

WSR 21-21-006
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 7, 2021, 10:17 a.m., effective October 7, 2021, 10:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Developmental disabilities administration (DDA) is amending one section in chapter 388-829 WAC and adding two new sections to chapter 388-829 WAC. These amendments are necessary to establish due dates for training required under chapter 388-829 WAC and to allow DDA to accept on-the-job learning related to COVID-19 to satisfy continuing education requirements.

Citation of Rules Affected by this Order: New WAC 388-829-0086 and 388-829-0087; and amending WAC 388-829-0085.

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

Other Authority: ESHB 1120 (2021).

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

Reasons for this Finding: Training requirement deadlines were suspended by [the] governor's proclamation to help address the effects of the COVID-19 public health emergency. The department of social and health services (DSHS) anticipates that once this suspension is lifted, the surge in demand for training would likely exceed capacity of training entities and result in providers failing to timely satisfy training requirements. Failing to enact these extended training deadlines could result in providers suddenly being out of compliance with training requirements, which could affect client access to qualified service providers.

Governor Proclamation 20-65.5 suspended and waived statutory training requirements until the earlier of the termination of the COVID-19 state of emergency or until (the proclamation is) rescinded. ESHB 1120 authorized DSHS to enact rules necessary to allow long-term care workers additional time to complete training requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.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 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 2, Amended 1, Repealed 0.

Date Adopted: October 7, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4897.1

AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

WAC 388-829-0085 How many hours of continuing education must DDA community residential staff complete each year? (1) Effective January 1, 2016, (~~(service providers)~~) direct support professionals must complete (~~(twelve)~~) 12 hours of continuing education (CE) each year, except in the calendar year they complete the one-time basic training requirement.

(2) (~~(Service providers)~~) A direct support professional who (~~(are)~~) is not credentialed through the department of health (DOH) must complete their CE by the end of the calendar year.

(3) (~~(Service providers)~~) A direct support professional must complete DOH-required CE (such as home care aide certification) by their birth date each year.

(4) A direct support professional employed during the COVID-19 public health emergency must complete:

- (a) Training according to WAC 388-829-0086; and
- (b) Continuing education according to WAC 388-829-0087.

[Statutory Authority: RCW 71A.12.030, 74.39A.074, 74.39A.341, 74.39A.351, and 18.88B.041. WSR 17-14-090, § 388-829-0085, filed 6/30/17, effective 8/1/17.]

NEW SECTION

WAC 388-829-0086 When must a direct support professional employed during the COVID-19 public health emergency complete training?

(1) A direct support professional employed during the COVID-19 public health emergency must complete training as follows:

Worker hired during the time frame of:	Must complete 75-hour new employee training no later than:
8/17/2019 to 9/30/2020	4/30/2022
10/1/2020 to 4/30/2021	6/30/2022
5/1/2021 to 3/31/2022	8/31/2022
After 3/31/2022	As required under WAC 388-829-0015

(2) Nothing in this section prevents a direct support professional hired between 11/17/2019 and 3/31/2022 from completing training in advance of the deadlines in subsection (1) of this section.

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NEW SECTION

WAC 388-829-0087 When must continuing education be completed when public health emergency waivers are lifted, and what continuing

education credit is granted to direct support professionals employed during the pandemic?

(1) The department finds that direct support professionals employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Direct support professionals received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all service providers under WAC 388-829-0005. Instruction included infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, direct support professionals required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training comprised of at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training:

(a) Is not considered to be repeated training as described in WAC 388-829-0100; and

(b) Satisfies the 12 hours of annual continuing education training.

(4) The direct support professional may apply the 12 hours of on-the-job training towards continuing education for either 2020 or 2021.

(5) All direct support professionals employed during the dates in subsection (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The hours must be applied as any other continuing education hours and to the renewal periods under WAC 388-829-0085.

(6) The department recognizes that direct support professionals may not have completed training hours in excess of the 12 hours of CE granted in subsection (4) of this section due to the COVID-19 public health emergency. All direct support professionals have 120 days from the end of the public health emergency to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section.

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WSR 21-21-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-225—Filed October 7, 2021, 4:47 p.m., effective October 9, 2021]

Effective Date of Rule: October 9, 2021.

Purpose: The purpose of this emergency rule is to return the waters of Drano Lake to permanent rules.

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

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 northwest corner of Drano Lake was closed to all angling in early September to reinforce an existing permanent regulation that closed fishing for and retention of steelhead to minimize sport fishery impacts on Endangered Species Act-listed steelhead. Water temperature in the adjacent mainstem Columbia River has continued to decrease and is now below the threshold at which steelhead entered Drano Lake and delayed migration earlier in the summer; steelhead are now exiting the lake and continuing upstream. Additionally, recent creel surveys in Drano Lake have not detected any steelhead encounters as Chinook catch rates continue to improve, supporting catch data from prior years indicating steelhead encounters are proportionately very low during October. Returning Drano Lake to permanent rule will provide additional opportunity for anglers to harvest salmon, while managing steelhead impacts within allowable limits.

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: October 7, 2021.

Kelly Susewind
Director

REPEALER

The following section of Washington Administrative Code is repealed, effective October 9, 2021:

WAC 220-312-03000C Freshwater exceptions to statewide
rules—Southwest. (21-177)

WSR 21-21-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-226—Filed October 7, 2021, 4:55 p.m., effective October 9, 2021]

Effective Date of Rule: October 9, 2021.

Purpose: The purpose of this emergency rule is to increase adult coho portion of salmon daily limits in sections of the Cowlitz, Green, and Toutle rivers.

Citation of Rules Affected by this Order: Amending WAC 220-312-030.

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

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

Reasons for this Finding: Coho salmon returns to the Cowlitz Salmon Hatchery and Toutle Hatchery have been above levels needed to meet broodstock collection goals for the hatchery programs. Increasing the adult coho limits on these rivers will provide additional fishing opportunities while still meeting program goals.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 7, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000E Freshwater exceptions to statewide rules—Southwest. Effective October 9 through December 31, 2021, the provisions of WAC 220-312-030 regarding salmon seasons for Cowlitz River, Green River, and Toutle River, shall be modified during the dates and in areas as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) **Cowlitz River (Cowlitz/Lewis Co.); from the mouth to posted markers below the Barrier Dam:** Salmon: Effective October 9 through December 31, 2021:

Daily limit 6. Release all salmon other than hatchery coho.

(2) **Green River (Cowlitz Co.); from the mouth to posted markers approximately 400 feet below the Toutle Hatchery rack:** Salmon: Effective October 9 through November 30, 2021:

Daily limit 6, of which up to 1 may be an adult Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(3) **Toutle River, North Fork (Cowlitz Co.); from the Forks to the fish Collection Facility:** Salmon: Effective October 9 through November 30, 2021:

Daily limit 6, of which up to 1 may be an adult Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

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WSR 21-21-012
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 8, 2021, 6:53 a.m., effective October 9, 2021]

Effective Date of Rule: October 9, 2021.

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

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

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

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

Reasons for this Finding: This subsequent filing is necessary to extend existing emergency rules, which expand support services to help WorkFirst families meet their basic needs during the COVID-19 pandemic and recovery. The department is actively undertaking appropriate procedures to adopt the rule as a permanent rule, and filed a CR-101 Pre-proposal statement of inquiry as WSR 21-13-124 on June 21, 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: October 8, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4873.2

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

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

People who can get support services include:

- (a) WorkFirst participants who receive a TANF cash grant;
- (b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);
- (c) TANF/SFA applicants as needed to meet the WorkFirst orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);
- (d) Unmarried or pregnant minors who are income eligible to receive TANF and are:
 - (i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or
 - (ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement and/or meeting the school requirements.
- (e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.

(2) Why do I receive support services?

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

- (a) To help you participate in work and WorkFirst activities that lead to independence.
- (b) To help you to participate in job search, accept a job, keep working, advance in your job, and/or increase your wages.
- (c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 170-290 WAC describes the rules for this child care assistance program.)

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

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

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

Definitions:

- Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.
- Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.
- Some support services are available if you need them for other required activities in your IRP.

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Reasonable accommodation for employment		x		
Clothing/uniforms		x		
Diapers		x	<u>x</u>	<u>x</u>
Haircut		x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene		x	<u>x</u>	<u>x</u>

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

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

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

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

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

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

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 15-18-024, § 388-310-0800, filed 8/25/15, effective 9/25/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.62.030, 74.09.035, 74.08.090, 74.09.530, 41.05.021, 2011 1st sp.s. c 15, and 2013 2nd sp.s. c 10. WSR 14-10-046, § 388-310-0800, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.250. WSR 13-02-048, § 388-310-0800, filed 12/24/12, effective 2/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 10-22-061, § 388-310-0800, filed 10/29/10, effective 12/1/10; WSR 09-06-053, § 388-310-0800, filed 2/26/09, effective 4/1/09. Statutory Authority: RCW 74.04.050 and 74.04.055. WSR 08-18-045, § 388-310-0800, filed 8/29/08, effective 10/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.260, chapter 74.08A RCW. WSR 06-10-035, § 388-310-0800, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340. WSR 05-02-014, § 388-310-0800, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340, and 2003 c 10 § 207. WSR 03-21-154, § 388-310-0800, filed 10/22/03, effective 10/27/03. Statutory Authority: RCW 74.08.090, 74.04.050, 78.08A.340, and [WSR] 99-14-043. WSR 02-11-130, § 388-310-0800, filed 5/21/02, effective 7/1/02; WSR 01-17-053, § 388-310-0800, filed 8/13/01, effective 9/1/01. Statutory Authority: RCW 74.08.090, 74.04.050, and 78.08A.340. WSR 00-13-106, §

388-310-0800, filed 6/21/00, effective 7/1/00. Statutory Authority:
RCW 74.08.090 and 74.04.050. WSR 99-14-043, § 388-310-0800, filed
6/30/99, effective 7/31/99; WSR 97-20-129, § 388-310-0800, filed
10/1/97, effective 11/1/97.]

WSR 21-21-013

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed October 8, 2021, 8:45 a.m., effective October 8, 2021, 8:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-338-020 and 246-338-026, medical test site licensure and notification requirements, the department of health (department) is adopting an emergency rule to amend WAC 246-338-026 mandating reporting of test results intended to detect SARS-CoV-2 or diagnose a possible case of the coronavirus disease 2019 (COVID-19) in alignment with the federal changes published in 85 F.R. 54820. WAC 246-338-020 is amended to add language referencing the new subsection in WAC 246-338-026. These changes will allow the new reporting, inspection, and fining processes in compliance with the new federal requirements which will ensure the current clinical laboratory improvement amendments (CLIA) exempt status is not threatened and will respond to the current public health emergency created by the COVID-19 pandemic. This is the fourth emergency rule for these amendments. It continues without change to the emergency rule that was filed on June 11, 2021, under WSR 21-13-045, and the prior filings on February 12, 2021, under WSR 21-05-048 and October 15, 2020, under WSR 20-21-062.

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

Statutory Authority for Adoption: RCW 70.42.060.

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

Reasons for this Finding: This emergency rule updates Washington rules to align with the recently updated federal requirements published in 85 F.R. 54820 which include new reporting and inspection requirements and fines for nonreporting. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and federal compliance requirements which could threaten the current CLIA exempt status. The department continues to consider options for continuing this requirement under a permanent rule-making process, recognizing the temporary nature of the federal regulation.

