

WSR 22-13-070
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed June 9, 2022, 1:05 p.m., effective June 9, 2022, 1:05 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 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: June 9, 2022.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-21-064 [22-10-022], filed 10/11/19 [4/25/22], effective 11/11/19 [5/6/22])

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.]

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.

AMENDATORY SECTION (Amending WSR 19-01-111 [22-10-022], filed 12/18/18 [4/25/22], effective 1/18/19 [5/26/22])

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.

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

[AMENDATORY SECTION] (Amending WSR 19-01-011 [22-10-022], filed 12/18/18 [4/25/22], effective 1/18/19 [5/26/22])

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.

| (a) Crimes that permanently disqualify a subject individual | (b) Crimes that disqualify a subject individual for five years from date of conviction |
|--|---|
| Abandonment of a child | Abandonment of a dependent person not against child |

| (a) Crimes that permanently disqualify a subject individual | (b) Crimes that disqualify a subject individual for five years from date of conviction |
|---|---|
| Arson | Assault 3 not domestic violence |
| Assault 1 | Assault 4/simple assault |
| Assault 2 | Burglary |
| Assault 3 domestic violence | Coercion |
| 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 |

| (a) Crimes that permanently disqualify a subject individual | (b) Crimes that disqualify a subject individual for five years from date of conviction |
|--|---|
| 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) |
| | 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.

| <u>Citation</u> | <u>Description</u> |
|-----------------|--|
| RCW 9A.42.060 | Abandonment of a dependent person in the first degree (if the victim is a child) |

| <u>Citation</u> | <u>Description</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>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>Citation</u> | <u>Description</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>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>Citation</u> | <u>Description</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>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>Citation</u> | <u>Description</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>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>Citation</u> | <u>Description</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>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 79A.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>Citation</u> | <u>Description</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>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>Citation</u> | <u>Description</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>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>Citation</u> | <u>Description</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>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.]

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 22-14-003

EMERGENCY RULES

TRANSPORTATION COMMISSION

[Filed June 22, 2022, 1:37 p.m., effective June 22, 2022, 1:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to amend WAC 468-300-080 related to the ferry fare fuel surcharge for Washington state ferries (WSF). Under the emergency rule, the fuel surcharge may only be implemented with approval of the Washington state transportation commission (WSTC), as opposed to it being automatically triggered.

Citation of Rules Affected by this Order: Amending WAC 468-300-080.

Statutory Authority for Adoption: RCW 47.56.030, 47.60.315, 34.05.350.

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

Reasons for this Finding: In addition to the conditions identified above, RCW 34.05.350 (1)(c) states in part:

In order to implement the requirements or reductions in appropriations enacted ... in an omnibus transportation appropriations act for the 2021-2023 biennium related to setting toll rates or ferry fares, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis.

The current WAC policy sets forth an automatic trigger for the fuel surcharge when specified thresholds are met. Under the current provisions, there is no subsequent review by WSTC nor the ability to stop, delay, or modify the way in which the surcharge is applied.

Given current economic challenges which directly impact the state and public financially, assessment of further charges upon ferry riders must include full review and approval by the commission before it is implemented to ensure all current efforts, including WSF's fuel hedging program, are fully considered in the assessment. In support of this assessment, this rule change will enable WSTC to consider factors such as the revenue requirements of the ferry system, available funding, and impacts on ferry riders and local communities when determining whether to implement the fuel surcharge.

Should current fuel market trends continue, it is possible the fuel surcharge could be automatically triggered before a regular rule-making process could be completed. Thus, this emergency rule making is needed to ensure the change is effective immediately, followed by a full rule-making process that will include gathering public input.

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: June 22, 2022.

Reema Griffith
Executive Director

OTS-3891.1

AMENDATORY SECTION (Amending WSR 13-18-019, filed 8/26/13, effective 9/26/13)

WAC 468-300-080 Fuel surcharge. (1) In order to manage the financial risk associated with fuel price volatility, it is hereby declared to be the policy of the Washington state transportation commission (~~(to)~~) (WSTC) that the WSTC may implement a fuel surcharge as an added component to the regular posted fares for passage on vessels operated by Washington state ferries (WSF) to mitigate the financial impacts associated with unexpected increases in fuel prices which exceed those incorporated in WSF's fuel budget. Upon WSTC approval, the total ferry fare charged will consist of the base fare plus an (~~(automatic-~~
~~ie,)~~) incremental, additional surcharge as calculated according to the formula set forth in this rule.

(2) The method for calculating the fuel surcharge amount shall be as follows:

(a) Determine excess fuel costs for the current quarter by subtracting budgeted fuel costs from actual fuel costs for the quarter. For the purposes of this rule, quarters shall be consistent with the state fiscal year definition of quarters.

(b) To minimize lags in the application of this rule, the quarter will be closed one month prior to the actual end of the quarter, and an estimate of actual costs will be prepared to account for the third month and any lags in accounting for actual purchases.

(c) The estimate of costs for the missing month shall be developed as follows:

(i) Estimated fuel costs for the third month of the quarter will be based on the Oil Price Information Service (OPIS) daily contract average rack prices for ultra low-sulfur dyed diesel fuel for the first (~~(fifteen)~~) 15 days of the missing month as reported by the Washington state department of general administration's office of state procurement for Tacoma and Anacortes fuel price data as of the cutoff date.

(ii) Applicable taxes and fees are added to the Anacortes and Tacoma rack prices to derive total estimated cost per gallon for purchases at Anacortes and Tacoma on the missing days.

(iii) Total price per gallon is multiplied by budgeted gallons of fuel for the missing month in the quarter, where gallons are split into estimated purchases at Anacortes and Tacoma prices based on the

year-to-date shares of gallons purchased at Tacoma and Anacortes rack prices.

(d) Net excess fuel costs for the quarter shall be determined on the basis of the current estimate of the excess fuel costs for the quarter plus an accounting for the following:

(i) Any necessary reconciliation from the previous quarter's estimate of actual costs once full accounting of actual costs is complete.

(ii) Any necessary adjustments to ensure actual costs reflect budget assumptions regarding the appropriate share of biodiesel fuel or total diesel gallons to be purchased. Where actual gallons purchased or share of biodiesel vary from the assumptions used to develop the budget, the actual costs shall be reduced by the amount that these variations may have increased costs beyond the amounts assumed in the budget appropriation.

(iii) Subtracting any fuel surcharge revenues collected in the current quarter.

(iv) Adding net excess fuel costs from the previous quarter.

(e) Calculate an excess fuel cost percentage by dividing adjusted excess fuel costs by the current quarter's budgeted fuel costs.

(f) A fuel surcharge amount is then calculated as follows:

(i) Multiply the excess fuel cost percentage by the share of budgeted fuel costs to total operating costs for the current biennium (defined as the specific fuel appropriation divided by the total appropriation made to "Program X - Marine" as provided in the current transportation budget and supporting financial plan); then

(ii) Divide the result by the farebox recovery rate for the current biennium (defined as the fare revenue target divided by total appropriation to "Program X - Marine" as provided in the current transportation budget and supporting financial plan).

(3) A fuel surcharge shall be determined based on the calculation of the surcharge amount (as defined in subsection (2)(f) of this section) and applied to applicable fares as follows:

(a) If the surcharge amount is less than 2.5%, then a fuel surcharge shall not be applied.

(b) Upon final approval by the WSTC, if the surcharge amount is equal to or greater than 2.5%, then the surcharge shall be determined as follows:

(i) Surcharge amount is equal to or greater than 2.5% and less than 5% then the surcharge shall be 2.5% of the applicable fare.

(ii) Surcharge amount is equal to or greater than 5% and less than 7.5% then the surcharge shall be 5% of the applicable fare.

(iii) Surcharge amount is equal to or greater than 7.5% and less than 10% then the surcharge shall be 7.5% of the applicable fare.

(iv) Surcharge amount is 10% or greater, the surcharge shall be 10% of the applicable fare.

(c) In determining final approval for the surcharge, the WSTC may consider factors including, but not limited to, the revenue requirements of the ferry system, available funding, and the impacts on users and local communities.

(d) The surcharge shall be applied to all fares, with resulting fares rounded to the nearest nickel.

(4) WSF shall estimate the need for a fuel surcharge on a quarterly basis, based upon the formula prescribed in this rule (~~and if~~). If the WSTC approves such a surcharge (~~is to be added or modified, then~~), the department shall:

(a) Notify ORCA partners and customers of the pending surcharge changes at least (~~(thirty)~~) 30 days prior to implementation of said changes.

(b) Make all surcharge changes effective on the first of the month.

(5) Excess fuel costs shall be reset to zero at the beginning of the biennium.

(6) The amount of any fuel surcharge shall be shown separately on customer receipts.

(7) WSF shall provide an annual report to the legislature, OFM, and the Washington state transportation commission summarizing its fuel cost mitigation activities, including how the department has managed its costs as well as the application, performance and impact of fuel surcharges pursuant to this authority.

(8) To facilitate understanding on the part of WSF customers and to ensure a transparent process, an explanation of how the surcharge is applied, including a summary of the actual calculation of the surcharge percentage, shall be described on the WSF website.

(9) This rule goes into effect on October 1, 2011.

[Statutory Authority: RCW 47.56.030 and 47.60.315. WSR 13-18-019, § 468-300-080, filed 8/26/13, effective 9/26/13; WSR 11-18-034, § 468-300-080, filed 8/30/11, effective 10/1/11 and 5/1/12.]

WSR 22-14-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-111—Filed June 22, 2022, 3:31 p.m., effective June 22, 2022, 3:31 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 220-358-03000L; 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: Modifies the select area commercial summer seasons with expanded hours of fishing time and four additional periods. Impacts to nonlocal stocks are expected to be minimal while allowing harvest of local Chinook stocks reared for the select area sites. 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 and June 22, 2022. 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 ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the 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: June 22, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000M 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:

| <u>Open_Dates</u> | <u>Open_Days</u> | <u>Open_Time</u> | <u>Open_Duration</u> |
|-------------------|------------------------|--------------------|----------------------|
| Jun 22 - Jul 15 | Mon, Wed, Thu (nights) | 6:00 pm - 10:00 am | 11 nights |

(a) Area definitions:

(i) June 22 through July 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) June 22 through July 15, 2022: 9 3/4-inch maximum mesh size.

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

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

(iv) 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 |
|-----------------|------------------------|--------------------|---------------|
| Jun 22 - Jul 15 | Mon, Wed, Thu (nights) | 6:00 pm - 10:00 am | 11 nights |

(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.

(b) Gear: Gillnets:

(i) June 22 through July 15, 2022: 9 3/4-inch maximum mesh size.

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

(iii) 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) Allowable Sales: Salmon (except Chum), white sturgeon 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.

(4) 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.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000L Columbia River below Bonneville Dam.
(22-108)

WSR 22-14-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-110—Filed June 22, 2022, 4:53 p.m., effective June 24, 2022]

Effective Date of Rule: June 24, 2022.

Purpose: The purpose of this rule is to reduce the Chinook portion of the daily limit in Catch Record Card Area 4.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500G; and amending WAC 220-313-075.

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

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

Reasons for this Finding: This emergency rule is necessary because more than 12 percent of the Chinook guideline in Catch Record Card Area 4 was taken on the first two open days of the season (June 18 and 19, 2022). A reduction in the Chinook daily limit is necessary to preserve the season length while avoiding exceedance of the Chinook guideline and maximizing catch of the available coho quota.

This rule also maintains other recreational salmon seasons in Catch Record Card Areas 1 - 3, previously set by WSR 22-13-143.

These rules for in-state waters are consistent with federal salmon fishing regulations adopted by the National Marine Fisheries Service in response to actions taken by the Pacific Fishery Management Council to set salmon fishery harvest specifications and management measures; this action is intended to achieve regulatory consistency in federal and state waters for the ocean recreational salmon fishery, which operates in both areas.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 22, 2022.

Kelly Susewind
Director

NEW SECTION**WAC 220-313-07500H Pacific Ocean Salmon—Seasons—Closed Areas.**

Effective June 24 through October 8, 2022 the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

- (1) **Catch Record Card Area 1:** Open June 25 through September 30, 2022:
- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
 - (b) Release wild coho.
 - (c) Chinook minimum length 22 inches.
 - (d) Coho minimum length 16 inches.
- (2) **Catch Record Card Area 2:** Open July 2 through September 30, 2022:
- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
 - (b) Release wild coho.
 - (c) Chinook minimum length 22 inches.
 - (d) Coho minimum length 16 inches.
 - (e) July 2 through August 7, 2022 the Grays Harbor Control Zone is open. See WAC 220-306-040.
- (3) **Catch Record Card Area 3:**
- (a) Open immediately, through September 30, 2022:
 - (i) Daily limit of 2 salmon.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) Release chum beginning August 1.
 - (b) Open October 5 through October 8, 2022 only in the area north of 47°50'00N. lat. and south of 48°00'00"N. lat.:
 - (i) Daily limit 2 Chinook salmon only.
 - (ii) Release all salmon except Chinook.
 - (iii) Chinook minimum length 24 inches.
- (4) **Catch Record Card Area 4:**
- (a) Open June 24, through September 30, 2022:
 - (i) Daily limit of 2 salmon; no more than one may be a Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) No chinook retention in waters east of the Bonilla-Tatoosh line beginning August 1.
 - (vi) Release chum salmon beginning August 1.
 - (b) Waters east of a true north-south line through Sail Rock are closed through July 31.

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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, effective June 24, 2022:

WAC 220-313-07500G Pacific Ocean salmon—Seasons—Closed
areas.

WSR 22-14-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-113—Filed June 22, 2022, 5:15 p.m., effective June 23, 2022]

Effective Date of Rule: June 23, 2022.

Purpose: The purpose of this emergency rule is to allow opportunity to catch the remainder of the May - June North of Falcon troll Chinook quota, while limiting catch to ensure that the quota is not exceeded.

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

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. The North of Falcon troll fishery is approaching its quota for the May - June season, and a coastwide landing limit is needed to both extend the season length and to ensure the quota is not exceeded. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with pre-season fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 22, 2022.

Kelly Susewind
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective June 23, 2022, until further notice, it is

unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00"W longitude and south of 48°23'00"N latitude open: June 23 through June 29, 2022.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.), open: June 23 through June 29, 2022.

(3) For Washington Catch Reporting Areas 1, 2, 3 and 4, landing and possession limits per vessel per landing week, defined as Thursday through Wednesday: From June 23 through June 29, 2022, 13 Chinook per vessel combined across all areas per landing week.

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

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

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

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

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

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

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

(c) Vessels may not land fish east of the Megler-Astoria bridge.

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

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

(b) Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at

360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.
(c) Vessels may not land fish east of the Sekiu River.

[]

REPEALER

The following section of Washington Administrative Code is repealed, effective June 23, 2022:

WAC 220-354-30000E Coastal salmon troll seasons—
Commercial. (22-103)

WSR 22-14-015
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 23, 2022, 2:55 p.m., effective June 23, 2022, 2:55 p.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 began regular rule making by filing a CR-101 Preproposal statement of inquiry (WSR 21-21-096) and the CR-102 Proposed rule making was filed on May 13, 2022, WSR 22-11-050, and a public hearing was held on June 22, 2022.

(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 began regular rule making by filing a CR-101 Preproposal statement of inquiry (WSR 21-21-096) and the CR-102 Proposed rule making was filed on May 13, 2022, WSR 22-11-050, and a public hearing was held on June 22, 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 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: June 23, 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 22-14-017

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed June 24, 2022, 8:45 a.m., effective June 24, 2022, 8:45 a.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.

Other Authority: Not applicable.

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

Reasons for this Finding: This rule making is in response to the Governor's Proclamation 20-05 declaring a State of Emergency for all counties throughout the state of Washington 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 22-06-047 on February 24, 2022. The agency is refiled to continue the emergency rule. 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: June 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 22-14-020
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 24, 2022, 10:04 a.m., effective June 24, 2022, 10:04 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-424-0001 Citizenship and immigration 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 align department policies with federal legislation and authorization from the Office of Refugee Resettlement (ORR) expanding eligibility for federally-funded benefits to humanitarian parolee arrivals displaced from Ukraine.

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, 74.04.510, 74.08.090, and 74.08A.120.

Other Authority: Additional Ukraine Supplemental Appropriations Act (AUSAA) 2022 and ORR Policy Letter 22-13.

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: Effective May 21, 2022, AUSAA authorizes ORR to provide resettlement assistance and other benefits available for refugees to specific Ukrainian populations and other specified non-Ukrainian individuals.

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

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

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

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

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

Date Adopted: June 24, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4902.4

AMENDATORY SECTION (Amending WSR 22-02-014 [22-12-038], filed 12/27/21 [5/25/22], effective 2/1/22 [6/25/22])

WAC 388-424-0001 Citizenship and immigration status—Definitions. For the purposes of determining an individual's citizenship and immigration 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 have not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigration 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 Laotian 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 as victims of trafficking by the federal U.S. Department of Health and Human Services (HHS), Office on Trafficking in Person (OTIP), or have been granted a T visa.

(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 unmarried minor sibling if the victim is under 21 years old.

(iii) Afghan nationals and their spouses and children, paroled into the U.S. between July 31, 2021, and September 30, 2022, after evacuation from Afghanistan to the U.S., or to a location overseas.

~~((iii))~~ (iv) Special immigrants from Iraq and Afghanistan are individuals granted:

~~(A) ((special))~~ Special immigrant status under INA §101 (a) (27)

~~((B))~~ i

(B) Special immigrant conditional permanent resident; or

(C) Paroled under section 602 (B) (1) AAPA/Sec 1059 (a) NDAA 2006;

(v) Individuals from Ukraine and their family members admitted as humanitarian parolees between February 24, 2022, and September 30, 2023, and whose parole has not been terminated by the Secretary of the Department of Homeland Security (DHS), who are:

(A) Citizens or nationals of Ukraine;

(B) Non-Ukrainian individuals who were habitually residing in Ukraine, and have documentation confirming last habitual residence in Ukraine;

(C) Individuals who were first granted humanitarian parole, and then obtained Temporary Protected Status (TPS). They are eligible for federally funded assistance until the end of their parole term due to underlying receipt of humanitarian parole.

(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 21 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 21 years old. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn 21 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) **"Survivors of certain crimes"** are noncitizens, and any of their qualifying family members, as defined in subsection (5) of this section, who have:

(a) Filed or are preparing to file an application for a T visa (trafficking victim);

(b) Filed or are preparing to file an application for a U visa (crime victim); or

(c) Been harmed by one of the specific crimes described below; and

(i) Was granted continued presence by U.S. Homeland Security; or

(ii) Has filed or is preparing to file an application for asylum status.

Specific crimes include:

(A) Those related to human trafficking, kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, coercion of involuntary servitude, and others under chapter 9A.40 RCW;

(B) Sexual exploitation of children and others under chapter 9.68A RCW; or

(C) Substantially similar crimes under federal law or the laws of another state.

(5) **"Qualifying family members"** are the spouse and child(ren) of survivors of certain crimes, and the parents or unmarried minor siblings if the survivor is under 21 years old. Qualifying family members do not include a person charged with or convicted of attempt, conspiracy, solicitation, or commission of a crime, listed under subsection (4)(c) of this section, against the survivor of certain crimes.

