voter signatures may undermine this verification process. There are pending Public Records Act requests that would result in the disclosure of a large number of voter signatures. If voter signatures are disclosed, it will not be possible to undo the potential harm. This rule also ensures that counties may maintain transparency by permitting in-person inspection without redaction. This rule additionally protects the phone number and email address of the voter. Phone numbers and email addresses of voters are exempt from release from the voter registration by state statute. The office of the secretary of state has filed notice of its intent to adopt the rule as a permanent rule and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule as evidenced by the following filing with the office of the code reviser, WSR 22-01-148.

Date Adopted: February 21, 2022.

Randy Bolerjack  
Deputy Secretary of State

**OTS-3424.3**

NEW SECTION

**WAC 434-250-380 Disclosure of voter signatures.** (1) Voter signatures, phone numbers, and email addresses must be redacted on all ballot return envelopes, ballot declarations, and signature correction forms that are produced electronically, disclosed to the public or made available for public inspection, subject to the exceptions in subsections (2) and (3). The requirement applies to original documents, copies, and electronic images.

(2) Voter signatures, phone numbers, and email addresses do not have to be redacted when making ballot envelopes, ballot declarations and signature correction forms available for in-person public inspection, so long as photocopying, photographs, and other types of image reproduction of voter signatures, phone numbers, and email addresses are prohibited.

(3) Election officials may disclose unredacted ballot envelopes, ballot declarations, and signature correction forms with other governmental entities for official purposes, provided that the ballot envelopes, ballot declarations, and signature correction forms are shared in a secure manner.

(4) Voter signatures on ballot envelopes, ballot declarations, and signature correction forms that are disclosed in litigation should be subject to a protective order that prohibits redisclosure of the voter signatures, phone numbers, and email addresses.

(5) Voter signatures, phone numbers, and email addresses on ballot envelopes, ballot declarations, and signature correction forms constitute information about election security for purposes of RCW 42.56.420.

(6) Public disclosure of voter signatures, phone numbers, and email addresses on ballot envelopes, ballot declarations, and signature correction forms may increase risk to the integrity of election operations.

(7) Subsection (2) of this section is severable. If a court concludes that agencies may not prohibit copying of records that are made available for in-person inspection, then voter signatures, phone numbers, and email addresses on ballot envelopes, ballot declarations, and signature correction forms must be redacted for in-person inspection of records.

(8) For purposes of this regulation, "signature correction form" means any form submitted by a voter for the purpose of curing a missing or mismatched signature on a ballot declaration or otherwise updating the voter signature.

(9) For purposes of this section, "voter signature" means any original handwritten signature or image of the voter's signature.

(10) The requirements of this section apply to any public records requests made prior to the effective date of this section for which disclosure of records has not already been completed.

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## WSR 22-06-017

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed February 22, 2022, 9:37 a.m., effective February 22, 2022, 9:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-010 Prescription labeling, records, and advertising—Minimum requirements. The pharmacy quality assurance commission (commission) is adopting emergency rules to reduce burdens on practitioners prescribing Schedule II substances during the coronavirus disease (COVID-19) outbreak. This adopted emergency rule will extend WSR 21-22-029 filed on October 25, 2021. This emergency rule was originally filed on April 21, 2020, under WSR 20-09-133. It was re-filed on July 10, 2020, after the commission's new chapter went into effect under WSR 20-15-058. This emergency rule will continue the existing emergency rule amending WAC 246-945-010 to increase the duration of time a practitioner has to deliver a signed prescription of a Schedule II substance to the pharmacy from seven days to 15 days when a prescription is dispensed in an emergency. It also defines what a "signed prescription" means and allows for a practitioner to accomplish this requirement through paper, electronic transmission, facsimile, photograph, or scanned copy. These alternative methodologies support patients, practitioners, and pharmacists' efforts to practice social distancing and to help mitigate communal spread.

Citation of Rules Affected by this Order: Amending WAC 246-945-010.

Statutory Authority for Adoption: RCW 18.64.005; chapter 69.50 RCW.

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

Reasons for this Finding: The immediate amendment of this existing rule is necessary for the preservation of public health, safety, and general welfare. Interested parties and leaders from the pain community have highlighted this is an immediate need for Washingtonians. This emergency rule has been in effect since April 21, 2020. This emergency rule allows more time and more avenues for complying with the requirements during the ongoing COVID-19 pandemic, reducing burdens on practitioners and pharmacists, and sustaining patient access during this difficult time. The emergency rules follow guidance from the United States Drug Enforcement Agency and will help address this problem and reduce barriers for providers and patient populations in need of Schedule II prescriptions throughout this public health emergency. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest.

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

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

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

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

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

Date Adopted: February 22, 2022.

Teri Ferreira, RPh  
Pharmacy Quality Assurance Chair

## OTS-2391.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-010 Prescription and chart order—Minimum requirements.** (1) For the purposes of this section, prescription does not include chart orders as defined in RCW 18.64.011(3).

(2) For the purposes of WAC 246-945-010 through 246-945-013, prescription includes written and electronic prescriptions.

(3) A prescription for a noncontrolled legend drug must include, but is not limited to, the following:

(a) Prescriber's name;

(b) Name of patient, authorized entity, or animal name and species;

(c) Date of issuance;

(d) Drug name, strength, and quantity;

(e) Directions for use;

(f) Number of refills (if any);

(g) Instruction on whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted, unless substitution is permitted under a prior-consent authorization;

(h) Prescriber's manual or electronic signature, or prescriber's authorized agent signature if allowed by law; and

(i) If the prescription is written, it must be written on tamper-resistant prescription pad or paper approved by the commission pursuant to RCW 18.64.500;

(4) A prescription for a controlled substance must include all the information listed in subsection (1) of this section and the following:

(a) Patient's address;

(b) Dosage form;

(c) Prescriber's address;

(d) Prescriber's DEA registration number; and

(e) Any other requirements listed in 21 C.F.R., Chapter II.

(5) A chart order must meet the requirements of RCW 18.64.550 and any other applicable requirements listed in 21 C.F.R., Chapter II.

(6) A controlled substance listed in Schedule II can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011 unless there is an "emergency."

(a) For the purposes of this subsection, an "emergency" exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it is not possible for the practitioner to provide a written or electronic prescription for the drug at that time.

(b) If a Schedule II drug is dispensed in an emergency, the practitioner must deliver a signed prescription to the dispenser within ~~((seven))~~ fifteen days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the ~~((seven))~~ fifteen day period, and further the pharmacist must note on the prescription that it was filled on an emergency basis.

(c) For the purposes of this subsection, a "signed prescription" shall be either:

(i) A paper prescription;

(ii) An electronic prescription;

(iii) A copy of the paper prescription sent via facsimile to the pharmacy; or

(iv) A photograph or scanned copy of the paper prescription sent to the pharmacy.

(7) A controlled substance listed in Schedule III, IV, or V, can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a controlled substance listed in Schedule III, IV, or V must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

(8) A noncontrolled legend drug can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a noncontrolled legend drug must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

[Statutory Authority: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590. WSR 20-12-072, § 246-945-010, filed 6/1/20, effective 7/1/20.]

**WSR 22-06-023  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 22-25—Filed February 22, 2022, 4:51 p.m., effective February 26, 2022, 12:01 p.m.]

Effective Date of Rule: February 26, 2022, 12:01 p.m.

Purpose: Amends recreational harvest rules for razor clams in Areas 1, 3, 4, and 5.

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

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 22, 2022.

Kelly Susewind  
Director

NEW SECTION

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

(1) Effective 12:01 p.m. February 26 through 11:59 p.m. March 4, 2022, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	February 26 through March 4	From 12:01 p.m. to 11:59 p.m.

Razor Clam Area	Date	Time
Area 2	Closed	Closed
Area 3	February 26, March 1, March 2, March 3, and March 4	From 12:01 p.m. to 11:59 p.m.
Area 4	February 26, March 2, and March 4	From 12:01 p.m. to 11:59 p.m.
Area 5	February 27, March 1, and March 3	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

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REPEALER

The following section of the Washington Administrative Code is repealed effective March 5, 2022:

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

**WSR 22-06-026**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-27—Filed February 23, 2022, 9:15 a.m., effective February 23, 2022, 9:15 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes commercial harvest of red sea urchin in all districts.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000I; and amending WAC 220-340-750.

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 closes harvest of red sea urchin in all sea urchin districts because the quotas for these areas have been reached. This closure is pursuant to obligations of state and tribal comanager agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 23, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-75000J Commercial sea urchin fishery.** Effective immediately, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1, District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23A, District 3 east of a line projected true north from the shoreline at 123°48.3'W longitude to the international border, District 4 Marine Fish-Shellfish Management and Catch Reporting Area 23C west of a line projected true north from the shoreline at 123°52.7'W longitude to the international border, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west and north of a line starting at Point Fosdick following longitude 122°35'W southward to latitude 47°14'N thence true west to Fox Island, and east and north of a line starting at Green Point following longitude 122°41'W southward to latitude 47°16.5'N thence true east to Fox Island.

(3) The maximum cumulative landings for green sea urchin for each weekly fishery opening period is 1,500 pounds per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

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#### REPEALER

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

WAC 220-340-75000I Commercial sea urchin fishery. (22-13)

**WSR 22-06-028**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed February 23, 2022, 10:08 a.m., effective February 23, 2022, 10:08 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is:

1. For students enrolled in both an institutional education program and a youth dropout reengagement program, this emergency rule change will allow the student's enrollment to be shared between an institutional education program and a youth dropout reengagement program. The change allows the student's enrollment to exceed 1.0 FTE in these circumstances as recently enacted in RCW 28A.190.070.

2. For all students enrolled in youth reengagement programs, allow for the required face-to-face interaction to be conducted in-person or via synchronous communication for the 2021-22 school year. Due to the ongoing COVID-19 pandemic, the emergency rule will ensure that students enrolled in youth reengagement programs will be able to access services through additional means of contact.

Citation of Rules Affected by this Order: Amending WAC 392-121-136, 392-122-221, 392-700-015, 392-700-035, 392-700-042, and 392-700-160.

Statutory Authority for Adoption: RCW 28A.190.070 and 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: 1. RCW 28A.190.070, recently enacted, requires the office of superintendent of public instruction (OSPI) to develop procedures for school districts to report student enrollment in institutional education and youth dropout reengagement programs starting with the 2021-22 school year. Current rules do not allow a student's enrollment to be shared between an institutional education and youth reengagement programs and do not allow a student enrolled in both to exceed 1.0 FTE in any month. An emergency rule is necessary to make this possible as required in RCW 28A.190.070. OSPI filed a CR-101 Preproposal statement of inquiry (WSR 21-21-096) to initiate regular rule making concerning this topic.

2. Students enrolled in youth dropout reengagement programs under chapter 392-700 WAC are required to receive face-to-face contact as defined in WAC 392-700-015. As programs are providing remote learning options due to the COVID-19 pandemic, face-to-face, in-person interaction is not feasible for all students. An emergency rule is necessary to ensure students will have access to services through alternative means of contact in the 2021-22 school year. OSPI filed a CR-101 Preproposal statement of inquiry (WSR 21-21-096) to initiate regular rule making concerning this topic and is in the process of gathering input in preparation for next steps.

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 5, Repealed 0.



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

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

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

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

Date Adopted: February 16, 2022.

Chris P. S. Reykdal  
State Superintendent of Public Instruction

### OTS-3392.1

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

**WAC 392-121-136 Limitation on enrollment counts.** Enrollment counts (~~purported to~~) under WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts or charter schools operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the aggregate of enrolled hours based upon the fourth day of each summer session.

(i) Prior to the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(ii) Beginning with the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 1,000 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum 1.8 FTE.

(c) Subject to (b) of this subsection ~~(7)~~:

(i) A student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student.

(ii) A student enrolled in running start during the regular school year may be claimed for up to a combined 1.2 full-time equivalent student.

(iii) A student enrolled in high school and skills center for more than 1.0 FTE, can be claimed for a 0.2 running start FTE.

(iv) A student enrolled in an institutional education program under WAC 392-122-205 and a youth engagement program under chapter 392-700 WAC can be claimed up to a combined 2.0 FTE.

Each student may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment, a maximum of a 1.0 full-time equivalent for running start ~~((and))~~, a maximum of a 1.0 full-time equivalent for the student's high school enrollment, and a maximum of a 1.0 full-time equivalent for institutional education funding under WAC 392-122-225 subject to the overall combined FTE limitation in (b) of this subsection.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old pre-school student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time by a state institution educational program on Form SPI E-672 shall not be reported by a school district or charter school for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts or charter schools for basic education and on Form SPI E-672 must not exceed one full-time equivalent, except if the student is enrolled in a youth reengagement program under chapter 392-700 WAC.

(6) Districts and charter schools providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim for an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

[Statutory Authority: RCW 28A.150.290. WSR 17-16-162, § 392-121-136, filed 8/2/17, effective 9/2/17. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-136, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-136, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290(1). WSR 10-13-020, § 392-121-136, filed 6/4/10, effective 7/5/10. Statutory Authority: RCW 28A.150.290. WSR 09-01-172, § 392-121-136, filed 12/23/08, effective 1/23/09; WSR 08-04-010, § 392-121-136, filed 1/24/08, effective 2/24/08; WSR 97-22-013 (Order 97-06), § 392-121-136, filed 10/27/97, effective 11/27/97; WSR 95-01-013, § 392-121-136, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.150.290, 28A.150.250 and 28A.150.260. WSR 91-02-096 (Order 50), § 392-121-136, filed 1/2/91, effective 2/2/91. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-136, filed 1/11/88.]

**OTS-3393.1**

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

- WAC 392-122-221 State institutional education program—Enrollment exclusions.** (1) The following may not be counted as an enrolled institutional education program student:
- (a) A person whose educational activity under WAC 392-122-212 has terminated.
  - (b) A person who has transferred to another institution, school district, or charter school.
  - (c) A person residing in a state institution who:
    - (i) Has not engaged in educational activity under WAC 392-122-212 in the past five school days, excluding days of excused absence;
    - (ii) Has not engaged in educational activity in the past ten school days under WAC 392-122-212, including days of excused absence; or
    - (iii) Is claimed by any school district or charter school as an enrolled student eligible for state basic education support (~~(pursuant to)~~) under chapter 392-121 WAC where the school district's count date occurs prior to the institution's count date for the month, except if the student is enrolled in a youth reengagement program under chapter 392-700 WAC.
- (2) When the institution's count date and the school district's or charter school's count date are on the same date, institutions shall have priority for counting the student.
- (3) As used in this section, "excused absence" means an absence from scheduled educational activity which certificated staff determine to be due to one or more of the following:
- (a) Illness;
  - (b) Attendance in court; or
  - (c) Meeting with a lawyer, case worker, counselor, physician, dentist, nurse, or other professional service provider.