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

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

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

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

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

Date Adopted: October 6, 2021.

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

OTS-2664.2

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

WAC 246-338-020 Licensure—Types of medical test site licenses.

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

(1) **Certificate of waiver.**

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

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

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

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

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

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

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

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

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

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

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

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

(ii) All potassium hydroxide (KOH) preparations;

(iii) Pinworm examinations;

(iv) Fern tests;

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

(vi) Urine sediment examinations;

(vii) Nasal smears for granulocytes;

(viii) Fecal leukocyte examinations;

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

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

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

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

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

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

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

020-1 Table of Requirements for Each License Type

LICENSE TYPE	REQUIREMENTS	INSPECTIONS		
		TYPE	FREQUENCY	
(1) Certificate of Waiver	<ul style="list-style-type: none"> • Restrict testing to tests classified as waived. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections. • Follow manufacturers' instructions for performing the test. 	<ul style="list-style-type: none"> • Complaint • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • When indicated 	
(2) PPMP	<ul style="list-style-type: none"> • Restrict testing to tests classified as PPMP or waived. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. • Follow manufacturers' instructions for performing the test. 	<ul style="list-style-type: none"> • Complaint • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • When indicated 	
(3) Moderate/High Complexity	(a) Low Volume, Category A-J	<ul style="list-style-type: none"> • Perform tests classified as moderate or high complexity. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. • Follow manufacturers' instructions for performing test. 	<ul style="list-style-type: none"> • Initial • Routine • Complaint • On-site follow-up • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • First 6 months of license • Every 2 years • When indicated • When indicated • When indicated

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
(b) Accredited: Low Volume, Category A-J	<ul style="list-style-type: none"> • Perform tests classified as moderate or high complexity. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. • Follow manufacturers' instructions for performing the test. • Submit to the department upon request, or authorize the accreditation organization to submit: • Proof of accreditation; • On-site inspection results; • Statement of deficiencies; • Plan of correction for the deficiencies cited; • Any disciplinary action and results of any disciplinary action taken by the accreditation organization against the medical test site. 	<ul style="list-style-type: none"> • Validation • Complaint • On-site follow-up • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • 2.5% of accredited sites annually • When indicated • When indicated • When indicated

[Statutory Authority: RCW 70.42.090 and 2002 c 371. WSR 02-12-105, § 246-338-020, filed 6/5/02, effective 7/6/02. Statutory Authority: RCW 70.42.005, 70.42.060. WSR 01-02-069, § 246-338-020, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 70.42.005, 70.42.060 and chapter 70.42 RCW. WSR 00-06-079, § 246-338-020, filed 3/1/00, effective 4/1/00. Statutory Authority: RCW 70.42.005. WSR 97-14-113, § 246-338-020, filed 7/2/97, effective 8/2/97. Statutory Authority: Chapter 70.42 RCW. WSR 94-17-099, § 246-338-020, filed 8/17/94, effective 9/17/94; WSR 93-18-091 (Order 390), § 246-338-020, filed 9/1/93, effective 10/2/93; WSR 91-21-062 (Order 205), § 246-338-020, filed 10/16/91, effective 10/16/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-338-020, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.42 RCW. WSR 90-20-017 (Order 090), § 248-38-020, filed 9/21/90, effective 10/22/90.]

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

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

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

- (a) Name of site;
- (b) Director;
- (c) Location of site;
- (d) Tests, specialties, and subspecialties; and
- (e) Test methodologies.

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

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

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

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

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

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

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

(ii) Changes in technical personnel and supervisors;

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

(iv) Other information as requested by the department.

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

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

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

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

[Statutory Authority: RCW 70.42.005, 70.42.060 and chapter 70.42 RCW. WSR 00-06-079, § 246-338-026, filed 3/1/00, effective 4/1/00.]

WSR 21-21-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-228—Filed October 8, 2021, 4:05 p.m., effective October 8, 2021, 4:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Cascade River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000P; 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 area of the Cascade River was closed to avoid gear conflicts with tribal fisheries. Tribal fisheries have concluded in the Cascade, so gear conflict avoidance closures are no longer necessary. The coho return is sufficient to allow for recreational salmon fishing seven days per week through October 24, 2021. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: October 8, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000S Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through October 24, 2021 recreational fishing seasons for the Skagit River and Cascade River, shall be modified as follows, during dates listed below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

(1) Skagit River (Skagit County):

(a) From Highway 9 Bridge at Sedro Woolley to the Baker River: All recreational fishing is closed October 12, 13, 14, 19, 20 and 21, 2021.

(b) From mouth to Cascade River Rd. (Marblemount Bridge): Recreational salmon fishing is open immediately, through October 24, 2021 except in areas and times listed in subsection (1)(a) of this rule:

(i) Daily limit 4, of which up to 2 may be coho. Release Chinook and chum.

(ii) Night Closure in effect.

(2) Cascade River (Skagit County): From the mouth to Rockport-Cascade Road Bridge:

Recreational salmon fishing is open immediately, through October 24, 2021, seven days per week:

(a) Daily limit 4. Release all salmon other than coho.

(b) Night Closure in effect.

(c) Anti-snagging Rule in effect.

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REPEALER

The following section of the Washington Administrative Code is repealed:

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

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

[Order 21-224—Filed October 8, 2021, 4:12 p.m., effective October 10, 2021]

Effective Date of Rule: October 10, 2021.

Purpose: The purpose of this emergency rule is to close retention of chum in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A commercial fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-354-120, 220-354-160, and 220-354-180.

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 close scheduled openings for commercial purse seine and gillnet fisheries in Puget Sound Management and Catch Reporting Areas 7 and 7A. The aggregate abundance of Inside Southern Chum in British Columbia is estimated to be below the critical threshold of 1 million chum. Per chapter 6 of the Pacific Salmon Treaty, the United States fleet cannot start fishing in Areas 7/7A on October 10. Reef net fishers in Puget Sound Management and Catch Reporting Area 7 will also be required to release all chum to align with these conservation measures. 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 3, 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: October 8, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000D Puget Sound salmon—Purse seine—Open periods. Effective October 10 through November 6, 2021, the following provisions of WAC 220-354-160 regarding commercial Gill Net open periods in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A shall

be as follows. All other provisions of WAC 220-351-210 not contained herein remain in effect unless otherwise altered by emergency rule:

Areas	Open Periods
7 and 7A	Closed

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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.

NEW SECTION

WAC 220-354-16000P Puget Sound salmon—Gillnet—Open periods.

Effective October 10 through November 6, 2021, the following provisions of WAC 220-354-160 regarding commercial purse seine open periods for Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A shall be as described below. All other provisions of WAC 220-354-120 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Areas	Open Periods
7 and 7A	Closed

[]

NEW SECTION

WAC 220-354-18000R Puget Sound salmon—Reef net—Open periods.

Effective October 10, through November 6, 2021, the following provisions of WAC 220-354-180 regarding reef net open periods in Puget Sound Salmon Management and Catch Reporting Area 7 shall be as follows. All other provisions of WAC 220-354-180 not contained herein remain in effect unless others altered by emergency rule:

Reef nets - Open to reef nets according to the times, dates, and conditions as prescribed and listed below:

Area	Open/Closed	Time	Date(s)
7	Open	5 AM - 9 PM Daily	10/10/2021 - 11/6/2021

(a) It is unlawful to retain any salmon other than coho salmon taken with reef net gear from October 10 through November 6, 2021.

(b) All other saltwater and freshwater areas - Closed.

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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 21-21-035
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 12, 2021, 12:35 p.m., effective October 12, 2021, 12:35 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is enacting WAC 388-845-2019 on an emergency basis to make temporary modifications to developmental disabilities administration's (DDA) home and community-based services waivers in order to control the spread of the COVID-19 virus and to meet immediate health and safety needs. This is the seventh filing on WAC 388-845-2019, however, this rule language differs from that of the sixth filing. The language in this filing removes a limit to distance-based observation and reporting to allow clients receiving residential habilitation to receive the service. Removing the limit is necessary to meet the health and welfare needs of clients receiving residential habilitation services whose provider might be experiencing staff shortages due to the ongoing public health emergency. This filing cancels and supersedes the emergency rule filed as WSR 21-19-083.

Citation of Rules Affected by this Order: New WAC 388-845-2019.

Statutory Authority for Adoption: RCW 34.05.350, 71A.12.030.

Other Authority: 42 U.S.C. 1396n(c).

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: Enacting this rule on an emergency basis is necessary to address effects of the COVID-19 pandemic and it is in the public interest to do so as following notice and comment requirements in the permanent rule-making process would delay temporary changes aimed to help clients avoid disruptions in service. The changes in this emergency filing are necessary to implement temporary changes to the home and community-based services waivers as approved by the Centers for Medicare and Medicaid Services (CMS) in an Appendix K. This rule address [addresses] the effects of COVID-19 on clients, providers, and DDA staff by temporarily suspending limits on respite services, permitting the state to exceed the budget for some DDA waivers, allowing assistive technology to be available on all waivers, permitting waiver services to be provided remotely when needed, expanding settings where some services can be provided to clients who are quarantined or hospitalized, and other changes.

An Appendix K is a standalone appendix that may be utilized by states during emergency situations to request amendment to approved 1915(c) waivers. It includes actions that states can take under the existing section 1915(c) home and community-based [services] waiver authority in order to respond to an emergency.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, 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 0, Repealed 0.

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

Date Adopted: October 11, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4794.6

NEW SECTION

WAC 388-845-2019 What modifications to waiver services apply during the COVID-19 outbreak? (1) Notwithstanding any contrary requirement under this title, changes under this section to DDA's home and community-based waivers are effective immediately and necessary to respond to managing the COVID-19 outbreak. All changes, except the provision of remote waiver services, require prior approval by the DDA field services director or designee and will be assessed on a case-by-case basis. Once the emergency declaration regarding COVID-19 is expired, this rule will no longer be applicable, and allowances approved in this rule must end.

(2) The following changes to waiver services are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) All waiver services except goods may be offered remotely by providers when travel to the waiver participant is not possible due to COVID-19 infection or exposure.

(b) Limits to the number of respite hours a client may receive that are generated in the CARE assessment are temporarily suspended. The amount of respite hours a client may receive are determined by DDA.

(c) Assistive technology on the basic plus waiver is included as part of the list of aggregate services. The basic plus, CIIBS, and individual and family services waiver aggregate budgets may be exceeded for COVID-19-related health and safety needs.

(d) Respite provided out-of-state may be provided in excess of thirty days.

(e) Community guide and community engagement may be provided to more than one client at a time.

(f) Staff and family consultation may be provided to more than one client at a time.