(6) **"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).

(7) **"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~~) 50 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 18 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~~) 18 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 18 before February 27, 2001, would have automatically become a citizen if, while still under 18, they became a lawful permanent resident and both of their parents were 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.

(8) **"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, 74.04.055, 74.04.057, 74.04.820, 74.08.090, 74.08A.120, 74.09.035. WSR 22-02-014, § 388-424-0001, filed 12/27/21, effective 2/1/22. 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 [22-12-038], filed 8/27/12 [5/25/22], effective 9/27/12 [6/25/22])

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))~~ (i) Conditional entrant;
- ~~((B))~~ (ii) Lawful permanent resident (LPR);
- ~~((C))~~ (iii) Paroled for one year or more; or
- (iv) Individuals from Ukraine granted humanitarian parole; or

~~((D))~~ (v) Abused spouse or child or parent or child of an abused spouse or child.

~~((ii))~~ (vi) 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.]

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 12-19-037 [22-12-038], filed 9/12/12 [5/25/22], effective 10/13/12 [6/25/22])

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((-));
- (k) Individuals from Ukraine admitted as humanitarian parolees between February 24, 2022, and September 30, 2023, and whose parole has not been terminated by the Secretary of the Department of Homeland Security (DHS), who are:
 - (i) Citizens or nationals of Ukraine;
 - (ii) Non-Ukrainian individuals, who were habitually residing in Ukraine, and have documentation confirming last habitual residence in Ukraine;
 - (iii) Individuals who were first granted humanitarian parole, and then obtained Temporary Protected Status (TPS). They are eligible for refugee cash assistance until the end of their parole term due to underlying receipt of humanitarian parole.

(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.]

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.

**WSR 22-14-022
EMERGENCY RULES****DEPARTMENT OF COMMERCE**

[Filed June 24, 2022, 11:00 a.m., effective June 29, 2022]

Effective Date of Rule: June 29, 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 issued a Preproposal notice of inquiry (CR-101) in order to determine a reasonable effective date on a permanent basis and adopted an 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 simultaneously issued a proposed rule making (CR-102) 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 an additional 120 days, until October 27, 2022, 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 June 29, 2022. This emergency rule suspends the effective date until October 27, 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: June 24, 2022.

David Pringle
Rules Coordinator

OTS-3900.1

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)) October 27, 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 22-14-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-112—Filed June 24, 2022, 3:41 p.m., effective June 24, 2022, 3:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to set closure dates for all species in a portion of the Skagit River.

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

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

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

Reasons for this Finding: This closure is necessary to avoid gear conflicts during scheduled treaty fisheries.

Additional periodic closures to prevent conflicts with tribal fisheries are expected. In-season closures will be announced as soon as possible.

This rule also maintains salmon seasons for the Skagit River, Cascade River, and Nooksack River, North Fork that were originally set in WSR 22-12-021 on May 28; WSR 22-13-004 on June 1; WSR 22-13-057 on June 8; and WSR 22-13-073 on June 9, 2022.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 22, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000F Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through July 15, 2022, the following provisions of WAC 220-312-040 regarding salmon seasons for the Cascade River, Nooksack River, North Fork, and Skagit River, and periodic all species closures for Skagit River shall be modified during the dates and in locations listed and described herein. All other pro-

visions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

(1) **Cascade River** (Skagit Co.): From mouth to Rockport-Cascade Rd. Bridge: Salmon: Effective immediately, through July 15, 2022:

(a) Daily limit 4 of which up to 2 adults may be retained. Release all salmon other than hatchery Chinook.

(b) Night closure and Anti-snagging rule in effect.

(2) **Nooksack River, North Fork** (Whatcom Co.): From the Hwy. 9 Bridge to the yellow marker at the upstream side of the Kendall Hatchery: Salmon: Effective immediately, through June 30, 2022:

(a) Daily limit 2. Release all salmon other than hatchery Chinook.

(b) Night closure and Anti-snagging rule in effect.

(3) **Skagit River** (Skagit Co.):

(a) From Hwy. 536 Bridge (Memorial Hwy. Bridge) in Mt. Vernon to the Hwy. 9 Bridge in Sedro Woolley: Salmon: Effective immediately, through July 15, 2022:

(i) Daily limit 2 sockeye. Release all salmon other than sockeye.

(ii) Night closure in effect.

(iii) Selective gear rules are not in effect for salmon.

(b) From Hwy. 9 Bridge in Sedro Woolley to the Dalles Bridge at Concrete: Effective immediately, through July 15, 2022:

(i) Salmon: Open (see exception in subsection (ii))

(A) Daily limit 2 sockeye. Release all salmon other than sockeye.

(B) Night closure in effect.

(C) Selective gear rules are not in effect for salmon.

(ii) All species: Closed waters June 28 through June 29, 2022.

(c) From the Dalles Bridge at Concrete to line projected across the thread of the river 200 feet below the west bank of the Baker River: Effective June 28 through June 29, 2022: All species: Closed waters.

[]

REPEALER

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

WAC 220-312-04000E Freshwater exceptions to statewide rules—Puget Sound. (22-102)

WSR 22-14-037
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 27, 2022, 12:44 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The department is amending WAC 388-484-0006 TANF/SFA time limit extensions.

The amendments extend a time limit extension hardship category related to impacts of the COVID-19 pandemic (commonly known as the "Coronavirus"), through June 30, 2023, as provided in the 2021-2023 supplemental operating budget (chapter 297, Laws of 2022); and implement a time limit extension hardship category related to the state's unemployment rate per HB 1755 (chapter 24, Laws of 2022).

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

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.010, 74.08A.015.

Other Authority: 2021-2023 Supplemental operating budget: Section 205 (1)(b)(iii) chapter 297, Laws of 2022; and HB 1755: Chapter 24, Laws of 2022.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: Families approaching and exceeding the 60-month lifetime TANF time limit will have access to benefits needed to sustain basic needs, thus this emergency adoption is necessary to preserve public health, safety, and welfare.

These amendments implement policies per the supplemental operating budget (chapter 297, Laws of 2022), and HB 1755 (chapter 24, Laws of 2022), effective July 1, 2022.

The department is actively undertaking appropriate procedures to permanently adopt these amendments.

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

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

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

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

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

Date Adopted: June 24, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4924.3

AMENDATORY SECTION (Amending WSR 21-22-053, filed 10/28/21, effective 11/28/21)

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

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

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

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

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

(b) You:

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

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

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

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

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

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

(vii) Are an active TANF recipient from July 1, 2021, through June 30, (~~2022~~) 2023; or

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

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

1, 2020, when the ~~((state's))~~ Washington state employment security department's unemployment rate was at seven percent or above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WSR 22-14-038
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 27, 2022, 1:25 p.m., effective June 30, 2022]

Effective Date of Rule: June 30, 2022.

Purpose: The department was granted rule-making authority in SHB 1120 and is extending emergency rules that reinstate the fingerprinting requirement for providers that was temporarily suspended by the governor's proclamation due to the public health emergency (PHE). 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.

While the governor's proclamation is still in place that temporarily waived fingerprinting, to start preparing for the end of the PHE. The department of social and health services (DSHS) filed a CR-101 under WSR 22-07-064. As the PHE continues, DSHS is continuing to monitor capacity issues for providers who need to complete fingerprinting, working with stakeholders, and coordinating with other state agencies on rule content prior to the filing of the proposed rule notice (CR-102). To continue this work DSHS needs an extension of the emergency rule.

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, 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: June 27, 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: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical 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.

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 individu-
 al.

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 22-14-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-117—Filed June 27, 2022, 1:41 p.m., effective June 27, 2022, 1:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to set closure dates for all species in a portion of the Skagit River.

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

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

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

Reasons for this Finding: This rule is necessary to set closure dates for all species in a portion of the Skagit River.

Previously scheduled dates for the treaty fishery have changed. This closure is necessary to avoid gear conflicts during those scheduled treaty fisheries.

Additional periodic closures to prevent conflicts with tribal fisheries are expected. In-season closures will be announced as soon as possible.

This rule also maintains salmon seasons for the Skagit River, Cascade River, and Nooksack River, North Fork that were originally set in WSR 22-12-021 on May 28; WSR 22-13-004 on June 1; WSR 22-13-057 on June 8; and WSR 22-13-073 on June 9, 2022.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 27, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000G Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through July 15, 2022, the following provisions of WAC 220-312-040 regarding salmon seasons for the

Cascade River, Nooksack River, North Fork, and Skagit River, and periodic all species closures for Skagit River shall be modified during the dates and in locations listed and described herein. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

(1) **Cascade River** (Skagit Co.): From mouth to Rockport-Cascade Rd. Bridge: Salmon: Effective immediately, through July 15, 2022:

(a) Daily limit 4 of which up to 2 adults may be retained. Release all salmon other than hatchery Chinook.

(b) Night closure and Anti-snagging rule in effect.

(2) **Nooksack River, North Fork** (Whatcom Co.): From the Hwy. 9 Bridge to the yellow marker at the upstream side of the Kendall Hatchery: Salmon: Effective immediately, through June 30, 2022:

(a) Daily limit 2. Release all salmon other than hatchery Chinook.

(b) Night closure and Anti-snagging rule in effect.

(3) **Skagit River** (Skagit Co.):

(a) From Hwy. 536 Bridge (Memorial Hwy. Bridge) in Mt. Vernon to the Hwy. 9 Bridge in Sedro Woolley: Salmon: Effective immediately, through July 15, 2022:

(i) Daily limit 2 sockeye. Release all salmon other than sockeye.

(ii) Night closure in effect.

(iii) Selective gear rules are not in effect for salmon.

(b) From Hwy. 9 Bridge in Sedro Woolley to the Dalles Bridge at Concrete: Effective immediately, through July 15, 2022:

(i) Salmon: Open (see exception in subsection (ii))

(A) Daily limit 2 sockeye. Release all salmon other than sockeye.

(B) Night closure in effect.

(C) Selective gear rules are not in effect for salmon.

(ii) All species: Closed waters June 29 through June 30, 2022.

(c) From the Dalles Bridge at Concrete to line projected across the thread of the river 200 feet below the west bank of the Baker River: Effective June 29 through June 30, 2022: All species: Closed waters.

[]

REPEALER

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

WAC 220-312-04000F Freshwater exceptions to statewide rules—Puget Sound. (22-112)

WSR 22-14-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-118—Filed June 27, 2022, 4:34 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The purpose of this emergency rule is to change Puget Sound recreational salmon fishing rules to conform with those agreed to during the 2022 North of Falcon season setting process until those rules are made permanent.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

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

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

Reasons for this Finding: This emergency rule is necessary to modify salmon seasons in Catch Record Card Areas 5, 6, 7, 9, 10, 11, and 12 to conform with seasons and rules agreed to with comanagers during the 2022 North of Falcon season setting process. These rules are interim until permanent rules are in place.

Date Adopted: June 27, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000X Puget Sound salmon—Saltwater seasons and daily limits. Effective July 1 through July 31, 2022, the following provisions of WAC 220-313-060 regarding salmon seasons for the Puget Sound Catch Record Card Areas shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) **Catch Record Card Area 5:**

- (a) Daily limit 2; up to 1 may be a Chinook.
- (b) Release chum, wild Chinook and wild coho.

(2) **Catch Record Card Area 6:**

- (a) Daily limit 2; up to 1 may be a Chinook.
- (b) Release chum, wild Chinook and wild coho.
- (c) Waters east of a true north-south line through the Number 2 Buoy immediately east of Ediz Hook: Release all Chinook.
- (d) Waters of Port Angeles Harbor west of a line from the tip of Ediz Hook to the ITT Rayonier Dock: Closed.
- (e) Waters of Dungeness Bay inside a line from Dungeness Spit Lighthouse to the Number 2 Red Buoy, and then to the Port Williams Boat Ramp: Closed.

(3) **Catch Record Card Area 7:**

- (a) July 1 through July 13: Closed.
- (b) July 14 through July 16:

- (i) Daily limit 2; up to 1 may be a Chinook.
- (ii) Release chum, wild Chinook and wild coho.
- (c) July 17 through July 31: Closed.
- (d) Waters of Rosario Strait and Eastern Strait of Juan de Fuca closure area described in WAC 220-313-020(7): Closed.
- (e) Waters of Bellingham Bay described in WAC 220-313-020(1): Closed.
- (4) **Catch Record Card Area 9:**
 - (a) July 1 through July 13: Closed.
 - (b) July 14 through July 27: Open Thursdays through Saturdays of each week only:
 - (i) Daily limit 2; up to 1 may be a Chinook.
 - (ii) Release chum, wild Chinook and wild coho.
 - (c) July 28 through July 31:
 - (i) Daily limit 2; up to 1 may be a Chinook.
 - (ii) Release chum, wild Chinook and wild coho.
 - (d) Waters south of a line from Foulweather Bluff to Olele Point: Closed.
- (5) **Catch Record Card Area 10:**
 - (a) July 1 through July 13:
 - (i) Daily limit 2.
 - (ii) Release Chinook and chum.
 - (b) July 14 through July 31:
 - (i) Daily limit 2; up to 1 may be a Chinook.
 - (ii) Release chum and wild Chinook.
 - (c) Waters of Shilshole Bay southeast of a line from Meadow Point to West Point: Closed.
 - (d) West Elliott Bay: Waters of Elliott Bay between a line from West Point to Alki Point and a line from Duwamish Head to Pier 91. Closed.
 - (e) East Elliot Bay: Waters of Elliott Bay between a line from Duwamish Head to Pier 91 up to the mouth of the Duwamish River including Harbor Island (Duwamish Waterways): Salmon: Closed.
 - (f) Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge in Bremerton, south of a line true west from Battle Point, and west of a line drawn true south from Point White:
 - (i) Daily limit 3.
 - (ii) Release chum and wild Chinook.
 - (g) Free-flowing freshwaters downstream of the mouth at Gorst Creek, Blackjack Creek, Chico Creek, Curley Creek, and Grovers Creek: Closed.
 - (h) Elliott Bay Fishing Pier at Terminal 86, Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier, open year-round:
 - (i) Daily limit 2; up to 1 may be a Chinook.
 - (ii) Release chum.
 - (i) Duwamish Waterway downstream from an east-west line projected through southernmost tip of Harbor Island to a line extending from Jack Block Park through the northernmost tip of Harbor Island extending to shore northeast of the North Waterway (47°35.47'N, 122°20.58'W):
 - (i) Night closure and Anti-snagging rule in effect
 - (ii) Only fish hooked inside the mouth may be retained.
 - (j) Free-flowing freshwaters downstream of the mouth at Gorst Creek, Blackjack Creek, Chico Creek, Curley Creek, Grovers Creek: Closed.
- (6) **Catch Record Card Area 11:**

(a) Open Wednesdays through Saturdays of each week only:

(i) Daily limit 2; up to 1 may be a Chinook.

(ii) Release chum and wild Chinook.

(b) Waters of Commencement Bay east of a line from the Cliff House Restaurant to the Sperry Ocean Dock: Closed.

(c) Dash Point Dock, Les Davis Pier, Des Moines Pier, Redondo Pier, and Point Defiance Boathouse Dock:

(i) Daily limit 2; up to 1 may be a Chinook.

(ii) Release chum.

(7) **Catch Record Card Area 12:**

(a) Waters south of Ayock Point including waters within a 2,000-foot arc seaward of yellow buoys at the mouth of Finch Creek at Hoodsport Salmon Hatchery:

(i) Daily limit 4.

(ii) Release chum and wild Chinook.

(iii) Within a 2,000-foot arc seaward of yellow buoys at the mouth of Finch Creek at Hoodsport Salmon Hatchery: It is unlawful to fish for or possess salmon taken from these waters from one hour after sunset to one hour before sunrise.

(iv) Those waters of Hood Canal inshore of the 2 yellow buoy markers to the mouth of Finch Creek, waters within the channel created by Finch Creek on exposed tideland and fishing from any Hoodsport Hatchery structure are closed except to persons with disabilities who permanently use a wheelchair and who have a designated harvester card may fish from the ADA-access site at the Hoodsport Salmon Hatchery, as long as persons follow all applicable department rules.

(b) Waters north of Ayock Point: Closed

(c) Free-flowing freshwater is closed to all fishing downstream of the mouth of the Dewatto, Dosewallips, Duckabush, Hamma Hamma, and Skokomish rivers.

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WSR 22-14-046
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 28, 2022, 7:40 a.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The department is adopting emergency amendments to WAC 388-436-0050 Determining financial need and benefit amount for CEAP and 388-478-0005 Cash assistance need and payment standards and grant maximum.

These amendments reflect a change in the temporary assistance for needy families (TANF) and state family assistance (SFA) maximum benefit limit, from an eight-person household to 10-person household, effective July 1, 2022, per the 2021-2023 supplemental operating budget. Amendments to update related net income limits and allowable benefit amounts for the consolidated emergency assistance program, which are based on the TANF standards, are also included.

Citation of Rules Affected by this Order: Amending WAC 388-436-0050 and 388-478-0005.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.660, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, and 74.62.030.

Other Authority: Section 205 (1) (b) (v), chapter 297, Laws of 2022.

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

Reasons for this Finding: This emergency adoption increases cash payment standards thereby providing essential supports to individuals and families necessary for the preservation of public welfare.

The 2021-2023 supplemental operating budget (section 205 (1) (b) (v), chapter 297, Laws of 2022) also supports immediate adoption of amendments to this rule, effective July 1, 2022.

The department filed the CR-101 under WSR 22-09-072, and continues to undertake appropriate procedures to adopt the rule amendments as permanent.

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

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

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

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

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

Date Adopted: June 28, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4928.1

AMENDATORY SECTION (Amending WSR 21-21-054, filed 10/15/21, effective 11/15/21)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than or equal to (~~ninety percent~~) 90% of the temporary assistance for needy families (TANF) payment standard. The net income limit for CEAP assistance units is:

| Assistance unit members | Net income limit |
|--------------------------|------------------|
| 1 | \$375 |
| 2 | 475 |
| 3 | 589 |
| 4 | 694 |
| 5 | 799 |
| 6 | 908 |
| 7 | 1,049 |
| 8 (or more) | 1,160 |
| <u>9</u> | <u>1,274</u> |
| <u>10 or more</u> | <u>1,385</u> |

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need item: Maximum allowable amount by assistance unit size:

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 (or more) | 9 | <u>10 or more</u> |
|------------------------------|-------|-------|-------|-------|-------|-------|-------|--------------------------|--------------|-------------------|
| Food | \$253 | \$322 | \$397 | \$469 | \$539 | \$612 | \$699 | \$773 | <u>\$864</u> | <u>\$939</u> |
| Shelter | 308 | 390 | 485 | 572 | 657 | 744 | 863 | 952 | <u>1,048</u> | <u>1,139</u> |
| Clothing | 36 | 45 | 56 | 66 | 76 | 89 | 98 | 112 | <u>127</u> | <u>139</u> |
| Minor medical care | 214 | 273 | 338 | 397 | 458 | 516 | 603 | 665 | <u>736</u> | <u>800</u> |
| Utilities | 105 | 132 | 163 | 191 | 220 | 253 | 292 | 322 | <u>354</u> | <u>385</u> |
| Household maintenance | 76 | 97 | 121 | 140 | 163 | 185 | 214 | 235 | <u>255</u> | <u>277</u> |
| Job related transportation | 417 | 528 | 654 | 771 | 888 | 1,009 | 1,165 | 1,289 | <u>1,416</u> | <u>1,539</u> |
| Child related transportation | 417 | 528 | 654 | 771 | 888 | 1,009 | 1,165 | 1,289 | <u>1,416</u> | <u>1,539</u> |

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

(a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;

(b) Cash on hand, if not already counted as income; and

(c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.660, 74.08.090, 74.08A.230 and 2021 c 334. WSR 21-21-054, § 388-436-0050, filed 10/15/21, effective 11/15/21. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, 2018 c 299 and 2017 c 1. WSR 18-09-088, § 388-436-0050, filed 4/17/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, and 2015 3rd sp.s. c 4 § 207. WSR 16-01-093, § 388-436-0050, filed 12/15/15, effective 1/15/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 11-16-029, § 388-436-0050, filed 7/27/11, effective 8/27/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.660. WSR 09-14-040, § 388-436-0050, filed 6/24/09, effective 7/25/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 08-18-009, § 388-436-0050, filed 8/22/08, effective 9/22/08; WSR 98-16-044, § 388-436-0050, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

WAC 388-478-0005 Cash assistance need and payment standards and grant maximum. (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC 388-478-0006).