[Statutory Authority: RCW 28A.150.290 and 28A.710.040(5). WSR 21-04-039, § 392-122-221, filed 1/26/21, effective 2/26/21. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-221, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 08-24-029, § 392-122-221, filed 11/24/08, effective 12/25/08; WSR 01-24-002, § 392-122-221, filed 11/21/01, effective 12/22/01. Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. WSR 98-21-065 (Order 98-09), § 392-122-221, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. WSR 95-08-025, § 392-122-221, filed 3/29/95, effective 4/29/95; WSR 92-03-045 (Order 92-03), § 392-122-221, filed 1/10/92, effective 2/10/92.]

#### OTS-2253.6

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 2021-22 school year, face-to-face interaction means in-person, or synchronous communication using interactive digital tools, including real-time online applications, or voice or video communication technology.
- (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 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) **"Institutional education program"** means a program that meets a definition under WAC 392-122-205.

(17) **"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))~~ (18) "**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))~~ (19) "**Noninstructional staff**" is any person employed in a position that is not an instructional staff as defined under subsection ~~((16))~~ (17) of this section.

~~((19))~~ (20) "**OSPI**" means the office of superintendent of public instruction.

~~((20))~~ (21) "**Program**" means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

~~((21))~~ (22) "**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))~~ (23) "**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))~~ (24) "**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))~~ (25) "**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))~~ (26) "**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))~~ (27) "**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.

[Statutory Authority: RCW 28A.175.010, 28A.175.115. WSR 17-01-125, § 392-700-015, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 28A.175.100. WSR 15-15-115, § 392-700-015, filed 7/16/15, effective 8/16/15; WSR 14-22-073, § 392-700-015, filed 11/3/14, effective

12/4/14; WSR 13-13-005, § 392-700-015, filed 6/6/13, effective 7/7/13. Statutory Authority: RCW 28A.175.100 and 2010 c 20. WSR 11-17-045, § 392-700-015, filed 8/11/11, effective 9/11/11.]

AMENDATORY SECTION (Amending WSR 18-17-031, filed 8/6/18, effective 9/6/18)

**WAC 392-700-035 Student eligibility.** (1) A student is eligible to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age at the beginning of the school year but whose sixteenth birthday occurs on or before September 1st;

(b) Has not yet met the high school graduation requirements of either the district, tribal compact school, charter school, or the college under RCW 28B.50.535; and

(c) At the time the student enrolls, is significantly behind in credits based on the student's cohort graduation date. The cohort graduation date is established as the end of the fourth school year after a student first enrolls in the ninth grade.

(i) A student who is more than twenty-four months from their cohort graduation date and has earned less than sixty-five percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than sixty-five percent. A cohort is the group of students that enter the ninth grade in the same school year;

(ii) A student who is between twelve and twenty-four months from their cohort graduation date and has earned less than seventy percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than seventy percent;

(iii) A student who is less than twelve months from their cohort graduation date or who has passed their cohort graduation date by less than twelve months and has earned less than seventy-five percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than seventy-five percent;

(iv) A student who is passed their cohort graduation date by twelve months or more and has not met their district, tribal compact school, or charter school graduation requirements; or

(v) A student who has never attended the ninth grade and has earned zero high school credits.

(d) If determined not to be credit deficient as outlined in (c) of this subsection, has been recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, a district, tribal compact school, or charter school designated school personnel, or staff from community agencies which provide educational advocacy services;

(e) Are not currently enrolled in any high school classes that receive state basic education funding, excluding an approved skill center program, a Jobs for Washington's Graduates program, ~~((or))~~ running start program, or institutional education program under WAC 392-122-205;

(f) Students who are claimed for state funding by a district, tribal compact school, or charter school outside the district they live in, must be released by either a choice transfer or interdistrict agreement. When a choice transfer is in place, the student's resident

district as defined in WAC 392-700-015(~~(+23+)~~) (24) becomes the district operating the program.

(2) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

- (a) Earns a high school diploma;
- (b) Earns an associate degree; or

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(3) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

[Statutory Authority: RCW 28A.175.010 and 28A.175.115. WSR 18-17-031, § 392-700-035, filed 8/6/18, effective 9/6/18; WSR 17-01-125, § 392-700-035, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 28A.175.100. WSR 15-15-115, § 392-700-035, filed 7/16/15, effective 8/16/15; WSR 14-22-073, § 392-700-035, filed 11/3/14, effective 12/4/14; WSR 13-13-005, § 392-700-035, filed 6/6/13, effective 7/7/13. Statutory Authority: RCW 28A.175.100 and 2010 c 20. WSR 11-17-045, § 392-700-035, filed 8/11/11, effective 9/11/11.]

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

**WAC 392-700-042 Program operating agreements and OSPI approval.**

(1) Districts, tribal compact schools, charter schools, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve students. Many models of operation are authorized as part of the statewide dropout reengagement system.

Regardless of the model of operation, the state funding is allocated to the district, tribal compact school, charter school, or direct funded technical college that is reporting the student's enrollment for the program.

(2) A district, tribal compact school, or charter school may enter into one of the following models of operations through the OSPI approval process:

(a) Directly operate a program where the services are provided by the district, tribal compact school, or charter school resources;

(b) Enter into a partnership with an agency or college that will provide the services through a defined scope of work or contracted services agreement; or

(c) Become part of a consortium with other districts, tribal compact schools, charter schools, colleges, and/or agencies by executing a consortium agreement that is signed by all members.

(3) The purpose of the consortium will be to create and operate a program that will serve students enrolled in multiple districts including tribal compact schools and charter schools, and reduce the administrative burden. If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

(a) Take the lead in organizing and managing the regional consortium;



(b) Provide information and technical assistance to districts, tribal compact schools, and charter schools interested in participating in the consortium and providing the opportunity for their students to enroll;

(c) Develop scopes of work with agencies and colleges to operate the programs;

(d) Provide oversight and technical assistance to the program to align with all requirements of this chapter and the delivery of quality programming;

(e) Assist the program with the preparation of required reports, enrollment data, and course records needed to enroll students, award credit, and report FTE and performance to OSPI;

(f) Facilitate data entry of required student data into each district, tribal compact school, or charter school's statewide student information system related to enrollment; and

(g) Work with the districts, tribal compact schools, and charter schools to facilitate the provision of special education, accommodations under Section 504 of the Rehabilitation Act of 1973, and transitional bilingual instruction pursuant to WAC 392-700-147.

(4) A technical college receiving direct funding and authorized to enroll students under WAC 392-121-187 may directly operate a program and serve students referred from multiple districts. The technical college will assume the responsibilities of operating the program as described in this chapter and will meet all responsibilities outlined in WAC 392-121-187.

(5) All programs must be approved by OSPI as follows:

(a) If the program is run by a district, tribal compact school, charter school, agency or college, the program must be approved.

(b) If the program is run by a consortium, both the program and participating districts, tribal compact school, or charter school must be approved.

(c) Any program which meets the definition of an online school program in RCW 28A.250.010 must be approved as an online provider, pursuant to RCW 28A.250.060(2).

(6) Dependent on the model of operations, OSPI will specify the necessary documentation required for approval.

(7) OSPI will provide model documents that can be modified to include district-, tribal compact school-, charter school-, college-, or agency-specific language and will indicate which elements of these standard documents must be submitted to OSPI for review and approval.

(8) Upon initial approval, OSPI will specify the duration of the approval and indicate the necessary criteria to obtain reapproval.

(9) After receiving a notice of approval, OSPI will assign a code to be used when reporting students enrolled in the program.

(10) This chapter does not affect the authority of districts, tribal compact schools, and charter schools under RCW 28A.150.305, 28A.320.035, or any other provision of law to contract for educational services other than reengagement programs as defined by WAC 392-700-015(~~(+20)~~) (21).

[Statutory Authority: RCW 28A.175.010, 28A.175.115. WSR 17-01-125, § 392-700-042, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 28A.175.100. WSR 15-15-115, § 392-700-042, filed 7/16/15, effective 8/16/15; WSR 14-22-073, § 392-700-042, filed 11/3/14, effective 12/4/14; WSR 13-13-005, § 392-700-042, filed 6/6/13, effective 7/7/13.]

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);
  - (e) For continuing students, met the weekly status check requirement pursuant to WAC 392-700-015(~~((+24+))~~) (25);
  - (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))~~) (i) If concurrently enrolled in a special education, transitional bilingual instruction, skills center, (~~((e#))~~) running start, or institutional education programs, does not exceed the FTE limitation (~~(pursuant to)~~) under WAC 392-121-136; and
  - (~~((k))~~) (j) 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+))~~) (16).
  - (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 non-vocational 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.

[Statutory Authority: RCW 28A.175.010, 28A.175.115. WSR 17-01-125, § 392-700-160, filed 12/20/16, effective 1/20/17. Statutory Authority: RCW 28A.175.100. WSR 15-15-115, § 392-700-160, filed 7/16/15, effective 8/16/15; WSR 14-22-073, § 392-700-160, filed 11/3/14, effective 12/4/14; WSR 13-13-005, § 392-700-160, filed 6/6/13, effective 7/7/13. Statutory Authority: RCW 28A.175.100 and 2010 c 20. WSR 11-17-045, § 392-700-160, filed 8/11/11, effective 9/11/11.]

WSR 22-06-029  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 22-26—Filed February 23, 2022, 10:49 a.m., effective March 1, 2022]

Effective Date of Rule: March 1, 2022.

Purpose: The purpose of this emergency rule is to reduce the adult salmon daily limits for the lower Cowlitz River and the Kalama River, and to close salmon seasons on May 1 in the lower Cowlitz River.

Citation of Rules Affected by this Order: 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: Preseason forecasts indicate a reduced adult salmon daily limit in the Cowlitz and Kalama rivers, as well as a shortened salmon season in the lower Cowlitz River are necessary to provide both spring Chinook angling opportunity and to meet broodstock and hatchery collection goals.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 23, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-03000F Freshwater exceptions to statewide rules—Southwest.** Effective March 1, until further notice, the provisions of WAC 220-312-030 regarding salmon seasons for Cowlitz River and Kalama River, shall be modified during the dates and in areas as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) **Cowlitz River (Cowlitz/Lewis Co.); from the mouth to posted markers below the Barrier Dam:** Salmon:

(a) Effective March 1, through April 30, 2022: Daily limit 6, of which up to 1 may be an adult. Release all salmon other than hatchery Chinook and hatchery coho.

(b) Effective May 1, 2022, until further notice: Closed to fishing for or retaining.

(2) **Kalama River (Cowlitz Co.); from the mouth to 1000 feet below the fishway at the upper salmon hatchery (Kalama Falls Hatchery):** Salmon:

Effective March 1, 2022, until further notice: Daily limit 6, of which up to 1 may be an adult.

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**WSR 22-06-036**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-23—Filed February 23, 2022, 4:33 p.m., effective March 1, 2022]

Effective Date of Rule: March 1, 2022.

Purpose: The purpose of this emergency rule is to close recreational fishing in coastal tributaries, including Grays Harbor and Willapa Bay tributaries and the Hoko River.

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

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

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

Reasons for this Finding: These measures are being taken to protect wild steelhead stocks. Most coastal wild steelhead runs were expected to return well below escapement targets, as they have the past five seasons. For this reason, Washington department of fish and wildlife (WDFW) took initial measures in December of 2021 by enacting additional gear/bait restrictions, restrictions to fishing from a floating device, and early closures to coastal tributaries, including those of Grays Harbor and Willapa Bay.

At that time, forecasted 2021/2022 coastwide wild steelhead returns (26,200) were expected to fall short of escapement goals for wild steelhead (27,066). In-season analysis of data available from tribal fisheries, weir counts, and sport creel, indicate the 2021/2022 season returns of wild coastal steelhead are even lower than expected.

WDFW is taking extra precaution by including the Hoko River in this closure to avoid significantly increased fishing pressure due to its proximity to Olympic Peninsula coastal streams, as it would be the only stream open for steelhead in the area.

The rules contained in this filing will result in a reduction of wild steelhead encounters.

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

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

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

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

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

Date Adopted: February 23, 2022.

Kelly Susewind  
Director

NEW SECTION**WAC 220-312-02000S Freshwater exceptions to statewide rules—**

**Coast.** Effective March 1, 2022, until further notice, all recreational fishing seasons for waters listed herein are closed. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

1. **Bear River (Pacific Co.)**
4. **Bogachiel River (Clallam Co.)**
5. **Calawah River: (Clallam Co.),** from the mouth to the forks
6. **Chehalis River (Grays Harbor Co.),** from the mouth upstream, including all forks
7. **Clearwater River (Jefferson Co.),** from the mouth to Snahapish River
8. **Dickey River (Clallam Co.),** from the Olympic National Park boundary upstream including the East and West forks
9. **Elk Creek (Lewis/Pacific Co)**
10. **Fork Creek (Pacific Co.),** from Fork Creek Hatchery rack upstream 500 feet at fishing boundary sign
11. **Hoh River (Jefferson Co.),** from Olympic National Park boundary upstream to Olympic National Park boundary below mouth of South Fork Hoh
12. **Hoh River, South Fork (Jefferson Co.),** outside of Olympic National Park boundary
13. **Hoko River (Clallam Co.),** from mouth to the Ellis Creek Bridge (RM 18.5)
14. **Humtulpis River (Grays Harbor Co.),** from the mouth to confluence of East and West forks and West Fork from mouth to Donkey Creek
15. **Naselle River (Pacific Co.),** from the Hwy. 101 Bridge to the North Fork
16. **Nemah River, Middle (Pacific Co.)**
17. **Nemah River, North (Pacific Co.),** from Hwy. 101 Bridge to Cruiser Creek
18. **Nemah River, South (Pacific Co)**
19. **Newaukum River, including South Fork (Lewis Co.),** from mouth to Hwy. 508 Bridge near Kearny Creek
20. **Newaukum River, Middle Fork (Lewis Co.),** from mouth to Taucher Rd. Bridge
21. **Newaukum River, North (Lewis Co.),** from mouth to 400' below Chehalis City water intake
22. **Palix River (Pacific Co.)**
23. **Quillayute River (Clallam Co.),** from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers
24. **Quinault River (Grays Harbor/Jefferson Co.),** from the mouth at upper end of Quinault Lake upstream to Olympic National Park boundary
25. **Satsop River and East Fork (Grays Harbor Co.),** from the mouth to bridge at Schafer State Park, and from 400' below Bingham Creek Hatchery dam to the dam and all Forks
26. **Skookumchuck River (Lewis/Thurston Co.),** from mouth to 100' below outlet of TransAlta WDFW steelhead rearing pond located at the base of Skookumchuck Dam
27. **Sol Duc River (Clallam Co.),** from mouth to Hwy. 101 Bridge upstream of Klahowya campground
28. **Thunder Creek (Clallam Co.),** from mouth to D2400 Rd.

**29. Willapa River (Pacific Co.),** from mouth (City of South Bend boat launch) to Hwy. 6 Bridge (near the town of Lebam)

**30. Wynoochee River (Grays Harbor Co.)**

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

REPEALER

The following section of Washington Administrative Code is repealed effective March 1, 2022:

WAC 220-312-02000R Freshwater exceptions to statewide rules—Coast. (21-267)



WSR 22-06-037  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 22-29—Filed February 23, 2022, 4:47 p.m., effective February 23, 2022, 4:47 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule extends the tribal winter gillnet fishery in The Dalles and John Day pools and opens Bonneville Pool. This rule is consistent with actions of the Columbia River Compact on February 23, February 15, February 9, and January 25, 2022. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: February 23, 2022.

