

WSR 21-14-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-103—Filed June 23, 2021, 3:59 p.m., effective June 23, 2021, 3:59 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule opens the 2021 tribal spring and summer commercial fisheries above Bonneville Dam, and in accordance with state/tribal memorandums of understanding and memorandums of agreement for below Bonneville Dam. This rule is consistent with actions of the Columbia River Compact on June 8 and June 23, 2021. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Ore-

gon (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 23, 2021.

Kelly Susewind
Director

NEW SECTION

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

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

(a) Seasons:

(i) Immediately through 6:00 PM Thursday, June 24, 2021

(ii) 6:00 AM Monday June 28 to 6:00 PM Thursday, July 1, 2021

(iii) 6:00 AM Monday July 5 to 6:00 PM Thursday, July 8, 2021

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

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

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

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

(a) Season: Immediately through 11:59 PM July 31, 2021.

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

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

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

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

(a) Season: Immediately through 11:59 PM July 31, 2021, only during days and times opened under tribal rules.

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

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

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

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

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

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

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

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

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REPEALER

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

WAC 220-359-02000M Columbia River salmon seasons.

WSR 21-14-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 23, 2021, 4:29 p.m., effective June 25, 2021]

Effective Date of Rule: June 25, 2021.

Purpose: Additional regulations are needed to prevent wildfires on department lands during the current period of high fire danger. The new rules will help reduce the threat of wildfires on department lands and provide protection of human health, safety, and wildlife habitat.

Citation of Rules Affected by this Order: Amending WAC 220-500-030, 220-500-040, 220-500-110, and 220-500-140.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

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 rule is necessary to protect department lands from imminent risk of wildfire damage during a high fire danger period which is occurring currently and before permanent rules can be adopted. These additional prohibitions are needed immediately to protect humans, wildlife, and property.

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 4, 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, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-500-03000 Behavior and conduct. (1) Notwithstanding the provisions of WAC 220-500-030, effective June 25, 2021, until further notice, in wildlife areas and access sites in eastern Washington owned or controlled by the department, it is unlawful to:

(a) Operate a chainsaw without a permit or approval from the director; or

(b) Weld or operate an acetylene torch or other open flame without a permit or approval from the director.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 and 77.15.230.

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NEW SECTION

WAC 220-500-04000 Regulating public access. (1) Notwithstanding the provisions of WAC 220-500-040, effective June 25, 2021, until further notice, it is unlawful to operate a motor vehicle off developed roadways in wildlife areas and access sites owned or controlled by the department in eastern Washington. However, it is permissible to park in an area devoid of vegetation within 10 feet of the roadway, and to park overnight in developed campgrounds and at trailheads.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 and 77.15.230.

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NEW SECTION

WAC 220-500-11000 Fires and campfires. (1) Notwithstanding the provisions of WAC 220-500-110, effective June 25, 2021, until further notice, it is unlawful to build, start, or maintain fires or campfires in wildlife areas and access sites owned or controlled by the department in eastern Washington without a permit or approval from the director. However, it is permissible to use personal camp stoves or lanterns fueled by liquid petroleum, liquid petroleum gas, or propane.

(2) Effective immediately until further notice, it is unlawful to smoke in wildlife areas and access sites owned or controlled by the department in eastern Washington, except in an enclosed vehicle.

(3) A violation of this section is an infraction punishable under RCW 77.15.160 and 77.15.230.

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NEW SECTION

WAC 220-500-14000 Firearms and target practicing. (1) Notwithstanding the provisions of WAC 220-500-140, effective June 25, 2021, until further notice, it is unlawful to discharge firearms on department owned or controlled by the department in eastern Washington unless engaged in lawful hunting.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 and 77.15.230.

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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.

WSR 21-14-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-104—Filed June 24, 2021, 3:57 p.m., effective June 26, 2021]

Effective Date of Rule: June 26, 2021.

Purpose: The purpose of this emergency rule is to return salmon seasons in the Cowlitz River, Cowlitz River Reservoir and Cispus River to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000Z.

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

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

Reasons for this Finding: This rule is needed to return salmon and steelhead seasons and daily limits within the Cowlitz River, Cispus River and Cowlitz River Reservoir (Lake Scanewa) to permanent rules.

Salmon retention on the Cowlitz River was closed earlier in the year to help ensure that the spring Chinook broodstock collection goal was achieved. Adult broodstock collection is on track and the goal is expected to be met, therefore a reopening of retention for hatchery salmon is warranted.

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 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 24, 2021.

Kelly Susewind
Director

REPEALER

The following section of Washington Administrative Code is repealed, effective June 26, 2021:

WAC 220-312-03000Z Freshwater exceptions to statewide rules—Southwest. (21-85)

WSR 21-14-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-105—Filed June 28, 2021, 2:13 p.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The purpose of this emergency rule is to set salmon seasons for the upper Columbia [River] from Priest Rapids Dam to Chief Joseph Dam and upper Columbia River tributaries according to seasons agreed to during the 2021/2022 North of Falcon season setting process.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000S and 220-312-05000V; and amending WAC 220-312-060 and 220-312-050.

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

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

Reasons for this Finding: Summer Chinook and sockeye returns to the upper Columbia River and tributaries are forecasted to be sufficient to provide this recreational opportunity. This action is consistent with comanager agreements reached in April during the North of Falcon season-setting process. These rules are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: June 28, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000S Freshwater exceptions to statewide rules—Columbia River. Effective July 1 through August 15, 2021, the provisions of WAC 220-312-060 and WAC 220-220-160 regarding recreational salmon seasons and Two-pole angling from the Priest Rapids Dam to Chief Joseph Dam, shall be modified as described below. All other provisions of WAC 220-312-060 and WAC 220-220-160 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) **From Priest Rapids Dam to Wells Dam:** Effective July 1 through August 15, 2021: Daily limit 6. Up to 2 adult Chinook and up to 2 sockeye may be retained. Release wild adult Chinook and Coho.