(g) Assistive technology is available on all five waiver programs when a waiver participant requires a technology in order to receive waiver-funded remote supports, to increase, maintain, or improve independence with daily living, to increase safety, or to facilitate social communication. Assistive technology is only available to the participant when access to technologies through other resources is not possible. Assistive technology includes:

- (i) The evaluation of the needs of the waiver participant, including a functional evaluation of the participant in the participant's customary environment;
- (ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (iii) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (v) Training or technical assistance for the participant and if appropriate, the participant's family;
- (vi) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of individuals with disabilities; and
- (vii) Distance-based observation and reporting provided by an assistive technology distance-based observation and reporting specialist.
- (h) If transportation is necessary to prevent illness or meet a client's immediate health and safety needs, waiver transportation services may be used to travel to a place where the client will not be receiving waiver services (e.g., transportation to a family member's home).
- (3) If a client is displaced from their home because of quarantine or hospitalization, or if a provider is unavailable due to illness or business closure, the following waiver services may be provided in a hotel, shelter, church, other facility-based setting, or the home of a direct-care worker when those supports are not available through the medicaid state plan or another legally liable funding source:
- (a) Residential habilitation;
 - (b) Respite care;
 - (c) Positive behavior support;
 - (d) Staff and family consultation;
 - (e) Behavioral health stabilization- positive behavior support;
 - (f) Behavioral health stabilization- crisis diversion beds;
 - (g) Nurse delegation; and
 - (h) Skilled nursing.
- (4) Positive behavior support and staff and family consultation may be provided in an acute care setting such as a hospital or short-term institutional setting if:
- (a) DDA determines that no other alternatives are available and a nonintegrated setting is the only setting available to meet the client's health and safety needs;
 - (b) The waiver service provider is not otherwise funded by another resource; and
 - (c) The waiver services do not duplicate services already available in that setting.
- (5) The following changes to waiver service provider qualifications are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.
- (a) Staff and family consultation may include emergency preparedness consultation support from a provider trained in emergency management or a similar field with a current DDA contract.

(b) Respite care may be provided by currently contracted positive behavior support providers.

(6) Specialized medical equipment and supply, specialized equipment and supply, and assistive technology provider types may include the use of a purchase card and community choice guides when supply or cost impacts occur due to COVID-19.

(7) The following changes to level-of-care evaluations and re-evaluations for waiver participants are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) A client's services may continue and the level-of-care reassessment may be postponed up to one year if due to illness or quarantine:

(i) The client, their representative, or a DDA employee are unable to participate in the reassessment; or

(ii) There is insufficient time for the case manager to complete the annual reassessment paperwork.

(b) On a case-by-case basis, the time limit for approving a client's expired person-centered service plan may be extended if:

(i) The plan currently meets the client's needs; and

(ii) Monthly remote or telephonic monitoring is provided to ensure the plan continues to meet the client's needs.

(c) Telephonic assessments may occur in place of face-to-face assessments on a case-by-case basis. An initial assessment may be conducted telephonically when needed to prevent potential exposure related to COVID-19.

(d) For initial CARE assessments, employees may complete the assessment and person-centered service plan via the telephone or other electronic means and then do a brief in-person visit before moving the assessment to current.

(e) If the previsit questionnaire response indicates it is not safe to do an in-person visit, services can be authorized prior to an in-person visit occurring.

(f) A person-centered service plan, or revisions to a person-centered service plan, may be approved with a retroactive approval date for service needs identified to mitigate harm or risk directly related to COVID-19 impacts. Telephonic (or other information technology medium) assessments may occur when the assessment cannot occur due to impacts of COVID-19.

(8) CIIBS waiver quarterly face-to-face meeting requirement may be provided telephonically when a face-to-face meeting cannot occur due to client or client representative health concerns or staffing availability.

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

[Order 21-214—Filed October 13, 2021, 1:33 p.m., effective October 19, 2021]

Effective Date of Rule: October 19, 2021.

Purpose: The purpose of this emergency rule is to open recreational razor clam digging on Long Beach, Twin Harbors, Copalis, and Mocrocks beaches.

Citation of Rules Affected by this Order: Repealing WAC 220-330-01000P and 220-330-16000A; and amending WAC 220-330-010 and 220-330-160.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. An exceptionally large population of harvestable razor clams in Razor Clam Areas 1, 3, 4, and 5 allow for a temporary increase in the daily bag limit. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 a.m. October 19, through 11:59 a.m. October 25, 2021, razor clam digging is permissible in Razor Clam Area 1 and

Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. October 19, through 11:59 p.m. October 19, 2021, and effective 12:01 p.m. October 21, through 11:59 p.m. October 21, 2021, and effective 12:01 p.m. October 23, through 11:59 p.m. October 23, 2021, and effective 12:01 p.m. October 25, through 11:59 p.m. October 25, 2021, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. October 20, through 11:59 p.m. October 20, 2021, and effective 12:01 p.m. October 22, through 11:59 p.m. October 22, 2021, and effective 12:01 p.m. October 24, through 11:59 p.m. October 24, 2021, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

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

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NEW SECTION

WAC 220-330-01000P Shellfish—Daily limits, size restrictions, and unlawful acts. Notwithstanding the provisions of WAC 220-330-010 regarding Razor clam daily limits, effective 12:01 a.m. October 19, through 11:59 p.m. October 25, 2021, the daily limit is 20 razor clams for personal use in any one day from Razor Clam Area 1, Razor Clam Area 3, Razor Clam Area 4 and Razor Clam Area 5. All other provisions of WAC 220-330-010 not addressed herein remain in effect unless otherwise amended by emergency rule.

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REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. October 26, 2021:

WAC 220-330-1600000A	Razor clams—Areas and seasons.
WAC 220-330-010000P	Shellfish—Daily limits, size restrictions, and unlawful acts.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-330-1600000A is probably intended to be WAC 220-330-16000A.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-330-010000P is probably intended to be WAC 220-330-01000P.

WSR 21-21-046
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 14, 2021, 8:25 a.m., effective October 16, 2021]

Effective Date of Rule: October 16, 2021.

Purpose: The department of social and health services (DSHS) division of child support (DCS) files this CR-103E, Rule-making order, to extend emergency rules amending chapter 388-14A WAC in order to implement SHB 2302 (chapter 227, Laws of 2020) regarding abatement of child support obligations for certain incarcerated individuals as well as other administrative provisions regarding service and mailing of modification requests and hearing notices. Relevant provisions of SHB 2302 took effect February 1, 2021.

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

Statutory Authority for Adoption: Emergency rule making is authorized under RCW 34.05.350 (1) (a) and (b) in order to implement SHB 2302 (chapter 227, Laws of 2020) regarding incarceration abatement and administrative provisions regarding service and mailing of modification requests and hearing notices, which took effect on February 1, 2021. Further authority is found in RCW 26.09.105, 26.18.170, 26.19.011, 26.19.071, 26.23.050, 26.23.110, 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20A.055, 74.20A.056.

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

Reasons for this Finding: The legislature enacted SHB 2302 during the 2020 legislative session. Several provisions required to implement incarceration abatement and service/ mailing procedures for modification requests and hearing notices have a February 1, 2021, effective date. These provisions direct DCS to abate child support payments for certain incarcerated individuals and also direct the office of administrative hearings to send certain mailings and notices instead of DCS. Emergency rule making is necessary to continue these statutory changes. DCS has filed its intent to adopt the rule as permanent under WSR 21-13-094 and is actively taking steps towards its adoption.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 7, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 7, Repealed 0.
Date Adopted: October 14, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4852.3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) An order entered under chapter 34.05 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

"Cash medical support" means a combination of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Dependent child" means a person:

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

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

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

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

(1) A judicial proceeding;

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

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

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

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

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

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

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

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

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

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

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

- (1) Wages or salary;
- (2) Commissions and bonuses;
- (3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;
- (4) Disability payments under Title 51 RCW;
- (5) Unemployment compensation under RCW 50.40.020, 50.40.050 and Title 74 RCW;
- (6) Benefits under the family and medical leave insurance program under Title 50A RCW;
- (7) Gains from capital, labor, or a combination of the two; and
- (8) The fair value of nonmonetary compensation received in exchange for personal services.

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

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

- (1) Partnerships and associations;
- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

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

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children,

or one or more children in foster care placement. The family is sometimes called the assistance unit.

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

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

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

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

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

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

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

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

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

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

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

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

dental care, orthodontic care, preventive care, mental health care, and physical therapy. The term "health care coverage" includes, but is not limited to, health insurance coverage.

"Health insurance" or **"health insurance coverage"** is included in the definition of "health care coverage." Health insurance coverage includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or a health maintenance organization pursuant to chapter 48.46 RCW, and the state through chapter 41.05 RCW.

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

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

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

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

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

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

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

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

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

"Medical expenses," for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the

purpose of enforcement action under chapters 26.18, 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical costs incurred on behalf of a child, which include:

- Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
- Prescribed medical equipment and prescribed pharmacy products;
- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
- Dental, orthodontic, and optometrical costs incurred on behalf of a child; and
- Copayments and/or deductibles incurred on behalf of a child.

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

"Medical support" consists of:

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

(2) Cash medical support, which consists of:

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

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

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

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

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

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

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

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

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

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

- (1) RCW 26.26.101 prior to January 1, 2019;
- (2) RCW 26.26A.100 on or after January 1, 2019; or
- (3) Under the laws of another jurisdiction.

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

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

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

"Past support" means support arrears.

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

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

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

"Physical custodian" means custodial parent (CP).

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

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

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

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

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

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

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

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

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
 - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the non-custodial parent, past or present employers, or the post office;
 - (b) Contacting state agencies, unions, financial institutions or fraternal organizations;
 - (c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or
 - (d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.
- (4) Referral to the state or federal parent locator service;
- (5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;
- (6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or
- (7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

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

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

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

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

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

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

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

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

- (1) An amount paid directly to the custodial parent by the non-custodial parent during a time when there is an open TANF grant, which the custodial parent does not immediately report or turn over to the department;
- (2) A debt owed to the division of child support by anyone other than a noncustodial parent; or
- (3) Amounts collected and retained by the division of child support which are applied to current or past due child support obligations which have been assigned to the state.

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

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

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

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

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

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

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including uninsured medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: Part I of 2018 c 150 and RCW 26.09.105, 26.18.170, 26.23.050, 34.05.220 (1)(a), 34.05.350(1), 74.08.090, and 74.20.040(9). WSR 19-02-017, § 388-14A-1020, filed 12/21/18, effective 1/21/19. Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-1020, filed 12/18/12, effective 1/18/13. Statutory Authority: 2011 c 283, RCW 34.05.220, 43.20A.550, 74.04.055, 74.04.057, 74.08.090, 74.20A.055, 74.20A.056, and 74.20A.310. WSR 12-01-002, § 388-14A-1020, filed 12/7/11, effective 1/7/12. Statutory Authority: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055(9), and 74.20A.056(11). WSR 11-12-006, § 388-14A-1020, filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 26.18.170, 26.23.035, 26.23.050, [26.23.]110, 74.20.040, 74.20A.030, [74.20A.]055, [74.20A.]056, and 74.20A.310. WSR 09-02-059, § 388-14A-1020, filed 1/5/09, effective 1/27/09. Statutory Authority: 2007 c 143, §§ 1, 2, 3, 4, 5, 7, 8, and 9. WSR 08-12-029, § 388-14A-1020, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.20A.310, 45 C.F.R. 302.31 and 302.33. WSR 06-03-120, § 388-14A-1020, filed 1/17/06, effective 2/17/06. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 74.20A.310. WSR 05-14-101, § 388-14A-1020, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 74.08.090, 74.20A.310, and 26.18.170, 42 U.S.C. 666 (a)(19), Child Support Performance and Incentives Act of 1998, 45 C.F.R. 303.31, and 45 C.F.R. 303.32. WSR 04-17-119, § 388-14A-1020, filed 8/17/04, effective 9/17/04. Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.055, 74.20A.056. WSR 01-03-089, § 388-14A-1020, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-011 and 388-14-020.]