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on program grant standards.

~~((4) Starting July 1, 2012, the monthly cash assistance grant for an assistance unit cannot exceed the payment standard for a family of 8 listed in WAC 388-478-0020(1).))~~

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0005, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-478-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, 74.08.090, and 2012 2nd sp.s. c 7. WSR 12-18-023, § 388-478-0005, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, and 74.08.090. WSR 11-21-024, § 388-478-0005, filed 10/11/11, effective 11/11/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, 74.08.090, and

2008 c 329 § 207 (1)(e). WSR 08-21-134, § 388-478-0005, filed 10/20/08, effective 10/28/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, § 388-478-0005, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0005, filed 7/31/98, effective 9/1/98.]

WSR 22-14-047
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 28, 2022, 7:48 a.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The department is amending WAC 388-424-0015 Immigrant eligibility restrictions for the state family assistance, ABD cash, and PWA programs.

Effective July 1, 2022, these amendments are necessary to implement HB 1748 (chapter 208, Laws of 2022) and expand aged, blind, or disabled program and housing and essential needs referral eligibility to victims of human trafficking (as defined in RCW 74.04.005).

Citation of Rules Affected by this Order: Amending WAC 388-424-0015.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.04.805, 74.04.820, 74.08.090, 74.08A.100, 74.08A.120, 74.09.035, 74.09.530, and 74.62.030.

Other Authority: HB 1748 (chapter 208, Laws of 2022).

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

Reasons for this Finding: These amendments are necessary to implement HB 1748 (chapter 208, Laws of 2022), which takes effect July 1, 2022.

The department is actively taking appropriate steps to adopt the rule as permanent, and filed notice of its intent under WSR 22-11-081.

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

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

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

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

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

Date Adopted: June 28, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4935.1

AMENDATORY SECTION (Amending WSR 22-02-014, filed 12/27/21, effective 2/1/22)

WAC 388-424-0015 Immigrant eligibility restrictions for the ~~((state family assistance)) SFA, ABD cash, and PWA programs.~~ (1) To receive state family assistance (SFA) benefits, you must be:

(a) A "qualified alien" as defined in WAC 388-424-0001 who is ineligible for temporary assistance to needy families (TANF) due to the five-year bar as described in WAC 388-424-0006(~~((+3))~~);

(b) A "nonqualified alien" who meets the Washington state residency requirements (~~(as listed)~~) in WAC 388-468-0005, including a non-citizen American Indian who does not meet the criteria in WAC 388-424-0001; or

(c) A "survivor of certain crimes" as defined in WAC 388-424-0001(~~((+4))~~).

(2) To receive aged, blind, or disabled (ABD) cash or pregnant women assistance (PWA) benefits, you must be:

(a) A "U.S. citizen" as defined in WAC 388-424-0001;

(b) A "U.S. national" as defined in WAC 388-424-0001;

(c) An American Indian born outside the U.S.;

(d) A "qualified alien" (~~(or similarly defined lawful immigrant such as victim of trafficking)~~) as defined in WAC 388-424-0001; or

(e) A "nonqualified alien" as defined (~~(described)~~) in WAC 388-424-0001 who (~~((+))~~), United States Immigration and Customs Enforcement is not taking steps to enforce their departure; or

(~~((i) Has verified their intent to stay in the United States indefinitely; and~~

~~(ii) The United States Immigration and Customs Enforcement is not taking steps to enforce their departure.))~~

(f) A "survivor of certain crimes" as defined in WAC 388-424-0001.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.820, 74.08.090, 74.08A.120, 74.09.035. WSR 22-02-014, § 388-424-0015, filed 12/27/21, effective 2/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, 74.09.530, and 2011 1st sp.s. c 15, 2013 2nd sp.s. c 10, and the 2013 biennial budget. WSR 15-02-006, § 388-424-0015, filed 12/26/14, effective 1/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-424-0015, filed 4/27/12, effective 6/1/12. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090. WSR 11-16-056, § 388-424-0015, filed 7/29/11, effective 8/29/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0015, filed 7/7/04, effective 8/7/04. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 00-08-060, § 388-424-0015, filed 3/31/00, effective 4/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-424-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1805.]

WSR 22-14-050

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed June 28, 2022, 3:21 p.m., effective June 28, 2022, 3:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending these rules to align with the Additional Ukrainian Supplemental Appropriations Act (AUSAA), P.L. 117-128. The AUSAA Act provides for resettlement assistance, entitlement programs, and other benefits available to refugees for Ukrainian populations and other non-Ukrainian people in response to their displacement from Ukraine and entry into the United States.

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

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: P.L. 117-128.

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

Reasons for this Finding: Emergency rules are necessary to allow for immediate assistance to Ukrainian refugees and certain other people from Ukraine who have relocated in the state of Washington while the permanent rule-making process is conducted.

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 2, Repealed 0.

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

Date Adopted: June 28, 2022.

Wendy Barcus
Rules Coordinator

OTS-3918.1

AMENDATORY SECTION (Amending WSR 22-08-002, filed 3/23/22, effective 4/23/22)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Special immigrant conditional permanent resident; or

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

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

(xiii) A Ukrainian or a non-Ukrainian person who habitually resided in the Ukraine who, under section 401 of the Additional Ukrainian Supplemental Appropriations Act, 2022 (AUSAA), was granted parole:

(A) Between February 24, 2022, and September 30, 2023; or

(B) After September 30, 2023, and is:

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

(II) The parent or guardian of a person described in (b) (xiii) (A) of this subsection who is an unaccompanied minor.

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

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

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

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

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

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

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

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

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

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

(2) **Eligibility.**

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

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

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

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

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

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(d) A nonqualified alien may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(e) An undocumented person may be eligible for:

(i) Alien medical programs;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTS-3917.1

AMENDATORY SECTION (Amending WSR 22-08-002, filed 3/23/22, effective 4/23/22)

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

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

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

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

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

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

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

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

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

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

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

(ii) Special immigrant conditional permanent resident; or

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

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

(k) A Ukrainian or a non-Ukrainian person who habitually resided in the Ukraine who, under section 401 of the Additional Ukrainian Supplemental Appropriations Act, 2022 (AUSAA), was granted parole:

(i) Between February 24, 2022, and September 30, 2023; or

(ii) After September 30, 2023, and is:

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

(B) The parent or guardian of a person described in (k) (i) of this subsection who is an unaccompanied minor.

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

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

WSR 22-14-058
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 29, 2022, 10:26 a.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The department is amending WAC 388-310-0800 WorkFirst—Support services. Amendments expand the types of available support services to include assistance with housing and utilities in state fiscal year 2023 to support ongoing recovery from the COVID-19 pandemic.

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

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

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

Reasons for this Finding: The expansion of support services specific to assist with securing housing will help WorkFirst families increase stability during the COVID-19 pandemic and recovery.

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

Number of Sections Adopted at the Request of a 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: June 29, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4934.1

AMENDATORY SECTION (Amending WSR 22-01-143, filed 12/15/21, effective 1/15/22)

WAC 388-310-0800 WorkFirst—Support services. (1) Who can get support services?

People who can get support services include:

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

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

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

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

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

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

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

(f) Former WorkFirst participants who are working at least 15 hours per week or more, for up to three months after leaving TANF if they need employment-related transportation support services to meet a temporary need or emergency.

(2) Why do I receive support services?

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

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

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

(c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 110-15 WAC describes the rules for this child care assistance program.)

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

There is a limit of ((five thousand dollars)) \$5,000 per person per program year (July 1st to June 30th) for WorkFirst support services you may receive.

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

Definitions:

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

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

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

| Type of Support Service | Restrictions | • Work | •• Safety | ••• Other |
|---|--------------|-----------|--------------|--------------|
| Reasonable accommodation for employment | | x | | |
| Clothing/uniforms | | x | | |
| Diapers | | x | x | x |
| Haircut | | x | | |

| Type of Support Service | Restrictions | • Work | •• Safety | ••• Other |
|--|---|-----------|--------------|--------------|
| Lunch | Same rate as established by OFM for state employees | x | | |
| Personal hygiene | | x | x | x |
| Professional, trade, association, union, and bonds | | x | | x |
| Relocation related to employment or safety (can include rent, housing, and deposits) | | x | x | |
| Short-term lodging and meals in connection with job interviews/tests | Same rate as established by OFM for state employees | x | | |
| Tools/equipment | | x | x | x |
| Car repair needed to restore car to operable condition | | x | x | x |
| License/fees | | x | x | x |
| Mileage reimbursement | Same rate as established by OFM for state employees | x | x | x |
| Transportation allotment, including fuel support | | x | x | x |
| Counseling | | x | x | x |
| Educational expenses | | x | x | x |
| Medical exams (not covered by medicaid) | | x | x | x |
| Public transportation | | x | x | x |
| Testing-diagnostic | | x | x | x |
| <u>Housing and utilities</u> | <u>Funding allocated for 07/01/2022 - 06/30/2023 only</u> | <u>x</u> | <u>x</u> | <u>x</u> |

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

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

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

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

The department will give you ((ten)) 10 days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.250. WSR 22-01-143, § 388-310-0800, filed 12/15/21, effective 1/15/22. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 15-18-024, § 388-310-0800, filed 8/25/15, effective 9/25/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.62.030, 74.09.035, 74.08.090, 74.09.530, 41.05.021, 2011 1st sp.s. c 15, and 2013 2nd sp.s. c 10. WSR 14-10-046, § 388-310-0800, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.250. WSR 13-02-048, § 388-310-0800, filed 12/24/12, effective 2/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 10-22-061, § 388-310-0800, filed 10/29/10, effective 12/1/10; WSR 09-06-053, § 388-310-0800, filed 2/26/09, effective 4/1/09. Statutory Authority: RCW 74.04.050 and 74.04.055. WSR 08-18-045, § 388-310-0800, filed 8/29/08, effective 10/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.260, chapter 74.08A RCW. WSR 06-10-035, § 388-310-0800, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050,

74.08A.340. WSR 05-02-014, § 388-310-0800, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340, and 2003 c 10 § 207. WSR 03-21-154, § 388-310-0800, filed 10/22/03, effective 10/27/03. Statutory Authority: RCW 74.08.090, 74.04.050, 78.08A.340, and [WSR] 99-14-043. WSR 02-11-130, § 388-310-0800, filed 5/21/02, effective 7/1/02; WSR 01-17-053, § 388-310-0800, filed 8/13/01, effective 9/1/01. Statutory Authority: RCW 74.08.090, 74.04.050, and 78.08A.340. WSR 00-13-106, § 388-310-0800, filed 6/21/00, effective 7/1/00. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 99-14-043, § 388-310-0800, filed 6/30/99, effective 7/31/99; WSR 97-20-129, § 388-310-0800, filed 10/1/97, effective 11/1/97.]

WSR 22-14-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-120—Filed June 29, 2022, 3:40 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The purpose of this emergency rule is to open recreational Chinook harvest seasons in the Icicle River.

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

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

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

Reasons for this Finding: This rule is needed to open hatchery Chinook retention in the Icicle River. Much of the spring Chinook run destined for the Icicle River has just recently moved into the Icicle River and hatchery broodstock goals have been met. Extending the fishery will allow anglers additional opportunity to harvest these fish. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 29, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000P Freshwater exceptions to statewide rules—Eastside. Effective 1 hour before official sunrise July 1 through 1 hour after official sunset July 17, 2022, provisions of WAC 220-312-050 regarding salmon seasons for the Icicle River shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

Icicle River:

(a) From the closure signs located 800 feet upstream of the mouth of the river to 500 feet downstream from the Leavenworth National Fish Hatchery Barrier Dam: Salmon:

(i) Daily limit 2. Release all salmon other than hatchery Chinook.

(ii) Anglers must retain first 2 hatchery Chinook over 12 inches in length.

(iii) Night closure in effect.

(b) From the shoreline markers where Cyo Road intersects the Icicle River at the Sleeping Lady Resort to the Icicle Peshastin Irrigation Footbridge (approximately 750 feet upstream from the Snow Lakes trailhead parking area): Salmon:

(i) Daily limit 2. Release all salmon other than hatchery Chinook.

(ii) Anglers must retain first 2 hatchery Chinook over 12 inches in length.

(iii) Night closure in effect.

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WSR 22-14-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-119—Filed June 29, 2022, 3:46 p.m., effective June 30, 2022]

Effective Date of Rule: June 30, 2022.

Purpose: The provisions of this emergency rule:

(1) Open a commercial nonspot shrimp clean up fishery in Subregion 1C in Puget Sound from June 30 through July 5, 2022.

(2) Allow spot shrimp commercial harvest from select subareas and subregions simultaneously in a single day.

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

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

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

Reasons for this Finding: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require adoption of harvest seasons contained in this emergency rule.

This emergency rule is necessary to prosecute state commercial shrimp pot and trawl fisheries in Puget Sound. It allows harvesters to both respond to dynamic changes in market conditions and promotes full utilization of both the commercial spot and nonspot shares. These rules are in congruence with 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: June 29, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000W Commercial shrimp pot fishery—Puget Sound.

Notwithstanding the provisions of WAC 220-340-520, effective June 30, 2022, until further notice, or until they expire pursuant to RCW

34.05.350, it is unlawful to fish for shrimp for commercial purposes using pot gear in Puget Sound except as provided for in this section:

(1) In all areas fishers are limited to a maximum of 100 spot shrimp pots, as defined in WAC 220-340-520 (5)d, and a maximum of 100 non-spot shrimp pots, as defined in WAC 220-340-520 (5)e.

(2) Spot Shrimp Pot Harvests:

(a) Spot shrimp harvest is permitted as indicated in the following table opening one hour before official rise until further notice. Any closures take effect one hour after official sunset.

| Geographical Management Unit (WAC 220-320-140) | Status | Effective Date |
|--|--------|----------------|
| Subregion 1A | Open | immediately |
| Subregion 1B | Closed | |
| Subregion 1C | Open | immediately |
| Region 2E | Closed | |
| Region 2W | Closed | |
| Subarea 23A-E | Open | immediately |
| Subarea 23A-W | Open | immediately |
| Subarea 23A-C and MSFS Catch Area 23B | Open | immediately |
| Subarea 23A-S and MSFS Catch Area 23D | Open | immediately |
| MFSF Catch Area 23C | Open | immediately |
| MFSF Catch Area 25A, excluding the Discovery Bay Shrimp District | Open | immediately |
| Discovery Bay Shrimp District | Closed | |
| MFSF 29 (Straits - Neah Bay) | Open | immediately |
| Subarea 26B-1 and MFSF Catch Area 26C | Closed | |
| Subarea 26B-2 | Open | immediately |
| Region 5 | Closed | |
| MFSF Catch Area 26D | Closed | |
| MFSF Catch Areas 28A, 28B, 28C, and 28D | Closed | |

(b) The first spot shrimp catch accounting period starts one hour before official sunrise on May 1, 2022, through one hour after official sunset on August 2, 2022.

(c) It is unlawful for the total harvest during the first spot shrimp accounting period to exceed 4,500 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(d) It is unlawful to harvest spot shrimp from more than one Geographical Management Unit listed in 2(a) in a single day with the following exceptions:

(i) Spot shrimp may be harvested from subregion 1A and subregion 1C on the same day.

(ii) Spot shrimp may be harvested from subarea 23A-E, and either 23A-W, 23A-C or MFSF Catch Area 23B on the same day.

(3) Non-spot shrimp pot harvests:

(a) Non-spot shrimp pot harvest is permitted as indicated in the following table opening one hour before official rise until further notice. Any closures take effect one hour after official sunset.

| Geographical Management Unit (WAC 220-320-140) | Status | Effective Date |
|--|---------------------|---------------------|
| Subregion 1A | Open | immediately |
| Subregion 1B | Closed | immediately |
| Subregion 1C | See Subsection 3(g) | See Subsection 3(g) |

| | | |
|---|--------|-------------|
| Region 2E | Open | immediately |
| Region 2W | Open | immediately |
| Region 3, not including Discovery Bay Shrimp District | Open | immediately |
| Discovery Bay Shrimp District | Open | immediately |
| Region 4 | Closed | |
| Region 5 | Closed | |
| Region 6 | Closed | |

(b) The non-spot shrimp catch accounting period is weekly from one hour before official sunrise each Wednesday through one hour after official sunset on the subsequent Tuesday, totaling 7 days in length.

(c) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 700 pounds per non-spot shrimp catch accounting week from subregions 1A, 1B, 1C, and Region 2E combined.

(d) There is no weekly harvest limit of non-spot shrimp from Region 2W, Region 3, and Discovery Bay Shrimp District.

(e) Harvest of non-spot shrimp is not permitted deeper than 175 feet in subarea 23A East or subregion 1A.

(f) It is unlawful to harvest non-spot shrimp in more than one Geographical Management unit listed in 3(a) in a single day with the following exceptions:

(i) Non-spot shrimp may be harvested from more than one subregion of Region 1 on the same day.

(ii) Non-spot shrimp may be harvested from Discovery Bay Shrimp District and Region 3 on the same day.

(g) Non-spot pot harvest is permitted in sub region 1C effective one hour before official sunrise on June 30, 2022 through one hour after official sunset on July 5, 2022 or when the available commercial share has been harvested, whichever comes first.

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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 effective June 30, 2022:

WAC 220-340-52000V Commercial shrimp pot fishery—Puget Sound. (22-109)

WSR 22-14-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-121—Filed June 29, 2022, 3:54 p.m., effective June 29, 2022, 3:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to extend spring Chinook retention seasons in the Nooksack River, North Fork.

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

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

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

Reasons for this Finding: River conditions have continued to be poor for sport fishing throughout most of this season and catch remains within guidelines. The fishery will continue to be monitored and may close earlier than scheduled if the total encounters agreed to may be reached. There will be no further extensions for this fishery.