(2) **From Wells Dam to Hwy. 173 Bridge at Brewster:** Effective July 16 through August 15, 2021: Daily limit 6. Up to 2 adult Chinook and up to 2 sockeye may be retained. Release wild adult Chinook and Coho.

(3) **From Hwy. 173 Bridge at Brewster to the Corps of Engineers safety marker on the Douglas County shore to the rock jetty at the upstream shoreline of Foster Creek:** Effective July 1 through August 15, 2021:

(a) Daily limit 6. Up to 2 adult Chinook and up to 2 sockeye may be retained. Release wild adult Chinook and Coho.

(b) Two-pole fishing is allowed with a valid Two-pole endorsement.

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NEW SECTION

WAC 220-312-05000V Freshwater exceptions to statewide rules—Eastside. Effective July 1 through August 15, 2021, the provisions of WAC 220-312-050 regarding recreational salmon seasons for the waters listed below, shall be modified as described. All other provisions of WAC 220-312-050 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) **Chelan River from the railroad bridge to the Chelan P.U.D. safety barrier below the powerhouse:** Effective July 16 through August 15, 2021:

(a) Daily limit 6. Up to 2 hatchery adult Chinook may be retained. Release sockeye, coho, and wild adult Chinook.

(b) Anti-snagging rule in effect.

(c) Night Closure in effect.

(2) **Entiat River from the mouth to boundary markers located approximately 1500 feet upstream of the Upper Roaring Creek Rd. Bridge:** Effective July 16 through August 15, 2021:

(a) Daily limit 6 Chinook. Release all other salmon

(b) Night Closure in effect.

(3) **Okanogan River:**

(a) **From the mouth to Hwy. 97 Bridge at Oroville:** Effective July 1 through August 15, 2021:

(i) Daily limit 6. Up to 2 hatchery adult Chinook may be retained. Release sockeye, coho, and wild adult Chinook.

(ii) Anti-snagging rule in effect.

(iii) Night Closure in effect.

(4) **Similkameen River from the mouth to 400 feet below Enloe Dam:** Effective July 1 through August 15, 2021:

(a) Daily limit 6. Up to 2 hatchery adult Chinook may be retained. Release sockeye, coho, and wild adult Chinook.

(b) Anti-snagging rule in effect.

(c) Night Closure in effect.

(5) **Wenatchee River from mouth to Icicle Rd. Bridge:** Effective August 1 through August 15:

(a) Daily limit 6. Up to 2 hatchery adult Chinook may be retained. Release sockeye, coho, and wild adult Chinook.

(b) Night Closure in effect.

(c) Selective Gear Rules in effect, except use of bait is allowed.

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REPEALER

The following sections of Washington Administrative Code are repealed effective August 16, 2021:

WAC 220-312-06000S Freshwater exceptions to statewide rules—Columbia River.

WAC 220-312-05000V Freshwater exceptions to statewide rules—Eastside.

WSR 21-14-028

**RECISSION OF EMERGENCY RULES
EMPLOYMENT SECURITY DEPARTMENT**

[Filed June 29, 2021, 8:36 a.m.]

On March 25, 2020, the governor issued Emergency Proclamation 20-30, which suspended the requirement for individuals claiming unemployment benefits to actively look for work. With the economy recovering, the governor rescinded Proclamation 20-30 effective July 4, 2021. Therefore, the requirement for individuals claiming unemployment benefits is going back into effect beginning July 4, 2021. With the resumption of job search requirements, the employment security department (ESD) hereby rescinds the emergency rule adopted under WSR 20-08-040, effective July 4, 2021.

Therefore, ESD hereby reinstates the following rules, effective July 4, 2021:

- WAC 192-140-075 What happens if I do not demonstrate that I am actively looking for work?, suspended on March 24, 2020, as WSR 20-08-040. Effective March 24, 2020.
- WAC 192-140-080 What happens if I do not comply with a job search directive?, suspended on March 24, 2020, as WSR 20-08-040. Effective March 24, 2020.
- WAC 192-180-012 Requirements of individuals who leave work due to illness or disability, suspended on March 24, 2020, as WSR 20-08-040. Effective March 24, 2020.
- WAC 192-180-014 Requirements of individuals who leave work due to domestic violence or stalking—RCW 50.20.010 (1)(c), suspended on March 24, 2020, as WSR 20-08-040. Effective March 24, 2020.
- WAC 192-180-015 Tracking job search activities—RCW 50.20.240, suspended on March 24, 2020, as WSR 20-08-040. Effective March 24, 2020.
- WAC 192-180-020 Monitoring job search activities—RCW 50.20.240, suspended on March 24, 2020, as WSR 20-08-040. Effective March 24, 2020.
- WAC 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044, suspended on March 24, 2020, as WSR 20-08-040. Effective March 24, 2020.

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

WSR 21-14-031
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 29, 2021, 11:05 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

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

These amendments add a time limit extension hardship category (under RCW 74.08A.010 (5)(a)(1)) to support the operating budget: SB [ESSB] 5092 (chapter 334, Laws of 2021), effective July 1, 2021; and a time limit extension hardship category to implement 2SSB 5214 (chapter 239, Laws of 2021), effective July 25, 2021 (ninety days after session ended).

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

Statutory Authority for Adoption: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030.

Other Authority: SB [ESSB] 5092 (chapter 334, Laws of 2021), 2SSB 5214 (chapter 239, 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; 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 sixty-month lifetime temporary assistance for needy families time limit will have access to benefits needed to sustain basic needs, thus this amendment is necessary to preserve public health, safety, and welfare. Observing requirements of notice and opportunity to comment would be contrary to the public interest.

These amendments also meet the implementation needs of the operating budget: SB [ESSB] 5092 (chapter 334, Laws of 2021), and 2SSB 5214 (chapter 239, Laws of 2021).

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 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, 2021.