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

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

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

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

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

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

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

[Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-3800, filed 12/18/12, effective 1/18/13. Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), chapter 26.19 RCW, RCW 34.05.220(1), 74.20A.055, 74.20A.056. WSR 03-20-072, § 388-14A-3800, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, chapter 26.19 RCW, 34.05.220(1), 74.20A.055, 74.20A.056. WSR 01-03-089, § 388-14A-3800, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-140.]

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

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

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

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

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

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

[Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-3900, filed 12/18/12, effective 1/18/13. Statutory Authority: RCW 74.08.090, 45 C.F.R. 302.70, 45 C.F.R. 303.7, 45 C.F.R. 303.8. WSR 01-03-089, § 388-14A-3900, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-143.]

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

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

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

- (i) DCS last reviewed the order under this section;
- (ii) The order was last modified; or
- (iii) The order was entered; or

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

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

- (ii) The order was last modified; or
- (iii) The order was entered.

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

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

[Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-3901, filed 12/18/12, effective 1/18/13. Statutory Authority: RCW 74.08.090, 45 C.F.R. 302.70, 45 C.F.R. 303.7, 45 C.F.R. 303.8. WSR 01-03-089, § 388-14A-3901, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-143.]

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

WAC 388-14A-3903 How does DCS decide whether to petition for modification of a support order? (1) The division of child support (DCS) petitions to modify a support order when DCS finds during the review that each of the following conditions are present:

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

- (i) Is at least fifteen percent above or below the current support obligation;
- (ii) Is at least one hundred dollars per month above or below the current support obligation; and
- (iii) Is at least a two thousand four hundred dollar change over the remaining life of the support order; or
- (iv) Will provide enough income to:

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

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

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

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

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

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

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

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

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

[Statutory Authority: 2019 c 275 §§ 2 and 3, RCW 26.09.170, 74.20A.059, 26.09.105, 26.18.170, 74.04.055, 74.08.090, 74.20.040(9), and 74.20A.310. WSR 20-04-032, § 388-14A-3903, filed 1/28/20, effective 2/28/20. Statutory Authority: RCW 74.08.090, 45 C.F.R. 302.70, 45 C.F.R. 303.7, 45 C.F.R. 303.8. WSR 01-03-089, § 388-14A-3903, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-143.]

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

WAC 388-14A-3925 Who can ask to modify an administrative support order?

(1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may file a petition and request a hearing to prospectively modify an administrative order for child support. The request must be in writing and must state:

(a) Any circumstances that have changed;

(b) Any relief requested; and

(c) The proposed new support amount.

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

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

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

(5) DCS((~~7~~)) or the administrative law judge (ALJ)((~~, or the department review judge~~)):

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

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

(6) A request to add a requirement for the custodial parent (CP) to provide health care coverage, or to add a provision in the order to

include the CP's share of uninsured medical expenses, is not by itself a sufficient basis for modification of the order.

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

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

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

(a) Dismiss the petition; or

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

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

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

[Statutory Authority: Part I of 2018 c 150 and RCW 26.09.105, 26.18.170, 26.23.050, 34.05.220 (1)(a), 34.05.350(1), 74.08.090, and 74.20.040(9). WSR 19-02-017, § 388-14A-3925, filed 12/21/18, effective 1/21/19. Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-3925, filed 12/18/12, effective 1/18/13. Statutory Authority: 2007 c 143, §§ 1, 2, 3, 4, 5, 7, 8, and 9. WSR 08-12-029, § 388-14A-3925, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 34.05.220(2), 43.20A.550, 74.04.055, 74.08.090, 74.20.040, 74.20A.310. WSR 07-08-055, § 388-14A-3925, filed 3/29/07, effective 4/29/07. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 02-06-098, § 388-14A-3925, filed 3/4/02, effective 4/4/02. Statutory Authority: RCW 74.08.090, 26.23.050, 74.20A.055, 74.20A.059. WSR 01-03-089, § 388-14A-3925, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-140.]

NEW SECTION

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

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

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

[]

NEW SECTION

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

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

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

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

(5) A hearing under this section:

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

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

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

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

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

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

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

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

[]

NEW SECTION

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

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

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

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

(2) There is a rebuttable presumption that an incarcerated person has no access to or possession of income or assets to pay child sup-

port while incarcerated. DCS may assert it has rebutted the presumption. See WAC 388-14A-3955.

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

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

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

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

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

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

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

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

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

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

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

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

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

[]

NEW SECTION

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

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

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

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

(3) If the support order is modified under RCW 26.09.170 or RCW 74.20A.059 during the period of abatement, this provision regarding

reinstatement of support at fifty percent in subsection (1) of this section does not apply. DCS enforces the modified support obligation.

[]

NEW SECTION

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

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

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

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

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

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

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

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

[]

NEW SECTION

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

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

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

(4) The administrative law judge issues an order:

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

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

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

[]

NEW SECTION

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

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

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

(4) The administrative law judge issues an order:

(a) Upholding the notice of abatement;

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

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

[]

NEW SECTION

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

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

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

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

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

[]

NEW SECTION

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

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

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

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

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

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

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

[]

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

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

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

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

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

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

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

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

date of the complete oral request for hearing or the date that DCS receives the written authorization.

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

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

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

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

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

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

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

[Statutory Authority: RCW 34.05.220(2), 43.20A.550, 74.04.055, 74.08.090, 74.20.040, 74.20A.310. WSR 07-08-055, § 388-14A-6100, filed 3/29/07, effective 4/29/07. Statutory Authority: RCW 74.08.090, 34.05.220. WSR 01-03-089, § 388-14A-6100, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-500.]

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

[Order 21-230—Filed October 14, 2021, 9:38 a.m., effective October 14, 2021, 9:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open recreational fishing seasons in the Skagit River from the Highway 9 Bridge at Sedro Woolley to the Baker River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000S; 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: The Skagit River from Highway 9 to Baker River was scheduled to be closed October 14 to avoid gear conflicts with tribal fisheries. The October 14 closure is no longer necessary so the section will open immediately and remain open until the next scheduled closures from October 19 through October 21.

The Skagit River coho return remains sufficient to allow for the recreational salmon season to extend through October 24. Additional recreational opportunity is being evaluated and if available, will be announced as soon as possible.

Washington department of fish and wildlife asks anglers to respect tribal fishers and not to interfere with tribal fisheries. Conflicts that arise during ongoing fisheries may necessitate additional time and area closures in the future to reduce conflicts.

Immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. 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: October 14, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000T Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through October 24, 2021 recreational fishing seasons for the Skagit River and Cascade River, shall be modified as follows, during dates listed below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

(1) Skagit River (Skagit County):

(a) From Highway 9 Bridge at Sedro Woolley to the Baker River: All recreational fishing is closed October 19, 20 and 21, 2021.

(b) From mouth to Cascade River Rd. (Marblemount Bridge): Recreational salmon fishing is open immediately through October 24, except in areas and times listed in subsection (1)(a) of this rule:

(i) Daily limit 4, of which up to 2 may be coho. Release Chinook and chum.

(ii) Night Closure in effect.

(2) Cascade River (Skagit County): From the mouth to Rockport-Cascade Road Bridge:

Recreational salmon fishing is open immediately, through October 24, 2021, seven days per week:

(a) Daily limit 4. Release all salmon other than coho.

(b) Night Closure in effect.

(c) Anti-snagging Rule in effect.

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REPEALER

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

WAC 220-312-04000S Freshwater exceptions to statewide rules—Puget Sound. (21-228)

WSR 21-21-052

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed October 15, 2021, 8:13 a.m., effective October 15, 2021, 8:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-817-581 Novel coronavirus disease 2019 vaccination. The dental quality assurance commission (commission) is extending the emergency rule that allows dentists to delegate administration of novel coronavirus disease 2019 (COVID-19) vaccination to licensed dental hygienists with close supervision and demonstration of competency. This emergency rule will extend WSR 21-13-091 filed on June 18, 2021. The rule was originally filed on February 19, 2021 (WSR 21-06-012).

Citation of Rules Affected by this Order: New WAC 246-817-581.

Statutory Authority for Adoption: RCW 18.29.050 and 18.32.0365.

Other Authority: RCW 18.32.002.

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

Reasons for this Finding: In response to the COVID-19 pandemic, dentists are among the essential health care providers who can safely administer vaccinations and help address this public health emergency. Mass vaccination across the state has taken cooperation and coordination across the entire health system. Dentists and delegated dental hygienists are able to increase capacity for priority populations who may not otherwise be connected to traditional health care system[s] during the pandemic. Increased capacity and opportunity to administer the COVID-19 vaccine will help Washington end this pandemic. Allowing delegation of COVID-19 vaccination to dental hygienists assists dentists by reducing their workload to effectively continue dental care to patients while increasing the number of health care professionals who can administer the vaccine.

Standard rule making takes approximately nine to 12 months. The CR-101 (WSR 21-07-020) was filed on February 19, 2021. The CR-102 (WSR 21-18-005) was filed on August 18, 2021, and the rules hearing is scheduled for October 22, 2021.

The immediate continuance of this emergency rule is necessary for the preservation of public health, safety, and general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

Allowing dentists to delegate COVID-19 vaccinations to dental hygienists under close supervision increases the number of health care workers permitted to administer the vaccine and provides safer access to dental care for more patients.

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

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

Date Adopted: October 15, 2021.

David L. Carsten, DDS, Chairperson
Dental Quality Assurance Commission

OTS-2845.3

NEW SECTION

WAC 246-817-581 Novel coronavirus disease 2019 vaccination. (1)

A supervising dentist may delegate the administration of a vaccination of novel coronavirus disease 2019 to a licensed dental hygienist under the dentist's close supervision, provided the licensed dental hygienist has demonstrated skills necessary to perform the task competently.

(2) For the purpose of administering vaccination for the novel coronavirus disease 2019, a dentist's approval of the vaccination protocol and screening meets the dentist's requirement to diagnose the condition to be treated and personal authorization of the procedure as required by close supervision under WAC 246-817-510(1).

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WSR 21-21-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-231—Filed October 15, 2021, 4:32 p.m., effective October 15, 2021, 4:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to amend commercial crab rules in Puget Sound as follows:

WAC 220-340-42000R

(1) Requires all crab harvested not delivered to an original receiver to be landed or recorded on a shellfish transportation ticket within 36 hours of harvest. Requires separate transportation tickets to be completed for each day's harvest not delivered to an original receiver that is stored off the fishing vessel. Implements a 10-day restriction on the length of time that crab may be stored off-vessel before being delivered to an original receiver.

(2) Implements a labeling requirement for crab that are stored off-vessel.

(3) Implements a labeling requirement for crab that are stored off-vessel and not delivered to an original receiver within 36 hours.

WAC 220-340-45500A

(1) Defines subareas east and west of Marine Fish-Shellfish catch area 23C to align with agreed to boundaries within the Region 3 2021-2022 crab management plan.

(2) Opens Puget Sound commercial crab harvest in Crab Management Regions 1, 2-East, 2-West, 3-1, 3-2, and 3-3 effective immediately. Describes hard closure dates by Crab Management Region. Closes Crab Management Region 2-East effective October 17, 2021, at 11:59 p.m.

(3) Allows deployment of up to 35 pots per license for the commercial harvest of Dungeness crab in Crab Management Regions 1 and 2-East.

(4) Closes commercial deployment of pots in 2-East effective October 18, 2021, at 12:00 a.m.

(5) Allows deployment of up to 50 pots per license for the commercial harvest of Dungeness crab in Crab Management Regions 2-West and 3-2.