This rule also maintains salmon seasons for the Skagit River, Cascade River, and Nooksack River, North Fork that were originally set in WSR 22-12-021 on May 28; WSR 22-13-004 on June 1; WSR 22-13-057 on June 8; WSR 22-13-073 on June 9; and WSR 22-14-041 on June 27, 2022.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 29, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000H Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through July 15, 2022, the following provisions of WAC 220-312-040 regarding salmon seasons for the Cascade River, Nooksack River, North Fork, and Skagit River, and periodic all species closures for Skagit River shall be modified during the dates and in locations listed and described herein. All other pro-

visions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

(1) **Cascade River** (Skagit Co.): From mouth to Rockport-Cascade Rd. Bridge: Salmon: Effective immediately, through July 15, 2022:

(a) Daily limit 4 of which up to 2 adults may be retained. Release all salmon other than hatchery Chinook.

(b) Night closure and Anti-snagging rule in effect.

(2) **Nooksack River, North Fork** (Whatcom Co.): From the Hwy. 9 Bridge to the yellow marker at the upstream side of the Kendall Hatchery: Salmon: Effective immediately, through July 10, 2022:

(a) Daily limit 2. Release all salmon other than hatchery Chinook.

(b) Night closure and Anti-snagging rule in effect.

(3) **Skagit River** (Skagit Co.):

(a) From Hwy. 536 Bridge (Memorial Hwy. Bridge) in Mt. Vernon to the Hwy. 9 Bridge in Sedro Woolley: Salmon: Effective immediately, through July 15, 2022:

(i) Daily limit 2 sockeye. Release all salmon other than sockeye.

(ii) Night closure in effect.

(iii) Selective gear rules are not in effect for salmon.

(b) From Hwy. 9 Bridge in Sedro Woolley to the Dalles Bridge at Concrete: Effective immediately, through July 15, 2022:

(i) Salmon: Open (see exception in subsection (ii))

(A) Daily limit 2 sockeye. Release all salmon other than sockeye.

(B) Night closure in effect.

(C) Selective gear rules are not in effect for salmon.

(ii) All species: Closed waters immediately, through June 30, 2022.

(c) From the Dalles Bridge at Concrete to line projected across the thread of the river 200 feet below the west bank of the Baker River: Effective immediately, through June 30, 2022: All species: Closed waters.

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REPEALER

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

WAC 220-312-04000G Freshwater exceptions to statewide rules—Puget Sound. (22-117)

WSR 22-14-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 30, 2022, 8:29 a.m., effective June 30, 2022, 8:29 a.m.]

Effective Date of Rule: Immediately upon filing.

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

In June of 2022, the SeaLife Response Rehabilitation and Research (SR3) team contracted by the Washington department of fish and wildlife (WDFW) to monitor SRKW body condition concluded their analysis of SRKW observations collected between September 2021 and April 2022.

Body Condition: SR3 uses measurements taken from drone photographs and statistical analyses detailed in Stewart et al. (2021) to identify whales in poor condition, which means the orca's body condition falls in the lowest 20 percent of measurements for their age and sex compared to comparable measurements from 2016-2022. This lowest body condition state is classified as "BC1." The best available science suggests that whales measured to be in the "poor condition" state had a significantly increased (two to three times higher) probability of subsequent mortality.

There were 12 whales in the BC1 state from J and L pods, including one calf (C), one adult male (M), five adult females (F), one juvenile (J), and four subadult males (S): J27(M), J36(F), J44(S), J49(J), J56(C), L54(F), L83(F), L90(F), L94(F), L110(S), L116(S), and L117(S).

This includes six whales that were measured to be in BC1 in both September 2021 and fall-spring 2022, plus an additional L pod female (L94) that was not imaged in September. Additionally, there were four whales which have declined into poor condition since September and are now listed as BC1 (J27, J44, J49, L90). L54 was not imaged in the fall-spring 2022 period, but is on the list because she was measured to be BC1 when last imaged in September 2021. Typically, when the southern residents return to the Salish Sea in the spring, they are significantly leaner than in the fall (Fearnbach et al. 2019), and thus we have no reason to believe that L54's condition has improved. No K pod whales were imaged in the fall-spring 2022 period, but none were measured to be in BC1 in September 2021 when all were imaged.

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

within 9 months of birth, out of an approximately 17-month gestation period). Four females were determined to fall in this classification when last measured: K12, K20, K27, and L72. Recent online videos show a young calf traveling with K pod, and most likely one of K12, K20, or K27 is the mother. These K pod whales were last measured in September 2021, so we expect these pregnancies may have ended as of late June 2022. However, if these whales are encountered and still exhibit signs of late-stage pregnancy, an emergency rule at that time will be warranted. Currently, we expect L72 remains in late-stage pregnancy, meriting vulnerable status. As a reminder, calves and their mothers receive extra protection via WAC 220-460-110, which prohibits motorized commercial whale watching vessels from approaching within one-half nautical mile of a group of SRKW that contains a calf of under one year of age.

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

Per WAC 220-460-110, the department is adopting an emergency rule to designate J27, J36, J44, J49, J56, L54, L83, L90, L94, L110, L116, L117, and L72 as vulnerable and thereby prevent commercial whale watching operators from approaching these individuals or a group containing any of these individuals within 0.5 nautical mile. This designation and the additional distance is necessary to ensure that the ability of these whales to survive is not hindered by the presence of vessels.

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

Statutory Authority for Adoption: RCW 77.65.620.

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

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

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

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

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

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

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

Date Adopted: June 30, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-460-110D Southern Resident Killer Whales J27, J36, J44, J49, J56, L54, L83, L90, L94, L110, L116, L117, and L72 In conjunction with WAC 220-460-110(2), the department designates the Southern Resident Killer Whales J27, J36, J44, J49, J56, L54, L83, L90, L94, L110, L116, L117, and L72 as vulnerable individuals.

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WSR 22-14-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-124—Filed June 30, 2022, 9:29 a.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The purpose of this emergency rule is to return Klickitat River salmon seasons to permanent rules.

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

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

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

Reasons for this Finding: This rule is needed to return Klickitat River salmon fisheries to permanent rules.

The adult salmon daily limit on the Klickitat River was reduced earlier in the year to help ensure the spring Chinook broodstock collection goal was achieved. Adult Chinook collection at Klickitat Salmon Hatchery is currently at 95 percent of the broodstock goal and is likely to be met in the near future; therefore, a reduced daily limit for adult Chinook is no longer needed.

This rule maintains rules set for Lewis River in WSR 22-13-143, Order 22-105, on June 17, 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 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 30, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000P Freshwater exceptions to statewide rules—Southwest. Effective July 1 through July 31, 2022, the provisions of WAC 220-312-030 regarding the Lewis river's salmon 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:

Lewis River (Clark/Cowlitz Co.):

From the mouth to the overhead powerlines below Merwin Dam: Effective immediately, through July 31, 2022:

Salmon: Daily limit 6; up to 2 adults may be retained. Release all salmon other than hatchery Chinook.

[]

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

REPEALER

The following sections of the Washington Administrative Code are repealed, effective July 1, 2022:

WAC 220-312-03000N Freshwater exceptions to statewide rules—Southwest. (22-105)

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 22-14-075

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed June 30, 2022, 1:44 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The agency is amending WAC 182-515-1509 to align with SB [SSB] 5745. This bill increases the personal needs allowance for people receiving home and community-based waiver services to an amount no less than 300 percent of the federal benefit rate.

Citation of Rules Affected by this Order: Amending WAC 182-515-1509.

Statutory Authority for Adoption: SB [SSB] 5745, 67th legislature, 2021 regular session; RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: Emergency rule making is necessary because the underlying authorization, SB [SSB] 5745, increases the personal needs allowance for certain people, effective July 1, 2022. The agency has rule making pending, but it will not have permanent rules in place by that date.

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: June 30, 2022.

Wendy Barcus
Rules Coordinator

OTS-3842.2

AMENDATORY SECTION (Amending WSR 20-08-082, filed 3/27/20, effective 4/27/20)

WAC 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility. (1) A client eligible for home and community based (HCB) waiver services authorized by home and community services (HCS) under WAC 182-515-1508 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS when living ((a~~t~~)) in their own home:

(a) A single client who lives ((a~~t~~)) in their own home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to 300% of the federal ((poverty level (FPL))) benefit rate (FBR) for the supplemental security income (SSI) cash grant program and must pay the remaining available income toward cost of care after allowable deductions described in subsection (4) of this section. The Washington apple health income and resource standards chart identifies 300% of the FBR as the medical special income level (SIL).

(b) A married client who lives with the client's spouse ((a~~t~~)) in their own home (as defined in WAC 388-106-0010) keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of the client's available income toward cost of care after allowable deductions under subsection (4) of this section.

(c) A married client who lives ((a~~t~~)) in their own home and apart from the client's spouse keeps a PNA of up to the ((FPL)) SIL but must pay the remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living ((a~~t~~)) in their own home where each client receives HCB waiver services is each allowed to keep a PNA of up to the ((FPL)) SIL but must pay remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(e) A married couple living ((a~~t~~)) in their own home where each client receives HCB waiver services, one spouse authorized by the developmental disabilities administration (DDA) and the other authorized by HCS, is allowed the following:

(i) The client authorized by DDA pays toward the cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The client authorized by HCS retains the ((federal poverty level (FPL))) SIL and pays the remainder of the available income toward cost of care after allowable deductions under subsection (4) of this section.

(3) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS and room and board when living in a department contracted alternate living facility (ALF) defined under WAC 182-513-1100. A Client:

(a) Keeps a PNA of under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by deductions in the following order:

(a) An earned income deduction of the first \$65 plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the

garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA, as calculated under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the special income level (SIL) defined under WAC 182-513-1100:

(a) The PNA allowed in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, and the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at (~~www.heca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-08-082, § 182-515-1509, filed 3/27/20, effective 4/27/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-515-1509, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-515-1509, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as WAC 182-515-1509, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1). WSR 12-21-091, § 388-515-1509, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530 and Washington state 2007-09 operating budget (SHB 1128). WSR 08-22-052, § 388-515-1509, filed 11/3/08, effective 12/4/08.]

WSR 22-14-076
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 30, 2022, 2:53 p.m., effective July 8, 2022]

Effective Date of Rule: July 8, 2022.

Purpose: The department is extending the amendment of the rule listed below to assure [ensure] certified community residential services and supports (CCRSS) providers are not significantly impeded from providing services and support to clients during the COVID-19 pandemic. Governor Inslee's Proclamation 20-18 and subsequent extensions identified that the pandemic has resulted in disruptions of long-term care systems, including the ability to safely conduct inspections. The governor's proclamations included the suspension of licensing inspections for all long-term care settings with the exception of CCRSS settings. Current rule states the department may conduct an on-site certification evaluation for each service provider at any time, but at least once every two years. The amendment lengthens the amount of time to complete certification evaluations that are currently suspended for consistency and safety across all programs regulated by the department. The amendment will allow the department additional time to complete certification evaluations when it is safe and practical to do so. In addition, under the rule development phase of rule making, the department is in discussions with stakeholders about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary. The department previously filed the CR-101 under WSR 20-24-092 and is continuing the process of permanent rule making. In addition, under the rule development phase of rule making, the department is in discussions with stakeholders about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary. In the meantime, the department is extending the emergency rule under RCW 34.05.350.

Citation of Rules Affected by this Order: Amending WAC 388-101-3130.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.080.

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

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as CCRSS settings. Current CCRSS rules ensure the department may conduct on-site certification evaluations of each CCRSS service provider at any time, but at least every two years. Due to the suspension of certification evaluations, as proclaimed for all other long-term care settings related to the COVID-19 pandemic, the amendment will allow for additional time to complete the certification evaluations when the pandemic subsides.

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: June 30, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4821.1

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3130 Certification evaluation. (1) The department may conduct an on-site certification evaluation of each service provider at any time (~~(, but at least once every two years)~~).

(2) During certification evaluations the service provider's administrator or designee must:

(a) Cooperate with department representatives during the on-site visit;

(b) Provide all contractor records, client records, and other relevant information requested by the department representatives;

(c) Ensure the service provider's administrator or designee is available during any visit to respond to questions or issues identified by department representatives; and

(d) Ensure the service provider's administrator or designee is present at the exit conference.

[Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3130, filed 12/21/07, effective 2/1/08.]

WSR 22-14-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-127—Filed June 30, 2022, 4:20 p.m., effective July 2, 2022]

Effective Date of Rule: July 2, 2022.

Purpose: The purpose of this emergency rule is to close salmon seasons in Catch Record Card Area 4 and to reduce the Chinook portion of the salmon daily limit in Catch Record Card Area 3.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500H; and amending WAC 220-313-075.

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

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

Reasons for this Finding: This emergency rule is needed because Neah Bay has harvested a significant portion of its Chinook quota, and closure of waters east of the Bonilla-Tatooshline and subsequent closure of the entire area should reserve some Chinook quota for reopening the area later in the summer when more coho salmon are present. Modification of the daily limit for Area 3 is to ensure that Chinook quota in that area is not consumed quickly as more Chinook move through the area, and fishing effort potentially increases due to closure of Area 4.

This rule also maintains previously established recreational salmon seasons in Areas 1 and 2.

These rules for in-state waters are consistent with federal salmon fishing regulations adopted by the National Marine Fisheries Service in response to actions taken by the Pacific Fishery Management Council to set salmon fishery harvest specifications and management measures; this action is intended to achieve regulatory consistency in federal and state waters for the ocean recreational salmon fishery, which operates in both areas.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 30, 2022.

Kelly Susewind
Director

NEW SECTION**WAC 220-313-07500I Pacific Ocean salmon—Seasons—Closed areas.**

Effective July 2 through October 8, 2022 the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

(1) **Catch Record Card Area 1:** Open immediately through September 30, 2022:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.

(2) **Catch Record Card Area 2:** Open immediately through September 30, 2022:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.

(e) July 4 through August 7, 2022 the Grays Harbor Control Zone is open. See WAC 220-306-040.

(3) **Catch Record Card Area 3:**

(a) Open immediately through July 3, 2022:

- (i) Daily limit of 2 salmon.
- (ii) Release wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.

(b) Open July 4 through September 30, 2022:

- (i) Daily limit of 2 salmon; no more than one may be a Chinook.
- (ii) Release wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.
- (v) Release chum beginning August 1.

(c) Open October 5 through October 8, 2022 only in the area north of 47°50'00" N. lat. and south of 48°00'00" N. lat.:

- (i) Daily limit 2 Chinook salmon only.
- (ii) Release all salmon except Chinook.
- (iii) Chinook minimum length 24 inches.

(4) **Catch Record Card Area 4:** Open July 2 through July 4, 2022:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho.
- (c) Chinook minimum length 24 inches.
- (d) Coho minimum length 16 inches.
- (e) Closed in waters east of the Bonilla-Tatoosh line

[]

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

REPEALER

The following section of Washington Administrative Code is repealed, effective July 2, 2022:

WAC 220-313-07500H Pacific Ocean salmon—Seasons—Closed
areas. (22-110)

WSR 22-14-078
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-122—Filed June 30, 2022, 4:22 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The purpose of this emergency rule is to increase daily sockeye limits in the Columbia River areas listed within this rule.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000U; and amending WAC 220-312-050 and 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 action is necessary to increase daily sockeye limits and reopen adult summer Chinook retention in the areas listed within this rule.

The *U.S. v. OR* technical advisory committee (TAC) updated both the 2022 preseason summer Chinook and sockeye returns from 56,300 to 66,800, and 198,700 to 426,000, respectively. At this updated run size there are additional sockeye available for the mainstem Columbia, Okanogan, and Similkameen rivers. TAC is comprised of representatives from Washington, Oregon, Idaho, NOAA, and the treaty tribes and are responsible for developing preseason and in-season run forecast that salmon season are based on.

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 on June 30, 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 Endangered Species Act (ESA). On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the 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 1.

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

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

Date Adopted: June 30, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia River. Effective July 1 through October 15, 2022, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Megler-Astoria Bridge to Chief Joseph Dam, shall be modified during the dates listed and as described below. All year-round Closed Waters areas remain in effect. Other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From the Megler-Astoria Bridge upstream to 600 feet below the fish ladder at the new Bonneville Powerhouse: Salmon and steelhead:

(a) Effective July 1 through July 13, 2022: Daily limit 6. No more than 2 adults may be retained, of which up to 1 may be a hatchery steelhead. Release all salmon other than sockeye and hatchery Chinook. Release wild steelhead.

(b) Effective July 14 through July 31, 2022: Daily limit 6. No more than 2 adults may be retained, of which up to 1 may be a hatchery steelhead. Release all salmon other than sockeye and hatchery jack Chinook. Release wild steelhead.

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

Effective July 1 through July 31, 2022: Daily limit 6. No more than 2 adults may be retained, of which up to 1 may be a hatchery steelhead. Release all salmon other than sockeye and hatchery Chinook. Release wild steelhead.

(3) From The Dalles Dam upstream to a line starting from a fishing boundary sign on the Washington north shore located approximately

1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington southern shore located approximately 200' above the fish ladder exit: Salmon and steelhead:

Effective June 16, 2022, until further notice: Closed to fishing for and retention of salmon and steelhead.

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

Effective July 1 through July 31, 2022: Daily limit 6. No more than 2 adults may be retained, of which up to 1 may be a hatchery steelhead. Release all salmon other than sockeye and hatchery Chinook. Release wild steelhead.

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

(a) Effective immediately through July 15, 2022: Closed to angling from a floating device or by any method except hand-cast lines from the west shore (Richland side of the river).

(b) Effective July 1 through July 15, 2022: Daily limit 6. No more than 3 adult salmon may be retained of which no more than 2 may be hatchery Chinook. Release wild adult Chinook.

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

Effective July 1 through August 15, 2022: Daily limit 6. No more than 3 adult salmon may be retained of which no more than 2 may be hatchery Chinook. Release wild adult Chinook.

(7) From Priest Rapids Dam to boundary markers 400 feet downstream of the fish ladders at Rock Island Dam: Salmon:

Effective July 1 through August 31, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho.

(8) From Rock Island Dam to Boundary 400 feet below the Wells Dam spawning channel discharge (on Chelan County side) and fish ladder (on Douglas County side): Salmon:

Effective July 1 through October 15, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho.

(9) From Wells Dam to Hwy. 173 Bridge at Brewster: Salmon:

Effective July 16 through September 30, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho.

(10) From Hwy. 173 Bridge at Brewster to the rock jetty at the upstream shoreline of Foster Creek (Douglas County side): Salmon:

Effective July 1 through October 15, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho.

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NEW SECTION

WAC 220-312-05000Q Freshwater exceptions to statewide rules—Eastside. Effective July 1 through October 15, 2022, the provisions of WAC 220-312-050 regarding recreational salmon seasons in the Okanogan and Similkameen rivers, shall be modified during the dates listed and as described below. All provisions of WAC 220-312-050 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Okanogan River (Okanogan Co.):

(a) From the mouth to the Hwy. 97 bridge immediately upstream of the mouth: Salmon:

Effective July 1 through October 15, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho. Night closure and Anti-snagging rule in effect. Two-pole fishing is allowed with valid a two-pole endorsement.