Katherine I. Vasquez

SHS-4875.1

AMENDATORY SECTION (Amending WSR 21-12-077, filed 5/28/21, effective 7/1/21)

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

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

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

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

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

(b) You:

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

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

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

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

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

(vi) Are homeless 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; or

(viii) 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 unemployment rate was at seven percent or above. The extension provided for under this subsection (2)(b)(viii) is equal to the number of months that you received TANF on or after March 1, 2020, when the state'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 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 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, 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 21-14-032
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 29, 2021, 11:08 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The department is amending WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance? These amendments are necessary to support SHB 2441 (chapter 338, Laws of 2020), and align with changes to temporary assistance for needy families (TANF) sanction rules effective July 1, 2021.

Citation of Rules Affected by this Order: Amending WAC 388-432-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.660, 74.08.090, 74.08A.230.

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

Reasons for this Finding: These amendments increase the number of households that potentially qualify for diversion cash assistance benefits and align with changes in SHB 2441 (chapter 338, Laws of 2020), effective July 1, 2021. Therefore, emergency adoption is necessary to support state legislation and the preservation of the public health, safety, and welfare. Observing time requirements of notice and opportunity to comment would be contrary to the public interest.

The department filed a Preproposal statement of inquiry (CR-101) under WSR 21-13-016 to incorporate these amendments and is actively undertaking appropriate procedures to adopt the rule as permanent.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 29, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4867.1

AMENDATORY SECTION (Amending WSR 17-07-042, filed 3/8/17, effective 4/8/17)

WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance? The department of social and health services (DSHS) has a program called diversion cash assistance (DCA). If your family needs an emergency cash payment but does not need ongoing monthly cash assistance, you may be eligible for this program.

(1) To get DCA, you must:

(a) Meet all the eligibility rules for temporary assistance for needy families (TANF)/state family assistance (SFA), and once DSHS finds you eligible, you are not required to fulfill the following TANF-related requirements:

(i) Participation in (~~workfirst~~) WorkFirst as defined in chapter 388-310 WAC; and

(ii) Assignment of child support rights or cooperation with the division of child support as defined in chapter 388-422 WAC;

(b) Have a current bona fide or approved need for living expenses;

(c) Provide proof that your need for DCA exists; and

(d) Have or expect to get enough income or resources to support you and your family for at least twelve months.

(2) You may get DCA to help pay for one or more of the following needs:

(a) Child care;

(b) Housing;

(c) Transportation;

(d) Expenses to get or keep a job;

(e) Food costs, but not if an adult member of your family has been disqualified for food stamps;

(f) Medical costs, except when an adult member of your family is not eligible because he or she failed to provide third party liability (TPL) information as defined in WAC 182-503-0540.

(3) DCA payments are limited to:

(a) One thousand two hundred fifty dollars once in a twelve-month period that starts with the month DCA benefits begin; and

(b) The cost of your need.

(4) We do not budget your income or make you use your resources to lower the amount of DCA payments you can receive.

(5) DSHS may make DCA payments:

(a) All at once; or

(b) As separate payments over a thirty-day period that starts on the date of your first DCA payment.

(6) We will pay your DCA benefit directly to the service provider when possible.

(7) You are not eligible for DCA if one or more of the following applies:

(a) Any adult member of your assistance unit got DCA within the last twelve months;

(b) Any adult member of your assistance unit gets TANF/SFA currently;

(c) Any adult member of your assistance unit is not eligible for cash assistance for any reason unless one parent in a two-parent-assistance unit currently receives SSI;

(d) Your assistance unit does not have a needy adult, such as when you do not receive TANF/SFA for yourself but for your children only;

(e) Any adult member of your assistance unit is not eligible for cash assistance for any one of the following sanctions:

(i) TANF/SFA closure because of a noncompliance sanction (NCS) termination;

(ii) TANF/SFA closure while in (~~workfirst~~) WorkFirst sanction on or after July 1, (~~2010~~) 2021; or

(iii) Noncooperation with division of child support.

(8) If you apply for DCA after your TANF/SFA grant is terminated, we consider you an applicant for DCA.

(9) If you apply for TANF/SFA and you received DCA less than twelve months ago, we set up a DCA loan:

(a) The amount of the DCA loan is one-twelfth of the total DCA benefit times the number of months that are left in the twelve-month period;

(b) The first month begins with the month your DCA benefits began; and

(c) We will collect the loan only by reducing your TANF/SFA grant by five percent each month.

(10) If you stop getting TANF/SFA before you have repaid your DCA loan, we will stop collecting the loan unless you get back on TANF/SFA.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.210, and 74.62.030. WSR 17-07-042, § 388-432-0005, filed 3/8/17, effective 4/8/17. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 2011 1st sp.s. c 15. WSR 13-18-004, § 388-432-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-064, § 388-432-0005, filed 11/30/10, effective 12/31/10. Statutory Authority: RCW 74.08.090, 74.04.050. WSR 01-03-066, § 388-432-0005, filed 1/12/01, effective 3/1/01.]

WSR 21-14-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-106—Filed June 29, 2021, 4:14 p.m., effective July 4, 2021]

Effective Date of Rule: July 4, 2021.

Purpose: The purpose of this emergency rule is to set weekly landing limits for coastal commercial crab.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000N; and amending WAC 220-340-420.

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

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

Reasons for this Finding: The weekly landing limit and period is necessary to mitigate handling mortality from sorting soft-shelled crab and provide for an orderly fishery. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000P Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420:

(1) Effective 12:01 A.M. July 4, 2021 until further notice, it is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 2,500 pounds taken during each of the following coastal crab accounting periods:

- July 4 - July 10, 2021
- July 11 - July 17, 2021
- July 18 - July 24, 2021
- July 25 - July 31, 2021
- August 1 - August 7, 2021

- August 8 - August 14, 2021
- August 15 - August 21, 2021
- August 22 - August 28, 2021
- August 29 - September 4, 2021
- September 5 - September 11, 2021
- September 12 - September 15, 2021

(2) Any crab taken prior to July 4, 2021, and not landed before 11:59 p.m. July 3, 2021, become part of the July 4 through July 10, 2021 accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

(4) All other provisions of the permanent rule remain in effect.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. July 4, 2021:

WAC 220-340-42000N Commercial crab fishery—Unlawful acts.
(21-67)

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

WSR 21-14-039
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed June 30, 2021, 10:32 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

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

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

Statutory Authority for Adoption: RCW 43.216.060 and 43.216.070; chapter 334, Laws of 2021.