(6) Allows deployment of up to 40 pots per license for the commercial harvest of Dungeness crab in Crab Management Regions 3-1.

(7) Allows deployment of up to 60 pots per license for the commercial harvest of Dungeness crab in Crab Management Regions 3-3.

(8) Requires undeployed buoy tags to be retained for inspection.

(9) Closes Port Angeles Harbor to commercial crab harvest due to public health decrees.

(10) Closes commercial crab harvest in Crab Management Region 3-4 until further notice.

(11) Closes areas to state commercial [crab harvest] that have been agreed to in regional management plans.

(12) Repeals areas where recreational and tribal harvest has been allowed that state commercial harvest has been historically limited. Closes areas in Crab Management Region 2-East effective October 17, 2021, at 11:59 p.m.

(13) Repeals areas where recreational and tribal harvest has been allowed that state commercial harvest has been historically closed. Closes areas in Crab Management Region 2-East effective October 17, 2021, at 11:59 p.m.

WAC 220-352-34000J

(1) Clarifies the Puget Sound commercial dealer quick reporting requirements.

(2) Implements a Puget Sound "hung crab" harvest report requirement for crab not delivered to an original receiver with 36 hours of harvest.

(3) Implements a Puget Sound "hung crab" sales report requirement for "hung crab" that have been reported but not landed.

(4) Implements a registration requirement for commercial license holders to notify the department which crab management area a license will be fishing in.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000Q, 220-340-45500Z and 220-352-34000I; and amending WAC 220-340-420, 220-340-455, and 220-352-340.

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: There is sufficient allocation available in Regions 1, 2-West, 2-East, 3-1, 3-2, and 3-3 to accommodate this opening. Commercial crab harvest in Crab Management Region 2-East will close on Sunday, October 17, 2021, at 11:59 p.m. when the state share is projected to be harvested. These provisions are in conformity with agreed regional management plans with applicable tribes or in accordance with procedures proscribed in the draft Shellfish Implementation Plan when no annual regional management plan agreement has been reached. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans.

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

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

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

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

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

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

Date Adopted: October 15, 2021.

Kelly Susewind
Director

NEW SECTION

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

(1) Crab Management Region 1 includes Marine Fish-Shellfish (MFSF) Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B. Crab Management Region 2-East includes MFSF Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A East. Crab Management Region 2 West includes MFSF Catch Reporting Areas 25B, 25D, and 26A West. Crab Management Region 3-1 includes MFSF Catch Reporting Areas 23A and 23B. Crab Management Region 3-2 includes MFSF Catch Reporting Areas 25A, 25E, and 23D. Crab Management Region 3-3 includes MFSF Catch Reporting Areas 23C East, and Crab Management Region 3-4 consists of 23C West and 29.

(2) Effective immediately, until further notice, all crab removed from a vessel licensed in Puget Sound that are not delivered to an original receiver within 36 hours must be recorded on a commercial fish and shellfish transportation ticket. Separate commercial fish and shellfish transportation tickets must be filled out for each day's harvest stored this way. It is illegal to store crab for more than 10 days in this manner.

(3) Effective immediately, until further notice, all crab that have been removed from a vessel must be stored in containers labeled with the following:

(a) date of harvest,

(b) an estimate of pounds of crab contained,

(c) either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from.

(4) Effective immediately, until further notice, all crab that have been removed from a vessel and are not delivered to an original receiver within 36 hours must be stored in containers labeled with the following:

(a) date of harvest,

(b) an estimate of pounds of crab contained,

(c) either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from, and

(d) Commercial fish and shellfish transportation ticket number.

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NEW SECTION

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

(1) For the purposes of crab harvest allocation, fishing season, and catch reporting, the following Marine Fish-Shellfish Catch Reporting Areas are modified as follows:

(a) Catch Area 23C East (23C-E) includes those waters of Puget Sound westerly of a line due north from the Ediz Hook light to the international boundary; and easterly of a line projected due north from Low Point.

(b) Catch Area 23C West (23C-W) includes those waters of Puget Sound westerly of a line due north from Low Point to the international boundary; and easterly of a line projected due north from the mouth of the Sekiu River.

(2) It is permissible to harvest Dungeness crab for commercial purposes from the following areas as listed:

(a) Region 1:

(i) Marine Fish-Shellfish Catch Areas 21A, 21B, and 22B; effective immediately through March 31, 2022 at 11:59 p.m.

(ii) Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B; effective immediately through April 15, 2021 at 11:59 p.m.

(b) Region 2 East:

Crab Management Region 2 East; effective immediately through October 17, 2021 at 11:59 p.m.

(c) Region 2 West:

Crab Management Region 2-W; effective immediately through February 15, 2022.

(d) Region 3:

(i) Crab Management Region 3-1; effective immediately through March 31, 2022.

(ii) Crab Management Region 3-2; effective immediately through March 31, 2022.

(iii) Crab Management Region 3-3; effective immediately through April 15, 2022.

(3) Effective immediately, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 35 pots per license per buoy tag number in Crab Management Regions 1 and 2E.

(4) Effective 12:00 a.m. October 18, 2021, until further notice, it is unlawful to deploy any pots to harvest crabs for commercial purposes in Crab Management Region 2E.

(5) Effective immediately, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 2 West and 3-2 with the following exceptions:

(a) Region 2 West:

Commercial harvest is limited to 20 pots per license in those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin until 11:59 p.m. December 31, 2021.

(b) Region 3-2:

(i) Commercial harvest is limited to 20 pots per license within the Sequim Bay Special Management Area which consists of all waters of Sequim Bay south of a line true west from Travis Spit to the Miller Peninsula until March 31, 2022.

(ii) Commercial harvest is limited to 20 pots per license within the Discovery Bay Special Management Area defined as all waters of Discovery Bay south of a line from Diamond Point to Cape George until March 31, 2022

(6) Effective immediately, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 40 pots per license per buoy tag number in Crab Management Region 3-1.

(7) Effective immediately, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 60 pots per license per buoy tag number in Crab Management Region 3-3.

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

(9) Public Health Closures: effective immediately, until further notice, the following areas are closed to commercial crab fishing:

That portion of Marine Fish/Shellfish Catch Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(10) Closure of areas with insufficient commercial share remaining: effective immediately, until further notice, the following areas are closed to commercial crab fishing: Crab Management Region 3-4.

(11) Management Plan Tribal Exclusive Closures: effective immediately, until further notice, the following areas are closed to commercial crab fishing:

(a) Region 2 East:

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

(b) Region 3-2:

Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A previously described as "west of a line from the new Dungeness Light to the abandoned dock at the Three Crabs Restaurant" now described as the Dungeness Bay Special Management Area which include all waters of Dungeness Bay west of the 123°6.50' Longitude line originating from the New Dungeness Light (48°10.90'N, 123°6.50'W).

(12) Limited Commercial Areas: It is permissible to harvest Dungeness crab for commercial purposes from the following areas as listed:

(a) Region 1, effective immediately, until further notice:

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

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

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

(b) Region 2 West, effective immediately, until further notice:

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

(c) Region 2 East, effective immediately through October 17, 2021 at 11:59 p.m.:

(i) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(ii) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(13) Commercial exclusion areas: It is permissible to harvest crab for commercial purposes from the following areas as listed:

(a) Region 1, effective immediately, until further notice:

(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.

(ii) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

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

(iv) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island, thence to Chuckanut Rock, thence to the most southerly tip of Clark's Point.

(v) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.

(vi) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(vii) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.

(viii) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore and following the shoreline to the point of origin.

(ix) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B, which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.

(x) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.

(b) Region 2 East, effective immediately through October 17, 2021 at 11:59 p.m.:

(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A within a line projected from Rocky Point northeast to the red number 2 buoy north of Ustalady Point, thence to Brown Point on the northeast corner of Ustalady Bay.

(ii) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24D south of a line from the point at the southern end of Honeymoon Bay (48°03.047'N, 122°32.306'W) to the point just north of Beverly Beach.

(iii) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from the #3 buoy south-

ward to the oil boom pier on the shoreline, also known as Port Gardner.

(iv) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A in Cornet Bay south of a line projected true east and west from the northernmost tip of Ben Ure Island.

(c) Region 3-2, effective immediately, until further notice:

Those waters of Discovery Bay, Area 25E south of a line from Contractors Point to Tukey Point.

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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.

NEW SECTION

WAC 220-352-34000J Puget Sound crab—Additional reporting requirements. Notwithstanding the provisions of WAC 220-352-340,

(1) Effective immediately, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab landed by WDFW licensed Puget Sound commercial crab harvesters to fail to report to the department the previous day's purchases by 10:00 a.m. the day following the purchase. Reports must be made by online at on the Puget Sound commercial crab reporting website, by fax to (360) 302-3031, or by e-mail at crab.report@dfw.wa.gov. Reports must include all of the following:

- (a) dealer name,
- (b) dealer license number,
- (c) dealer phone number,
- (d) date of delivery of crab to the original receiver, and
- (e) the total number of pounds of crab caught by non-treaty fishers by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area.

(2) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must deliver all crab removed from their vessel to a licensed original receiver within 36 hours or submit a report of crab retained for delivery at a future date to the Department. Reports must be received within 36 hours following an offload. Reports must be made by online on the Puget Sound commercial crab reporting website or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

- (a) harvester name,
- (b) WDFW issued vessel ID,
- (c) Puget Sound commercial license number,
- (d) date of harvest,
- (e) an estimate of pounds of harvest retained by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area, and
- (f) a commercial fish and shellfish transportation ticket number.

(3) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must report the delivery of all crab to an original receiver that were previously retained off-vessel by 10:00 a.m. the day following delivery to an original receiver. Reports must be made by online on the Puget Sound commercial crab reporting website, or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

- (a) harvester name,
- (b) WDFW issued vessel ID,
- (c) Puget Sound commercial license number,
- (d) date of sale,
- (e) dealer name,
- (f) commercial shellfish transportation ticket number(s) delivered, and
- (g) fish receiving ticket number(s) corresponding to landing date of delivery.

(4) Effective immediately, until further notice, Puget Sound commercial crab license holders, or their designated alternate operators, must register which Crab Management Region that gear will be deployed in for each license they hold prior to the opening date. Registrations must be updated when gear moves between areas. Registrations can be made by registering on the WDFW Puget Sound commercial crabbing webpage or sending an email to crab.report@dfw.wa.gov, detailing the following information:

- (a) Vessel Operator Name
- (b) Vessel Name and Vessel Registration Number
- (c) Permit Number(s) to be Fished
- (d) Crab Management Region to be fished
- (e) Gear Deployment Date

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

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

REPEALER

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

- WAC 220-340-42000Q Commercial crab fishery—Unlawful acts. (21-223)
- WAC 220-340-45500Z Commercial crab fishery—Seasons and area—Puget Sound. (21-223)
- WAC 220-352-34000I Puget Sound crab—Additional reporting requirements. (21-223)

WSR 21-21-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-232—Filed October 15, 2021, 4:35 p.m., effective October 15, 2021, 4:35 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule extends commercial nonspot pot harvest in Marine Fish-Shellfish (MFSF) Management Catch Area 25A.

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

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

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

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

The emergency regulation extends the nonspot pot fishery in MFSF Catch Area 25A to allow for continued harvest pursuant to procedures agreed to in annual regional management plans. Sections of this regulation define open areas to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and nonspot shares while also achieving the 50/50 harvest defined by the federal court order. 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: October 15, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000Q Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, or until they expire pursuant to

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

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3 as well as Marine Fish/Shellfish Catch Reporting Areas 26B, and 26D are open to the commercial harvest of all shrimp species until further notice, except as provided for in this section:

(i) Commercial harvest of spot shrimp by pots is prohibited.