Kelly Susewind  
Director

#### NEW SECTION

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

(1) Open Areas: SMCRA 1F (Bonneville Pool)

(a) Season: 6 AM Wednesday, March 2, 2022, until 6 PM Friday, March 4, 2022.

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

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

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

(2) Open Areas: SMCRA 1G (The Dalles Pool)

(e) Season: 6 AM Thursday, February 24, 2022, until 6 PM Monday, February 28, 2022.

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

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

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

(3) Open Areas: SMCRA 1H (John Day Pool)

(a) Season: Immediately through 6 PM Monday, February 28, 2022.

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

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

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

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

(a) Season: Immediately through 6 PM Saturday, March 19, 2022.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length caught in the Bonneville Pool and sturgeon from 43 to 54 inches fork length caught in The Dalles and John Day pools may be sold or kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery.

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

(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.

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**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:

WAC 220-359-02000Z Columbia River salmon seasons above Bonneville Dam. (22-21)

**WSR 22-06-038**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-30—Filed February 23, 2022, 5:28 p.m., effective February 23, 2022, 5:28 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000H; and amending WAC 220-358-030.

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

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

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

Reasons for this Finding: Adds white sturgeon retention to the 2022 winter, spring, and summer select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 23 and 15, 2022. The general public welfare is protected with the immediate opening of nontreaty select area fisheries. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: February 23, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000I Columbia River seasons below Bonneville.**

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**(1) Tongue Point and South Channel Select Areas:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 24 - Mar 11	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	7 nights
Apr 18 - Apr 19	Mon (night)	8:30 pm - 12:30 am	4 hrs
Apr 21 - Apr 22	Fri (morning)	11:00 pm - 3:00 am	4 hrs
Apr 25 - Apr 29	Mon, Thur (nights)	7:00 pm - 7:00 am	2 nights
May 2 - Jun 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	19 nights

**Tongue Point Select Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 14	Mon (night)	5:30 pm - 9:30 pm	4 hrs
Mar 16	Wed (night)	7:00 pm - 11:00 pm	4 hrs
Mar 17	Thu (night)	7:30 pm - 11:30 pm	4 hrs
Mar 21 - Mar 22	Mon (night)	9:30 pm - 1:30 am	4 hrs

**South Channel Select Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 14 - Mar 18	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
Mar 21 - Mar 25	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Mar 28	Mon (night)	6:00 pm - 10:00 pm	4 hrs
Mar 31 - Apr 1	Thu (night)	8:00 pm - 12:00 am	4 hrs
Apr 4 - Apr 5	Mon (night)	10:30 pm - 2:30 am	4 hrs
Apr 8	Fri (morning)	12:30 am - 4:30 am	4 hrs
Apr 11	Mon (night)	5:00 pm - 9:00 pm	4 hrs
Apr 14	Thu (night)	7:00 pm - 11:00 pm	4 hrs

## (a) Area definitions:

## (i) Immediately through April 14, 2022:

(A) Tongue Point: Waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

(B) South Channel: Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

## (ii) April 18 through June 15, 2022:

(A) Tongue Point: Area as described in OAR 635-042-0170 (1)(a) and WAC 220-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) South Channel: Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) Gear: Gillnets:

(i) Immediately through April 14, 2022: 7-inch minimum mesh size.

(ii) April 18 through June 15, 2022: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 1,500 feet (250 fathoms).

(iv) In the Tongue Point Area, the lead line weight may not exceed two pounds per any one fathom.

(v) In the South Channel Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

**(2) Blind Slough and Knappa Slough Select Areas:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 24 - Mar 18	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	10 nights
Mar 21 - Apr 1	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights
Apr 18 - Apr 29	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights
May 2 - Jun 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	19 nights

**Blind Slough Select Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 4 - Apr 15	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights

**Knappa Slough Select Area only:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 4 - Apr 5	Mon (night)	10:30 pm - 2:30 am	4 hrs
Apr 8	Fri (Morning)	12:30 am - 4:30 am	4 hrs
Apr 11	Mon (night)	5:00 pm - 9:00 pm	4 hrs
Apr 14	Thu (night)	7:00 pm - 11:00 pm	4 hrs

(a) Areas:

(i) The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

(ii) The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed. Prior to May 3, 2022, the western (downstream) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(b) Gear: Gillnets:

(i) Immediately through April 15, 2022: 7-inch minimum mesh size.

(ii) April 18 through June 15, 2022: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(c) Miscellaneous:

Permanent transportation rules in effect. In accordance with WACs 220-352-040 (1)(i) and 220-301-010 (11)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

**(3) Deep River Select Area:**

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 24 - Mar 18	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	10 nights
Mar 21 - Apr 15	Mon, Thu (nights)	7:00 pm - 7:00 am	8 nights
Apr 18 - Apr 29	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights
May 2 - Jun 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	19 nights

(a) Area:

From the mouth of Deep River defined as a line from USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(b) Gear: Gillnets:

(i) Immediately through April 15, 2022: 7-inch minimum mesh size.

(ii) April 18 through June 14, 2022: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(v) Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream, or channel any net longer than three-fourths the width of the stream (WAC 220-354-010(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of nets, whether fishing singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided by department rule (WAC 220-353-060(1)).

(c) Miscellaneous:

(i) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff.

(ii) Immediately through April 15, 2022: fishers are required to call 360-846-5268 or 360-795-0319 to confirm the place and time of sampling.



(iii) April 18 through June 14, 2022: a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

**(4) Allowable Sales:** Salmon (except Chum) and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

**(5) 24-hour quick reporting** is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

**(6) Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

**(7) Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000H Columbia River seasons below Bonneville Dam. (22-22)

**WSR 22-06-041**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-28—Filed February 24, 2022, 9:30 a.m., effective March 1, 2022]

Effective Date of Rule: March 1, 2022.

Purpose: The purpose of this emergency rule is to open spring Chinook seasons for the lower Columbia River and Deep River.

Citation of Rules Affected by this Order: Amending WAC 220-312-060 and 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: Sets the 2022 spring recreational salmon season in the Columbia River from Buoy 10 upstream to the Oregon/Washington border, including shad and hatchery steelhead. Endangered Species Act (ESA) impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 23, 2022. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering

proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: February 24, 2022.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000I Freshwater exceptions to statewide rules—Columbia.** Effective March 1 through May 5, 2022, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to Hwy. 730 at the Washington/Oregon border, and shad seasons from the mouth to the Bonneville Dam, shall be modified 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 a true north-south line through Buoy 10, upstream to a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.**

(a) Salmon and steelhead: Effective March 1 through April 6, 2022: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(b) Shad: Effective March 1 through April 6, 2022: No min. size. No daily limit.

**(2) From a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock upstream to Bonneville Dam:**

(a) Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Salmon and steelhead: Effective March 1 through April 6, 2022: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(c) Shad: Effective March 1 through April 6, 2022: No minimum size. No daily limit.

**(3) From Bonneville Dam to Tower Island power lines (approximately 6 miles below The Dalles Dam): Salmon and steelhead:**

(a) Effective March 16 through May 5, 2022: Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Effective March 1 through March 31, 2022: Daily limit is 2. Release all salmon.

(c) Effective April 1 through May 5, 2022: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

**(4) From Tower Island power lines to The Dalles Dam: Salmon and steelhead:**

(a) Effective March 1 through March 31, 2022: Daily limit is 2. Release all salmon.

(b) Effective April 1 through May 5, 2022: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

**(5) From The Dalles Dam to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:**

Effective April 1 through May 5, 2022: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

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NEW SECTION

**WAC 220-312-03000G Freshwater exceptions to statewide rules—Southwest.** Effective March 1 through April 6, 2022, the provisions of WAC 220-312-030 regarding Deep River salmon and steelhead seasons shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

**Deep River (Wahkiakum Co.): Salmon and steelhead:**

Effective March 1 through April 6, 2022: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all wild Chinook and wild coho.

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**WSR 22-06-042**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed February 24, 2022, 9:45 a.m., effective February 24, 2022, 9:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Because of the ongoing COVID-19 public health emergency, on January 18, 2022, home and community services (HCS) temporarily suspended conducting ongoing assessments for HCS clients living in adult family homes, assisted living facilities, and enhanced services facilities. The intent of this suspension is to allow HCS staff to focus on conducting assessments for patients staying in hospitals, which will facilitate their discharge to long-term care facilities and improve the current surge capacity in hospitals. This emergency rule suspends the regulatory requirement for these facilities to complete assessments for HCS clients while the HCS assessors are not available. The Centers for Medicare and Medicaid Services approved this flexibility for medicaid beneficiaries needing specific long-term care services and supports whose assessments meet the requirements under 42 C.F.R. 441.720. The emergency rule will be effective retroactively to match the suspension effective date by HCS.

Citation of Rules Affected by this Order: WAC 388-76-10350, 388-78A-2100, and 388-107-0080.

Statutory Authority for Adoption: RCW 18.20.090, 70.97.230, 70.128.040(1).

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

Reasons for this Finding: Many hospitals in this state are currently at or over capacity, leading them to redirect patients who are needing emergency care and delaying procedures that are necessary but nonemergent. This puts the health of all residents of Washington at risk if they are not able to get the care they need at their local hospital. By temporarily suspending assessment requirements for residents living in adult family homes, assisted living facilities, and enhanced services facilities, HCS can focus personnel resources on assessing patients in hospitals, which will speed admissions to long-term care facilities and increase the bed availability in hospitals.

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

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

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

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

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

Date Adopted: February 24, 2022.

Katherine I. Vasquez

**SHS-4914.2**

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

**WAC 388-76-10350 Assessment—Updates required.** The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

(1) When there is a significant change in the resident's physical or mental condition;

(2) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

(3) At the resident's request or at the request of the resident's representative; or

(4) At least every ((twelve)) 12 months, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10350, filed 10/16/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

**WAC 388-78A-2100 On-going assessments.** The assisted living facility must:

(1) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency;

(2) Complete an assessment specifically focused on a resident's identified problems and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

(b) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the on-going assessments is qualified to perform them.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2100, filed 6/18/13, effective 7/19/13. Statutory Authority: RCW 18.20.090. WSR 06-01-047, § 388-78A-2100, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and

chapter 18.20 RCW. WSR 04-16-065, § 388-78A-2100, filed 7/30/04, effective 9/1/04.]

AMENDATORY SECTION (Amending WSR 16-14-078, filed 7/1/16, effective 8/1/16)

**WAC 388-107-0080 Ongoing comprehensive assessments.** The enhanced services facility must:

(1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070(~~(r)~~) on the following timelines:

(a) Upon a significant change in the resident's condition; or  
(b) (~~(or)~~) At least every 180 days if there is no significant change in condition, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

(2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(b) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

(c) When the resident has an injury requiring the intervention of a practitioner(~~(r)~~).

(3) Review each resident's needs to evaluate discharge or transfer options when the resident:

(a) No longer needs the level of behavioral support provided by the facility; or

(b) Expresses the desire to move to a different type of community based setting(~~(r)~~).

(4) Ensure that the person-centered service planning team discusses all available placement options; and

(5) Ensure the staff person performing the ongoing assessments is a qualified assessor.

[Statutory Authority: RCW 70.97.230 and HCBS Final Rule 42 C.F.R. WSR 16-14-078, § 388-107-0080, filed 7/1/16, effective 8/1/16. Statutory Authority: Chapter 70.97 RCW. WSR 14-19-071, § 388-107-0080, filed 9/12/14, effective 10/13/14.]

## WSR 22-06-047

## EMERGENCY RULES

## HEALTH CARE AUTHORITY

[Filed February 24, 2022, 2:45 p.m., effective February 24, 2022, 2:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is revising this section to allow for payment of office visits for clients under the alien emergency medical (AEM) program when the visit is specifically for the assessment and treatment of the COVID-19 virus.

Citation of Rules Affected by this Order: Amending WAC 182-507-0115.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This rule making is in response to the Governor's Proclamation 20-05 declaring a State of Emergency for all counties throughout the state of Washington because of the coronavirus disease 2019 (COVID-19) and the secretary of the federal Department of Health and Human Services declaration of a public health emergency related to COVID-19. This emergency rule making is necessary to preserve the public health, safety, and general welfare by allowing payment for the office visit for an AEM client for the assessment and treatment of the COVID-19 virus.

This emergency filing replaces the emergency rules filed under WSR 21-22-061 on October 28, 2021. The agency is refiling to continue the emergency rule. Since the last emergency filing, the agency's CR-102 Proposed rule making expired January 3, 2022. The agency's CR-101 Preproposal statement of inquiry filed under WSR 20-15-077 remains in effect while the agency continues to monitor the changing conditions presented by COVID-19 and its variants.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: February 24, 2022.

Wendy Barcus  
Rules Coordinator

OTS-2140.1



AMENDATORY SECTION (Amending WSR 12-24-038, filed 11/29/12, effective 12/30/12)

**WAC 182-507-0115 Alien emergency medical program (AEM).** (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 182-507-0110 is eligible for the alien emergency medical program's scope of covered services described in this section if the person meets ~~((a) and (b) or (c))~~ the requirements of (a) of this subsection, as well as the requirements of either (b), (c), or (d) of this subsection:

(a) The medicaid agency determines that the primary condition requiring treatment ~~((meets the definition of))~~ is an emergency medical condition as defined in WAC 182-500-0030, and the condition is confirmed through review of clinical records; and

(b) The person's qualifying emergency medical condition is treated in one of the following hospital settings:

(i) Inpatient;

(ii) Outpatient surgery;

(iii) Emergency room services, which must include an evaluation and management (E&M) visit by a physician; or

(c) Involuntary Treatment Act (ITA) and voluntary inpatient admissions to a hospital psychiatric setting that are authorized by the agency's inpatient mental health designee (see subsection (5) of this section); or

(d) For the assessment and treatment of the COVID-19 virus, the agency covers one physician visit provided in any outpatient setting, including the office or clinic setting, or via telemedicine, online digital or telephonic services to assess/evaluate and test, if clinically indicated, as follows:

(i) If the test is positive, in addition to the services described in (b) of this subsection and subsection (2)(b) of this section, any medically necessary services to treat, including:

(A) Follow-up office visits;

(B) Medications, prior authorization requirements may apply;

(C) Respiratory services and supplies; and

(D) Medical supplies, prior authorization requirements may apply.

(ii) If a test is negative, any treatment described in (d)(i)(A) through (B) of this subsection, as a precautionary measure for an anticipated positive test result.

(e) The coverage described in (d) of this subsection is in effect only during the time period, as determined by the agency in its sole discretion, that a public health emergency related to COVID-19 exists.