Under RCW 34.05.350 the agency for good cause finds that 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: Chapter 334, Laws of 2021, took effect May 18, 2021, and authorized July 1 rate increases for the child care subsidy programs. There was insufficient time between chapter 334'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 11, Repealed 0.

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

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

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

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

Date Adopted: June 30, 2021.

Brenda Villarreal
Rules Coordinator

OTS-3144.3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The need for care is verified;

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

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

(e) For sleep time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The parent is a WorkFirst participant; and

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

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

(a) Registration fees;

(b) Field trip fees;

(c) Nonstandard hours bonus;

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

(e) Special needs rates for a child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Partial-Day Monthly Rates

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Admission;
- (b) Enrichment programs and/or ongoing lessons;
- (c) Public transportation or mileage reimbursement at the state office of financial management rate for the use of a private vehicle;
- (d) The cost of hiring a nonemployee to provide an activity at the child care site in-house field trip activity; and
- (e) The purchase or development of a prekindergarten curriculum.

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

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

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

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

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

(2) Nonstandard hours are defined as:

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

(3) NSHB amounts are:

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

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0249, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0249, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0249, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0249, filed 10/28/09, effective 12/1/09.]

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

WAC 110-15-0267 Payment discrepancies—Provider underpayments.

(1) Underpayments to a provider occur if DCYF pays less than the amount the provider is eligible to receive.

(2) Underpayment requests will only be considered by (~~DSHS~~) DCYF if the provider submitted the original invoice for payment to DCYF no later than (~~six~~) three months after the date of service.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0267, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0267, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0267, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0267, filed 10/28/09, effective 12/1/09.]

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0268 Payment discrepancies—Provider overpayments.

(1) An overpayment occurs when a provider receives payment that is more than the provider is eligible to receive. Provider overpayments are established when that provider:

- (a) Bills and receives payment for services not provided;
 - (b) Bills without attendance records that support the billing. Beginning July 1, 2018, attendance must be recorded using DCYF's electronic attendance system or a DCYF-approved electronic attendance system. Any other format for recording attendance will not be considered valid support for a provider billing and may result in an overpayment;
 - (c) Bills and receives payment for more than the provider is eligible to bill;
 - (d) Routinely provides care in a location other than what was approved at the time of authorization;
 - (e) With respect to license-exempt in-home/relative providers, bills the state for more than six children at one time for the same hours of care; or
 - (f) With respect to licensed or certified providers:
 - (i) Bills the state for more than the number of children in the provider's licensed capacity; or
 - (ii) Is caring for a child receiving WCCC benefits outside the provider's licensed allowable age range without a DCYF-approved exception; or
 - (g) With respect to certified providers caring for children in a state bordering Washington:
 - (i) Is determined to not be in compliance with the state's licensing regulations; or
 - (ii) Fails to notify (~~(DSHS)~~) DCYF within ten days of any suspension, revocation, or change to the provider's license.
- (2) DCYF (~~(or DSHS)~~) will request documentation from a provider when preparing to establish an overpayment. The provider must provide requested information within (~~(twenty-eight consecutive)~~) forty-five calendar days from the date of the written request.
- (3) A provider must repay any payments that the provider was not eligible to receive.
- (4) A provider must repay any overpayment, even if the overpayment is the result of a DCYF (~~(or DSHS)~~) error in issuing payment the provider was not eligible to receive.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0268, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0268, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0268, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0268, filed 5/31/17, effective 7/1/17; WSR 12-11-025, § 170-290-0268, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0268, filed 10/28/09, effective 12/1/09.]

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

WAC 110-15-0275 Payment discrepancies—Providers. (1) This section applies to all child care providers.

(2) Providers must submit a billing invoice for payment within ~~((six))~~ three months of the date child care services are provided. Any invoice submitted more than ~~((six))~~ three months from date child care services are provided will not be processed.

(3) For purposes of correcting payment errors based on correctly submitted invoices under the provisions of subsection (2) of this section, the following time limits apply:

(a) For underpayments:

(i) Two years back from the date the payment was issued if the error was based on rates paid by age or region, except as provided in (a)(iii) of this subsection; or

(ii) Three years back from the date payment was issued if the error was based on any issue other than rates paid by age or region; and

(iii) Three years back from the date the payment was issued for any underpayment identified by a federal or state audit.

(b) For overpayments:

(i) Two years back from the date payment was issued if the error was based on rates paid by age or region, except as provided in

(b)(iii) of this subsection; and ~~((DSHS or))~~ DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within two years of the date the payment was issued; or

(ii) Three years back from the date payment was issued if the error was based on any issue other than rates paid by age or region; DSHS or DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the payment was issued; and

(iii) Three years back from the date the payment was issued for any overpayment identified by a federal or state audit; ~~((DSHS or))~~ DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the payment was issued.

(4) For in-home/relative and family home child care providers, disputes regarding underpayments may be addressed through the grievance process provided for in the collective bargaining agreement.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-0275, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-0275, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0275, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0275, filed 10/28/09, effective 12/1/09.]

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

WAC 110-15-3850 Payment discrepancies generally. Child care subsidy payment discrepancies are described in WAC 110-15-0266 through 110-15-0275, with the exception of underpayments requested by licensed child care centers, which will only be considered for (~~six~~) three months after the date of services.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 19-12-058, § 110-15-3850, filed 5/31/19, effective 7/1/19. WSR 18-14-078, recodified as § 110-15-3850, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 11-12-078, § 170-290-3850, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3850, filed 10/28/09, effective 12/1/09.]