(ii) Commercial harvest of non-spot shrimp by pots in Shrimp Management Area 1A, 1B, and 1C is prohibited effective October 15, 2021 at 11:59 p.m.

(iii) Commercial harvest of non-spot shrimp by pots in Shrimp Management Area 3, other than Marine Fish Shellfish Catch Reporting Area 25A, is prohibited effective October 15, 2021 at 11:59 p.m.

(iv) Commercial harvest of non-spot shrimp by pots in Marine Fish Shellfish Catch Reporting Area 25A is prohibited effective October 30, 2021 at 11:59 p.m.

(v) Commercial harvest of all shrimp species in Shrimp Management Area 2E is prohibited.

(vi) Commercial harvest of all shrimp species in Shrimp Management Area 4 which consists of Marine Fish/Shellfish Catch Reporting Areas 26B and 26C, is prohibited.

(vii) Commercial harvest of all shrimp species in Shrimp Management Area 6, which consists of Marine Fish/Shellfish Catch Areas 26D, is prohibited.

(viii) Commercial harvest of spot shrimp in Shrimp Management Areas 1A, 1B and 1C is prohibited.

(ix) Commercial harvest of spot shrimp in Shrimp Management Area 2W is prohibited.

(x) Commercial harvest of spot shrimp in Sub-areas 23A-W, 23A-E, 23A-S, and 23A-C of Marine Fish/Shellfish Catch Reporting Area 23A and Marine Fish/Shellfish Catch Reporting Areas 23B and 23D is prohibited.

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

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

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

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

(iii) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

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

(v) Non-spot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the dis-

tance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

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

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

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

(A) Spot and non-spot pots may be concurrently deployed in Marine Fish/Shellfish Catch Reporting Area 23A but not within the same sub-area (23A-E, 23A-W, 23A-C, or 23A-S).

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

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

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

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

It is unlawful to harvest shrimp in more than one Shrimp Management Area (1A, 1B, 1C, 2E, 2W, 3, 4, 5, or 6) per day.

(2) Shrimp Non-spot Pot Harvest Restrictions:

(a) The non-spot shrimp catch accounting period is weekly, from 12:00 a.m. on Wednesdays through 11:59 p.m. on Tuesdays.

(b) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 1000 pounds per non-spot shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, and 2W combined.

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

(3) Shrimp Trawl Harvest Restrictions:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Marine Fish/Shellfish Catch Reporting Area 23D) is closed.

Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

That portion of Marine Fish/Shellfish Catch Reporting Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open effective immediately, until October 15, 2021 at 11:59 p.m.

(b) The waters of south Lopez Sound (the portion of Marine Fish/Shellfish Catch Reporting Area 22A south of a line projected east and west from the northern tip of Trump Island) is open effective immediately, until October 15, 2021 at 11:59 p.m.

(c) The remaining portion of Shrimp Management Area 1B and Marine Fish/Shellfish Catch Reporting Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until October 15, 2021 at 11:59 p.m.

(d) Marine Fish/Shellfish Catch Reporting Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) is open effective immediately, until October 15, 2021 at 11:59 p.m.

(e) Marine Fish/Shellfish Catch Reporting Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) is open effective immediately, until October 15, 2021 at 11:59 p.m.

(f) Trawling is allowed only in waters deeper than 120 feet in Marine Fish/Shellfish Catch Reporting Area 20A.

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

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

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

REPEALER

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

WAC 220-340-52000P Puget Sound shrimp pot and trawl fishery—Season. (21-193)

WSR 21-21-067
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 18, 2021, 10:02 a.m., effective October 28, 2021]

Effective Date of Rule: October 28, 2021.

Purpose: The department is extending emergency amendments to 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 (90 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.

Reasons for this Finding: Families approaching and exceeding the 60-month lifetime TANF time limit will have access to benefits needed to sustain basic needs, thus this 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 filed a Preproposal statement of inquiry (CR-101) under WSR 21-13-126, Proposed rule-making order (CR-102) under WSR 21-17-111, and a public hearing was held on September 21, 2021.

The current emergency filing is under WSR 21-14-031 and expires on October 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 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: October 18, 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 21-21-068
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 18, 2021, 10:10 a.m., effective October 28, 2021]

Effective Date of Rule: October 28, 2021.

Purpose: The department is extending emergency amendments to 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 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 (DCA) 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. 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, Proposed rule-making order (CR-102) under WSR 21-17-096, and a public hearing was held on September 21, 2021.

The current emergency filing is under WSR 21-14-032 and expires on October 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 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: October 18, 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 21-21-070
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 18, 2021, 10:40 a.m., effective October 20, 2021]

Effective Date of Rule: October 20, 2021.

Purpose: The department is extending emergency amendments for WAC 388-478-0020 Payment standards for TANF, SFA and RCA, 388-478-0027 What is the payment standard for pregnant women assistance (PWA)?, 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA?, and 388-436-0050 Determining financial need and benefit amount for CEAP.

These amendments implement a 15 percent payment standard increase (effective July 1, 2021) for the TANF, SFA, RCA, and PWA programs, approved via the 2021-2023 Operating Budget. Amendments also update net income limits and allowable benefit amounts for the Consolidated Emergency Assistance Program.

Citation of Rules Affected by this Order: Amending WAC 388-478-0020, 388-478-0027, 388-478-0035, and 388-436-0050.

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

Other Authority: ESSB 5092 (chapter 334, Laws of 2021).

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

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

Operating Budget - ESSB 5092 (chapter 334, Laws of 2021), effective July 1, 2021, also supports immediate adoption of this rule.

The department filed CR-101 under WSR 21-13-014, and CR-102 under WSR 21-17-094, and continues to undertake procedures to adopt the rule as permanent.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at the Request of a 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 4, Repealed 0.

Date Adopted: October 18, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4868.1

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

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

Assistance unit members	Net income limit
1	((\$327) <u>\$375</u>)
2	((413) <u>475</u>)
3	((512) <u>589</u>)
4	((603) <u>694</u>)
5	((695) <u>799</u>)
6	((789) <u>908</u>)
7	((912) <u>1,049</u>)
8 or more	((1,009) <u>1,160</u>)

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

(a) The TANF payment standard, based on assistance unit size, (~~for households with shelter costs~~) as specified under WAC 388-478-0020; or

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

Need item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 or more
Food	((\$220) <u>\$253</u>)	((\$280) <u>\$322</u>)	((\$345) <u>\$397</u>)	((\$408) <u>\$469</u>)	((\$469) <u>\$539</u>)	((\$532) <u>\$612</u>)	((\$608) <u>\$699</u>)	((\$672) <u>\$773</u>)
Shelter	((268) <u>308</u>)	((339) <u>390</u>)	((422) <u>485</u>)	((497) <u>572</u>)	((571) <u>657</u>)	((647) <u>744</u>)	((750) <u>863</u>)	((828) <u>952</u>)
Clothing	((31) <u>36</u>)	((39) <u>45</u>)	((49) <u>56</u>)	((57) <u>66</u>)	((66) <u>76</u>)	((77) <u>89</u>)	((85) <u>98</u>)	((97) <u>112</u>)
Minor medical care	((186) <u>214</u>)	((237) <u>273</u>)	((294) <u>338</u>)	((345) <u>397</u>)	((398) <u>458</u>)	((449) <u>516</u>)	((524) <u>603</u>)	((578) <u>665</u>)
Utilities	((91) <u>105</u>)	((115) <u>132</u>)	((142) <u>163</u>)	((166) <u>191</u>)	((191) <u>220</u>)	((220) <u>253</u>)	((254) <u>292</u>)	((280) <u>322</u>)
Household maintenance	((66) <u>76</u>)	((84) <u>97</u>)	((105) <u>121</u>)	((122) <u>140</u>)	((142) <u>163</u>)	((161) <u>185</u>)	((186) <u>214</u>)	((204) <u>235</u>)
Job related transportation	((363) <u>417</u>)	((459) <u>528</u>)	((569) <u>654</u>)	((670) <u>771</u>)	((772) <u>888</u>)	((877) <u>1,009</u>)	((1,013) <u>1,165</u>)	((1,121) <u>1,289</u>)
Child related transportation	((363) <u>417</u>)	((459) <u>528</u>)	((569) <u>654</u>)	((670) <u>771</u>)	((772) <u>888</u>)	((877) <u>1,009</u>)	((1,013) <u>1,165</u>)	((1,121) <u>1,289</u>)

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

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

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

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

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

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

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

WAC 388-478-0020 Payment standards for TANF, SFA, and RCA. The maximum monthly payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) assistance units are:

Assistance unit size	Payment standard	Assistance unit size	Payment standard
1	(\$363) \$417	6	(\$877) \$1,009
2	((459)) 528	7	((1,013)) 1,165
3	((569)) 654	8	((1,121)) 1,289
4	((670)) 771	9	((1,231)) 1,416
5	((772)) 888	10 or more	((1,338)) 1,539

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0020, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, 2018 c 299 and 2017 c 1. WSR 18-09-088, § 388-478-0020, filed 4/17/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, and 2015 3rd sp.s. c 4 § 207. WSR 16-01-093, § 388-478-0020, filed 12/15/15, effective 1/15/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 11-16-029, § 388-478-0020, filed 7/27/11, effective 8/27/11. Statutory Authority: RCW 74.04.050, 74.04.055, and 2008 c 329 § 207 (1) (e). WSR 08-16-105, § 388-478-0020, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and

74.08.090. WSR 98-16-044, § 388-478-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-507-0710.]

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

WAC 388-478-0027 What is the payment standard for pregnant women assistance (PWA)? The payment standard for a PWA cash assistance unit is:

Assistance Unit Size	Payment Standard
1	(\$363) <u>\$417</u>

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0027, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335 and 2019 c 415. WSR 19-21-056, § 388-478-0027, filed 10/11/19, effective 11/11/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-478-0027, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA? To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), refugee cash assistance (RCA), or a pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of family members	Maximum earned income level	Number of family members	Maximum monthly earned income level
1	(\$726) <u>\$834</u>	6	(\$1,754) <u>\$2,018</u>
2	((918)) <u>1,056</u>	7	((2,026)) <u>2,330</u>
3	((1,138)) <u>1,308</u>	8	((2,242)) <u>2,578</u>
4	((1,340)) <u>1,542</u>	9	((2,462)) <u>2,832</u>
5	((1,544)) <u>1,776</u>	10 or more	((2,676)) <u>3,078</u>

[Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, 2018 c 299 and 2017 c 1. WSR 18-09-088, § 388-478-0035, filed 4/17/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, and

2015 3rd sp.s. c 4 § 207. WSR 16-01-093, § 388-478-0035, filed 12/15/15, effective 1/15/16. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-478-0035, filed 4/27/12, effective 6/1/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 11-16-029, § 388-478-0035, filed 7/27/11, effective 8/27/11. Statutory Authority: RCW 74.04.050, 74.04.055, and 2008 c 329 § 207 (1)(e). WSR 08-16-105, § 388-478-0035, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0035, filed 7/31/98, effective 9/1/98.]

WSR 21-21-074
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed October 18, 2021, 12:33 p.m., effective October 18, 2021, 12:33 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.