(b) From the Hwy. 97 bridge immediately upstream of the mouth to the Hwy. 97 bridge at Oroville: Salmon:

Effective July 1 through September 15, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho. Night closure and Anti-snagging rule in effect.

(2) Similkameen River (Okanogan Co.): From the mouth to 400 feet below Enloe Dam: Salmon:

Effective July 1 through September 15, 2022: Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release wild adult Chinook and coho. Night closure and Anti-snagging rule in effect.

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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 July 1, 2022:

WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia. (22-94)

WSR 22-14-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-126—Filed July 1, 2022, 4:40 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The purpose of this emergency rule is to amend coastal commercial salmon troll rules.

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

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 30, 2022.

Kelly Susewind
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective July 1, 2021, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open: July 1 through September 30, 2022.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.), open: July 1 through August 7, 2021.

(3) Landing and possession limit of 50 Chinook per vessel for the period July 1 - July 6.

(4) Beginning July 7, landing and possession limit of 40 Chinook per vessel per landing week, defined as Thursday through Wednesday.

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

(6) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

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

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

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

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

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

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

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

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

(c) Vessels may not land fish east of the Megler-Astoria bridge.

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

(a) Vessels in possession of salmon south of the Queets River may not cross the Queets River line (47°31'42"N. lat.) without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov

with area fished, total Chinook, coho, and halibut catch aboard and destination.

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

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

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REPEALER

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

WAC 220-354-30000F Coastal salmon troll seasons—
Commercial. (22-113)

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 22-14-080
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-125—Filed July 1, 2022, 6:16 p.m., effective July 1, 2022, 6:16 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 220-359-02000C; 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 Zone 6 treaty commercial gillnet fishery upstream of Bonneville Dam. This rule is consistent with actions of the Columbia River Compact on June 2 and 30, 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 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: June 30, 2022.

Kelly Susewind
Director

NEW SECTION

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

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

(a) Season: Immediately, through 11:59 PM July 31, 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 may not be sold, but 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 kept for subsistence purposes only.

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

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

(a) Season: Immediately, through 11:59 PM July 31, 2022. Only during days and times opened under tribal rule.

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

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

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

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

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

(c) Allowable sales: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence. Sales of fish are allowed after the open period concludes, as long as the fish were landed during the open period.

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

(a) Season:

(i) Immediately, through 6 PM Friday, July 1, 2022

(ii) 6 AM Monday July 4 to 6 PM Friday, July 8, 2022

(iii) 6 AM Monday July 11 to 6 PM Friday, July 15, 2022

(b) Gear:

(i) Set and Drift Gill nets with a 7" minimum mesh size restriction immediately, through 6 PM Friday, July 1, 2022

(ii) Set and Drift Gill nets with a 7" minimum mesh size restriction 6 AM Monday July 4 to 6 PM Friday, July 8, 2022

(iii) Set and Drift Gill nets with no mesh size restriction 6 AM Monday July 11 to 6 PM Friday, July 15, 2022

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

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

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

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

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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:

WAC 220-359-02000C Columbia River salmon seasons above
Bonneville Dam. (22-91)

WSR 22-14-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-129—Filed July 1, 2022, 11:03 a.m., effective July 1, 2022, 11:03 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to amend coastal commercial salmon troll rules.

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

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

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

Reasons for this Finding: This rule is necessary to correct an error in the previously filed rule for coastal salmon troll seasons, WSR 22-14-079, Order 22-126, filed June 30, 2022. An incorrect year was listed for subsection (2) in the previous filing; this filing corrects that year.

A harvestable quota of salmon is available for the troll fleet. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 1, 2022.

Kelly Susewind
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective immediately, until further notice, it is

unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00"W longitude and south of 48°23'00"N latitude open: Immediately, through September 30, 2022.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.), open: Immediately, through August 7, 2022.

(3) Landing and possession limit of 50 Chinook per vessel for the period July 1 - July 6, 2022.

(4) Beginning July 7, landing and possession limit of 40 Chinook per vessel per landing week, defined as Thursday through Wednesday.

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

(6) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

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

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

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

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

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

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

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

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

(c) Vessels may not land fish east of the Megler-Astoria bridge.

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

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

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

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

[]

REPEALER

The following section Washington Administrative Code is repealed effective immediately:

WAC 220-354-30000G Coastal salmon troll seasons—
Commercial. (22-126)

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 22-14-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-128—Filed July 1, 2022, 1:01 p.m., effective July 1, 2022, 1:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational shrimp rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000M; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available, but recreational shares will only support a limited number of days in the marine areas listed in this section. In addition, this emergency regulation opens the Marine Area 4 (east of the Bonilla-Tatoosh line), 5, 6, and 7 West seasons one hour before sunrise to one hour after sunset, which is the default daily start time and end time for those areas. This regulation opens the recreational nonspot shrimp fisheries on the dates listed for Marine Areas 8-1, 8-2, and 7 East and maintains the recreational nonspot shrimp fishery already open in Marine Areas 9, 11, and 13. The nonspot shrimp fisheries have maximum depth restrictions specific to each area to limit capture and handling of spot shrimp. Spot shrimp must be immediately released unharmed during nonspot shrimp seasons. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: July 1, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000N Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective immediately it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5: Open each day, from 1 hour before official sunrise to 1 hour after official sunset, until further notice for all shrimp species.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open from 1 hour before official sunrise to 1 hour after official sunset on July 7 through 9, and July 21 through 23 for all shrimp species.

(3) Marine Area 7 West: Open from 1 hour before official sunrise to 1 hour after official sunset on July 7 through 9 for all shrimp species.

(4) Marine Area 7 South: Open from 1 hour before official sunrise to 1 hour after official sunset on July 7 through July 9 for all shrimp species.

(5) Marine Areas 7 East: Open July 2 through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(6) Marine Areas 8-1 and 8-2: Open July 2 through October 15 for shrimp species other than spot shrimp with a 175-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 175 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(7) Marine Area 9: Open through October 15 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(8) Marine Area 11: Open through October 15 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(9) Marine Area 12: Open July 6 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(10) Marine Area 13: Open through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

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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:

WAC 220-330-07000M Shrimp—Areas and seasons. (22-106)

WSR 22-14-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-130—Filed July 1, 2022, 1:27 p.m., effective July 5, 2022]

Effective Date of Rule: July 5, 2022.

Purpose: The purpose of this emergency rule is to modify salmon seasons in Catch Record Card Area 5 by closing odd numbered dates beginning July 5 for the duration of July.

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

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

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

Reasons for this Finding: These closure dates are necessary to maximize season length while remaining within catch and encounter limits for Chinook salmon for Area 5.

Catch rates have been high to date in neighboring Marine Area 4, necessitating its closure next week and creating the potential for shift of fishing effort to Area 5. The alternating day closures were recommended by Puget Sound recreational fishery advisors and representatives of the Sekiu community as the preferred method for attempting to ensure total closure of the area is not needed early in the season.

This rule also maintains rules for Catch Record Card Areas 6, 7, 9, 10, 11, and 12, set by WSR 22-14-045, Order 22-118, filed June 27, 2022.

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: July 1, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000Y Puget Sound salmon—Saltwater seasons and daily limits. Effective July 5 through July 31, 2022, the following

provisions of WAC 220-313-060 regarding salmon seasons for the Puget Sound Catch Record Card Areas shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) **Catch Record Card Area 5:**

(a) Effective July 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 2022:

(i) Daily limit 2; up to 1 may be a Chinook.

(ii) Release chum, wild Chinook and wild coho.

(b) Effective July 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, and 31, 2022: Closed

(2) **Catch Record Card Area 6:**

(a) Daily limit 2; up to 1 may be a Chinook.

(b) Release chum, wild Chinook and wild coho.

(c) Waters east of a true north-south line through the Number 2 Buoy immediately east of Ediz Hook: Release all Chinook.

(d) Waters of Port Angeles Harbor west of a line from the tip of Ediz Hook to the ITT Rayonier Dock: Closed.

(e) Waters of Dungeness Bay inside a line from Dungeness Spit Lighthouse to the Number 2 Red Buoy, and then to the Port Williams Boat Ramp: Closed.

(3) **Catch Record Card Area 7:**

(a) July 1 through July 13: Closed.

(b) July 14 through July 16:

(i) Daily limit 2; up to 1 may be a Chinook.

(ii) Release chum, wild Chinook and wild coho.

(c) July 17 through July 31: Closed.

(d) Waters of Rosario Strait and Eastern Strait of Juan de Fuca closure area described in WAC 220-313-020(7): Closed.

(e) Waters of Bellingham Bay described in WAC 220-313-020(1): Closed.

(4) **Catch Record Card Area 9:**

(a) July 1 through July 13: Closed.

(b) July 14 through July 27: Open Thursdays through Saturdays of each week only:

(i) Daily limit 2; up to 1 may be a Chinook.

(ii) Release chum, wild Chinook and wild coho.

(c) July 28 through July 31:

(i) Daily limit 2; up to 1 may be a Chinook.

(ii) Release chum, wild Chinook and wild coho.

(d) Waters south of a line from Foulweather Bluff to Olele Point: Closed.

(5) **Catch Record Card Area 10:**

(a) July 1 through July 13:

(i) Daily limit 2.

(ii) Release Chinook and chum.

(b) July 14 through July 31:

(i) Daily limit 2; up to 1 may be a Chinook.

(ii) Release chum and wild Chinook.

(c) Waters of Shilshole Bay southeast of a line from Meadow Point to West Point: Closed.

(d) West Elliott Bay: Waters of Elliott Bay between a line from West Point to Alki Point and a line from Duwamish Head to Pier 91. Closed.

(e) East Elliot Bay: Waters of Elliott Bay between a line from Duwamish Head to Pier 91 up to the mouth of the Duwamish River including Harbor Island (Duwamish Waterways): Salmon: Closed.

(f) Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge in Bremerton, south of a line true west from Battle Point, and west of a line drawn true south from Point White:

- (i) Daily limit 3.
- (ii) Release chum and wild Chinook.

(g) Free-flowing freshwaters downstream of the mouth at Gorst Creek, Blackjack Creek, Chico Creek, Curley Creek, and Grovers Creek: Closed.

(h) Elliott Bay Fishing Pier at Terminal 86, Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier, open year-round:

- (i) Daily limit 2; up to 1 may be a Chinook.
- (ii) Release chum.

(i) Duwamish Waterway downstream from an east-west line projected through southernmost tip of Harbor Island to a line extending from Jack Block Park through the northernmost tip of Harbor Island extending to shore northeast of the North Waterway (47°35.47'N, 122°20.58'W):

- (i) Night closure and Anti-snagging rule in effect
- (ii) Only fish hooked inside the mouth may be retained.

(j) Free-flowing freshwaters downstream of the mouth at Gorst Creek, Blackjack Creek, Chico Creek, Curley Creek, Grovers Creek: Closed.

(6) Catch Record Card Area 11:

(a) Open Wednesdays through Saturdays of each week only:

- (i) Daily limit 2; up to 1 may be a Chinook.
- (ii) Release chum and wild Chinook.

(b) Waters of Commencement Bay east of a line from the Cliff House Restaurant to the Sperry Ocean Dock: Closed.

(c) Dash Point Dock, Les Davis Pier, Des Moines Pier, Redondo Pier, and Point Defiance Boathouse Dock:

- (i) Daily limit 2; up to 1 may be a Chinook.
- (ii) Release chum.

(7) Catch Record Card Area 12:

(a) Waters south of Ayock Point including waters within a 2,000-foot arc seaward of yellow buoys at the mouth of Finch Creek at Hoodsport Salmon Hatchery:

- (i) Daily limit 4.
- (ii) Release chum and wild Chinook.

(iii) Within a 2,000-foot arc seaward of yellow buoys at the mouth of Finch Creek at Hoodsport Salmon Hatchery: It is unlawful to fish for or possess salmon taken from these waters from one hour after sunset to one hour before sunrise.

(iv) Those waters of Hood Canal inshore of the 2 yellow buoy markers to the mouth of Finch Creek, waters within the channel created by Finch Creek on exposed tideland and fishing from any Hoodsport Hatchery structure are closed except to persons with disabilities who permanently use a wheelchair and who have a designated harvester card may fish from the ADA-access site at the Hoodsport Salmon Hatchery, as long as persons follow all applicable department rules.

(b) Waters north of Ayock Point: Closed

(c) Free-flowing freshwater is closed to all fishing downstream of the mouth of the Dewatto, Dosewallips, Duckabush, Hamma Hamma, and Skokomish rivers.

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REPEALER

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

WAC 220-313-06000X Puget Sound salmon—Saltwater seasons and daily limits. (22-118)

WSR 22-14-092

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed July 1, 2022, 3:17 p.m., effective July 1, 2022, 3:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is amending WAC 182-557-0225(7) to update the risk score weights specifically pertaining to children of various age groups outlined and the weights for health diagnoses for children. This update aligns with the release of version 6.5 of the University of San Diego's Chronic Illness and Disability Payment System (CDPS).

Citation of Rules Affected by this Order: Amending WAC 182-557-0225.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Not applicable.

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

Reasons for this Finding: This emergency filing is necessary to fix the outdated risk score weights. Medically needy children who currently do not qualify for programs (such as health homes) under the old CDPS version may qualify for these programs under the newest version 6.5, released in April 2022. The agency began the permanent rule-making process under WSR 22-12-029, filed May 24, 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 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: July 1, 2022.

Wendy Barcus
Rules Coordinator

OTS-3839.1

AMENDATORY SECTION (Amending WSR 17-24-111, filed 12/6/17, effective 1/6/18)

WAC 182-557-0225 Health home services—Methodology for calculating a person's risk score. The agency uses eight steps to calculate a person's risk score.

(1) **Step 1. Collect paid claims and health plan encounter data.**

The agency obtains a set of paid fee-for-service claims and managed care encounters for a client.

(a) For clients age (~~(seventeen)~~) 17 and younger, the agency uses all paid claims and encounters within the last (~~(twenty-four)~~) 24 months.

(b) For clients age (~~(eighteen)~~) 18 and older, the agency uses all paid claims and encounters within the last (~~(fifteen)~~) 15 months.

(i) The claims and encounters include the international classification of diseases (ICD) diagnosis codes and national drug codes (NDC) submitted by health care providers. These are used in steps 2 and 3 to create a set of risk categories.

(ii) The agency uses two algorithms developed by the University of San Diego:

(A) Chronic illness and disability payment system (CDPS) which assigns ICD diagnosis codes to CDPS risk categories (see Table 3 in subsection (5)(b) of this section); and

(B) Medical Rx (MRx) which assigns NDCs to MRx risk categories (see Table 2 in subsection (3)(b) of this section).

(2) **Step 2. Group ICD diagnosis codes into chronic illness and disability payment system risk categories.**

(a) To group ICD diagnosis codes into the CDPS risk categories (see Table 1 in (b) of this subsection), the agency uses an ICD diagnosis code to CDPS risk categories crosswalk in subsection

(1)(b)(ii)(A) of this section. Each of the ICD diagnosis codes listed is assigned to one risk category. If an ICD diagnosis code is not listed in the crosswalk it does not map to a risk category that is used in the calculation of the risk score.

(b) **Table 1. Titles of Chronic Illness and Disability Payment System Risk Categories**

| | |
|-------|--------------------------------|
| CARVH | Cardiovascular, very high |
| CARM | Cardiovascular, medium |
| CARL | Cardiovascular, low |
| CAREL | Cardiovascular, extra low |
| PSYH | Psychiatric, high |
| PSYM | Psychiatric, medium |
| PSYML | Psychiatric, medium low |
| PSYL | Psychiatric, low |
| SKCM | Skeletal, medium |
| SKCL | Skeletal, low |
| SKCVL | Skeletal, very low |
| CNSH | Central Nervous System, high |
| CNSM | Central Nervous System, medium |
| CNSL | Central Nervous System, low |
| PULVH | Pulmonary, very high |
| PULH | Pulmonary, high |
| PULM | Pulmonary, medium |
| PULL | Pulmonary, low |
| GIH | Gastro, high |
| GIM | Gastro, medium |
| GIL | Gastro, low |
| DIA1H | Diabetes, type 1 high |

| | |
|--------|----------------------------------|
| DIA1M | Diabetes, type 1 medium |
| DIA2M | Diabetes, type 2 medium |
| DIA2L | Diabetes, type 2 low |
| SKNH | Skin, high |
| SKNL | Skin, low |
| SKNVL | Skin, very low |
| RENEH | Renal, extra high |
| RENVH | Renal, very high |
| RENM | Renal, medium |
| RENL | Renal, low |
| SUBL | Substance abuse, low |
| SUBVL | Substance abuse, very low |
| CANVH | Cancer, very high |
| CANH | Cancer, high |
| CANM | Cancer, medium |
| CANL | Cancer, low |
| DDM | Developmental Disability, medium |
| DDL | Developmental Disability, low |
| GENEL | Genital, extra low |
| METH | Metabolic, high |
| METM | Metabolic, medium |
| METVL | Metabolic, very low |
| PRGCMP | Pregnancy, complete |
| PRGINC | Pregnancy, incomplete |
| EYEL | Eye, low |
| EYEVL | Eye, very low |
| CERL | Cerebrovascular, low |
| AIDSH | AIDS, high |
| INFH | Infectious, high |
| HIVM | HIV, medium |
| INFM | Infectious, medium |
| INFL | Infectious, low |
| HEMEH | Hematological, extra high |
| HEMVH | Hematological, very high |
| HEMM | Hematological, medium |
| HEML | Hematological, low |

(3) Step 3. Group national drug codes (NDCs) into MRx risk categories.

(a) To group the NDC codes into MRx risk categories (see Table 2 in (b) of this subsection), the agency uses a NDC code to MRx risk categories crosswalk in subsection (1)(b)(ii)(B) of this section.

(b) Table 2. Titles of Medicaid Rx Risk Categories

| | |
|------|-------------------|
| MRx1 | Alcoholism |
| MRx2 | Alzheimer's |
| MRx3 | Anti-coagulants |
| MRx4 | Asthma/COPD |
| MRx5 | Attention Deficit |
| MRx6 | Burns |
| MRx7 | Cardiac |

| | |
|-------|------------------------------|
| MRx8 | Cystic Fibrosis |
| MRx9 | Depression/Anxiety |
| MRx10 | Diabetes |
| MRx11 | EENT |
| MRx12 | ESRD/Renal |
| MRx13 | Folate Deficiency |
| MRx14 | CMV Retinitis |
| MRx15 | Gastric Acid Disorder |
| MRx16 | Glaucoma |
| MRx17 | Gout |
| MRx18 | Growth Hormone |
| MRx19 | Hemophilia/von Willebrands |
| MRx20 | Hepatitis |
| MRx21 | Herpes |
| MRx22 | HIV |
| MRx23 | Hyperlipidemia |
| MRx24 | Infections, high |
| MRx25 | Infections, medium |
| MRx26 | Infections, low |
| MRx27 | Inflammatory/Autoimmune |
| MRx28 | Insomnia |
| MRx29 | Iron Deficiency |
| MRx30 | Irrigating Solution |
| MRx31 | Liver Disease |
| MRx32 | Malignancies |
| MRx33 | Multiple Sclerosis/Paralysis |
| MRx34 | Nausea |
| MRx35 | Neurogenic Bladder |
| MRx36 | Osteoporosis/Pagets |
| MRx37 | Pain |
| MRx38 | Parkinsons/Tremor |
| MRx39 | Prenatal Care |
| MRx40 | Psychotic Illness/Bipolar |
| MRx41 | Replacement Solution |
| MRx42 | Seizure Disorders |
| MRx43 | Thyroid Disorder |
| MRx44 | Transplant |
| MRx45 | Tuberculosis |

(4) **Step 4. Remove duplicate risk categories.** After mapping all diagnosis and drug codes to the risk categories, the agency eliminates duplicates of each client's risk categories so that there is only one occurrence of any risk category for each client.