WSR 21-14-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-107—Filed June 30, 2021, 11:39 a.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: The purpose of this emergency rule is to open coastal commercial salmon troll seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000X; 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, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-30000Z 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, 2021.

(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 8, 2021.

(3) Landing and possession limit of 20 marked coho per vessel per landing week, defined as Thursday through Wednesday.

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

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

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

(7) 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.

(8) For delivery to Washington ports east of the Sekiu River, vessels must notify WDFW at (360)249-1215 or by email at Danielle.Williams@dfw.wa.gov prior to crossing the Bonilla-Tatoosh line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery. Vessels may not land fish east of Port Angeles or east of the Megler-Astoria bridge.

(9) 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.

(10) 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.

[]

REPEALER

The following section Washington Administrative Code is repealed effective July 1, 2021:

WAC 220-354-30000X Coastal salmon troll seasons—
Commercial. (21-84)

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

WSR 21-14-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-109—Filed June 30, 2021, 5:24 p.m., effective July 1, 2021]

Effective Date of Rule: July 1, 2021.

Purpose: Amends freshwater fishing rules for North Fork Nooksack River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000C and 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 emergency rule is needed to reopen the hatchery spring Chinook fishery in a portion of the North Fork Nooksack River. Shortly after reopening the sport fishery on June 18, the weather got hot and the river became high and turbid resulting in poor to unfishable fishing conditions. Sufficient numbers of hatchery spring Chinook are forecasted to return to allow for a harvest fishery. Once tribal comanager's had completed their spring Chinook fishery with unused wild Chinook impacts and offered those unused impacts to the state. This transaction has been approved by the National Oceanic and Atmospheric Administration and all comanagers. With additional allowable encounters, the recreational fishery can reopen. This fishery will be actively monitored. Should total encounters reach the agreed to threshold, the fishery may close earlier than scheduled. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000F Freshwater exceptions to statewide rules—Puget Sound. Effective immediately through July 9, 2021, the following provisions of WAC 220-312-040 regarding salmon seasons for the Nooksack River, North Fork, shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Nooksack River, North Fork (Whatcom Co.) from the Hwy. 9 Bridge to the yellow marker at the upstream side of Kendall Hatchery:

Salmon: Daily limit 2. Release all salmon other than hatchery Chinook. Night Closure and Anti-snagging rule in effect.

[]

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2021:

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

REPEALER

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

WAC 220-312-04000F Freshwater exceptions to statewide rules—Puget Sound. (21-99)

WSR 21-14-045
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 1, 2021, 9:13 a.m., effective July 1, 2021, 9:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 39.12.070 requires labor and industries (L&I) set the fees "at a level that generates revenue that is as near as practicable to the amount of the appropriation to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW." L&I completed budget projections considering the continuation of a twenty dollar fee, as well as several other alternatives. L&I concluded that the twenty dollar fee, rather than a higher fee, will result in a modest drawdown from existing funds. However, L&I concludes that it has a sufficient cushion to maintain the twenty dollar fee until a permanent rule is implemented later in the year considering further budget projections.

Purpose: Prior to 1993, the filing fees charged on for each statement of intent to pay prevailing wages (intent) form and each affidavit of wages paid (affidavit) form were \$12.50. In 1993, SHB 1219 created a dedicated account, the public works administration account, and limited the filing fee to no more than \$25. WAC 296-127-040 was amended to set a \$25 filing fee on the intent and WAC 296-127-045 was amended to set the affidavit filing fee at \$25.

By 2006, the \$25 filing fee was inadequate to run the prevailing wage program. A partial fix was made: The 2006 legislation, SSB 5236, eliminated a transfer to the general fund of thirty percent of the revenue received into the public works administration account.

In 2008, EHB 3381 addressed many fees charged to "implement programs that protect and improve Washington's health, safety, education, employees, and consumers," including the intent and affidavit fees. Section 2 of EHB 3381 amended RCW 39.12.070. The amended statute (RCW 39.12.070) set the intent and affidavit filing fee at \$40. The administrative rules, WAC 296-127-040 for the intent and WAC 296-127-045 for the affidavit, were both amended to charge the filing fee set in RCW 39.12.070 for the form filing fee.

In 2014, SHB 1254 (effective June 12, 2014) amended RCW 39.12.070 adding a new subsection (3) to the statute that eliminates the filing fee for (only the) affidavits that are filed by an entity that is exempt from paying prevailing wages.

2019's Prevailing wage program fees—Determination—Limit Act amends RCW 39.12.070 related to setting fees for administration of the prevailing wage program and the fee for approval of a statement of intent to pay prevailing wages and certifying an affidavit of wages paid (sections 1 and 2, chapter 193, Laws of 2019, SB 5566). The words "or less" were added after the law's statement: "However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be forty dollars" and another sentence added to the statute stating: "For the 2019-2021 biennium, the fees shall not be more than twenty dollars." This provision expires at the end of the biennium, so the provisions are neces-

sary to implement the expiration of the provision from sections 1 and 2, chapter 193, Laws of 2019, SB 5566.

The rules still refer to the filing fee set in RCW 39.12.070, but the statute no longer sets a precise filing fee and the biennium is ending. In order for L&I to continue to process and approve or certify the intent and affidavit forms, rule making is required to set the intent and affidavit filing fees that will be charged after the end of the 2019-2021 biennium.

This emergency rule is adopted under chapter 296-127 WAC, Prevailing wage. On June 22, 2021, L&I filed a Preproposal statement of inquiry (CR-101) to initiate permanent rule making for these requirements.

Citation of Rules Affected by this Order: Amending WAC 296-127-040 and 296-127-045.

Statutory Authority for Adoption: Section 1, chapter 193, Laws of 2019; RCW 39.12.070.

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

Reasons for this Finding: In order for L&I to continue to process and approve or certify the intent and affidavit forms, rule making is required to set the intent and affidavit filing fees that will be charged after the end of the 2019-2021 biennium.