(2) If a person meets the criteria in subsection (1) of this section, the agency will cover and pay for all related medically necessary health care services and professional services provided:

(a) By physicians in their office or in a clinic setting immediately prior to the transfer to the hospital, resulting in a direct admission to the hospital; and

(b) During the specific emergency room visit, outpatient surgery or inpatient admission. These services include, but are not limited to:

(i) Medications;

(ii) Laboratory, X-ray, and other diagnostics and the professional interpretations;

(iii) Medical equipment and supplies;

(iv) Anesthesia, surgical, and recovery services;

(v) Physician consultation, treatment, surgery, or evaluation services;

(vi) Therapy services;

(vii) Emergency medical transportation; and

(viii) Nonemergency ambulance transportation to transfer the person from a hospital to a long term acute care (LTAC) or an inpatient physical medicine and rehabilitation (PM&R) unit, if that admission is prior authorized by the agency or its designee as described in subsection (3) of this section.

(3) The agency will cover admissions to an LTAC facility or an inpatient PM&R unit if:

(a) The original admission to the hospital meets the criteria as described in subsection (1) of this section;

(b) The person is transferred directly to this facility from the hospital; and

(c) The admission is prior authorized according to LTAC and PM&R program rules (see WAC 182-550-2590 for LTAC and WAC 182-550-2561 for PM&R).

(4) The agency does not cover any services, regardless of setting, once the person is discharged from the hospital after being treated for a qualifying emergency medical condition authorized by the agency or its designee under this program. Exceptions:

(a) For admissions to treat COVID-19 or complications thereof, the agency will cover up to two postdischarge physician follow-up visits, regardless of how the visits are conducted or where they are conducted.

(b) Pharmacy services, drugs, devices, and drug-related supplies listed in WAC 182-530-2000, prescribed on the same day and associated with the qualifying visit or service (as described in subsection (1) of this section) will be covered for a one-time fill and retrospectively reimbursed according to pharmacy program rules.

(5) Medical necessity of inpatient psychiatric care in the hospital setting must be determined, and any admission must be authorized by the agency's inpatient mental health designee according to the requirements in WAC 182-550-2600.

(6) There is no precertification or prior authorization for eligibility under this program. Eligibility for the AEM program does not have to be established before an individual begins receiving emergency treatment.

(7) Under this program, certification is only valid for the period of time the person is receiving services under the criteria described in subsection (1) of this section. The exception for pharmacy services is also applicable as described in subsection (4) of this section.

(a) For inpatient care, the certification is only for the period of time the person is in the hospital, LTAC, or PM&R facility - The admission date through the discharge date. Upon discharge the person is no longer eligible for coverage.

(b) For an outpatient surgery or emergency room service the certification is only for the date of service. If the person is in the hospital overnight, the certification will be the admission date through the discharge date. Upon release from the hospital, the person is no longer eligible for coverage.

(8) Under this program, any visit or service not meeting the criteria described in subsection (1) of this section is considered not within the scope of service categories as described in WAC 182-501-0060. This includes, but is not limited to:

(a) Hospital services, care, surgeries, or inpatient admissions to treat any condition which is not considered by the agency to be a qualifying emergency medical condition, including but not limited to:

(i) Laboratory X-ray, or other diagnostic procedures;  
(ii) Physical, occupational, speech therapy, or audiology services;

(iii) Hospital clinic services; or

(iv) Emergency room visits, surgery, or hospital admissions.

(b) Any services provided during a hospital admission or visit (meeting the criteria described in subsection (1) of this section), which are not related to the treatment of the qualifying emergency medical condition;

(c) Organ transplants, including preevaluations, post operative care, and anti-rejection medication;

(d) Services provided outside the hospital settings described in subsection (1) of this section including, but not limited to:

(i) Office or clinic-based services rendered by a physician, an ARNP, or any other licensed practitioner;

(ii) Prenatal care, except labor and delivery;

(iii) Laboratory, radiology, and any other diagnostic testing;

(iv) School-based services;

(v) Personal care services;

(vi) Physical, respiratory, occupational, and speech therapy services;

(vii) Waiver services;

(viii) Nursing facility services;

(ix) Home health services;

(x) Hospice services;

(xi) Vision services;

(xii) Hearing services;

(xiii) Dental services;

(xiv) Durable and nondurable medical supplies;

(xv) Nonemergency medical transportation;

(xvi) Interpreter services; and

(xvii) Pharmacy services, except as described in subsection (4) of this section.

(9) The services listed in subsection (8) of this section are not within the scope of service categories for this program and therefore the exception to rule process is not available.

(10) Providers must not bill the agency for visits or services that do not meet the qualifying criteria described in this section. The agency will identify and recover payment for claims paid in error.

[Statutory Authority: RCW 41.05.021. WSR 12-24-038, § 182-507-0115, filed 11/29/12, effective 12/30/12. WSR 12-13-056, recodified as § 182-507-0115, filed 6/15/12, effective 7/1/12. Statutory Authority: RCW 74.04.050, 74.08.090, and 2009 c 564 §§ 1109, 201, 209. WSR 10-19-085, § 388-438-0115, filed 9/17/10, effective 10/18/10.]

## WSR 22-06-052

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

[Filed February 25, 2022, 8:23 a.m., effective February 25, 2022, 8:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-930-010 Sex offender treatment provider. The department of health (department) is continuing the emergency rule amendment to WAC 246-930-010 to remove the words "face-to-face" from the definition of sex offender treatment, enabling sex offenders to continue accessing telehealth treatment and enabling increased social distancing during the coronavirus disease 2019 (COVID-19) declared emergency.

These rules continue the initial emergency rules that were filed on July 9, 2020, as WSR 20-15-057 and subsequently extended under WSR 20-23-011 on November 6, 2020, WSR 21-07-017 on March 5, 2021, WSR 21-14-058 on July 2, 2021, and WSR 21-22-066 on October 29, 2021. As part of the department's continuing response to the evolving COVID-19 public health threat, continuing this emergency rule will allow sex offenders to maintain access to care to prevent recidivism, while mitigating the further spread of COVID-19 and its variants.

Citation of Rules Affected by this Order: Amending WAC 246-930-010.

Statutory Authority for Adoption: RCW 18.155.040.

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 continuation of this emergency rule is necessary for the preservation of public health, safety, and general welfare. By extending the emergency rule amendment, the department will continue allowing sex offender treatment to occur through telehealth. By allowing treatment through telehealth rather than face-to-face, the department will support both the health of sex offenders, who require access to treatment, and the welfare of the public, who are at risk if offenders recidivate. Additionally, allowing telehealth treatment will help reduce community transmission of COVID-19 and its variants. Telehealth treatment is not an ideal substitute for in-person group or individual therapy sessions; however, it is a tool that will allow sex offenders to maintain access to care and will mitigate public health concerns created by COVID-19 while vaccine and booster distribution continues.

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

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

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

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

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

Date Adopted: February 22, 2022.

Kristin Peterson, JD  
Deputy Secretary for  
Policy and Planning  
for Umair A. Shah, MD, MPH  
Secretary

## OTS-2368.1

AMENDATORY SECTION (Amending WSR 07-09-092 [21-13-079], filed 4/18/07 [6/15/21], effective 5/19/07 [7/16/21])

**WAC 246-930-010 General definitions.** In these rules, the following terms shall have the definition described below, unless another definition is stated:

(1) "Affiliate sex offender treatment provider" or "affiliate" means an individual who has satisfactorily passed the examination, met the education requirements, and has been issued a certificate to evaluate and treat sex offenders under chapter 18.155 RCW, and under the supervision of a certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.

(2) "Certified sex offender treatment provider" or "provider" means an individual who has satisfactorily passed the examination, met the education and experience requirements, and has been issued a certificate by the department to evaluate and treat sex offenders under chapter 18.155 RCW.

(3) "Client" means a person who has been investigated by law enforcement or child protective services for committing or allegedly committing a sex offense, or who has been convicted of a sex offense.

(4) "Committee" means the sex offender treatment providers advisory committee.

(5) "Community protection contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.

(6) "Co-therapy hours" means the actual number of hours the applicant spent facilitating a group session.

(7) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(8) "Department" means the department of health.

(9) "Evaluation" means a comprehensive assessment or examination of a client conducted by a provider or affiliate that examines the client's offending behavior. Evaluation results must be detailed in a written report. Examples of evaluations include forensic, SSOSA, and SSODA evaluations. Standards for assessment and evaluation reports, and evaluation experience credit are located in WAC 246-930-320 and 246-930-340.

(10) "Parties" means the defendant, the prosecuting attorney, and the supervising officer.

(11) "Secretary" means the secretary of the department of health, or designee.

(12) "SSODA" means special sex offender disposition alternative, authorized under RCW 13.40.160.

(13) "SSOSA" means special sex offender sentencing alternative, authorized under RCW 9.94A.670.

(14) "Supervising officer" is the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, for example, a community corrections officer or a juvenile probation officer.

(15) "Treatment" means (~~face-to-face~~) individual, group, or family therapy, provided by an affiliate or provider, to a client. Treatment is focused on the client's offending behavior.

(16) "Treatment plan" means a written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.

[Statutory Authority: RCW 18.155.040. WSR 07-09-092, § 246-930-010, filed 4/18/07, effective 5/19/07; WSR 94-13-179, § 246-930-010, filed 6/21/94, effective 7/22/94; WSR 92-12-027 (Order 275), § 246-930-010, filed 5/28/92, effective 6/28/92; WSR 91-23-076 (Order 212), § 246-930-010, filed 11/19/91, effective 12/20/91; WSR 91-11-063 (Order 168), § 246-930-010, filed 5/16/91, effective 6/16/91.]

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

## WSR 22-06-053

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

[Filed February 25, 2022, 8:35 a.m., effective February 25, 2022, 8:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-056 Schedule V. The pharmacy quality assurance commission (commission) is adopting emergency rules to remove Epidiolex from the list of Schedule V controlled substances in Washington state. This adopted emergency rule will extend WSR 21-22-065 filed on October 29, 2021. The emergency rule was originally filed on May 20, 2020, under WSR 20-11-078. Epidiolex is an FDA-approved cannabidiol with less than 0.3 percent tetrahydrocannabinol (THC). Descheduling the drug from Schedule V will maintain the emergency rule. It also aligns Washington state rule with the federal decision to exclude all hemp products with less than 0.3 percent THC from the definition of marijuana and the United States Drug Enforcement Agency's (DEA) rule making to remove Epidiolex from Schedule V, completed on August 21, 2020.

Citation of Rules Affected by this Order: Amending WAC 246-945-056.

Statutory Authority for Adoption: RCW 18.64.005, 69.50.201.

Other Authority: 21 U.S.C. § 811.

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 immediate amendment of this existing rule is necessary for the preservation of public health, safety, and general welfare. Epidiolex is an FDA-approved cannabidiol with less than 0.3 percent THC used to help treat some seizure disorders. The 2018 Agricultural Improvement Act amended the Controlled Substances Act and declassified hemp products with less than 0.3 percent THC from Schedule I; however, Epidiolex was placed on Schedule V until April 6, 2020, when the DEA announced that it would be descheduled as a federally controlled substance. The DEA finalized rule making to remove Epidiolex from Schedule V on August 21, 2020. This emergency rule will maintain the emergency rule already in effect and update Washington rule to align with the federal decision. Emergency rules are necessary to reduce burdens on practitioners prescribing Epidiolex and allow patients easier access to the care they need. This rule may also help reduce pressure on the health system during the ongoing COVID-19 pandemic. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. The commission has initiated permanent rule making. The CR-101 to permanently deschedule Epidiolex (WSR 20-23-027) was filed on November 10, 2020. Proposed rule making (CR-102) is scheduled to be filed in February 2022.

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

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

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

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

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

Date Adopted: February 22, 2022.

Teri Ferreira, RPh  
Pharmacy Quality Assurance Chair

## OTS-2392.1

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-056 Schedule V.** The commission finds that the following substances have low potential for abuse relative to substances in Schedule IV under RCW 69.50.210 and WAC 246-945-055 and have currently accepted medical use in treatment in the United States and that the substances have limited physical dependence or psychological dependence liability relative to the substance in Schedule IV. In addition to the substances listed in RCW 69.50.212, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule V.

Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide); also referred to as BRV; UCB-34714; Briviact;

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester].

~~((3) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols, also known as Epidiolex.))~~

[Statutory Authority: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590. WSR 20-12-072, § 246-945-056, filed 6/1/20, effective 7/1/20.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

**Reviser's note:** The brackets and enclosed material in the text of 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 22-06-060**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed February 25, 2022, 2:44 p.m., effective February 26, 2022]

Effective Date of Rule: February 26, 2022.

Purpose: As directed by chapter 334, Laws of 2021 (ESSB 5092), implement July 1, 2021, child care base rate increases paid to family home and center providers who participate in child care subsidy programs and implement collective bargaining agreements the department entered into with SEIU Local 925, representative for family home and family, friend, and neighbor child care providers. The agreements authorize a July 1, 2022, rate increase and payment of field trip fees for family, friend, and neighbor providers, and, for family homes, payment based on an authorized monthly unit of care, increased non-standard hours bonus, new time periods for producing attendance records requested by the department or the state auditor, and new time periods for correcting payment discrepancies.

Citation of Rules Affected by this Order: WAC 110-15-0034, 110-15-0190, 110-15-0200, 110-15-0205, 110-15-0240, 110-15-0247, 110-15-0249, 110-15-0267, 110-15-0268, 110-15-0275, and 110-15-3850.

Statutory Authority for Adoption: RCW 43.216.060 and 43.216.070; chapter 334, Laws of 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: Chapter 334, Laws of 2021, took effect May 18, 2021, and authorized July 1 rate increases for the child care subsidy programs. Identical emergency rules were filed under WSR 21-14-039 and 21-22-067. Permanent rules have been adopted and will take effect in early March.

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 11, Repealed 0.

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

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

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

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

Date Adopted: February 25, 2022.

Brenda Villarreal  
Rules Coordinator

**OTS-3144.3**

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

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

(1) Licensed or certified child care providers who accept child care subsidies must comply with all child care licensing or certification requirements contained in this chapter, chapter 43.216 RCW and chapters 110-06, 110-300, (~~(110-300A, 110-300B)~~) 110-300D, and (~~(110-305)~~) 110-301 WAC.

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

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

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

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

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

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

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

(b) Attendance records must be provided to the state auditor's office within thirty calendar days from the date of a written request.

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

(~~((6))~~) (7) All child care providers must maintain and provide receipts for billed field trip/quality enhancement fees as follows. If requested by DCYF or DSHS, the provider must provide the following receipts for billed field trip/quality enhancement fees:

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

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

(~~((7))~~) (8) All child care providers must:

(a) Retain all records required by this chapter for a minimum of five years;

(b) Provide to the department records from the previous twelve months immediately upon the department's written request; and

(c) Provide to the department any records between twelve months and five years old within two weeks of the department's written request.

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

~~((8))~~ (10) All child care providers must follow the billing procedures required by DCYF.