L&I is monitoring the emergency proclamations, information including guidance from the Center 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: New 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 September 20, 2021, filed as WSR 21-19-118, as conditions have changed due to the vaccination requirements under the Governor's Proclamation 21-14.2 being in effect as of October 18, 2021.

L&I is taking action to help prevent the spread of COVID-19 and respond to the governor's proclamations establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how businesses may continue operation 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 [Healthy] 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 July 2021 "Washington Ready" order, Proclamation 20-25.14, some restrictions remained for

large indoor gatherings and mask use is required for unvaccinated employees when indoors. The current "Washington Ready" Proclamation 20-25.17 addresses the increase in COVID-19 cases and hospitalizations in many parts of the state and the need to decrease the spread of the highly contagious Delta variant. Proclamation 20-25.17 continues the requirements under 20-25.15 for face coverings or masks for customers and employees regardless of vaccination status in indoor spaces accessible to the public and requires face coverings or masks for large outdoor events with 500 or more individuals, regardless of vaccination status. In setting the conditions for businesses under the "Washington Ready" 20-25.17 order considerations included statewide and county level data, the percentage of the state population who are fully vaccinated, the number of counties with high or substantial transmission rates, and 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.

Proclamation 21-14.2 prohibits any state agency, operator of an education setting, and operator of a health care setting from permitting workers to engage in work after October 18, 2021, if the worker is not fully vaccinated against COVID-19 and provided proof of vaccination status. Under Proclamation 21-14.2, "worker" includes employees and on-site contractors. Operators of health care settings are also prohibited from permitting a health care provider to engage in work for the operator as an employee, contractor, or volunteer in their capacity as a health care provider after October 18, 2021, if the health care provider has not been fully vaccinated against COVID-19 and provided proof of vaccination. Vaccination is not required for workers and health care providers who are provided a disability or religious accommodation in accordance with Proclamation 21-14.2. In issuing Proclamation 21-14.2, consideration included the following: Vaccines are effective in reducing infection and serious disease, and widespread vaccination is the primary means we have as a state to protect everyone; health care workers face COVID-19 exposures in a variety of health care settings, with those involving direct patient care likely at higher risk; increasing vaccination rates at educational settings is the strongest protective measure against COVID-19 available and, together with masking, is vital to providing in-person instruction in as safe a manner as possible; the sharp increase in COVID-19 cases and hospitalizations, primarily among unvaccinated populations but also in breakthrough infections in some fully vaccinated individuals, makes it vital to expand the vaccination requirement to workers in educational setting[s]; and that it is the duty of every employer to protect the health and safety of employees by establishing and maintaining a healthy and safe work environment and by requiring all employees to comply with health and safety measures.

The governor's proclamations and amendments, including 20-25.17 and 21-14.2, create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions among individuals not fully vaccinated, reduce the occurrence of breakthrough infections, 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.

The business operating conditions in the governor's orders are also consistent with the purpose of chapter 49.17 RCW and guidance from the Center for Disease Control and Prevention. Chapter 49.17 RCW and L&I rules 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. Lack of COVID-19 hazard controls such as failure to address symptomatic employees can be cited under the safe place standard. This emergency rule ensures clarity that restrictions and conditions on business 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. The governor's proclamations have found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The governor's proclamations are 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 orders.

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: October 18, 2021.

Joel Sacks
Director

OTS-2313.6

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.

(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.

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WSR 21-21-081
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed October 18, 2021, 3:10 p.m., effective October 18, 2021, 3:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Implement section 201, chapter 199, Laws of 2021, by establishing the **working connections and seasonal child care subsidy programs'** family eligibility threshold to be annual household income at or below 60 percent of the state median income and setting copayments as directed by section 201(5)(a), chapter 199.

Citation of Rules Affected by this Order: Amending WAC 110-15-0003, 110-15-0005, 110-15-0075, 110-15-0109, 110-15-2210, 110-15-3640, and 110-15-3840.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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

Reasons for this Finding: Chapter 199, Laws of 2021, took effect July 1, 2021, and authorized a new household income eligibility threshold and copayment schedule for the working connections and seasonal child care subsidy programs effective October 1, 2021. There was insufficient time between chapter 199's effective date and October 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 7, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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: October 18, 2021.

Brenda Villarreal
Rules Coordinator

OTS-3341.2

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

WAC 110-15-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"**Able**" means being physically and mentally capable of caring for a child in a responsible manner.

"Administrative error" means an error made by DCYF ((~~or~~ DSHS)) through no fault of the consumer or provider.

"Approved activity" means an activity that a consumer is required to participate in at application and reapplication to be eligible to collect benefits.

"Authorization" means the transaction created by ((DSHS)) DCYF which allows the provider to claim payment during a certification period. The transaction may be adjusted based on the family need.

"Available" means being free to provide care when not participating in an approved activity under WAC 110-15-0040, 110-15-0045, or 110-15-0050 during the time child care is needed.

"Benefit" means a regular payment made by a government agency on behalf of a person eligible to receive it.

"Calendar year" means those dates between and including January 1st and December 31st.

"Capacity" means the maximum number of children the licensee is authorized to have in care at any given time.

"Collective bargaining agreement" or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person eligible to receive:

- (a) WCCC benefits as described in part II of this chapter; or
- (b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay to the child care provider each month toward the cost of child care, whether provided under a voucher or contract.

"Days" means calendar days unless otherwise specified.

"DCYF" means the department of children, youth, and families.

"DSHS" means the department of social and health services.

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature, symbol, or process executed by a person with the intent to sign the record.

"Eligibility" means that a consumer has met all of the requirements of:

- (a) Part II of this chapter to receive WCCC program subsidies; or
- (b) Part III of this chapter to receive SCC program subsidies.

"Eligibility period" means the months for which households shall be eligible to receive WCCC or SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S. This includes unsubsidized employment, as verified by ((DSHS)) DCYF, and subsidized employment, such as:

- (a) Working in a federal or state paid work study program; or
- (b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to himself or herself or another person. See RCW 74.04.004.

"Homeless" means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987 without a fixed, regular, and adequate nighttime residence.

"In-home/relative provider" or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing standards and is approved for working connections child care (WCCC) payment under WAC 110-15-0125.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

"Living in the household" means people who reside at the same physical address.

"Lump-sum payment" means a single payment that is not anticipated to continue.

"Newly eligible consumer" means a consumer that has at least one full calendar month break in benefit eligibility.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

"Overpayment" means a payment or benefits received by a provider or consumer that exceeds the amount the provider or consumer is approved for or eligible to receive.

"Parental control" means a child is living with a biological or adoptive parent, stepparent, legal guardian verifiable by a legal or court document, adult sibling or step-sibling, nephew or niece, aunt, great-aunt, uncle, great-uncle, grandparent or great-grandparent, or an approved in loco parentis custodian responsible for exercising day-to-day care and control of the child.

"Preschool age child" means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"Program violation" means a failure to adhere to program requirements, which results in an overpayment.

"Sanction" means deterrent action imposed by the department to address a program violation finding.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child who is between five years of age through twelve years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting, or processing of fruit trees or crops.

"Second tier eligibility" means an increased income limit for eligible families who reapply before the end of their current eligibility period.

"Self-employment" means engaging in any legal income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S., as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

"Sign" means placing a name or legal mark on a document by physically writing or using an electronic signature.

"State median income (SMI)" means an annual income figure representing the point at which there are as many families earning more than that amount as there are earning less than that amount. The Census Bureau publishes median family income figures for each state each year, depending on family size.

"TANF" means temporary assistance for needy families, a cash assistance program administered by DSHS.

"Technical assistance" means a strategy that is focused on the resolution of a specific concern or need. This may be in writing or by phone call.

"To the extent of available funds" means one or more of the following:

- (a) Limited or closed enrollment;
- (b) Subject to a priority list for new enrollees pursuant to applicable state and federal law and as described in WAC 110-15-2210; or
- (c) Subject to a waiting list.

"Unintentional" means not done willfully or on purpose.

"Waiting list" means a list of applicants or reapplicants eligible to receive subsidy benefits when funding becomes available.

"WCCC" means the working connections child care program, a child care subsidy program described in part II of this chapter that assists eligible families to pay for child care.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0003, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0003, 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, § 170-290-0003, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-013, § 170-290-0003, filed 5/26/17, effective 6/26/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0003, 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, § 170-290-0003, filed 4/15/16, effective 5/16/16; WSR 14-12-050, § 170-290-0003, filed 5/30/14, effective 6/30/14; WSR 12-11-025, § 170-290-0003, filed 5/8/12, effective 6/8/12; WSR 11-12-078, § 170-290-0003, 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, § 170-290-0003, filed 10/28/09, effective 12/1/09.]

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

- WAC 110-15-0005 Eligibility.** (1) **Consumer.** At application and reapplication, to be eligible for WCCC, the consumer must:
- (a) Have parental control of one or more eligible children;
 - (b) Live in the state of Washington;
 - (c) Participate in an approved activity or meet the eligibility special circumstances requirements under WAC 110-15-0020, 110-15-0023, or 110-15-0024;
 - (d) Have countable income at or below (~~two hundred percent of the federal poverty guidelines (FPG) and have resources under~~) sixty percent of the SMI at initial application or at or below sixty-five percent of the SMI at reapplication;
 - (e) Not have assets that exceed one million dollars (~~per WAC 110-15-0022~~); and
 - (~~e~~) (f) Have an agreed payment arrangement with any provider to whom any outstanding WCCC copayment is owed.
- (2) **Children.** To be eligible for WCCC, a child must:
- (a) Belong to one of the following groups as defined in WAC 388-424-0001:
 - (i) A U.S. citizen;
 - (ii) A U.S. national;
 - (iii) A qualified alien; or
 - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.
 - (b) Legally reside in Washington state, which will be determined by applying the criteria of WAC 388-424-0001 or 388-468-0005; and
 - (c) Be less than thirteen years of age on the first day of eligibility; or
 - (d) Be less than nineteen years of age, and:
 - (i) Have a verified special need, according to WAC 110-15-0020;
- or
- (ii) Be under court supervision.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0005, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0005, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060 and 43.215.070. WSR 17-23-017, § 170-290-0005, filed 11/3/17, effective 12/4/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0005, 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, § 170-290-0005, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0005, filed 10/5/12, effective 11/5/12. 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, § 170-290-0005, 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, § 170-290-0005, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0005, 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, § 388-290-0005, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0005, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 21-01-180, filed 12/21/20, effective 1/21/21)

WAC 110-15-0075 Determining income eligibility and copayment amounts. (1) DCYF takes the following steps to determine a consumer's eligibility and copayment, ~~((whether))~~ when care is provided under a WCCC voucher or contract:

(a) Determine the consumer's family size (under WAC 110-15-0015); and

(b) Determine the consumer's countable income (under WAC 110-15-0065).

(2) DCYF calculates the consumer's copayment as follows:

(IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG):	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG:	\$65
(c) Above 137.5% of the FPG through 200% of the FPG:	The dollar amount equal to subtracting 137.5% of the FPG from countable income, multiplying by 50%, then adding \$65, up to a maximum of \$115.)