There are approximately one thousand public agencies that contract for public work in Washington state. Under the provisions of RCW 39.12.040, these agencies cannot make payment, release contract retainage, or accept the contract work as complete without the required approved and certified intent and affidavit forms. This means a rule setting the filing fees that allow processing of these forms needs to be in place or many payments on public works will not be possible under the law. Without the legal ability to make payments, public works will come to a statewide standstill.

Immediate adoption of administrative rules setting the filing fees for the intent form and for the affidavit form are necessary for the preservation of the public health, safety, or general welfare (allowing public works to proceed without interruption). The time requirements regarding notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

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

Date Adopted: July 1, 2021.

Joel Sacks

OTS-3153.1

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-040 Statement of intent to pay prevailing wages.

(1) All statements of intent to pay prevailing wages submitted to the industrial statistician of the department shall be accompanied by (~~the fee set in RCW 39.12.070~~) a twenty dollar filing fee for each statement. Fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies statements of intent for its own contracts shall provide to the industrial statistician each month the number of statements of intent certified and quarterly shall send the fee set in RCW 39.12.070 for each statement of intent to pay prevailing wages it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-040, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-040, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. WSR 90-24-053, § 296-127-040, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-040, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-040, filed 8/27/82.]

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-045 Affidavit of wages paid. (1) All affidavits of wages paid submitted to the industrial statistician of the department shall be accompanied by (~~the fee set in RCW 39.12.070~~) a twenty dollar filing fee for each affidavit of wages paid. All fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies affidavits of wages paid for its own contracts shall provide to the industrial statistician each month the number of affidavit of wages paid it has certified and quarterly shall send the fee set in RCW 39.12.070 for each affidavit of wages paid it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-045, filed 8/19/08, effective 9/19/08.]

Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-045, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. WSR 90-24-053, § 296-127-045, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-045, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-045, filed 8/27/82.]

WSR 21-14-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-108—Filed July 1, 2021, 2:27 p.m., effective July 5, 2021]

Effective Date of Rule: July 5, 2021.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in specific Columbia River select areas 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 220-358-03000A; 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; 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: Modifies 2021 commercial select area summer seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact actions of February 16, March 23, March 30, April 7, and July 1, 2021. There is insufficient time to promulgate permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the 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: July 1, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000B Columbia River seasons below Bonneville.

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, effective July 5 through July 16, 2021, 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:

Open_Dates	Open_Days	Open_Time	Open_Duration
Jul 5 - Jul 16	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights

(a) Area:

The lower (downstream) boundary of the Tongue Point fishing area is defined as a line from a regulatory marker (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern-most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island.

For summer fisheries, the open waters include the entire Tongue Point Select 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.

The South Channel Select Area is 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:

Summer seasons (Jul 5 - Jul 16): 9 3/4-inch maximum mesh size restriction.

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

In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom;

In the South Channel Select 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:

Open_Dates	Open_Days	Open_Time	Open_Duration
Jul 5 - Jul 16	Mon, Thu (nights)	7:00 pm - 7:00 am	4 nights

(a) Area:

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.

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

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

(b) Gear: Gillnets:

Summer seasons (Jul 5 - Jul 16): 9 3/4-inch maximum mesh size restriction.

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

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 OAR 635-006-0210 (2) (h) and WACs 220-352-040 (1) (m) 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, 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 **three** white sturgeon possession and sales limit includes all on-going 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 these fisheries.

(5) 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)).

(6) 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 Washington Administrative Code is repealed, effective July 5, 2021:

WAC 220-358-03000A Columbia River seasons below
Bonnevile. (21-50)

WSR 21-14-058

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed July 2, 2021, 8:14 a.m., effective July 2, 2021, 8:14 a.m.]

Effective Date of Rule: Immediately upon filing.

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

These rules continue the initial emergency rules that were filed on July 9, 2020, as WSR 20-15-057 and subsequently extended on November 6, 2021, as WSR 20-23-011 and most recently on March 5, 2021, as WSR 21-07-017. As part of the department's continuing response to the evolving COVID-19 public health threat, continuing this emergency rule will allow sex offenders to maintain access to care, help prevent recidivism, and mitigate the COVID-19 public health threat while vaccine distribution efforts are ongoing.

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

Statutory Authority for Adoption: RCW 18.155.040.

Other Authority: None.

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

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

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, 2021.

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

AMENDATORY SECTION (Amending WSR 07-09-092, filed 4/18/07, effective 5/19/07)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WSR 21-14-059

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed July 2, 2021, 9:12 a.m., effective July 2, 2021, 9:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-010 Prescription labeling, records, and advertising—Minimum requirements, the pharmacy quality assurance commission (commission) is adopting emergency rules to reduce burdens on practitioners prescribing Schedule II substances during the coronavirus disease (COVID-19) outbreak. This adopted emergency rule will extend WSR 21-07-016 filed on March 5, 2021. This emergency rule was originally filed on April 21, 2020, under WSR 20-09-133. It was re-filed on July 10, 2020, after the commission's new chapter went into effect under WSR 20-15-058. This emergency rule will continue the existing emergency rule amending WAC 246-945-010 to increase the duration of time a practitioner has to deliver a signed prescription of a Schedule II substance to the pharmacy from seven days to fifteen days when a prescription is dispensed in an emergency. It also defines what a "signed prescription" means and allows for a practitioner to accomplish this requirement through paper, electronic transmission, facsimile, photograph, or scanned copy. These alternative methodologies support patients, practitioners, and pharmacists' efforts to practice social distancing and to help mitigate communal spread.

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

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

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

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

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

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

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

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

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

Date Adopted: June 4, 2021.