(5) **Step 5. Select the highest CDPS risk category within a disease group.**

(a) The agency organizes CPDS risk categories into risk category groups of different intensity levels. The high risk category in each group is used in the calculation of the risk score. The lower level risk categories are eliminated from further calculations.

(b) **Table 3. Chronic Disease Payment System Risk Category Groups**

| Group Description | Risk Categories (Ordered Highest to Lowest Intensity) |
|--------------------------|---|
| AIDS/HIV and Infection | AIDSH, INFH, HIVM, INFM, INFL |
| Cancer | CANVH, CANH, CANM, CANL |
| Cardiovascular | CARVH, CARM, CARL, CAREL |
| Central Nervous System | CNSH, CNSM, CNSL |
| Diabetes | DIA1H, DIA1M, DIA2M, DIA2L |
| Developmental Disability | DDM, DDL |
| Eye | EYEL, EYEVL |
| Gastrointestinal | GIH, GIM, GIL |
| Hematological | HEMEH, HEMVH, HEMM, HEML |
| Metabolic | METH, METM, METVL |
| Pregnancy | PRGCMP, PRGINC |
| Psychiatric | PSYH, PSYM, PSYML, PSYL |
| Substance Abuse | SUBL, SUBVL |
| Pulmonary | PULVH, PULH, PULM, PULL |
| Renal | RENEH, RENVH, RENM, RENL |
| Skeletal | SKCM, SKCL, SKCVL |
| Skin | SKNH, SKNL, SKNVL |

(6) **Step 6. Determine age/gender category.**

(a) For each client, the agency selects the appropriate age/gender category. The ~~((eleven))~~ 11 categories are listed in Table 4 in (b) of this subsection. The categories for ages below five and above ~~((sixty-five))~~ 65 are gender neutral.

(b) **Table 4. Age/Gender Categories**

| Age | Gender |
|--------------|--------|
| Age <1 | |
| Age 1 to 4 | |
| Age 5 to 14 | Male |
| Age 5 to 14 | Female |
| Age 15 to 24 | Male |
| Age 15 to 24 | Female |
| Age 25 to 44 | Male |
| Age 25 to 44 | Female |
| Age 45 to 64 | Male |
| Age 45 to 64 | Female |
| Age 65+ | |

(7) **Step 7. Apply risk weights.**

(a) The agency assigns each risk category and age/gender category a weight. The weight comes from either the model for clients who are age ~~((seventeen))~~ 17 and younger or from the model for clients age ~~((eighteen))~~ 18 and older.

(b) In each model there are three types of weights.

(i) Age/gender - Weights that correspond to the age/gender category of a client.

(ii) CDPS - Weights that correspond to (~~(fifty-eight)~~) 58 of the CDPS risk categories.

(iii) MRx - Weights that correspond to (~~(forty-five)~~) 45 of the MRx risk categories.

(c) **Table 5. Risk Score Weights**

| Category Type | Category | Description | Weights for Children (age <18) | Weights for Adults (age 18+) |
|---------------|----------------------|--------------------------------|--|--|
| Age/Gender | Age <1 | Clients of age less than 1 | ((0.40671)) <u>0.91261</u> | 0.00000 |
| | Age 1 to 4 | Clients age 1 to 4 | ((0.40671)) <u>0.31764</u> | 0.00000 |
| | Age 5 to 14, Male | Male clients age 5 to 14 | ((0.28867)) <u>0.25834</u> | 0.00000 |
| | Age 5 to 14, Female | Female clients age 5 to 14 | ((0.29441)) <u>0.26338</u> | 0.00000 |
| | Age 15 to 24, Male | Male clients age 15 to 24 | ((0.22630)) <u>0.25662</u> | -0.01629 |
| | Age 15 to 24, Female | Female clients age 15 to 24 | ((0.26930)) <u>0.29685</u> | 0.03640 |
| | Age 25 to 44, Male | Male clients age 25 to 44 | 0.00000 | 0.04374 |
| | Age 25 to 44, Female | Female clients age 25 to 44 | 0.00000 | 0.06923 |
| | Age 45 to 64, Male | Male clients age 45 to 64 | 0.00000 | 0.13321 |
| | Age 45 to 64, Female | Female clients age 45 to 64 | 0.00000 | 0.06841 |
| | Age 65+ | Clients age 65 and older | 0.00000 | -0.05623 |
| | CDPS | CARVH | Cardiovascular, very high | ((0.53941)) <u>0.84325</u> |
| CARM | | Cardiovascular, medium | ((0.23927)) <u>0.33428</u> | 0.73492 |
| CARL | | Cardiovascular, low | ((0.18510)) <u>0.12835</u> | 0.24620 |
| CAREL | | Cardiovascular, extra low | ((0.06589)) <u>0.04307</u> | 0.06225 |
| PSYH | | Psychiatric, high | ((0.47759)) <u>0.40351</u> | 0.27085 |
| PSYM | | Psychiatric, medium | ((0.31301)) <u>0.23892</u> | 0.00000 |
| PSYML | | Psychiatric, medium low | ((0.16307)) <u>0.13796</u> | 0.00000 |
| PSYL | | Psychiatric, low | ((0.10344)) <u>0.07675</u> | 0.00000 |
| SKCM | | Skeletal, medium | ((0.23477)) <u>0.21071</u> | 0.42212 |
| SKCL | | Skeletal, low | ((0.10630)) <u>0.08343</u> | 0.15467 |
| SKCVL | | Skeletal, very low | ((0.07873)) <u>0.06244</u> | 0.06773 |
| CNSH | | Central Nervous System, high | ((0.30440)) <u>0.80483</u> | 0.78090 |
| CNSM | | Central Nervous System, medium | ((0.34386)) <u>0.31945</u> | 0.40886 |
| CNSL | | Central Nervous System, low | ((0.16334)) <u>0.15106</u> | 0.18261 |

| Category Type | Category | Description | Weights for Children (age <18) | Weights for Adults (age 18+) |
|---------------|----------|----------------------------------|---------------------------------|------------------------------|
| | PULVH | Pulmonary, very high | (1.28955) 1.14056 | 4.01723 |
| | PULH | Pulmonary, high | (0.67772) 0.34356 | 0.39309 |
| | PULM | Pulmonary, medium | (0.39768) 0.35587 | 0.31774 |
| | PULL | Pulmonary, low | (0.14708) 0.11315 | 0.13017 |
| | GIH | Gastro, high | (0.78046) 0.65934 | 1.34924 |
| | GIM | Gastro, medium | (0.29755) 0.24699 | 0.24372 |
| | GIL | Gastro, low | (0.14579) 0.09767 | 0.05104 |
| | DIA1H | Diabetes, type 1 high | (0.31680) 0.27018 | 1.04302 |
| | DIA1M | Diabetes, type 1 medium | (0.31680) 0.27018 | 0.23620 |
| | DIA2M | Diabetes, type 2 medium | (0.16104) 0.13647 | 0.17581 |
| | DIA2L | Diabetes, type 2 low | (0.16104) 0.13647 | 0.09635 |
| | SKNH | Skin, high | (0.49898) 0.56322 | 0.37981 |
| | SKNL | Skin, low | (0.25185) 0.23664 | 0.45155 |
| | SKNVL | Skin, very low | (0.07523) 0.05697 | 0.02119 |
| | RENEH | Renal, extra high | (2.43609) 1.80489 | 3.41999 |
| | RENVH | Renal, very high | (0.93888) 0.59311 | 0.69251 |
| | RENM | Renal, medium | (0.33264) 0.28630 | 0.92846 |
| | RENL | Renal, low | (0.17492) 0.21048 | 0.17220 |
| | SUBL | Substance Abuse, low | (0.27104) 0.15170 | 0.16104 |
| | SUBVL | Substance Abuse, very low | (0.04493) 0.01794 | 0.08784 |
| | CANVH | Cancer, very high | (1.31064) 1.19700 | 2.80074 |
| | CANH | Cancer, high | (0.57909) 0.51985 | 0.97173 |
| | CANM | Cancer, medium | (0.29642) 0.22164 | 0.38022 |
| | CANL | Cancer, low | (0.15058) 0.10350 | 0.22625 |
| | DDM | Developmental Disability, medium | (0.31414) 0.50073 | 0.27818 |
| | DDL | Developmental Disability, low | (0.11095) 0.19696 | 0.05913 |
| | GENEL | Genital, extra low | (0.02242) 0.00790 | 0.01121 |

| Category Type | Category | Description | Weights for Children (age <18) | Weights for Adults (age 18+) |
|---------------|----------|---------------------------|--|------------------------------|
| | METH | Metabolic, high | ((0.51575)) <u>0.47167</u> | 0.47226 |
| | METM | Metabolic, medium | ((0.33856)) <u>0.26297</u> | 0.11310 |
| | METVL | Metabolic, very low | ((0.14658)) <u>0.11546</u> | 0.18678 |
| | PRGCMP | Pregnancy, complete | ((0.00000)) <u>0.00244</u> | 0.00000 |
| | PRGINC | Pregnancy, incomplete | ((0.17563)) <u>0.12631</u> | 0.51636 |
| | EYEL | Eye, low | ((0.11538)) <u>0.09919</u> | 0.13271 |
| | EYEVL | Eye, very low | ((0.04094)) <u>0.02835</u> | 0.00000 |
| | CERL | Cerebrovascular, low | ((0.10623)) <u>0.14294</u> | 0.00000 |
| | AIDSH | AIDS, high | ((0.91357)) <u>0.70597</u> | 0.47361 |
| | INFH | Infectious, high | ((0.91357)) <u>0.70597</u> | 0.79689 |
| | HIVM | HIV, medium | ((0.60245)) <u>0.26129</u> | 0.07937 |
| | INFM | Infectious, medium | ((0.41047)) <u>0.26129</u> | 0.79689 |
| | INFL | Infectious, low | ((0.15311)) <u>0.07784</u> | 0.05617 |
| | HEMEH | Hematological, extra high | ((2.80021)) <u>5.37808</u> | 12.71981 |
| | HEMVH | Hematological, very high | ((0.97895)) <u>0.72873</u> | 3.08836 |
| | HEMM | Hematological, medium | ((0.46032)) <u>0.37824</u> | 0.63211 |
| | HEML | Hematological, low | ((0.17762)) <u>0.18676</u> | 0.25601 |
| MRx | MRx1 | Alcoholism | ((0.11051)) <u>0.05982</u> | 0.01924 |
| | MRx2 | Alzheimer's | 0.00000 | 0.08112 |
| | MRx3 | Anti-coagulants | ((0.31281)) <u>0.34428</u> | 0.13523 |
| | MRx4 | Asthma/COPD | ((0.09825)) <u>0.08758</u> | 0.05751 |
| | MRx5 | Attention Deficit | 0.00000 | 0.00779 |
| | MRx6 | Burns | ((0.13977)) <u>0.16633</u> | 0.00000 |
| | MRx7 | Cardiac | ((0.09177)) <u>0.0906</u> | 0.06425 |
| | MRx8 | Cystic Fibrosis | ((0.48222)) <u>0.50399</u> | 0.37265 |
| | MRx9 | Depression/Anxiety | ((0.07013)) <u>0.06743</u> | 0.09436 |
| | MRx10 | Diabetes | ((0.16852)) <u>0.1519</u> | 0.17046 |
| | MRx11 | EENT | 0.00000 | 0.00072 |

| Category Type | Category | Description | Weights for Children (age <18) | Weights for Adults (age 18+) |
|---------------|----------|------------------------------|--|------------------------------|
| | MRx12 | ESRD/Renal | ((1.32358)) <u>1.24598</u> | 1.20707 |
| | MRx13 | Folate Deficiency | ((0.17618)) <u>0.17973</u> | 0.11899 |
| | MRx14 | CMV Retinitis | ((0.41138)) <u>0.37762</u> | 0.00000 |
| | MRx15 | Gastric Acid Disorder | ((0.11001)) <u>0.10082</u> | 0.15470 |
| | MRx16 | Glaucoma | ((0.03738)) <u>0.04221</u> | 0.12971 |
| | MRx17 | Gout | 0.00000 | 0.00000 |
| | MRx18 | Growth Hormone | ((0.97620)) <u>0.9741</u> | 1.59521 |
| | MRx19 | Hemophilia/von Willebrands | ((11.68858)) <u>13.56192</u> | 89.14461 |
| | MRx20 | Hepatitis | ((0.16213)) <u>0.03018</u> | 0.00000 |
| | MRx21 | Herpes | ((0.04497)) <u>0.0348</u> | 0.01725 |
| | MRx22 | HIV | ((0.69702)) <u>0.65537</u> | 1.01178 |
| | MRx23 | Hyperlipidemia | 0.00000 | 0.03791 |
| | MRx24 | Infections, high | ((1.23096)) <u>1.38405</u> | 1.51663 |
| | MRx25 | Infections, medium | ((0.07841)) <u>0.07462</u> | 0.06192 |
| | MRx26 | Infections, low | 0.00000 | 0.00918 |
| | MRx27 | Inflammatory/Autoimmune | ((0.09058)) <u>0.08075</u> | 0.20046 |
| | MRx28 | Insomnia | ((0.08510)) <u>0.07093</u> | 0.06437 |
| | MRx29 | Iron Deficiency | ((0.12948)) <u>0.13306</u> | 0.15054 |
| | MRx30 | Irrigating Solution | ((0.64194)) <u>0.87573</u> | 0.16387 |
| | MRx31 | Liver Disease | ((0.34084)) <u>0.45314</u> | 0.22681 |
| | MRx32 | Malignancies | ((0.36730)) <u>0.36859</u> | 0.44200 |
| | MRx33 | Multiple Sclerosis/Paralysis | ((0.03542)) <u>0.0345</u> | 0.04353 |
| | MRx34 | Nausea | ((0.16101)) <u>0.18219</u> | 0.17120 |
| | MRx35 | Neurogenic Bladder | ((0.13864)) <u>0.15282</u> | 0.07675 |
| | MRx36 | Osteoporosis/Pagets | 0.00000 | 0.00000 |
| | MRx37 | Pain | ((0.04154)) <u>0.0295</u> | 0.04151 |
| | MRx38 | Parkinsons/Tremor | ((0.17179)) <u>0.17163</u> | 0.06257 |
| | MRx39 | Prenatal Care | 0.00000 | 0.13192 |
| | MRx40 | Psychotic Illness/Bipolar | ((0.24399)) <u>0.22819</u> | 0.20274 |

| Category Type | Category | Description | Weights for Children (age <18) | Weights for Adults (age 18+) |
|---------------|----------|----------------------|--------------------------------|------------------------------|
| | MRx41 | Replacement Solution | ((0.47152)) 0.58622 | 1.49405 |
| | MRx42 | Seizure Disorders | ((0.23418)) 0.23997 | 0.19837 |
| | MRx43 | Thyroid Disorder | ((0.04267)) 0.03948 | 0.06326 |
| | MRx44 | Transplant | ((0.34858)) 0.37388 | 0.05810 |
| | MRx45 | Tuberculosis | ((0.22778)) 0.20006 | 0.00000 |

(8) **Step 8. Sum risk weights to obtain the risk score.**

After obtaining the weights that correspond to a client's age/gender category and set of risk categories, the agency takes a sum of the values of all of the weights. This sum is the risk score for a client.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-24-111, § 182-557-0225, filed 12/6/17, effective 1/6/18; WSR 15-17-065, § 182-557-0225, filed 8/14/15, effective 9/14/15.]

WSR 22-14-094
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 1, 2022, 4:08 p.m., effective July 1, 2022, 4:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In 2022, the Washington state legislature passed 2SHB 1988, chapter 185, Laws of 2022, and ESSB 5714, chapter 161, Laws of 2022. 2SHB 1988 and ESSB 5714 allows for tax deferrals on investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage, as well as solar canopies when the project meets certain labor standards and is certified by department of labor and industries (L&I), supporting Washington's clean energy economy and transitioning to a clean, affordable, and reliable energy future.

The emergency rules address:

- Standards for certification for:
 - Procurement from and contracts with women-owned, minority-owned, and veteran-owned businesses, which will include a requirement that the recipient of the deferral consult with the office of minority and women's business enterprises (OMWBE) and the department of veterans affairs (DVA) to develop a plan to meet the standards or good faith efforts;
 - Procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations;
 - Apprenticeship utilization;
 - Preferred entry for workers living in the area where the project is being constructed;
 - Payment of prevailing wages; and
 - Project labor agreements and community workforce agreements.
- Requirements for and processes related to application, records and documentation, and certification;
- Reorganizing and adding to the definition section, to provide clarity on each type of qualifying clean energy project identified under the rules as well as which definitions apply to different sections the chapter 296-140 WAC.

Citation of Rules Affected by this Order: New WAC 296-140-005, 296-140-006, 296-140-007 and 296-140-008; and amending WAC 296-140-001 and 296-140-004.

Statutory Authority for Adoption: Section 7, chapter 185, Laws of 2022, and section 6, chapter 161, Laws of 2022.

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

Reasons for this Finding: L&I is required to adopt emergency and permanent rules to implement both of these bills. These emergency rules will provide criteria necessary to certify labor standard requirements in order to qualify for tax deferral on investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage, as well as solar canopies while perma-

ment rules are being developed. L&I filed a CR-101 on June 21, 2022, and is required [to] have rules in place by July 1, 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 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 2, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 2, Repealed 0.

Date Adopted: July 1, 2022.

Joel Sacks
Director

OTS-3903.3

AMENDATORY SECTION (Amending WSR 21-21-043, filed 10/13/21, effective 11/13/21)

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

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

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

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

~~(3)) The following definitions apply to the entire chapter:~~

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

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

~~((5)) (c) "Good faith efforts" means the efforts by the project developer or its designated principle contractor that maximize the likelihood that the project will be built in compliance with the standards for certification. The totality of the circumstances and~~

factors will be reviewed to determine good faith. Good faith efforts are not necessary when the standard requirements have been met.

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

~~((7))~~ (e) "Local resident" means Washington laborers, workers, or mechanics receiving an hourly wage who live within 50 miles of the project being constructed unless the project is being constructed in a rural county, then it is defined as Washington workers who live within 200 miles of the project.