~~((9))~~ (11) Child care providers who accept child care subsidies must not:

(a) Claim a payment in any month a child has not attended at least one day within the authorization period in that month; however, in the event a ten-day notice terminating a provider's authorization extends into the following month, the provider may claim a payment for any remaining days of the ten calendar day notice in that following month;

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

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

~~((10))~~ (12) Licensed and certified providers must not charge consumers for:

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

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

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

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

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

~~((11))~~ (13) Providers who care for children in states bordering Washington state must verify they are in compliance with their state's licensing regulations and notify DCYF within ten days of any suspension, revocation, or changes to their license.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0034, filed 5/31/19, effective 7/1/19. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-15-0034, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-15-0034, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0034, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0034, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0034, filed 4/15/16, effective 5/16/16; WSR 12-11-025, § 170-290-0034, filed 5/8/12, effective 6/8/12.]

AMENDATORY SECTION (Amending WSR 20-08-077, filed 3/26/20, effective 4/26/20)

**WAC 110-15-0190 WCCC benefit calculations.** (1) The amount of care a consumer may receive is determined by DCYF at application or

reapplication. Once the care is authorized, the amount will not be reduced during the eligibility period unless:

- (a) The consumer requests the reduction;
- (b) The care is for a school-aged child (~~(as described in subsection (3) of this section; or)~~);
- (c) The authorization was for additional care needed for less than the entire length of the authorization period;
- (d) The care was authorized by child protective services (CPS) or child welfare services (CWS) and is part of the child's case plan under WAC 110-15-4510; or
- (e) Incorrect information was given at application or reapplication.

(2) To determine the amount of weekly hours of care needed, DCYF reviews the child care scheduled with the provider, and:

- (a) The consumer's participation in approved activities and the number of hours the child attends school, including home school, which will reduce the amount of care needed(~~(-)~~); or
- (b) (~~(In a two parent household,))~~ The days and times approved activities overlap in a two parent household, and only authorize care during those overlapping times. The consumer is eligible for full-time care if overlapping care totals one hundred ten hours in one month.
- (c) (~~(DCYF will not consider the schedule of))~~ A parent in a two parent household who is not able to care for the child under WAC 110-15-0020 is considered by DCYF to be unavailable for care, regardless of their schedule.

(3) Licensed or certified center child care is authorized as follows:

- (a) Full-time care ((for a family using licensed providers)) is authorized when the consumer participates in approved activities at least one hundred ten hours per month(~~(+)~~).
- (b) Twenty-three full-day units per month will be authorized when the child is in care five or more hours per day.
- (~~(b))~~ (c) Thirty half-day units per month will be authorized when the child is in care less than five hours per day.
- (~~(e))~~ (d) Forty-six half-day units per month will be authorized during the months of June, July, and August for a school-aged child who is in care for five or more hours per day.

(4) Licensed family home child care is authorized as the following monthly units of care:

- (a) **Full-time monthly unit** of care, equal to twenty-two full day units, is authorized when:
  - (i) A WCCC or SCC consumer participates in approved activities at least one hundred ten hours per month or full-time care is determined to be appropriate and included in a CPS or CWS case plan; and
  - (ii) The child has scheduled care with a single provider at least one hundred ten hours per month.
- (b) **Part-time monthly unit** of care, equal to the actual anticipated full and half day units of care needed averaged over a twelve-month period, is authorized when the care scheduled with a provider is less than one hundred ten hours per month.
- (c) **Full-time partial-day monthly unit** is authorized when a school-age child attends care in a licensed family home and meets the criteria in subsection (5) of this section.
- (d) **Part-time partial-day monthly unit** is authorized when a school-age child attends care in a licensed family home before and af-

ter school and does not meet the criteria for a full-time partial-day monthly unit.

(5) Additional monthly units of care may be authorized when:

(a) The consumer requests an authorization for additional care;

(b) The need for care is verified;

(c) The care is needed to supplement an existing monthly unit for unexpected care need for an approved activity limited to the time frame needed, not to exceed three months;

(d) For actual anticipated overtime when the overtime is included when determining eligibility for child care; or

(e) For sleep time.

(6) Full-time partial-day monthly unit. A single partial-day monthly unit (~~per month will be~~) equal to seventeen partial days and five full days is authorized for a school-age child attending a licensed family home child care when the consumer has at least one hundred ten hours of approved activity per month, and the child is:

(a) Authorized for care with only one provider; (~~and~~)

(b) (~~Eligible for full-time authorization, but is~~) Scheduled for care of one hundred ten hours or more in July and August;

(c) In care less than five hours on a typical school day; and

(~~e~~) Expected to need) (d) Needs care before and after school.

(~~d~~) Only one monthly unit may be authorized per child per month.

~~(5) Supervisor approval is required for additional days of care that exceeds twenty-three full days, thirty half days, or one partial-day monthly unit per month.~~

~~(6)) (7) When determining part-time care for a family using licensed providers when the activity or amount of care needed is less than one hundred ten hours per month:~~

(a) A full-day unit is calculated for each day of care of at least five hours;

(b) A half-day unit will be calculated for each day of care that is less than five hours; and

(c) A partial-day unit is calculated for each day of care in a licensed family home when:

(i) The child is in care before and after school; and

(ii) The total care for the day is less than five hours.

(8) Full-time care for a family using in-home/relative providers (family, friends and neighbors) is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Two hundred thirty hours of care (~~will be~~) is authorized when the child is in care five or more hours per day;

(b) One hundred fifteen hours of care (~~will be~~) is authorized when the child is in care less than five hours per day;

(c) One hundred fifteen hours of care (~~will be~~) is authorized during the school year for a school-aged child who is in care less than five hours per day and the provider (~~will be~~) is authorized for contingency hours each month, up to a maximum of two hundred thirty hours;

(d) Two hundred thirty hours of care (~~will be~~) is authorized during the school year for a school-aged child who is in care five or more hours in a day; and

(e) Supervisor approval is required for hours of care that exceed two hundred thirty hours per month.

(~~7~~) (9) Care cannot exceed sixteen hours per day, per child.

~~((8))~~ When determining part-time care for a family using licensed providers and the activity is less than one hundred ten hours per month:

~~(a)~~ A full-day unit will be authorized for each day of care that exceeds five hours;

~~(b)~~ A half-day unit will be authorized for each day of care that is less than five hours; and

~~(c)~~ A half-day unit will be authorized for each day of care for a school-aged child, not to exceed thirty half days.

~~(9))~~ (10) When determining part-time care for a family using in-home/relative providers:

(a) Under the provisions of subsection (2) of this section, DCYF ~~((will))~~ authorizes the number of hours of care needed per month when the activity is less than one hundred ten hours per month; and

(b) The total number of authorized hours and contingency hours claimed cannot exceed two hundred thirty hours per month.

~~((10))~~ (11) DCYF determines the allocation of hours or units for families with multiple providers based upon the information received from the parent.

~~((11))~~ (12) DCYF may authorize more than the state rate and up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site. "Appropriate" means licensed or certified child care under WAC 110-15-0125, or an approved in-home/relative provider under WAC 110-16-0010. "Reasonable distance" is determined by comparing distances other local families must travel to access appropriate child care.

~~((12))~~ (13) Other fees DCYF may authorize to a provider are:

(a) Registration fees;

(b) Field trip fees;

(c) Nonstandard hours bonus;

(d) Overtime care to a licensed provider when care is expected to exceed ten hours in a day when the consumer is eligible and authorized; and

(e) Special needs rates for a child.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 20-08-077, § 110-15-0190, filed 3/26/20, effective 4/26/20. Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0190, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0190, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060 and 43.215.070. WSR 17-23-057, § 170-290-0190, filed 11/9/17, effective 12/10/17; WSR 17-18-009, § 170-290-0190, filed 8/24/17, effective 9/24/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0190, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0190, filed 4/15/16, effective 5/16/16; WSR 13-22-040, § 170-290-0190, filed 10/31/13, effective 12/1/13. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0190, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0190, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0190, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.12.340. WSR 06-12-094, §

388-290-0190, filed 6/6/06, effective 7/7/06. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0190, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0190, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0190, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0190, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 20-15-161, filed 7/22/20, effective 8/22/20)

**WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and DCYF contracted seasonal day camps.** (1) **Base rate.** DCYF pays the lesser of the following to a licensed or certified child care center or DCYF contracted seasonal day camp:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table, effective July 1, (~~2020~~) 2021:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	<del>(\$36.27)</del> \$41.40	<del>(\$34.32)</del> \$37.50	<del>(\$31.64)</del> \$34.20	<del>(\$30.00)</del> \$33.75
	Half-Day	<del>(\$18.14)</del> \$20.70	<del>(\$17.16)</del> \$18.75	<del>(\$15.82)</del> \$17.10	<del>(\$15.00)</del> \$16.88
Spokane County	Full-Day	<del>(\$49.45)</del> \$59.09	<del>(\$42.32)</del> \$47.73	<del>(\$38.32)</del> \$44.95	<del>(\$27.91)</del> \$34.99
	Half-Day	<del>(\$24.73)</del> \$29.55	<del>(\$21.16)</del> \$23.87	<del>(\$19.16)</del> \$22.48	<del>(\$13.95)</del> \$17.50
Region 2	Full-Day	<del>(\$44.14)</del> \$48.00	<del>(\$34.32)</del> \$36.59	<del>(\$32.82)</del> \$36.50	<del>(\$23.86)</del> \$27.36
	Half-Day	<del>(\$22.07)</del> \$24.00	<del>(\$17.16)</del> \$18.30	<del>(\$16.41)</del> \$18.25	<del>(\$11.93)</del> \$13.68
Region 3	Full-Day	<del>(\$66.86)</del> \$76.36	<del>(\$55.41)</del> \$68.41	<del>(\$48.59)</del> \$57.66	<del>(\$34.77)</del> \$43.64
	Half-Day	<del>(\$33.43)</del> \$38.18	<del>(\$27.70)</del> \$34.21	<del>(\$24.30)</del> \$28.83	<del>(\$17.39)</del> \$21.82
Region 4	Full-Day	<del>(\$84.32)</del> \$95.73	<del>(\$69.09)</del> \$79.55	<del>(\$63.73)</del> \$71.82	<del>(\$39.23)</del> \$45.00
	Half-Day	<del>(\$42.16)</del> \$47.87	<del>(\$34.55)</del> \$39.78	<del>(\$31.86)</del> \$35.91	<del>(\$19.61)</del> \$22.50
Region 5	Full-Day	<del>(\$56.55)</del> \$62.55	<del>(\$46.77)</del> \$54.14	<del>(\$41.91)</del> \$48.08	<del>(\$28.18)</del> \$35.00
	Half-Day	<del>(\$28.27)</del> \$31.28	<del>(\$23.39)</del> \$27.07	<del>(\$20.95)</del> \$24.04	<del>(\$14.09)</del> \$17.50
Region 6	Full-Day	<del>(\$50.36)</del> \$57.00	<del>(\$44.59)</del> \$51.00	<del>(\$40.18)</del> \$47.00	<del>(\$29.41)</del> \$35.91
	Half-Day	<del>(\$25.18)</del> \$28.50	<del>(\$22.30)</del> \$25.50	<del>(\$20.09)</del> \$23.50	<del>(\$14.70)</del> \$17.96

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) WAC 110-300-0005 and 110-300-0356 allow providers to care for children from birth up to and including the end of their eligibility period after their thirteenth birthday.

(3) The provider must obtain a child-specific and time-limited exception from DCYF to provide care for a child outside the age listed on the center's license.

(4) If a provider is granted an exception to care for a child who is thirteen years old or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison; and

(b) The child must meet the special needs requirement as described in WAC 110-15-0220.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 20-15-161, § 110-15-0200, filed 7/22/20, effective 8/22/20; WSR 19-12-058, § 110-15-0200, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1. WSR 17-21-077, § 170-290-0200, filed 10/16/17, effective 11/16/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0200, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0200, filed 4/15/16, effective 5/16/16; WSR 14-24-070, § 170-290-0200, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0200, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0200, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0200, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0200, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0200, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0200, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0200, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0200, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0200, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0200, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0200, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 20-15-161, filed 7/22/20, effective 8/22/20)

**WAC 110-15-0205 Daily child care rates—Licensed or certified family home child care providers.** (1) (~~(Base rate.)~~) Monthly unit. DCYF authorizes care as monthly units as described in WAC 110-15-0190 based on the following full-day, partial-day, and half-day rates.

(2) The calculation of a monthly unit is based on daily rates. For a licensed or certified family home provider, DCYF ((pays)) calculates the monthly unit based on the lesser of the following ((to a licensed or certified family home child care provider)):

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table effective July 1, ((2020)) 2021:

	Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1 Full-Day	<del>(((\$34.32))</del> \$40.00	<del>(((\$34.32))</del> \$40.00	<del>(((\$29.41))</del> \$35.00	<del>(((\$29.41))</del> \$32.00	<del>(((\$27.45))</del> \$30.00
Half-Day	<del>(((\$17.16))</del> \$20.00	<del>(((\$17.16))</del> \$20.00	<del>(((\$14.70))</del> \$17.50	<del>(((\$14.70))</del> \$16.00	<del>(((\$13.73))</del> \$15.00
Partial-Day	\$30.00	\$30.00	\$26.25	\$24.00	\$22.50



	Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Spokane County	Full-Day <del>(((\$39.23))</del> \$42.00	Full-Day <del>(((\$39.23))</del> \$42.00	Full-Day <del>(((\$32.36))</del> \$40.00	Full-Day <del>(((\$31.18))</del> \$37.00	Full-Day <del>(((\$29.41))</del> \$36.00
	Half-Day <del>(((\$19.61))</del> \$21.00	Half-Day <del>(((\$19.61))</del> \$21.00	Half-Day <del>(((\$16.18))</del> \$20.00	Half-Day <del>(((\$15.59))</del> \$18.50	Half-Day <del>(((\$14.70))</del> \$18.00
	Partial-Day \$31.50	Partial-Day \$31.50	Partial-Day \$30.00	Partial-Day \$27.75	Partial-Day \$27.00
Region 2	Full-Day <del>(((\$38.23))</del> \$45.00	Full-Day <del>(((\$38.23))</del> \$45.00	Full-Day <del>(((\$34.32))</del> \$37.50	Full-Day <del>(((\$30.86))</del> \$35.00	Full-Day <del>(((\$29.41))</del> \$32.00
	Half-Day <del>(((\$19.11))</del> \$22.50	Half-Day <del>(((\$19.11))</del> \$22.50	Half-Day <del>(((\$17.16))</del> \$18.75	Half-Day <del>(((\$15.43))</del> \$17.50	Half-Day <del>(((\$14.70))</del> \$16.00
	Partial-Day \$33.75	Partial-Day \$33.75	Partial-Day \$28.13	Partial-Day \$26.25	Partial-Day \$24.00
Region 3	Full-Day <del>(((\$49.00))</del> \$55.00	Full-Day <del>(((\$49.00))</del> \$55.00	Full-Day <del>(((\$44.14))</del> \$48.86	Full-Day <del>(((\$39.27))</del> \$48.00	Full-Day <del>(((\$34.32))</del> \$40.00
	Half-Day <del>(((\$24.50))</del> \$27.50	Half-Day <del>(((\$24.50))</del> \$27.50	Half-Day <del>(((\$22.07))</del> \$24.43	Half-Day <del>(((\$19.64))</del> \$24.00	Half-Day <del>(((\$17.16))</del> \$20.00
	Partial-Day \$41.25	Partial-Day \$41.25	Partial-Day \$36.65	Partial-Day \$36.00	Partial-Day \$30.00
Region 4	Full-Day <del>(((\$58.82))</del> \$68.18	Full-Day <del>(((\$58.82))</del> \$68.18	Full-Day <del>(((\$55.68))</del> \$63.64	Full-Day <del>(((\$49.00))</del> \$59.09	Full-Day <del>(((\$34.32))</del> \$40.00
	Half-Day <del>(((\$29.41))</del> \$34.09	Half-Day <del>(((\$29.41))</del> \$34.09	Half-Day <del>(((\$27.84))</del> \$31.82	Half-Day <del>(((\$24.50))</del> \$29.55	Half-Day <del>(((\$17.16))</del> \$20.00
	Partial-Day \$51.14	Partial-Day \$51.14	Partial-Day \$47.73	Partial-Day \$44.32	Partial-Day \$30.00
Region 5	Full-Day <del>(((\$44.14))</del> \$48.86	Full-Day <del>(((\$44.14))</del> \$48.86	Full-Day <del>(((\$39.23))</del> \$42.00	Full-Day <del>(((\$34.32))</del> \$39.09	Full-Day <del>(((\$31.36))</del> \$35.71
	Half-Day <del>(((\$22.07))</del> \$24.43	Half-Day <del>(((\$22.07))</del> \$24.43	Half-Day <del>(((\$19.61))</del> \$21.00	Half-Day <del>(((\$17.16))</del> \$19.55	Half-Day <del>(((\$15.68))</del> \$17.86
	Partial-Day \$36.65	Partial-Day \$36.65	Partial-Day \$31.50	Partial-Day \$29.32	Partial-Day \$26.78
Region 6	Full-Day <del>(((\$37.86))</del> \$45.00	Full-Day <del>(((\$37.86))</del> \$45.00	Full-Day <del>(((\$34.32))</del> \$43.18	Full-Day <del>(((\$31.36))</del> \$38.00	Full-Day <del>(((\$28.95))</del> \$32.50
	Half-Day <del>(((\$18.93))</del> \$22.50	Half-Day <del>(((\$18.93))</del> \$22.50	Half-Day <del>(((\$17.16))</del> \$21.59	Half-Day <del>(((\$15.68))</del> \$19.00	Half-Day <del>(((\$14.48))</del> \$16.25
	Partial-Day \$33.75	Partial-Day \$33.75	Partial-Day \$32.39	Partial-Day \$28.50	Partial-Day \$24.38

~~((2) Effective July 1, 2019,)~~ (3) The monthly unit for family home providers in all regions and for all ages will ~~((receive))~~ include a partial-day rate that is seventy-five percent of the full-day rate when:

(a) The family home provider provides child care services for the child during a morning session and an afternoon session. A morning session begins at any time after 12:00 a.m. and ends before 12:00 p.m. An afternoon session begins at any time after 12:00 p.m. and ends before 12:00 a.m.;

(b) The child is absent from care in order to attend school or preschool; and

(c) The family home provider is not entitled to payment at the full-day rate.

~~((d) A child care provider is not entitled to two partial-day rates totaling one hundred fifty percent of the daily rate.~~

~~(3) A single partial-day monthly unit will be authorized for a school-age child who attends a licensed family home child care and is:~~

~~(a) Eligible for a full-time authorization and in care for less than five hours on a typical school day;~~

~~(b) Authorized for care with only one provider; and~~

~~(c) Expected to need care before and after school.~~

Partial-Day Monthly Rates

	July-August 2020	September 2020 - June 2021
Region 1	\$603.90	\$487.24
Spokane	\$647.02	\$522.03
Region 2	\$647.02	\$522.03
Region 3	\$755.04	\$609.18
Region 4	\$755.04	\$609.18
Region 5	\$689.92	\$556.64
Region 6	\$636.90	\$513.86

~~(4) The monthly unit will be prorated for partial months of authorization.~~

~~(5-))~~ (4) Monthly units for school age children will be adjusted for the months of July and August based on the consumer's approved activities and the child's schedule for care during the summer.

(5) School age children will be authorized for twenty-two full days in July and August when:

(a) They are authorized for a full-time, full-time partial-day, monthly unit; or

(b) They are authorized for a part-time, part-time partial-day, monthly unit;

(c) Are scheduled for child care with a single provider at least one hundred ten hours per month; and

(d) The consumer participates in an approved activity at least one hundred ten hours per month.

(6) Monthly units will be prorated for partial months of authorization.

(7) The monthly unit amount is averaged over all months of authorized care. Supplemental payments will not be made for calendar months with more than the average number of care days.

(8) Supplemental authorization for payment may be requested by the consumer for unexpected hours of care needed for allowable activities or changes in the consumer's schedule.

(9) WAC 110-300-0005 and 110-300-0355 allow providers to care for children from birth up to and including the end of their eligibility period after their thirteenth birthday.

~~((6))~~ (10) The provider must obtain a child-specific and time-limited exception from DCYF to provide care for a child outside the age listed on the family home child care license.

~~((7))~~ (11) If a provider is granted an exception to care for a child who is thirteen years of age or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section and the five through twelve year age range column is used for comparison; and

(b) The child must meet the special needs requirement as described in WAC 110-15-0220.

~~((8))~~ (12) DCYF pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection ~~((9))~~ (13) of this section).

~~((9))~~ (13) DCYF cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 20-15-161, § 110-15-0205, filed 7/22/20, effective 8/22/20; WSR 20-08-077, § 110-15-0205, filed 3/26/20, effective 4/26/20; WSR 19-12-058, § 110-15-0205, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0205, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0205, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0205, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0205, filed 4/15/16, effective 5/16/16; WSR 14-24-070, §

170-290-0205, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0205, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0205, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0205, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0205, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0205, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0205, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0205, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0205, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0205, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0205, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0205, filed 12/19/01, effective 1/19/02.]

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

**WAC 110-15-0240 Child care subsidy rates—In-home/relative providers.** (1) **Base rate.** When a consumer employs an in-home/relative provider, DCYF pays the lesser of the following to an eligible in-home/relative provider for child care:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy rate of two dollars and ~~((fifty-five))~~ sixty-five cents per hour per child. Beginning July 1, ~~((2020))~~ 2022, the maximum child care subsidy rate is ~~((two))~~ three dollars ~~((and sixty-five cents))~~ per hour per child.

(2) DCYF may pay above the maximum hourly rate for children who have special needs pursuant to WAC 110-15-0235.

(3) DCYF makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, DCYF pays the employer's share of the following:

- (a) Social Security and medicare taxes (FICA) up to the wage limit;
- (b) Federal Unemployment Taxes (FUTA); and
- (c) State unemployment taxes (SUTA).

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DCYF refunds all withheld taxes to the provider.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0240, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0240, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0240, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0240, filed 9/21/16, effective 10/22/16. Statutory Authority:

RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 14-24-070, § 170-290-0240, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0240, filed 9/29/14, effective 10/30/14; WSR 13-21-113, § 170-290-0240, filed 10/22/13, effective 11/22/13. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0240, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0240, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0240, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, and 74.13.085. WSR 05-22-078, § 388-290-0240, filed 10/31/05, effective 12/1/05. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0240, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0240, filed 12/19/01, effective 1/19/02.]

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

**WAC 110-15-0247 Field trip/quality enhancement fees. (1)**

((DSHS)) As funding allows, DCYF pays licensed or certified family home child care providers and in-home/relative providers a monthly field trip/quality enhancement fee up to thirty dollars per child or the provider's actual cost for the field trip, whichever is less, only if the fee is required of all parents whose children are in the provider's care. ((~~DEL-licensed~~)) DCYF-licensed or certified child care centers and school-age centers are not eligible to receive the field trip/quality enhancement fee.

(2) The field trip/quality enhancement fee is to cover the provider's actual expenses for:

(a) Admission;

(b) Enrichment programs and/or ongoing lessons;

(c) Public transportation or mileage reimbursement at the state office of financial management rate for the use of a private vehicle;

(d) The cost of hiring a nonemployee to provide an activity at the child care site in-house field trip activity; and

(e) The purchase or development of a prekindergarten curriculum.

(3) The field trip/quality enhancement fee shall not cover fees or admission costs for adults on field trips, or food purchased on field trips.

[WSR 18-14-078, recodified as § 110-15-0247, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0247, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0247, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0247, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0247, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0247, filed 3/29/04 and 4/7/04, effective 5/28/04.]

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

**WAC 110-15-0249 Nonstandard hours bonus.** (1) A consumer's provider may receive a nonstandard hours bonus (NSHB) payment per child per month for care provided if:

- (a) The provider is licensed or certified;
- (b) The provider provides at least thirty hours of nonstandard hours care during one month; and
- (c) The total cost of the NSHB to the state does not exceed the amount appropriated for this purpose by the legislature for the current state fiscal year.

(2) Nonstandard hours are defined as:

- (a) Before 6 a.m. or after 6 p.m.;
- (b) Any hours on Saturdays and Sundays; and
- (c) Any hours on legal holidays, as defined in RCW 1.16.050.

(3) NSHB amounts are:

- (a) (~~Seventy-six~~) Ninety dollars ((~~and fifty cents~~)) for family homes; and
- (b) Seventy-five dollars for centers.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0249, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0249, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0249, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0249, filed 10/28/09, effective 12/1/09.]

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

**WAC 110-15-0267 Payment discrepancies—Provider underpayments.**

(1) Underpayments to a provider occur if DCYF pays less than the amount the provider is eligible to receive.

(2) Underpayment requests will only be considered by (~~DSHS~~) DCYF if the provider submitted the original invoice for payment to DCYF no later than (~~six~~) three months after the date of service.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0267, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0267, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0267, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0267, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

**WAC 110-15-0268 Payment discrepancies—Provider overpayments.**

(1) An overpayment occurs when a provider receives payment that is more than the provider is eligible to receive. Provider overpayments are established when that provider:

(a) Bills and receives payment for services not provided;

(b) Bills without attendance records that support the billing. Beginning July 1, 2018, attendance must be recorded using DCYF's electronic attendance system or a DCYF-approved electronic attendance system. Any other format for recording attendance will not be considered valid support for a provider billing and may result in an overpayment;

(c) Bills and receives payment for more than the provider is eligible to bill;

(d) Routinely provides care in a location other than what was approved at the time of authorization;

(e) With respect to license-exempt in-home/relative providers, bills the state for more than six children at one time for the same hours of care; or

(f) With respect to licensed or certified providers:

(i) Bills the state for more than the number of children in the provider's licensed capacity; or

(ii) Is caring for a child receiving WCCC benefits outside the provider's licensed allowable age range without a DCYF-approved exception; or

(g) With respect to certified providers caring for children in a state bordering Washington:

(i) Is determined to not be in compliance with the state's licensing regulations; or

(ii) Fails to notify (~~DSHS~~) DCYF within ten days of any suspension, revocation, or change to the provider's license.

(2) DCYF (~~or DSHS~~) will request documentation from a provider when preparing to establish an overpayment. The provider must provide requested information within (~~twenty-eight consecutive~~) forty-five calendar days from the date of the written request.

(3) A provider must repay any payments that the provider was not eligible to receive.

(4) A provider must repay any overpayment, even if the overpayment is the result of a DCYF (~~or DSHS~~) error in issuing payment the provider was not eligible to receive.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0268, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0268, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0268, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0268, filed 5/31/17, effective 7/1/17; WSR 12-11-025, § 170-290-0268, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0268, filed 10/28/09, effective 12/1/09.]

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

**WAC 110-15-0275 Payment discrepancies—Providers.** (1) This section applies to all child care providers.

(2) Providers must submit a billing invoice for payment within ~~((six))~~ three months of the date child care services are provided. Any invoice submitted more than ~~((six))~~ three months from date child care services are provided will not be processed.

(3) For purposes of correcting payment errors based on correctly submitted invoices under the provisions of subsection (2) of this section, the following time limits apply:

(a) For underpayments:

(i) Two years back from the date the payment was issued if the error was based on rates paid by age or region, except as provided in (a)(iii) of this subsection; or

(ii) Three years back from the date payment was issued if the error was based on any issue other than rates paid by age or region; and

(iii) Three years back from the date the payment was issued for any underpayment identified by a federal or state audit.

(b) For overpayments:

(i) Two years back from the date payment was issued if the error was based on rates paid by age or region, except as provided in

(b)(iii) of this subsection; and ~~((DSHS or))~~ DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within two years of the date the payment was issued; or

(ii) Three years back from the date payment was issued if the error was based on any issue other than rates paid by age or region; DSHS or DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the payment was issued; and

(iii) Three years back from the date the payment was issued for any overpayment identified by a federal or state audit; ~~((DSHS or))~~ DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the payment was issued.

(4) For in-home/relative and family home child care providers, disputes regarding underpayments may be addressed through the grievance process provided for in the collective bargaining agreement.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0275, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0275, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0275, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0275, filed 10/28/09, effective 12/1/09.]

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

**WAC 110-15-3850 Payment discrepancies generally.** Child care subsidy payment discrepancies are described in WAC 110-15-0266 through 110-15-0275, with the exception of underpayments requested by licensed child care centers, which will only be considered for (~~six~~) three months after the date of services.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-3850, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-3850, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 11-12-078, § 170-290-3850, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3850, filed 10/28/09, effective 12/1/09.]



WSR 22-06-066  
EMERGENCY RULES  
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 28, 2022, 10:32 a.m., effective March 2, 2022]

Effective Date of Rule: March 2, 2022.

Purpose: The department is extending emergency amendments to WAC 388-424-0001 Citizenship and alien status—Definitions, 388-424-0020 How does my alien status impact my eligibility for federally funded basic food benefits?, and 388-466-0005 Immigration status requirements for refugee cash assistance.

These amendments are necessary to allow evacuees from Afghanistan paroled into the United States as humanitarian parolees under the Afghanistan Supplemental Appropriations Act, 2022, P.L. 117-43, sec. 2502, to receive federally funded benefits to the same extent as refugees.

Citation of Rules Affected by this Order: Amending WAC 388-424-0001, 388-424-0020, and 388-466-0005.

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

Other Authority: Afghanistan Supplemental Appropriations Act, 2022, P.L. 117-43, sec. 2502.

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

Reasons for this Finding: Federal law (P.L. 117-43) has extended eligibility to parolees effective October 1, 2021. The department filed a CR-101 under WSR 21-17-105 and is pursuing permanent adoption.

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

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

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

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

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

Date Adopted: February 28, 2022.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4902.2**

AMENDATORY SECTION (Amending WSR 20-09-044 [22-02-014], filed 4/8/20 [12/27/21], effective 5/9/20 [2/1/22])

**WAC 388-424-0001 Citizenship and alien status—Definitions.** For the purposes of determining an individual's citizenship and alien status for public assistance, the following definitions apply:

(1) **"Lawfully present"** are immigrants or noncitizens who have been inspected and admitted into the United States and not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigrant Services (CIS) to stay or live in the U.S.