Teri Ferreira, RPh, Chair
Pharmacy Quality Assurance Commission

OTS-2391.1

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

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

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

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

(a) Prescriber's name;

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

(c) Date of issuance;

(d) Drug name, strength, and quantity;

(e) Directions for use;

(f) Number of refills (if any);

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

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

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

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

(a) Patient's address;

(b) Dosage form;

(c) Prescriber's address;

(d) Prescriber's DEA registration number; and

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

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

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

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

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

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

(i) A paper prescription;

(ii) An electronic prescription;

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

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

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

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

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

WSR 21-14-061

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed July 2, 2021, 9:22 a.m., effective July 2, 2021, 9:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-056 Schedule V, the pharmacy quality assurance commission (commission) is adopting emergency rules to remove Epidiolex from the list of Schedule V controlled substances in Washington state. This adopted emergency rule will extend WSR 21-07-015 filed on March 5, 2021. The emergency which was originally filed on May 20, 2020, under WSR 20-11-078. Epidiolex is an FDA-approved cannabidiol with less than 0.3% tetrahydrocannabinol (THC). Descheduling the drug from Schedule V will maintain the emergency rule. It also aligns Washington state rule with the federal decision to exclude all hemp products with less than 0.3% THC from the definition of marijuana and the United States Drug Enforcement Agency's (DEA) rule making to remove Epidiolex from Schedule V, completed on August 21, 2020.

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

Statutory Authority for Adoption: RCW 18.64.005, 69.50.201.

Other Authority: 21 U.S.C. § 811.

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

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

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

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

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

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

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

Date Adopted: June 4, 2021.

Teri Ferreira, RPh, Chair
Pharmacy Quality Assurance Commission

OTS-2392.1

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

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

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

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

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

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

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

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

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

WSR 21-14-066

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed July 2, 2021, 11:07 a.m., effective July 2, 2021, 11:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These emergency rules relate to applications for standby (WAC 192-110-015) and allows the requirement to register for and search for work to be met by staying in contact with the employer; requires the claimant to be available for suitable work; expands standby eligibility to full-time, part-time, and less than full-time workers; automatically places claimants on standby from March 22, 2020, through July 3, 2021; and resets the number of weeks claimants can claim standby. These emergency rules permit greater flexibility in the use of standby in light of changes to Washington's economy due to COVID-19.

Citation of Rules Affected by this Order: Amending WAC 192-110-015.

Statutory Authority for Adoption: RCW 50.12.040.

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

Reasons for this Finding: In Proclamation 20-05, Governor Inslee proclaimed a State of Emergency in Washington regarding COVID-19. The proclamation directs agencies and departments to support the department of health and local officials in alleviating the impacts to people, property, and infrastructure across the state. The proposed rules allow for greater flexibility in the use of standby in light of changes to Washington's economy due to COVID-19 and permit claimants an opportunity to transition toward having to actively search for work in order to be eligible for unemployment benefits.

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: July 2, 2021.

Dan Zeitlin
Employment Security
Policy Director

OTS-3177.1

AMENDATORY SECTION (Amending WSR 20-03-073, filed 1/10/20, effective 2/10/20)

WAC 192-110-015 Applications by standby workers—RCW 50.20.010.

(1) What is "standby?"

(a) "Standby" means you are temporarily unemployed because of a lack of work but:

(i) You expect to return to work with your regular employer within four weeks; or

(ii) You expect to begin full-time work with a new employer within two weeks; or

(iii) You are temporarily unemployed due to natural disaster.

(b) ~~((You do not have))~~ The requirement to register for work ((or look for other work while)) and search for work is fulfilled so long as you are on standby and take reasonable measures to maintain contact with your employer.

(c) You must be available for all hours of work offered by your regular employer.

(2) How long can I be on standby?

(a) You can ask to be on standby for up to four weeks.

(b) We will ask your employer to verify that you are on standby, including your expected return to work date:

(i) If your employer does not reply, you can be on standby for up to four weeks;

(ii) If your employer confirms you are on standby, you can be on standby until the return to work date given by your employer, subject to the limitations of (c) of this subsection;

(iii) If your employer replies that you are not on standby or do not have a return to work date within eight weeks, we will require you to immediately register for work and to look for work.

(c) Your regular employer may ask that you be placed on standby for a maximum of eight weeks (except as provided in (2)(d) below). This request must be approved by the department. We will consider the following before deciding whether to approve standby for more than four weeks:

(i) How long you have been out of work;

(ii) Whether other suitable work is available;

(iii) The impact on you and your employer if you accept other work; and

(iv) Other factors that apply to your situation.

(d) At ~~((his or her))~~ the discretion of the commissioner, the commissioner may grant standby for more than eight weeks in a benefit year. Exceptions can be made due to natural disaster. Exceptions can also be made in other extraordinary circumstances when the employer applies in writing and shows there are conditions that apply to the business that are so unique or unusual compared to similar businesses that having their employees on standby for more than eight weeks is necessary.

(e) We can approve standby if you have obtained a definite offer of bona fide full-time work that has a probable start date within two weeks, which includes the week of the job offer and up to two additional weeks. The job, however, must be:

(i) With a new employer or with a former employer to whom you are no longer attached as provided in subsection (3)(f) of this section; and

(ii) Covered by Title 50 RCW or the comparable laws of another state or the federal government.

(f) Any weeks of standby you used prior to July 4, 2021, will be disregarded for calculating the number of weeks you are allowed to be on standby.

(3) Are there conditions that apply to a request for standby?

(a) You must have a probable date when you will return to work for your regular employer;

(b) We will not approve standby if you only have prospects of future work with your regular employer or a promise of more work at some unspecified date;

(c) We will not approve standby with your regular employer unless the employment is covered by Title 50 RCW or the comparable laws of another state or the federal government;

~~(d) ((Except for claimants who qualify as part-time eligible workers under RCW 50.20.119, we will not approve standby if you regularly work less than full-time. For purposes of this section, "full-time" means forty hours each week or the number of hours that are full-time for your occupation and labor market area;))~~ Standby is available to all full-time, part-time, and other less than full-time employees;

(e) Any week(s) that you do not qualify for benefits will not be considered as part of the maximum eight weeks of standby; ~~((and))~~

(f) After eight consecutive weeks of unemployment, we will no longer consider you attached to that employer. You must meet the job search requirements specified by RCW 50.20.010 (1)(c) and 50.20.240; and

(g) For any claims between March 22, 2020, and July 3, 2021, you are automatically deemed to be on standby. Such weeks will not count towards the four weeks of standby you may request pursuant to subsection (2)(a) of this section or the eight weeks requested by your employer in subsection (2)(b)(ii) of this section.