~~((8))~~ "~~Machinery and equipment~~" means ~~fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust.~~ "~~Machinery and equipment~~" does not include:

- ~~(a) Hand-powered tools;~~
- ~~(b) Property with a useful life of less than one year;~~
- ~~(c) Repair parts required to restore machinery and equipment to normal working order;~~
- ~~(d) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment;~~
- ~~(e) Buildings; or~~
- ~~(f) Building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.~~

~~(9))~~ (f) "Minority-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a minority business enterprise (MBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

~~((10))~~ (g) "Person" has the same meaning as in RCW 82.04.030.

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

~~((11))~~ (i) "Registered apprentice" means an apprentice registered in an apprenticeship program approved by the Washington state apprenticeship and training council according to chapters 49.04 RCW and 296-05 WAC.

~~((12))~~ (j) "Rural county" has the same definition as RCW 82.14.370(5).

~~((13))~~ (k) "Women-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a women business enterprise (WBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

~~((14))~~ (l) "Veteran-owned business" means a business certified by the Washington state department of veteran affairs under RCW 43.60A.190 or a business considered a veteran-owned business under 38 C.F.R. Part 74.

(2) The following definitions apply to WAC 296-140-002 through 296-140-004:

(a) "Category 1 clean energy project" means a project under RCW 82.08.962 and 82.12.962 to:

(i) Develop a facility capable of generating not less than 1,000 watts AC of electricity using any of the following principal sources of power: Fuel cells, wind, biomass energy, geothermal resource, tidal or wave energy, or technology that converts otherwise lost energy from exhaust;

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

(b) "Category 2 clean energy project" means a project under RCW 82.08.962 and 82.12.962 to develop solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.

(c) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust. "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Repair parts required to restore machinery and equipment to normal working order;

(iv) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment;

(v) Buildings; or

(vi) Building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(3) The following definitions apply to WAC 296-140-005 and 296-140-006:

(a) "Eligible investment project" means an investment project of at least \$2,000,000 in either qualified buildings or qualified machinery and equipment, or both, for any of the following new, renovated, or expanded:

(i) Manufacturing operations;

(ii) Facilities to produce clean fuels, subject to the limitations in section 1(8)(d), chapter 185, Laws of 2022, renewable hydrogen, green electrolytic hydrogen, or green hydrogen carriers; or

(iii) Storage facilities.

(b) "Green electrolytic hydrogen" means hydrogen produced through electrolysis and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(c) "Green hydrogen carrier" means a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

(d) (i) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the eligible investment project, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in section 2, chapter 185, Laws of 2022;

(C) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in chapter 185, Laws of 2022.

(ii) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(e) "Investment project" means an investment in either qualified buildings or qualified machinery and equipment, or both, including labor and services rendered in the planning, installation, and construction of the project.

(f) "Manufacturing" has the same meaning as "to manufacture" in RCW 82.04.120.

(g) "Manufacturing operation" means manufacturing tangible personal property exclusively incorporated as an ingredient or component of or used in the generation of:

(i) Passenger cars, light duty trucks, medium duty passenger vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or motorcycles that emit no exhaust gas from the onboard source of power, other than water vapor;

(ii) Charging and fueling infrastructure for electric, hydrogen, or other vehicle types that emits no exhaust gas from the onboard source of power, other than water vapor;

(iii) Renewable and green electrolytic hydrogen, including preparing renewable and green electrolytic hydrogen for distribution or converting it to a green hydrogen carrier;

(iv) Clean fuel with associated greenhouse gas emissions not exceeding 80 percent of the 2017 levels established under RCW 70A.535.020 or its successor statute under chapter 70A.535 RCW;

(v) Electricity from renewable resources; or

(vi) Storage facilities.

(h) "Operationally complete" means the eligible investment project is capable of being used for its intended purpose as described in the application.

(i) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw materials or finished goods if the facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(j) "Qualified machinery and equipment" means all new industrial fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control, monitor, or operate the machinery.

(k) "Recipient" means a person receiving a tax deferral under chapter 185, Laws of 2022.

(l) "Renewable resource" has the same meaning as in RCW 82.08.816.

(m) "Storage facility" means a facility that:

(i) Accepts electricity as an energy source and uses a chemical, thermal, mechanical, or other process to store energy for subsequent delivery or consumption in the form of electricity; or

(ii) Stores renewable hydrogen, green electrolytic hydrogen, or green hydrogen carrier for subsequent delivery or consumption.

(4) The following definitions apply to WAC 296-140-007 and 296-140-008:

(a) "Eligible area" means a qualifying commercial center.

(b) "Eligible investment project" means an investment project that is located, as of the date the application required by section 3, chapter 161, Laws of 2022, is received by the department, in an eligible area.

(c) (i) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the eligible investment project, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in section 8, chapter 161, Laws of 2022; or

(C) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in chapter 161, Laws of 2022.

(ii) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(d) "Investment project" means an investment in a qualified solar canopy including labor and services rendered in the planning, installation, and construction of the project.

(e) "Operationally complete" means the solar canopy has received its final electrical inspection and is connected to the electrical grid.

(f) "Qualified solar canopy" means construction of a new solar canopy that has an area of at least 50,000 square feet.

(g) "Qualifying commercial center" means a property currently used for retail, industrial, office, or other commercial purposes, containing a parking area or other area dedicated for both vehicle use and placement of a solar canopy.

(h) "Recipient" means a person receiving a tax deferral under this chapter.

(i) "Solar canopy" means an elevated structure, or multiple structures, containing a solar energy system, as defined in RCW 82.16.110, with a nameplate capacity of at least one megawatt of alternating current.

"Solar canopy" includes the solar energy system, power lines, and any equipment required to connect the solar canopy to the electrical grid.

[Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-001, filed 10/13/21, effective 11/13/21.]

AMENDATORY SECTION (Amending WSR 21-21-043, filed 10/13/21, effective 11/13/21)

WAC 296-140-004 Application, records and documentation, and certification for Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962. For Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962:

(1) Businesses applying for department certification must complete an application in a form required by the department prior to the start of the project.

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

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

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

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

(B) The dollar amount of the contract;

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

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

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

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

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

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

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

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

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

(c) Standard for apprenticeship utilization.

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

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

- (iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
 - (iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;
 - (v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;
 - (vi) Documentation and evidence to support good faith efforts as necessary; and
 - (vii) Other records and documentation requested by the department.
- (d) Standard for preferred entry by local workers.
- (i) The total number of workers performing labor hours on the project;
 - (ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;
 - (iii) Employment records that contain the address of individuals hired to work on the project;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
- (e) Standard for payment of prevailing wages.
- (i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and
 - (ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.
- (f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.
- (3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.
- (4) For Category 1 clean energy projects seeking certification for the 50 and 75 percent tax remittance and Category 2 clean energy projects seeking certification for the 50 percent tax remittance, businesses must submit notice of project completion in a form required by the department. After receiving the notice of competition, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.
- (5) For Category 1 clean energy projects seeking certification for the 100 percent tax remittance, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for the construction and installation of the energy producing equipment have all been signed.

[Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-004, filed 10/13/21, effective 11/13/21.]

NEW SECTION

WAC 296-140-005 Labor standard certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 185, Laws of 2022. (1) To qualify for department certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 185, Laws of 2022, the eligible investment projects must meet the following minimum requirements:

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

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts before the initiation of construction of the investment project; and

(ii) Have 15 percent of contracts awarded to minority and women-owned businesses and five percent of contracts awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. Good faith efforts which include, but are not limited to:

(A) Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises;

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

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

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

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

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

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

(H) Other efforts identified by OMWBE or DVA included in the plan required by (a)(i) of this subsection.

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

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the 24-month period prior to the bid date; or

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

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

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

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

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

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

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

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

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

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

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

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

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

(V) Not replacing an apprentice that quit or was fired; or

(VI) Not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

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

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

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

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

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

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

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

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

(2) To qualify for department certification for the 75 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 185, Laws of 2022, the eligible investment projects must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 185, Laws of 2022, under subsection (1) of this section; and

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

(3) To qualify for department certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 185, Laws of 2022, the eligible investment projects must have a signed PLA or CWA for the project prior to the initiation of construction of the investment project on the project. Separately meeting the standards for certification for the 50 percent and 75 percent certification under subsections (1) and (2) of this section are not required.

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

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NEW SECTION

WAC 296-140-006 Application, records and documentation, and certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 185, Laws of 2022. (1) Recipients applying for department certification must complete an application in a form required by the department prior to the initiation of construction of the investment project.

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

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

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

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

(B) The dollar amount of the contract;

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

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE or DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the plan; and

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

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

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

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

- (iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
- (c) Standard for apprenticeship utilization.
- (i) The name, occupational title, and registration number for each registered apprentice;
 - (ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;
 - (iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
 - (iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;
 - (v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;
 - (vi) Documentation and evidence to support good faith efforts as necessary; and
 - (vii) Other records and documentation requested by the department.
- (d) Standard for preferred entry by local workers.
- (i) The total number of workers performing labor hours on the project;
 - (ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;
 - (iii) Employment records that contain the address of individuals hired to work on the project;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
- (e) Standard for payment of prevailing wages.
- (i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and
 - (ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.
- (f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.
- (3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.
- (4) For eligible investment projects seeking certification for the 50 and 75 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 185, Laws of 2022, recipients must submit notice of the project is operationally complete in a form required by the department. After receiving the notice project is operationally complete, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For eligible investment projects seeking certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 185, Laws of 2022, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for all phases have all been signed.

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NEW SECTION

WAC 296-140-007 Labor standard certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 161, Laws of 2022. (1) To qualify for department certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 161, Laws of 2022, the eligible investment projects must meet the following minimum requirements:

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

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts; and

(ii) Have 15 percent of contracts awarded to minority and women-owned businesses and five percent of contracts awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. Good faith efforts which include, but are not limited to:

(A) Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises;

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

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

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

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

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

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

(H) Other efforts identified by OMWBE or DVA included in the plan required by (a) (i) of this subsection.

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

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the 24-month period prior to the bid date; or

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

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

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

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

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

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

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

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

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

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

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

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

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

(V) Not replacing an apprentice that quit or was fired; or

(VI) Not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

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

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

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

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

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

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

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

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

(2) To qualify for department certification for the 75 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 161, Laws of 2022, the eligible investment projects must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 161, Laws of 2022, under WAC 296-140-005(1); and

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

(3) To qualify for department certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 161, Laws of 2022, the eligible investment projects must have a signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the 50 percent and 75 percent certification under subsections (1) and (2) of this section are not required.

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

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NEW SECTION

WAC 296-140-008 Application, records and documentation, and certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 161, Laws of 2022. (1) Recipients applying for department certification must complete an application in a form required by the department prior to the initiation of construction of the investment project.

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

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

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

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

(B) The dollar amount of the contract;

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

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE or DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the plan; and

(v) Other records and documentation requested by the department, OMWBE or DVA.

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

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

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

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

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

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

(c) Standard for apprenticeship utilization.

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

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

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

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

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

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

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

(d) Standard for preferred entry by local workers.

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

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

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

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

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

(e) Standard for payment of prevailing wages.

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

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

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

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

(4) For eligible investment projects seeking certification for the 50 and 75 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 161, Laws of 2022, recipients must submit notice of the project is operationally complete in a form required by the department. After receiving the notice project is operationally complete, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For eligible investment projects seeking certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under section 6, chapter 161, Laws of 2022, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for all phases have all been signed.

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WSR 22-14-095
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed July 1, 2022, 4:29 p.m., effective July 1, 2022, 4:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To modify requirements in WAC 51-11R-40621 to provide an alternative credit path in lieu of a 11.0 HSPF ducted heat pump.

Citation of Rules Affected by this Order: Amending WAC 51-11R-40621.

Statutory Authority for Adoption: RCW 19.27A.045.

Other Authority: RCW 19.27A.020.

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

Reasons for this Finding: The state building code council was petitioned by the industry to provide a temporary alternative ducted heat pump efficiency credit option with the same 1.5 credit value. Supply chain issues have affected every manufacturer and qualifying components and systems have become unavailable in sufficient quantity to keep up with market demand. The council worked with the industry and other stakeholders to provide an option using a 10.0 HSPF ducted heat pump in conjunction with one of four additional measures.

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: June 29, 2022.

Tony Doan
Council Chair

OTS-3925.2

AMENDATORY SECTION (Amending WSR 22-10-094, filed 5/3/22, effective 6/3/22)

WAC 51-11R-40621 Table R406.3—Energy credits.

TABLE 406.3
ENERGY CREDITS

| OPTION | DESCRIPTION | CREDIT(S) | |
|---|--|-----------|-----------|
| | | All Other | Group R-2 |
| <p>1. EFFICIENT BUILDING ENVELOPE OPTIONS Only one option from Items 1.1 through 1.7 may be selected in this category. Compliance with the conductive UA targets is demonstrated using Section R402.1.4, Total UA alternative, where [1-(Proposed UA/Target UA)] > the required %UA reduction</p> | | | |
| 1.1 | Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.24. | 0.5 | 0.5 |
| 1.2 | Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.20. | 1.0 | 1.0 |
| 1.3 | Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.28 Floor R-38 Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab or Compliance based on Section R402.1.4: Reduce the Total conductive UA by 5%. | 0.5 | N/A |
| 1.4 | Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.25 Wall R-21 plus R-4 ci Floor R-38 Basement wall R-21 int plus R-5 ci Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab or Compliance based on Section R402.1.4: Reduce the Total conductive UA by 15%. | 1.0 | 1.0 |
| 1.5 | Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.22 Ceiling and single-rafter or joist-vaulted R-49 advanced Wood frame wall R-21 int plus R-12 ci Floor R-38 Basement wall R-21 int plus R-12 ci Slab on grade R-10 perimeter and under entire slab Below grade slab R-10 perimeter and under entire slab or Compliance based on Section R402.1.4: Reduce the Total conductive UA by 30%. | 2.0 | 1.5 |
| 1.6 | Prescriptive compliance is based on Table R402.1.1 with the following modifications: Vertical fenestration U = 0.18 Ceiling and single-rafter or joist-vaulted R-60 advanced Wood frame wall R-21 int plus R-16 ci Floor R-48 Basement wall R-21 int plus R-16 ci Slab on grade R-20 perimeter and under entire slab Below grade slab R-20 perimeter and under entire slab or Compliance based on Section R402.1.4: Reduce the Total conductive UA by 40%. | 3.0 | 2.0 |
| 1.7 | Advanced framing and raised heel trusses or rafters Vertical Glazing U-0.28 R-49 Advanced (U-0.020) as listed in Section A102.2.1, <i>Ceilings below a vented attic</i> and R-49 vaulted ceilings with full height of uncompressed insulation extending over the wall top plate at the eaves. | 0.5 | 0.5 |

| OPTION | DESCRIPTION | CREDIT(S) | |
|--|--|-----------|-----------|
| | | All Other | Group R-2 |
| 2. AIR LEAKAGE CONTROL AND EFFICIENT VENTILATION OPTIONS | | | |
| Only one option from Items 2.1 through 2.4 may be selected in this category. | | | |
| 2.1 | <p>Compliance based on R402.4.1.2: Reduce the tested air leakage to 3.0 air changes per hour maximum at 50 Pascals</p> <p>or</p> <p>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.3 cfm/ft² maximum at 50 Pascals</p> <p>and</p> <p>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a high efficiency fan(s) (maximum 0.35 watts/cfm), not interlocked with the furnace fan (if present). Ventilation systems using a furnace including an ECM motor are allowed, provided that they are controlled to operate at low speed in ventilation only mode.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the maximum tested building air leakage, and shall show the qualifying ventilation system and its control sequence of operation.</p> | 0.5 | 1.0 |
| 2.2 | <p>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 2.0 air changes per hour maximum at 50 Pascals</p> <p>or</p> <p>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.25 cfm/ft² maximum at 50 Pascals</p> <p>and</p> <p>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.65.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</p> | 1.0 | 1.5 |
| 2.3 | <p>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 1.5 air changes per hour maximum at 50 Pascals</p> <p>or</p> <p>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.20 cfm/ft² maximum at 50 Pascals</p> <p>and</p> <p>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.75.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</p> | 1.5 | 2.0 |

| OPTION | DESCRIPTION | CREDIT(S) | |
|--|---|-----------|-----------|
| | | All Other | Group R-2 |
| 2.4 | <p>Compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.6 air changes per hour maximum at 50 Pascals</p> <p>or</p> <p>For R-2 Occupancies, optional compliance based on Section R402.4.1.2: Reduce the tested air leakage to 0.15 cfm/ft² maximum at 50 Pascals</p> <p>and</p> <p>All whole house ventilation requirements as determined by Section M1505.3 of the <i>International Residential Code</i> or Section 403.8 of the <i>International Mechanical Code</i> shall be met with a heat recovery ventilation system with minimum sensible heat recovery efficiency of 0.80. Duct installation shall comply with Section R403.3.7.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the maximum tested building air leakage and shall show the heat recovery ventilation system.</p> | 2.0 | 2.5 |
| <p>3. HIGH EFFICIENCY HVAC EQUIPMENT OPTIONS Only one option from Items 3.1 through 3.6 may be selected in this category.</p> | | | |
| 3.1 ^a | <p>Energy Star rated (U.S. North) Gas or propane furnace with minimum AFUE of 95%</p> <p>or</p> <p>Energy Star rated (U.S. North) Gas or propane boiler with minimum AFUE of 90%.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p> | 1.0 | 1.0 |
| 3.2 ^a | <p>Air-source centrally ducted heat pump with minimum HSPF of 9.5.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p> | 1.0 | N/A |
| 3.3 ^a | <p>Closed-loop ground source heat pump; with a minimum COP of 3.3</p> <p>or</p> <p>Open loop water source heat pump with a maximum pumping hydraulic head of 150 feet and minimum COP of 3.6.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p> | 1.5 | 1.0 |
| 3.4 | <p>Ductless mini-split heat pump system, zonal control: In homes where the primary space heating system is zonal electric heating, a ductless mini-split heat pump system with a minimum HSPF of 10.0 shall be installed and provide heating to the largest zone of the housing unit.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p> | 1.5 | 2.0 |
| 3.5 ^a <u>Option 1</u> | <p>Air-source, centrally ducted heat pump with minimum HSPF of 11.0.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</p> | 1.5 | N/A |