(2) **"Qualified aliens"** are lawfully present immigrants defined in federal law as one of the following:

(a) Individuals lawfully admitted for permanent residence (LPRs).

(b) Individuals who are admitted to the U.S. as refugees under INA §207. The following individuals are treated the same as refugees in their eligibility for public assistance:

(i) Hmong or Highland Lao are members of a Hmong or Highland Lao-tian tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribal members.

(ii) Victims of trafficking according to federal law are:

(A) Individuals who have been certified or approved as victims of trafficking by the federal office of refugee resettlement.

(B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one years old.

(iii) Afghan nationals and their spouses and children, paroled in the U.S. between July 31, 2021, and September 30, 2022, after evacuation from Afghanistan to the U.S., or to a location overseas.

(iv) Special immigrants from Iraq and Afghanistan are individuals granted:

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

(B) Special immigrant conditional permanent resident; or

(C) Paroled under section 602 (B) (1) AAPA/Sec 1059(a) NDAA 2006.

(c) Individuals who have been granted asylum under INA §208.

(d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti, who were paroled into the U.S. or given other special status.

(e) Abused spouses or children, parents of abused children, or children of abused spouses:

(i) When the alien no longer resides with the person who committed the abuse, and has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried child under age twenty-one of a lawful permanent resident (LPR);

(B) A notice of "prima facie" approval of a pending self-petition under the violence against women act (VAWA); or

(C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.

(ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned twenty-one years old. Children

of abused persons who meet the conditions above retain their "qualified alien" status even after they turn twenty-one years old.

(f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA §212 (d)(5), including "public interest" parolees.

(g) Individuals granted withholding of deportation or removal under INA §243(h) or §241 (b)(3).

(h) Individuals who were admitted to the U.S. as conditional entrants under INA §203 (a)(7) prior to April 1, 1980.

(i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **"Nonqualified aliens"** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (1) of this section. Nonqualified aliens include but are not limited to:

(a) Citizens of Marshall Islands, Micronesia or Palau;

(b) Immigrants paroled into the U.S. for less than one year;

(c) Immigrants granted temporary protected status; or

(d) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also nonqualified. Examples include:

(i) Business visitors;

(ii) Students; and

(iii) Tourists.

(4) **"Undocumented aliens"** are noncitizens without a lawful immigration status as defined in subsections (2) or (3) of this section, and who:

(a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

(5) **"U.S. citizens"** are one of the following:

(a) Individuals born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

(c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per title 8, subchapter III, section 1401 of the United States Code.

(e) Individuals who turn eighteen years of age on or after February 27, 2001, automatically become U.S. citizens if the following conditions are met while the individual is under age eighteen per INA 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals who turned eighteen before February 27, 2001, would have automatically become a citizen if, while the individual was still under eighteen, he or she became a lawful permanent resident and both his or her parents naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

(6) **"U.S. nationals"** are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 20-09-044, § 388-424-0001, filed 4/8/20, effective 5/9/20. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090. WSR 11-16-056, § 388-424-0001, filed 7/29/11, effective 8/29/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0001, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0001, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0001, filed 7/7/04, effective 8/7/04.]

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

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 12-18-024, filed 8/27/12, effective 9/27/12)

**WAC 388-424-0020 How does my alien status impact my eligibility for federally funded Basic Food benefits?** (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a) or (b) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of lawful immigrants as defined in WAC 388-424-0001:

- (i) Amerasian;
- (ii) Asylee;
- (iii) Cuban or Haitian entrant;

- (iv) Deportation or removal withheld;
  - (v) Refugee;
  - (vi) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022;
  - (vii) Special immigrant from Iraq or Afghanistan;
  - ~~((vii))~~ (viii) Victim of trafficking;
  - ~~((viii))~~ (ix) Noncitizen American Indian; or
  - ~~((ix))~~ (x) Hmong or Highland Lao tribal member.
- (b) (i) You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:
- (A) Conditional entrant;
  - (B) Lawful permanent resident (LPR);
  - (C) Paroled for one year or more; or
  - (D) Abused spouse or child or parent or child of an abused spouse or child.
- (ii) And, one of the following also applies to you:
- (A) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;
  - (B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007;
  - (C) You receive cash or medical benefits based on supplemental security income (SSI) criteria for blindness or disability;
  - (D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;
  - (E) You are under age eighteen; or
  - (F) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.
- (3) If you are a legal immigrant not eligible for federal benefits under Basic Food only because of your alien status, you may be eligible for state-funded food assistance program (FAP) benefits under WAC 388-400-0050.

[Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-424-0020, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120. WSR 11-02-035, § 388-424-0020, filed 12/29/10, effective 2/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0020, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.320, Pub. L. No. 110-181, National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 111-08, the Omnibus Appropriations Act of 2009, Division F, Title VI, Section 602; Office of Refugee Resettlement State Letter 09-17 from April 9, 2009; and federal guidance issued on May 15, 2009, by the Food and Nutrition Service, United States Department of Agriculture. WSR 09-21-046, § 388-424-0020, filed 10/14/09, effective 11/4/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0020, filed 6/30/08, effective 8/1/08.

Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0020, filed 7/7/04, effective 8/7/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. WSR 03-05-029, § 388-424-0020, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-046, § 388-424-0020, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.510, S. 1150, the Agricultural Research, Extension, and Education Reform Act of 1998. WSR 99-01-058, § 388-424-0020, filed 12/11/98, effective 1/11/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-424-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1805.]

AMENDATORY SECTION (Amending WSR 12-19-037, filed 9/12/12, effective 10/13/12)

**WAC 388-466-0005 Immigration status requirements for refugee cash assistance.** (1) You may be eligible for refugee cash assistance (RCA) if you can provide documentation issued by the U.S. Citizenship and Immigration Services (USCIS), that you are:

- (a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);
- (b) Paroled into the U.S. as a refugee or asylee under section 212 (d) (5) of the INA;
- (c) Granted conditional entry under section 203 (a) (7) of the INA;
- (d) Granted asylum under section 208 of the INA;
- (e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;
- (f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;
- (g) Certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);
- (h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;
- (i) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022;
- (j) Admitted as Special Immigrant from Iraq or Afghanistan under section 101 (a) (27) of the INA, or special immigrant conditional permanent resident, or paroled under section 602 (B) (1) AAPA/Sec 1059(a) NDAA 2006.

(2) A permanent resident alien meets the immigration status requirements for RCA if the individual was previously in one of the statuses described in subsections (1) (a) through (g) of this section.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250, and 2011 1st sp.s. c 15. WSR 12-19-037, § 388-466-0005, filed 9/12/12, effective 10/13/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-466-0005, filed 6/30/08, effective 8/1/08. Statutory

Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-466-0005, filed 7/31/98, effective 9/1/98.]

**WSR 22-06-067**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-31—Filed February 28, 2022, 10:36 a.m., effective March 1, 2022]

Effective Date of Rule: March 1, 2022.

Purpose: The purpose of this emergency rule is to close recreational sea cucumber harvest in all Puget Sound marine areas beginning March 1, 2022.

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 rules with provisions of the 2021-22 Puget Sound Sea Cucumber Management Plan to ensure conservation of the species related to a biologically-based spawning window closure. This rule will close the personal use sea cucumber fisheries in Marine Areas 4 east of the Bonilla-Tatoosh Line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, and 13 from March 1, 2022, until further notice.

These rules are interim until permanent rules adopted by the fish and wildlife commission and filed under WSR 22-06-066 become effective.

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

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

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

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

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

Date Adopted: February 28, 2022.

Kelly Susewind  
Director

[NEW SECTION]

**WAC 220-330-09000D Sea cucumbers—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-090, effective March 1, 2022, until further notice, it is unlawful to take or possess sea cucumbers 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, and 13. All other



provisions of WAC 220-330-090 not addressed herein remain in effect unless otherwise amended by emergency rule.

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

## WSR 22-06-068

## EMERGENCY RULES

## DEPARTMENT OF COMMERCE

[Filed February 28, 2022, 11:29 a.m., effective March 1, 2022]

Effective Date of Rule: March 1, 2022.

Purpose: Commerce received a request from a water heater manufacturer on September 29, 2021, to temporarily suspend the effective date in the water heater appliance standards rule (WAC 194-24-180) due to an inability to obtain parts required for the modular communications port (CTA-2045) due to supply chain disruptions caused by the COVID-19 pandemic. Following a public comment period with participation from manufacturers, installers, energy efficiency organizations, environmental organizations, and electric utilities, commerce found sufficient evidence to support an emergency rule amending WAC 194-24-180 to suspend the rule's effective date until March 1, 2022. Commerce is issuing a Preproposal notice of inquiry (CR-101) in order to determine a reasonable effective date on a permanent basis and is adopting this emergency rule until June 29, 2022. In light of continuing economic and supply chain disruptions caused by the COVID-19 pandemic, commerce has determined that a further delay of the effective date is warranted. Commerce has issued a Preproposal statement of inquiry (CR-101) in order to permanently amend WAC 194-24-180 to delay the effective date of the regulation to a reasonable date. Commerce is issuing this CR-103E to adopt an emergency rule to delay the effective date of WAC 194-24-180 while it undertakes the appropriate procedures to adopt the permanent rule.

Citation of Rules Affected by this Order: Amending WAC 194-24-180.

Statutory Authority for Adoption: Chapter 19.260 RCW.

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

Reasons for this Finding: The economic disruptions resulting from the COVID-19 pandemic continue to stymie global supply chains, preventing manufacturers from accessing critical materials required for manufacturing the electronic communication ports. These disruptions are already affecting the supply of compliant heat pump water heaters, which are primarily installed in new buildings, and were expected to escalate in January 2022 when standard resistance water heaters were to become covered by the standard.

The current effective date in the rule is March 1, 2022. This emergency rule suspends the effective date until June 29, 2022, in order to provide time for commerce to conduct the procedures required to adopt a permanent rule establishing an effective date for the water heater standard.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 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: February 28, 2022.

Dave Pringle  
Rules Coordinator

## OTS-3638.2

AMENDATORY SECTION (Amending WSR 20-03-013, filed 1/6/20, effective 2/6/20)

**WAC 194-24-180 Electric storage water heaters.** (1) **Scope.** This rule applies to new electric storage water heaters manufactured on or after January 1, 2021. The effective date of the rule is suspended until ((January 1)) June 29, 2022 ((, for electric storage water heaters other than heat pump type water heaters)).

(2) **Standard.** Electric storage water heaters must have a modular demand response communications port compliant with:

(a) The March 2018 version of the ANSI/CTA-2045-A communication interface standard, or a standard determined by the department to be equivalent; and

(b) The March 2018 version of the ANSI/CTA-2045-A application layer requirements.

The interface standard and application layer requirements required in this subsection are the versions established in March 2018.

(3) Upon written request by a manufacturer, the department will determine whether an alternative communications port and communication interface standard are equivalent for the purposes of subsection (2) of this section.

(a) Any requested alternative must use a standard that is open and widely available and must provide the demand response functions provided using the standards identified in subsection (2) of this section.

(b) A request for designation of a standard must provide technical documentation demonstrating that the standard satisfies the requirements in (a) of this subsection and must describe any industry or stakeholder process used in developing the standard. The department will provide reasonable opportunity for input by utilities, manufacturers, technical experts and other interested stakeholders prior to determining whether the proposed standard is equivalent. The department will make available on a publicly accessible website any standard that it determines to be equivalent.

(4) **Testing.** There is no test method required for this product.

(5) **Listing.** There is no listing requirement for this product.

(6) **Marking.** Every unit of every electric storage water heater must have a label or marking indicating compliance with the standard in this section. The format and content of the label or marking must be approved in advance by the department.

[Statutory Authority: RCW 19.260.070. WSR 20-03-013, § 194-24-180, filed 1/6/20, effective 2/6/20.]

WSR 22-06-074  
EMERGENCY RULES  
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 1, 2022, 8:14 a.m., effective May 1, 2022]

Effective Date of Rule: May 1, 2022.

Purpose: The department was granted rule-making authority in SHB 1120 and is therefore proposing emergency rules to reinstate the fingerprinting requirement for providers that was temporarily suspended by the governor's proclamation due to the public health emergency. The proposal also amends other rules in chapter 388-06 WAC to ensure they are consistent with one another and do not conflict with current background check rules in chapter 388-113 WAC.

Citation of Rules Affected by this Order: New WAC 388-06-0550; repealing WAC 388-06-0520, 388-06-0535 and 388-06-0540; and amending WAC 388-06-0030, 388-06-0500, 388-06-0510, 388-06-0525, and 388-06-0530.

Statutory Authority for Adoption: RCW 43.20A.710, 43.43.837, 74.08.090, 74.09.520, 74.39A.056; SHB 1120, and section 19, chapter 203, Laws of 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: An emergency WAC in place prior to the end of the proclamation reduces future capacity issues by decreasing the backlog of providers who need to complete fingerprinting.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 3.

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 5, Repealed 3.

Date Adopted: March 1, 2022.

Katherine I. Vasquez  
Rules Coordinator

SHS-4874.7

AMENDATORY SECTION (Amending WSR 15-05-030, filed 2/10/15, effective 3/13/15)

**WAC 388-06-0030 What is the purpose of this chapter?** (1) WAC 388-06-500 through ~~((388-06-0540 defines))~~ 388-06-0550 define when ~~((the one hundred twenty-day provisional hire is allowed by DSHS))~~ an applicant, long-term care worker, or service provider may have unsupervised access to vulnerable adults and children pending the results of a fingerprint-based background check required by RCW 74.39A.056 or RCW 43.43.837.

(2) WAC 388-06-0700 through 388-06-0720 ~~((describes))~~ describe the responsibilities of the background check central unit.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 43.43.837. WSR 15-05-030, § 388-06-0030, filed 2/10/15, effective 3/13/15.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0500 What is the purpose of the ~~((one hundred twenty))~~ 120-day provisional ((hire)) period?** The ~~((one hundred and twenty))~~ 120-day provisional ((hire)) period allows ~~((an employee))~~ applicants, long-term care workers, and service providers to have unsupervised access to vulnerable adults and children ~~((, juveniles and vulnerable adults on a provisional basis))~~ pending the results of ~~((their Federal Bureau of Investigation (FBI))~~) a fingerprint-based background check.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0500, filed 7/10/01, effective 8/10/01.]