(4) When does standby begin?

(a) Standby begins the day of your request unless your request is backdated pursuant to (b) of this subsection.

(b)(i) You may backdate your request for standby up to one week for any reason.

(ii) Your request for standby may also be backdated for the convenience of the department. "For the convenience of the department" means for the purpose of program administration; or those situations where it is difficult or impossible to accept a timely request including, but not limited to, equipment breakdowns, lack of available staff, or special handling requirements.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, and 50.20.010. WSR 20-03-073, § 192-110-015, filed 1/10/20, effective 2/10/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-17-126, § 192-110-015, filed 8/22/17, effective 10/10/17; WSR 17-01-051, § 192-110-015, filed 12/13/16, effective 1/13/17. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-018, § 192-110-015, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 50.20.010 and 50.12.040. WSR 99-08-073, § 192-110-015, filed 4/5/99, effective 5/6/99.]

WSR 21-14-070

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed July 2, 2021, 12:34 p.m., effective July 2, 2021, 12:34 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

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

This emergency filing replaces the emergency rules filed under WSR 21-07-007 on March 4, 2021. The agency is refiled the emergency to continue the emergency rule while proceeding through the permanent rule-making process. Since the last emergency filing, the agency completed the external review of a draft rule, responded to stakeholder comments, and completed researching federal and state programs and their interaction with the AEM program to inform permanent rule changes. The agency filed a notice of proposed rule making under WSR 21-13-049 on June 11, 2021, and a public hearing is scheduled for July 27, 2021.

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

Number of Sections Adopted at the Request of a 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 2, 2021.

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 21-14-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-110—Filed July 2, 2021, 4:06 p.m., effective July 2, 2021, 4:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open spot shrimp fisheries in Marine Areas 6, 7 West, 7 East, 8-1, and 8-2.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000H; and amending WAC 220-330-070 and 220-330-020.

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

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

Reasons for this Finding: 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 6, 7 West, 7 East, 8-1, and 8-2. Marine Areas 8-1 and 8-2 will open with a reduced pot limit to stay within the remaining share. In addition, this emergency regulation opens the Marine Area 5, 6, 7 West, and 7 East 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 7 East, 8-1, 8-2, 9, 11, and 13 only. The nonspot shrimp fisheries have maximum depth restrictions specific to each area to limit capture and handling of spot shrimp. Spot shrimp must be immediately released unharmed during nonspot shrimp seasons. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: July 2, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000I Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective immediately through October 15, 2021, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Ta-toosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Area 5:

Open through Sept 15 for all shrimp species.

(2) Marine Areas 6 (excluding the Discovery Bay Shrimp District):

(a) Open July 14 through July 17 for all shrimp species

(b) Open July 28 through July 31 for all shrimp species

(3) Marine Area 7 West:

(a) Open July 14 through July 17 for all shrimp species

(b) Open July 28 through July 31 for all shrimp species

(4) Marine Area 7 South:

Open July 14 through July 17 for all shrimp species

(5) Marine Area 7 East:

(a) Open July 14 through July 17 for all shrimp species.

(b) Open June 20 through July 13 and July 18 through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During these times 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:

(a) Open from 7:00 am through 11:00 am on July 14 for all shrimp species.

(b) Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on July 14 in Marine Area 8-2.

(c) Open June 3 through July 13 and July 15 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.

(7) Marine Area 9:

Open June 3 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 June 3 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 13:

Open June 1 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.

[]

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

NEW SECTION**WAC 220-330-02000A Shrimp—Gear and gear-related unlawful acts..**

Notwithstanding the provisions of WAC 220-330-020, it is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled to have on board or to fish more than 2 shrimp pots in Marine Areas 8-1 and 8-2 on July 14.

[]

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 immediately:

WAC 220-330-07000H Shrimp—Areas and seasons. (21-100)

WSR 21-14-084
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 6, 2021, 1:35 p.m., effective July 6, 2021, 1:35 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Under the emergency rule:

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

L&I is monitoring the emergency proclamations, information including guidance from the Center[s] for Disease Control (CDC), and data on COVID-19 and will repeal the emergency rule if no longer needed.

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

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

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

Reasons for this Finding: This emergency rule making supersedes the emergency rule adopted on May 24, 2021, filed as WSR 21-12-027, as conditions have changed due to a new governor's proclamation being in effect (Proclamation 20-25.14).

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

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." The "Safe Start" orders further build on these by continuing the Safe Start plan for county-by-county phased reopening where the subsequent "Stay Safe, Stay Healthy" orders rolled back the county-by-county phased reopening in response to a COVID-19 outbreak surge and the following amendments under the "Health Washington - Roadmap to Recovery" took a regional approach to easing of the

rolled back restrictions and aligning with CDC guidance on fully vaccinated individuals. Under the current "Washington Ready" order, Proclamation 20-25.14, some restrictions are in place for large indoor gatherings and mask use is required for unvaccinated employees when indoors.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions among individuals not fully vaccinated, safely easing some restrictions while also maintaining crucial hospital capacity, ensuring care for Washingtonians who need it, and paving the way for economic recovery. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees. In setting conditions for businesses, statewide and county level data was considered. In setting the conditions for businesses under the "Washington Ready" order, consideration was given to critical knowledge gained regarding the spread of COVID-19, including a better understanding of the risks associated with certain activities and the measures that can be taken to reduce those risks, while recognizing department of health statistics reflect the continued persistence of COVID-19 and support the continuation of the state of emergency.

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

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

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

Date Adopted: July 6, 2021.

Joel Sacks
Director

OTS-2313.5

NEW SECTION

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

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

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

[]