| OPTION | DESCRIPTION | CREDIT(S) | |
|---|---|-----------|-----------|
| | | All Other | Group R-2 |
| 3.5 ^a Option 2 | <p><u>Air-source, inverter driven (variable speed) centrally ducted heat pump with minimum HSPF of 10.0 with at least one of the following:</u></p> <p><u>1. The system is listed on the NEEP cold climate air source heat pump database.</u></p> <p><u>2. Compliance based on Section R402.1.4: Reduce the total conductive UA by 22%. This option shall not be used if any other envelope category option is selected to show compliance with Section R406.</u></p> <p><u>3. If Option 5.3 has been selected, upgrade the Tier III heat pump water heater to a Tier IV heat pump water heater that is a unitary (nonsplit) system.</u></p> <p><u>4. Use the appliance credit option 7.1, but the dryer is required to have a CEF of 3.93 or higher. This option is not available if it is already selected as one of the options to show compliance with Section R406.</u></p> <p><u>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and the minimum equipment efficiency.</u></p> | 1.5 | N/A |
| 3.6 ^a | <p>Ductless split system heat pumps with no electric resistance heating in the primary living areas. A ductless heat pump system with a minimum HSPF of 10 shall be sized and installed to provide heat to entire dwelling unit at the design outdoor air temperature.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected, the heated floor area calculation, the heating equipment type(s), the minimum equipment efficiency, and total installed heat capacity (by equipment type).</p> | 2.0 | 3.0 |
| 4. HIGH EFFICIENCY HVAC DISTRIBUTION SYSTEM OPTIONS | | | |
| 4.1 | <p>All supply and return ducts located in an unconditioned attic shall be deeply buried in ceiling insulation in accordance with Section R403.3.6.</p> <p>For mechanical equipment located outside the conditioned space, a maximum of 10 linear feet of return duct and 5 linear feet of supply duct connections to the equipment may be outside the deeply buried insulation. All metallic ducts located outside the conditioned space must have both transverse and longitudinal joints sealed with mastic. If flex ducts are used, they cannot contain splices.</p> <p>Duct leakage shall be limited to 3 cfm per 100 square feet of conditioned floor area.</p> <p>Air handler(s) shall be located within the conditioned space.</p> | 0.5 | 0.5 |
| 4.2 | <p>HVAC equipment and associated duct system(s) installation shall comply with the requirements of Section R403.3.7.</p> <p>Locating system components in conditioned crawl spaces is not permitted under this option.</p> <p>Electric resistance heat and ductless heat pumps are not permitted under this option.</p> <p>Direct combustion heating equipment with AFUE less than 80% is not permitted under this option.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the heating equipment type and shall show the location of the heating and cooling equipment and all the ductwork.</p> | 1.0 | N/A |
| 5. EFFICIENT WATER HEATING OPTIONS | | | |
| <p>Only one option from Items 5.2 through 5.6 may be selected in this category. Item 5.1 may be combined with any option.</p> | | | |

| OPTION | DESCRIPTION | CREDIT(S) | |
|--------|---|-----------|-----------|
| | | All Other | Group R-2 |
| 5.1 | <p>A drain water heat recovery unit(s) shall be installed, which captures waste water heat from all and only the showers, and has a minimum efficiency of 40% if installed for equal flow or a minimum efficiency of 54% if installed for unequal flow. Such units shall be rated in accordance with CSA B55.1 or IAPMO IGC 346-2017 and be so labeled.</p> <p>To qualify to claim this credit, the building permit drawings shall include a plumbing diagram that specifies the drain water heat recovery units and the plumbing layout needed to install it. Labels or other documentation shall be provided that demonstrates that the unit complies with the standard.</p> | 0.5 | 0.5 |
| 5.2 | <p>Water heating system shall include one of the following: Energy Star rated gas or propane water heater with a minimum UEF of 0.80.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p> | 0.5 | 0.5 |
| 5.3 | <p>Water heating system shall include one of the following: Energy Star rated gas or propane water heater with a minimum UEF of 0.91 or Solar water heating supplementing a minimum standard water heater. Solar water heating will provide a rated minimum savings of 85 therms or 2000 kWh based on the Solar Rating and Certification Corporation (SRCC) Annual Performance of OG-300 Certified Solar Water Heating Systems or Water heater heated by ground source heat pump meeting the requirements of Option 3.3.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency and, for solar water heating systems, the calculation of the minimum energy savings.</p> | 1.0 | 1.0 |
| 5.4 | <p>Water heating system shall include one of the following: Electric heat pump water heater meeting the standards for Tier I of NEEA's advanced water heating specification or For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier I of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p> | 1.5 | 2.0 |
| 5.5 | <p>Water heating system shall include one of the following: Electric heat pump water heater meeting the standards for Tier III of NEEA's advanced water heating specification or For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p> | 2.0 | 2.5 |

| OPTION | DESCRIPTION | CREDIT(S) | |
|--|---|-----------|-----------|
| | | All Other | Group R-2 |
| 5.6 | <p>Water heating system shall include one of the following: Electric heat pump water heater with a minimum UEF of 2.9 and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors. Equipment shall meet Section 4, requirements for all units, of the NEEA standard <i>Advanced Water Heating Specification</i> with the UEF noted above or For R-2 Occupancy, electric heat pump water heater(s), meeting the standards for Tier III of NEEA's advanced water heating specification and utilizing a split system configuration with the air-to-refrigerant heat exchanger located outdoors, shall supply domestic hot water to all units. If one water heater is serving more than one dwelling unit, all hot water supply and recirculation piping shall be insulated with R-8 minimum pipe insulation.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall specify the water heater equipment type and the minimum equipment efficiency.</p> | 2.5 | 3.0 |
| 6. RENEWABLE ELECTRIC ENERGY OPTION | | | |
| 6.1 | <p>For each 1200 kWh of electrical generation per housing unit provided annually by on-site wind or solar equipment a 1.0 credit shall be allowed, up to 3 credits. Generation shall be calculated as follows: For solar electric systems, the design shall be demonstrated to meet this requirement using the National Renewable Energy Laboratory calculator PVWATTS or approved alternate by the code official.</p> <p>Documentation noting solar access shall be included on the plans.</p> <p>For wind generation projects designs shall document annual power generation based on the following factors: The wind turbine power curve; average annual wind speed at the site; frequency distribution of the wind speed at the site and height of the tower.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the photovoltaic or wind turbine equipment type, provide documentation of solar and wind access, and include a calculation of the minimum annual energy power production.</p> | 1.0 | 1.0 |
| 7. APPLIANCE PACKAGE OPTION | | | |
| 7.1 | <p>All of the following appliances shall be new and installed in the dwelling unit and shall meet the following standards: Dishwasher - Energy Star rated Refrigerator (if provided) - Energy Star rated Washing machine - Energy Star rated Dryer - Energy Star rated, ventless dryer with a minimum CEF rating of 5.2.</p> <p>To qualify to claim this credit, the building permit drawings shall specify the option being selected and shall show the appliance type and provide documentation of Energy Star compliance. At the time of inspection, all appliances shall be installed and connected to utilities. Dryer ducts and exterior dryer vent caps are not permitted to be installed in the dwelling unit.</p> | 0.5 | 1.5 |

^a An alternative heating source sized at a maximum of 0.5 Watts/ft² (equivalent) of heated floor area or 500 Watts, whichever is bigger, may be installed in the dwelling unit.

[Statutory Authority: RCW 19.27A.045 and chapter 19.27A RCW. WSR 22-10-094, § 51-11R-40621, filed 5/3/22, effective 6/3/22. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40621, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27A.160, and 19.27.074. WSR 17-10-063, § 51-11R-40621, filed 5/2/17, effective 6/2/17. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40621, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.025, 19.27A.045, 19.27.020, and 19.27.074. WSR 14-24-123, § 51-11R-40621, filed 12/3/14, effective

1/3/15. Statutory Authority: RCW 19.27A.025, 19.27A.045, and 19.27.074. WSR 13-20-121, § 51-11R-40621, filed 10/1/13, effective 11/1/13. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40621, filed 2/1/13, effective 7/1/13.]

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

**WSR 22-14-096
EMERGENCY RULES
DEPARTMENT OF**

CHILDREN, YOUTH, AND FAMILIES

[Filed July 1, 2022, 4:49 p.m., effective July 1, 2022, 4:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Increase the working connections child care (WCCC) program rates paid to child care centers for enrolled WCCC-eligible children beginning July 1, 2022, and make a technical correction to the designated age range for infants.

Citation of Rules Affected by this Order: Amending WAC 110-15-0200.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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: Section 229 (5)(d), chapter 297, Laws of 2022, authorized a 16 percent subsidy base rate enhancement for child care centers for fiscal year 2023. Permanent rule making has begun, but there was insufficient time between chapter 297's effective date and July 1 to complete the permanent rule-making process.

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

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

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

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

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

Date Adopted: July 1, 2022.

Brenda Villarreal
Rules Coordinator

OTS-3695.2

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0200 Daily child care rates—Licensed or certified child care centers and DCYF contracted seasonal day camps. (1) **Base rate.** Effective July 1, (~~(2021)~~) 2022, the child care subsidy rates paid to licensed or certified child care centers or DCYF contracted seasonal day camps are:

| | | Infants (((One month)) Birth - 11 mos.) | Toddlers (12 - 29 mos.) | Preschool (30 mos. - 6 yrs not attending kindergarten or school) | School-age (5 - 12 yrs attending kindergarten or school) |
|----------------|----------|---|------------------------------|---|--|
| Region 1 | Full-Day | (\$41.40) \$48.02 | (\$37.50) \$43.50 | (\$34.20) \$39.67 | (\$33.75) \$39.15 |
| | Half-Day | (\$20.70) \$24.01 | (\$18.75) \$21.75 | (\$17.10) \$19.84 | (\$16.88) \$19.58 |
| Spokane County | Full-Day | (\$59.09) \$68.54 | (\$47.73) \$55.37 | (\$44.95) \$52.14 | (\$34.99) \$40.59 |
| | Half-Day | (\$29.55) \$34.27 | (\$23.87) \$27.69 | (\$22.48) \$26.07 | (\$17.50) \$20.30 |
| Region 2 | Full-Day | (\$48.00) \$55.68 | (\$36.59) \$42.44 | (\$36.50) \$42.34 | (\$27.36) \$31.74 |
| | Half-Day | (\$24.00) \$27.84 | (\$18.30) \$21.22 | (\$18.25) \$21.17 | (\$13.68) \$15.87 |
| Region 3 | Full-Day | (\$76.36) \$88.58 | (\$68.41) \$79.36 | (\$57.66) \$66.89 | (\$43.64) \$50.62 |
| | Half-Day | (\$38.18) \$44.29 | (\$34.21) \$39.68 | (\$28.83) \$33.45 | (\$21.82) \$25.31 |
| Region 4 | Full-Day | (\$95.73) \$111.05 | (\$79.55) \$92.28 | (\$71.82) \$83.31 | (\$45.00) \$52.20 |
| | Half-Day | (\$47.87) \$55.53 | (\$39.78) \$46.14 | (\$35.91) \$41.66 | (\$22.50) \$26.10 |
| Region 5 | Full-Day | (\$62.55) \$72.56 | (\$54.14) \$62.80 | (\$48.08) \$55.77 | (\$35.00) \$40.60 |
| | Half-Day | (\$31.28) \$36.28 | (\$27.07) \$31.40 | (\$24.04) \$27.89 | (\$17.50) \$20.30 |
| Region 6 | Full-Day | (\$57.00) \$66.12 | (\$51.00) \$59.16 | (\$47.00) \$54.52 | (\$35.91) \$41.66 |
| | Half-Day | (\$28.50) \$33.06 | (\$25.50) \$29.58 | (\$23.50) \$27.26 | (\$17.96) \$20.83 |

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

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

(2) WAC 110-300-0005 and 110-300-0356 allow providers to care for children from birth up to and including the end of their eligibility period after their 13th birthday.

(3) Providers must obtain child-specific and time-limited exceptions from DCYF to provide care for children outside the age listed on the center's license.

(4) If providers are granted an exception to care for a child who is 13 years old or older at application or reapplication:

(a) The payment rate is the same as subsection (1) of this section, and the five through 12 year age range column is used for comparison; and

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

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0200, filed 2/3/22, effective 3/6/22; WSR 20-15-161, § 110-15-0200, filed 7/22/20, effective 8/22/20; WSR 19-12-058, § 110-15-0200, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1. WSR 17-21-077, § 170-290-0200, filed 10/16/17, effective 11/16/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0200, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0200, filed 4/15/16, effective 5/16/16; WSR 14-24-070, § 170-290-0200, filed 11/26/14, effective 1/1/15; WSR 14-20-088, § 170-290-0200, filed 9/29/14, effective 10/30/14; WSR 14-12-050, § 170-290-0200, filed 5/30/14, effective 6/30/14; WSR 13-21-113, § 170-290-0200, filed 10/22/13, effective 11/22/13. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0200, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0200, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0200, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as §

170-290-0200, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2005 c 518 § 207(3). WSR 05-20-051, § 388-290-0200, filed 9/30/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0200, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0200, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0200, filed 12/19/01, effective 1/19/02.]

WSR 22-14-102

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed July 5, 2022, 3:56 p.m., effective July 5, 2022, 3:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is expanding the eligibility period for refugee medical assistance from eight months to 12 months for persons whose date of eligibility is on or after October 1, 2021. This expansion requires amendments to WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs, and 182-507-0130 Refugee medical assistance.

Citation of Rules Affected by this Order: New WAC 182-504-0015 and 182-507-0130.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: 45 C.F.R. 400.211.

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

Reasons for this Finding: The director of the federal Office of Refugee Resettlement is authorized to determine the eligibility period for refugee medical assistance by publishing a final notice in the Federal Register. The director published such a notice on March 28, 2022 (87 F.R. 17312), which is the effective date of the eligibility period expansion. This emergency filing is necessary to implement this expansion immediately while the permanent rule-making process is completed. The agency filed the Preproposal statement of inquiry (CR-101) under WSR 22-14-100.

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

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

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

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

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

Date Adopted: July 5, 2022.

Wendy Barcus
Rules Coordinator

OTS-3932.1

AMENDATORY SECTION (Amending WSR 22-12-033, filed 5/24/22, effective 6/24/22)

WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs. (1) A certification period is the

period of time we determine that you are eligible for a categorically needy (CN) Washington apple health program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues through the end of the last month of the certification period.

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

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

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

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

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

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

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

(7) If you are a child, eligibility is continuous throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months, or you:

(a) Turn age 19;

(b) Move out-of-state; or

(c) Die.

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

(a) You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month you turn 19;

(b) The inpatient stay continues into the following month or months; and

(c) You remain eligible except for turning age 19.

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

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

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-12-033, § 182-504-0015, filed 5/24/22, effective 6/24/22; WSR 17-12-017, § 182-504-0015, filed 5/30/17, effective 6/30/17. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0015, filed 7/29/14, effective 8/29/14. WSR 11-24-018, recodified as § 182-504-0015, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-416-0015, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 ses-

sion law. WSR 09-07-086, § 388-416-0015, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-416-0015, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-416-0015, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-19-031, § 388-416-0015, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-21-064, § 388-416-0015, filed 10/18/04, effective 11/18/04. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. WSR 04-03-019, § 388-416-0015, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 74.09.450. WSR 00-08-002, § 388-416-0015, filed 3/22/00, effective 5/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-416-0015, filed 7/31/98, effective 9/1/98. Formerly 388-509-0970, 388-521-2105, 388-522-2210 and 388-522-2230.]

OTS-3927.1

AMENDATORY SECTION (Amending WSR 20-21-008, filed 10/8/20, effective 11/8/20)

WAC 182-507-0130 Refugee medical assistance (RMA). (1) You are eligible for refugee medical assistance (RMA) if all the following conditions are met. You:

- (a) Meet immigration status requirements of WAC 182-507-0135;
- (b) Have countable resources below (~~one thousand dollars~~) \$1,000 on the date of application;
- (c) Have countable income equal to or below (~~two hundred~~) 200 percent of the federal poverty level (FPL) on the date of application. The following income is not considered when determining eligibility for RMA:
 - (i) Resettlement cash payments made by the voluntary agency (VOLAG);
 - (ii) Income of a sponsor is not counted unless the sponsor is also part of your assistance unit; and
 - (iii) Income received after the date of application.
- (d) Provide the name of the VOLAG which helped bring you to the United States so that the department of social and health services (DSHS) can promptly notify the VOLAG (or sponsor) about the medical application.

(2) If you receive refugee cash assistance (RCA) you are eligible for RMA as long as you are not otherwise eligible for medicaid or a children's health care program as described in WAC 182-505-0210. You do not have to apply for or receive RCA in order to qualify for RMA.

(3) You are not eligible to receive RMA if you are:

- (a) Already eligible for medicaid or a children's health care program as described in WAC 182-505-0210;
- (b) A full-time student in an institution of higher education unless the educational activity is part of a DSHS-approved individual responsibility plan (IRP); or
- (c) A nonrefugee spouse of a refugee.

(4) If approved for RMA, the agency or its designee issues an approval letter in both English and your primary language. The agency or its designee also sends a notice every time there are any changes or actions taken which affect your eligibility for RMA.

(5) You may be eligible for RMA coverage of medical expenses incurred during the three months prior to the first day of the month of the application. Eligibility determination will be made according to medicaid rules.

(6) If you are a victim of human trafficking you must provide the following documentation and meet the eligibility requirements in subsections (1) and (2) of this section to be eligible for RMA:

(a) Adults, (~~(eighteen)~~) 18 years of age or older, must provide the original certification letter from the United States Department of Health and Human Services (DHHS). No other documentation is needed. The (~~(eight-month)~~) eligibility period will be determined based on the entry date on your certification letter;

(b) A child victim under the age of (~~(eighteen)~~) 18 does not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirements;

(c) A family member of a certified victim of human trafficking must have a T-2, T-3, T-4, or T-5 visa (derivative T-Visas), and the family member must meet eligibility requirements in subsections (1) and (2) of this section.

(7) The entry date for an asylee is the date that asylum status is granted. For example, you entered the United States on December 1, 1999, as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000, and were granted asylum on September 1, 2000. The date of entry is September 1, 2000, and that is the date used to establish eligibility for RMA.

(8) (a) RMA ends on either:

(i) The last day of the eighth month from the month you entered the United States if you entered the United States on or before September 30, 2021. For example, if you entered the United States on (~~(May 28, 2011)~~) September 30, 2021, you are eligible through the end of (~~(December 2011.)~~) April 2022; or

(ii) The last day of the 12th month from the month you entered the United States if you entered the United States on or after October 1, 2021. For example, if you entered the United States on October 25, 2021, you are eligible through the end of September 2022.

(b) You may receive RMA benefits for more months if you are in a category of persons for whom the federal Office of Refugee Resettlement has extended the eligibility period.

(9) If you are approved for RMA you are continuously eligible through the end of the (~~(eighth month after your entry to the United States)~~) initial RMA certification period, regardless of an increase in income.

(10) The agency, or its designee, determines eligibility for medicaid and other medical programs for your spouse when the spouse arrives in the United States. If the spouse is not eligible for medicaid due to your countable income, the spouse is still eligible for RMA (~~(for eight months following the spouse's entry into the United States)~~) under subsection (8) of this section.

(11) If you disagree with a decision or action taken on the case by the agency, or its designee, you have the right to request a review of the case action(s) or request an administrative hearing (see chapter 182-526 WAC). The request must be received by the agency, or its

designee, within ((~~ninety~~)) 90 days of the date of the decision or action.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-21-008, § 182-507-0130, filed 10/8/20, effective 11/8/20. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0130, filed 9/5/12, effective 10/6/12. WSR 12-02-034, recodified as § 182-507-0130, filed 12/29/11, effective 1/1/12. 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, § 388-466-0130, 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, § 388-466-0130, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, § 388-466-0130, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.08.090, 74.08A.320. WSR 00-21-065, § 388-466-0130, filed 10/16/00, effective 11/1/00.]