**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:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0510 What definitions apply to ~~((one hundred twenty))~~ 120-day provisional ((hires)) period rules?** ~~((("Agency" means any agency of the state or any private agency providing services to children, juveniles, and vulnerable adults.~~

~~((("Background check central unit (BCCU)" means the DSHS program responsible for conducting background checks for DSHS administrations.~~

~~((("Disqualified" means the results of an individual's background check disqualifies them from a position which will or may provide unsupervised access to children, juveniles, and vulnerable adults.~~

~~((("Entity" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.~~

~~((("Hire" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.~~

~~"Hiring individual" means a DSHS client who is eligible to hire an individual to provide in-home service with state funding.~~

~~"Individual" means an employee, a contract employee, a volunteer, or a student intern.~~

~~"Qualified" means an individual can be hired into a position that includes unsupervised access to children, juveniles, and vulnerable adults because the results of their background check are not disqualifying.~~

~~"Unsupervised access" means that:~~

~~(1) An individual will or may have the opportunity to be alone with a child, juvenile, or a vulnerable adult; and~~

~~(2) Neither a qualified employee, contract employee, volunteer, or student intern of the agency, or entity nor a relative or guardian of the child, juvenile or vulnerable adult is present)) "Applicant" has the same meaning as defined in RCW 43.43.830.~~

~~"Completed fingerprint check" means the applicant has a final fingerprint notification from the background check central unit that is not disqualifying.~~

~~"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.~~

~~"Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with, the department of social and health services or its designee, to provide services to vulnerable adults or children.~~

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0510, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 14-14-026, filed 6/24/14, effective 7/25/14)

**WAC 388-06-0525 When are ((individuals)) applicants, long-term care workers, and service providers eligible for the ((one hundred-twenty)) 120-day provisional ((hire)) period?** ~~((Individuals)) Applicants, long-term care workers, and service providers are eligible for the ((one hundred-twenty)) 120-day provisional ((hire immediately. The signed)) period once they have passed a state name and date of birth background check ((application and fingerprinting process must be completed as required by the applicable DSHS program)) and have scheduled their appointment to have their fingerprints taken for the fingerprint-based background check.~~

[Statutory Authority: RCW 43.43.832, 74.15.030 and 43.43.837. WSR 14-14-026, § 388-06-0525, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0525, filed 10/15/12, effective 12/25/12. Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0525, filed 7/30/10, effective 8/30/10. Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0525, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0530** ~~When does the ((one hundred twenty)) 120-day provisional ((hire)) period begin?~~ The ((one hundred twenty)) 120-day provisional ((hire may begin from either:

~~(1)) period begins on the date ((of hire of an individual; or  
(2) After completion of a state background check on an individual.~~

~~The agency, entity, or hiring individual makes this decision)) an applicant, long-term care worker, or service provider begins providing care to a vulnerable adult or child.~~

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0530, filed 7/10/01, effective 8/10/01.]

NEW SECTION

**WAC 388-06-0550** **How does the state of emergency declared in response to the COVID-19 pandemic affect the provisional period for applicants, long-term care workers, and service providers?** Notwithstanding WAC 388-06-0530, applicants, long-term care workers, and service providers who began providing care to vulnerable adults between November 1, 2019, and April 30, 2022, will have until August 28, 2022, to complete the fingerprint background check. Providers who begin providing care on or after May 1, 2022, are subject to the rules set forth in WAC 388-06-0525 and WAC 388-06-0530.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-06-0520	Who is responsible for approving the one hundred twenty-day provisional hire?
WAC 388-06-0535	Who approves one hundred twenty-day provisional hire extensions?
WAC 388-06-0540	Are there instances when the one hundred twenty-day provisional hire is not available?



**WSR 22-06-086**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-33—Filed March 1, 2022, 2:54 p.m., effective March 2, 2022]

Effective Date of Rule: March 2, 2022.

Purpose: This rule sets a limited Columbia River commercial fishery for eulachon smelt.

Citation of Rules Affected by this Order: Repealing WAC 220-358-06000E; and amending WAC 220-358-060.

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 extends a limited Columbia River commercial fishery for eulachon smelt. The regulation is consistent with a conservative research-level fishery, reduced from the level-one fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. The expected return of eulachon to the Columbia River in 2022 is anticipated to be larger than the run in 2021. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. National Oceanic and Atmospheric Administration fisheries concurs that a limited fishery is consistent with recovery of eulachon smelt. Rule is consistent with Columbia River compact action of January 25 and March 1, 2022. This limited research-level harvest opportunity allows for maintenance and monitoring of a sustainable fish population. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 1, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-06000E Commercial fisheries—Columbia River below Bonneville Dam—Smelt.** Notwithstanding the provisions of WAC 220-358-060, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

**Open Dates:** March 2 through March 18, 2022, open Mondays, Wednesdays, and Fridays only, 5:00 a.m. to 5:00 p.m. (12-hour periods).

**Open Area:** Columbia River - SMCRA 1A, 1B, 1C.

**Gear:** It is unlawful to use anything other than gillnets. Gillnets must meet the following specifications per WAC 220-358-060: mesh size not to exceed 2 inches stretch measure; not to exceed 1,500 feet in length along the cork line. Use of monofilament nets is permissible.

**Allowable sales:** Smelt.

**Other:** 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC. 220-352-315.

**Multi-Net Rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective March 19, 2022:

WAC 220-358-06000E Commercial fisheries—Columbia River  
below Bonneville Dam—Smelt.

WSR 22-06-089  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 22-34—Filed March 1, 2022, 4:27 p.m., effective March 2, 2022]

Effective Date of Rule: March 2, 2022.

Purpose: The purpose of this emergency rule is to open recreational sturgeon retention seasons in the Bonneville Pool and The Dalles Pool of the Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000H; 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 extend the season for sturgeon sport harvest in The Dalles Reservoir and Bonneville Reservoir. These populations are managed under sustainable harvest guidelines and these actions are taken to keep harvest within that guideline. This action is consistent with decisions made by the states of Washington and Oregon during the Columbia River compact hearing on December 15, 2021, January 25, 2022, and March 1, 2022. The general public welfare is protected with the limited duration opening of recreational sturgeon fishing in The Dalles and Bonneville reservoirs. These limited harvest opportunities allow for public use of the resource as well as the maintenance of a sustainable fish population. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 1, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-06000J Freshwater exceptions to statewide rules—Columbia River.** Effective March 2 through April 30, 2022 the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding

white sturgeon retention seasons from Bonneville Dam to John Day Dam shall be modified as follows. All other provisions of WAC 220-312-060, WAC 220-316-010, and WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) From Bonneville Dam to The Dalles Dam, including adjacent tributaries:**

(a) It is permissible to retain white sturgeon on the following dates only: March 9 and March 16, 2022. All other days are closed to sturgeon retention.

(b) The daily limit of white sturgeon is one fish between 38 inches minimum and 54 inches maximum fork length.

(c) Catch and release angling for sturgeon is permissible on all days, including days closed to sturgeon retention.

**(2) From The Dalles Dam to John Day Dam, including adjacent tributaries:**

(a) It is permissible to retain white sturgeon only on the following dates: March 2, 5, 7, 9, 12, 14, 16, 19, 21, 23, 26, 28, and 30, 2022. All other days are closed to sturgeon retention.

(b) The daily limit of white sturgeon is one fish between 43 inches minimum and 54 inches maximum fork length.

(c) Catch and release angling for sturgeon is permissible on all days, including days closed to sturgeon retention

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REPEALER

The following section of Washington Administrative Code is repealed, effective March 2, 2022:

WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia River. (22-10)

**WSR 22-06-092**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-32—Filed March 2, 2022, 7:59 a.m., effective March 2, 2022, 7:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes commercial harvest of green sea urchin in Districts 3 and 4.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000J; and amending WAC 220-340-750.

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 closes harvest of green sea urchin in Sea Urchin Districts 3 and 4 because the quota for these areas has been reached. This closure is pursuant to fulfill obligations of state and tribal comanager agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 25, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-75000K Commercial sea urchin fishery.** Effective immediately, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1, District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23A, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west and north of a line starting at Point Fosdick following longitude 122°35'W southward to latitude 47°14'N thence true west to Fox Island, and east and north of a line starting at Green Point following longitude 122°41'W southward to latitude 47°16.5'N thence true east to Fox Island.

(3) The maximum cumulative landings for green sea urchin for each weekly fishery opening period is 1,500 pounds per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

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REPEALER

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

WAC 220-340-75000J Commercial sea urchin fishery. (22-27)

**WSR 22-06-095**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed March 2, 2022, 9:45 a.m., effective March 2, 2022, 9:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend existing rules affecting specific programs as a result of the health crisis created by the coronavirus.

Citation of Rules Affected by this Order: Amending WAC 388-96-107.

Statutory Authority for Adoption: RCW 74.46.800(1).

Other Authority: Governor's Proclamation 20-05.

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 pandemic continues to affect the ability of nursing facilities to prioritize administrative work. This change will give facilities a little more time to identify the need for a due date extension request.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: March 2, 2022.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4915.1**

AMENDATORY SECTION (Amending WSR 17-22-037, filed 10/24/17, effective 11/24/17)

**WAC 388-96-107 Requests for extensions.** (1) A contractor may request in writing an extension for submitting cost reports. Contractor requests must:

(a) Be addressed to the manager, nursing facility rates program(~~7~~) and

(b) State the circumstances prohibiting compliance with the report due date(~~7~~~~and~~

~~(c) Be received by the department at least ten days prior to the due date of the report).~~

(2) The department may grant two extensions of up to ~~((thirty))~~ 30 days each, only if the circumstances, stated clearly, indicate the due date cannot be met and the following conditions are present:

- (a) The circumstances were not foreseeable by the provider; and
- (b) The circumstances were not avoidable by advance planning.

[Statutory Authority: RCW 74.46.800, 74.46.561(1). WSR 17-22-037, § 388-96-107, filed 10/24/17, effective 11/24/17. Statutory Authority: RCW 74.09.180 and 74.46.800. WSR 89-01-095 (Order 2742), § 388-96-107, filed 12/21/88. Statutory Authority: RCW 74.09.120. WSR 83-19-047 (Order 2025), § 388-96-107, filed 9/16/83; Order 1262, § 388-96-107, filed 12/30/77.]



**WSR 22-06-099**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed March 2, 2022, 11:15 a.m., effective March 2, 2022, 11:15 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule revision to chapter 392-210 WAC is to allow for the continuation of the Washington honors award program for the 2021-22 school year by adjusting the criteria and process. Due to the ongoing COVID-19 pandemic, high school students have had limited to no opportunities to satisfy the testing criteria currently outlined in the rule. Access and opportunities to take the Scholastic Aptitude Test (SAT) and the American College Test (ACT) have been limited since the pandemic began. The emergency amendment allows for additional assessment options. The emergency amendment also revises the selection of students to allow more flexibility for schools and streamline the process for the office of the superintendent of public instruction.

Citation of Rules Affected by this Order: Repealing WAC 392-210-025, 392-210-030 and 392-210-040; and amending WAC 392-210-015, 392-210-020, 392-210-035, and 392-210-045.

Statutory Authority for Adoption: RCW 28A.600.070.

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 COVID-19 pandemic and related emergency public health safety measures created inequities for students to meet the eligibility requirements specified in the rules for the Washington honors award. Specifically, the accessibility to SAT and ACT test sites and locations has been very limited or not available at all. In addition, some institutions of higher education have eliminated testing requirements for admissions, which makes these tests less relevant for college applications. These factors have reduced the number of graduating seniors taking these tests and therefore fewer students eligible for the Washington honors award.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 3.

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

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

Date Adopted: March 2, 2022.

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

OTS-2985.2

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

**WAC 392-210-015 Criteria for the selection of Washington state honors award students.** The Washington state honors award program shall recognize the top ten percent of the students in the state in each year's public and private high school graduating class who have demonstrated outstanding academic achievement. Outstanding academic achievement shall be determined by the following criteria:

(1) ~~((An academic achievement index based upon a combination of the combined))~~ The office of superintendent of public instruction shall identify the top ten percent of students in the state using the cumulative high school grade point average (calculated as provided in WAC 180-57-055) ((in)) including, but not limited to, the academic core subjects of English, mathematics, science, social studies, the arts, and languages other than English which may include American Indian languages ((and the combined verbal and quantitative composite scores on));

(2) For students with a grade point average (GPA) in the top ten percent in the state, high schools shall use at least one of the assessments available for students, which can include the Scholastic Aptitude Test (SAT) ((or)), the American College Test (ACT), the state-wide English language arts and mathematics assessments, or local assessments to evaluate students' academic achievement;

~~((2) Credits (as defined in WAC 180-51-050) earned in grades nine through twelve in the academic core subjects of English, mathematics, science, social studies, the arts, and foreign language;))~~

(3) Completion of at least seventy-five percent of the graduation requirements for the high school in which the candidate is enrolled; and

(4) Enrollment in at least three academic core subjects in grade twelve.

~~((In order to be considered for a Washington honors award, students must have taken the Scholastic Aptitude Test (SAT) or the American College Test (ACT) prior to January 31 of the year of graduation and be enrolled in a participating high school as indicated by the principal on forms provided by the superintendent of public instruction.))~~

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-015, filed 11/3/06, effective 12/4/06. Statutory Authority: RCW 28A.150.220. WSR 93-23-038 (Order 93-24), § 392-210-015, filed 11/10/93, effective 12/11/93. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-015, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

**WAC 392-210-020 ((Determination of)) Identification of students for the Washington state honors award ((academic achievement index)).** ~~((The superintendent of public instruction shall calculate the academic achievement index based upon an equivalent numeric weighting of the~~

~~combined high school grade point average in academic core subjects and the combined verbal and quantitative composite scores on the Scholastic Aptitude Test (SAT) or the American College Test (ACT). The superintendent of public instruction shall determine the top ten percent of each year's graduating class based upon a ranking of all participating students on the academic achievement index.)~~ All participating high schools shall use the eligibility criteria to identify the qualifying students for the award on or before the date provided by the superintendent of public instruction.

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-020, filed 11/3/06, effective 12/4/06. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-020, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

**WAC 392-210-035 Notification of students eligible for honors award.** Commencing with the ninth grade, and each year thereafter, each participating high school shall provide each enrolled student with a copy of the eligibility criteria for the Washington state honors award. ~~((The superintendent of public instruction shall provide schools with a suggested format that may be used to notify students.))~~

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-035, filed 11/3/06, effective 12/4/06. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-035, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 06-23-014, filed 11/3/06, effective 12/4/06)

**WAC 392-210-045 Washington honors award certificate.** The superintendent of public instruction shall prepare annually for each honors award recipient a suitable ~~((printed))~~ certificate which shall describe the purposes of the award, indicate the year in which the award was given, and be signed by the superintendent of public instruction. The certificate for each honors award recipient shall be delivered to the participating high school principal on or before May 30 of each school year. ~~((Each participating principal shall provide for issuing the certificate to each recipient at the regular high school commencement or other appropriate time prior to high school commencement.))~~

[Statutory Authority: RCW 28A.600.070. WSR 06-23-014, § 392-210-045, filed 11/3/06, effective 12/4/06. Statutory Authority: Chapter 28A.03 RCW. WSR 86-01-018 (Order 85-13), § 392-210-045, filed 12/9/85.]

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-210-025 Credits earned in academic core subjects.
- WAC 392-210-030 Enrollment in academic core subjects during grade twelve required.
- WAC 392-210-040 Notification of Washington honors award recipients.