<u>If the household's income is:</u>	<u>Then the household's maximum monthly copayment is:</u>
<u>At or below twenty percent of the SMI</u>	<u>Waived</u>
<u>Above twenty percent and at or below thirty-six percent of the SMI</u>	<u>\$65</u>
<u>Above thirty-six percent and at or below fifty percent of the SMI</u>	<u>\$90</u>
<u>Above fifty percent and at or below sixty percent of the SMI</u>	<u>\$115</u>
<u>At reapplication, above sixty percent and at or below sixty-five percent of the SMI</u>	<u>\$215</u>

(3) DCYF does not prorate the copayment when a consumer uses care for part of a month.

~~((The FPG is updated every year. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.))~~ For a parent age twenty-one years or younger who is attending high school or working towards completing a high school equivalency certificate, copayment is not required.

(5) DCYF updates the SMI annually in April.

[Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 21-01-180, § 110-15-0075, filed 12/21/20, effective 1/21/21. WSR 18-14-078, recodified as § 110-15-0075, 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, § 170-290-0075, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0075, filed 10/5/12, effective 11/5/12. 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, § 170-290-0075, 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, § 170-290-0075, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0075, 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, § 388-290-0075, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-14-067, § 388-290-0075, filed 6/27/02, effective 8/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0075, filed 12/19/01, effective 1/19/02.]

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

WAC 110-15-0109 Reapplication. (1) ~~((To request))~~ For WCCC benefits to be continued ~~((uninterrupted beyond the consumer's current))~~ without interruption into the new eligibility period, the consumer must reapply for WCCC benefits ~~((with DSHS))~~ on or before the end date of the current eligibility period.

(2) Determination of the consumer's eligibility to receive uninterrupted WCCC benefits beyond the consumer's current eligibility period will be made pursuant to the eligibility rules contained in this chapter.

(3) A consumer who reapplies on or before the end date of the current WCCC eligibility period may receive continued uninterrupted benefits through second tier eligibility if the consumer's household ~~((has))~~ countable income is greater than ~~((two hundred percent but less than two hundred twenty percent of the federal poverty guidelines (FPG)).~~

~~((a))~~ sixty percent but less than or equal to sixty-five percent of the SMI. If the total countable monthly income is ~~((equal to or))~~ greater than ~~((two hundred twenty percent FPG))~~ sixty-five percent of the SMI, the reapplication will be denied.

~~((b) The copayment for a second tier eligible consumer will be determined at two hundred percent of the FPG of countable household income.))~~

(4) If a consumer submits a reapplication after the last day of the current eligibility period and meets all WCCC eligibility requirements, the consumer's benefits will begin:

(a) On the date the consumer's reapplication is entered into ~~((DSHS's))~~ DCYF's automated system or the date the consumer's reapplication is date-stamped as received by ~~((DSHS))~~ DCYF, whichever date is earlier;

(b) When the consumer is working or participating in an approved activity; and

(c) The consumer's child is receiving care from an approved provider.

(5) Newly eligible households must begin care within twelve months of the eligibility determination date. If the household does not begin care within twelve months, the household must reapply in order to qualify for WCCC benefits.

[Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0109, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0109, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0109, 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, § 170-290-0109, 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, § 170-290-0109, 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, § 170-290-0109, filed 10/28/09, effective 12/1/09.]

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

WAC 110-15-2210 Eligibility. (1) If the applicant or reapplicant meets one of the qualifiers of the priority list and otherwise meets all eligibility requirements of Part II or III of this chapter, the applicant or reapplicant will not be placed on the wait list and will be eligible to receive WCCC subsidies. The priority list includes:

- (a) Families applying for or receiving TANF;
- (b) Families receiving TANF and working to cure a sanction;
- (c) Foster children;
- (d) Families that include a child with special needs;
- (e) Families with teen parents (under age twenty-two) who are not living with a parent or guardian, and who are attending a high school full-time that has an on-site child care center;
- (f) Families with a child residing with a biological parent or guardian who have received child protective services, child welfare services, or a family assessment response from ((~~DSHS~~)) DCYF in the past six months and has received a referral for child care as part of the family's case management; and
- (g) Reapplicants who received subsidies within the last thirty days and:
 - (i) Have reapplied for subsidies; and
 - (ii) Have household income of ((~~two hundred percent federal poverty level~~)) sixty percent of the SMI or below.

(2) As provided in WAC ((~~170-290-0001~~)) 110-15-0001, WCCC is administered to the extent of available funds. If available funds are insufficient to allow all priority groups to not be placed on the wait list and be eligible to receive WCCC subsidies, only the highest ranked groups that can be served within available funds will be prioritized. The priority groups are ranked in the order listed in subsection (1) of this section, highest to lowest.

(3) If funds are not available, an applicant or reapplicant not belonging to a group on the priority list will have their name placed on the wait list upon approval of eligibility. The name will be placed on the wait list based on the date of the application or reapplication and served as funds become available.

(4) If the applicant or reapplicant remains on the wait list for twelve months or longer, a new eligibility determination will be required when subsidy child care becomes available.

[WSR 18-14-078, recodified as § 110-15-2210, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060 and 43.215.070. WSR 17-22-101, § 170-290-2210, filed 10/30/17, effective 11/30/17; WSR 17-09-042, § 170-290-2210, filed 4/14/17, effective 5/15/17.]

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

WAC 110-15-3640 Determining income eligibility and copayment.

(1) For the SCC program, ((DSHS)) DCYF determines a consumer's family's income eligibility and copayment by:

- (a) The consumer's family size as defined under WAC ((170-290-3540)) 110-15-3540;
 - (b) The consumer's average monthly income as calculated under WAC ((170-290-3620)) 110-15-3620; and
 - (c) The consumer's family's average monthly income as compared to the ((federal poverty guidelines (FPG))) SMI.
- (2) At application and reapplication, if a consumer's family's income is above the maximum eligibility limit as provided in WAC ((170-290-0005)) 110-15-0005, the consumer's family is not eligible for the SCC program.

(3) The ((FPG)) SMI is updated every year. The SCC eligibility level is updated at the same time every year to remain current with the ((FPG)) SMI.

(4) SCC shall assign a copayment amount based on the family's countable income. The consumer pays the copayment directly to the provider.

(5) SCC does not prorate the copayment.

[WSR 18-14-078, recodified as § 110-15-3640, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3640, 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, § 170-290-3640, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3640, 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, § 170-290-3640, filed 10/28/09, effective 12/1/09.]

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

WAC 110-15-3840 New eligibility period. (1) ((If a consumer wants to receive SCC program subsidies for another)) To request SCC benefits be continued uninterrupted beyond the consumer's current eligibility period, ((he or she)) the consumer must reapply ((for SCC benefits)) to DCYF on or before the end date of the current eligibility period. ((To determine if a consumer is eligible, DSHS:

~~(a) Requests reapplication information before the end date of the consumer's current SCC eligibility period; and~~

~~(b) Verifies the requested information for completeness and accuracy.~~

~~(2) A consumer may be eligible for SCC program subsidies for a new eligibility period if:~~

~~(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;~~

~~(b) The consumer's provider is eligible for payment under WAC 170-290-3670 and 170-290-3750; and~~

~~(c) The consumer meets all SCC eligibility requirements.~~

~~(3) Effective October 1, 2016, if a consumer's household has countable income greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG, the consumer may be eligible for a three-month eligibility period called income phase-out. In determining eligibility for the income phase-out period, the following rules apply:~~

~~(a) All countable income must be between two hundred and two hundred twenty percent of the FPG. If the countable income exceeds two hundred twenty percent of the FPG, DSHS denies the reapplication;~~

~~(b) DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;~~

~~(c) There is no break between the twelve-month eligibility period and the income phase-out period;~~

~~(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;~~

~~(e) DSHS certifies the consumer for a three-month eligibility period;~~

~~(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month income phase-out period; and~~

~~(g) The consumer will not be eligible for a second, back-to-back income phase-out period if the countable income of the consumer's household remains between two hundred and two hundred twenty percent of the FPG at the end of the first three-month income phase-out period.~~

~~(4) If DSHS determines that a consumer is eligible for SCC program subsidies based on the consumer's reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.~~

~~(5) If a consumer fails to contact DSHS on or before the end date of the consumer's current SCC eligibility period to request SCC program subsidies, he or she must reapply according to WAC 170-290-3665.)~~

(2) Determination of the consumer's eligibility to receive uninterrupted SCC benefits beyond the consumer's eligibility period will be made pursuant to the eligibility rules contained in this chapter.

(3) A consumer who reapplies on or before the end date of their current eligibility period may receive continued, uninterrupted benefits through second tier eligibility if the consumer's household has countable income greater than sixty percent but less than or equal to sixty-five percent of the SMI. If the consumer's countable monthly income is greater than sixty-five percent of the SMI, the reapplication will be denied.

(4) If a consumer submits a reapplication after the last day the current eligibility period ends and meets eligibility requirements, the consumer's benefits will begin:

(a) On the date the consumer's reapplication is entered into DCYF's automated system or the date the consumer's reapplication is date-stamped as received by DCYF, whichever date is earlier;

(b) When the consumer is working or participating in an approved activity; and

(c) The consumer's child is receiving care from an approved provider under WAC 110-15-3750.

[WSR 18-14-078, recodified as § 110-15-3840, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3840, 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, § 170-290-3840, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3840, 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, § 170-290-3840, filed 10/28/09, effective 12/1/09.]

WSR 21-21-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-233—Filed October 18, 2021, 4:48 p.m., effective October 18, 2021, 4:48 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule sets commercial fisheries for fall 2021 in the mainstem and select areas. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 27, September 15, September 22, September 29, and October 18, 2021. The general public welfare is protected with the immediate but limited commercial openers. This harvest opportunity allows for the public use of the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and

Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, 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: October 18, 2021.

Kelly Susewind
Director

NEW SECTION

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

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

(1) Mainstem:

(a)

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 29	Mondays, Tuesdays, Wednesdays, Thursdays	4:00 am - 10:00 pm	18 hrs
Immediately - October 29	Fridays	4:00 am - 6:00 pm	14 hrs

(i) **Area:** SMCRA 1A, 1B, and 1C. Upper deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries include Elochoman-A, Cowlitz River, Kalama-A and Lewis-A.

(ii) **Gear:** Drift gillnets only. Maximum mesh size is 3.75 inches. Unslackened, single-wall, multi-filament floater nets only. Monofila-

ment nets are not allowed. Net length not to exceed 150 fathoms. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(iii) **Allowable Sales:** Salmon (except chum), shad, and white sturgeon; all coho must be adipose fin-clipped. A maximum of six 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). This white sturgeon possession and sales limit applies to mainstem fisheries only.

(iv) **Regulations:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

(v) **Soak times,** defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 30 minutes.

(vi) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(vii) **Measuring mesh size:** Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact

(viii) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(ix) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(x) **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

(xi) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure

of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(2) Tongue Point/South Channel Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 29	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) Area:

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

(ii) The South Channel 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 with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

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. Nets not specifically authorized for use 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. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. 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). This white sturgeon possession and sales limit applies to all Select Area fisheries.

(3) Blind Slough/Knappa Slough Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 29	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 10:00 am	16 hrs

(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.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 3, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

Nets not specifically authorized for use 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. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Permanent transportation rules in effect.** In accordance with WACs 220-69-230 (1) (i) and 220-22-010 (9) (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.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. 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). This white sturgeon possession and sales limit applies to all Select Area fisheries.

(4) Deep River Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 27	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs

Open Dates	Open Days	Open Time	Open Duration
November 1 - November 24	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

(a) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically authorized for use may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Permanent transportation rules in effect.** In accordance with WAC chapter 220-352, 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.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. 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). This white sturgeon possession and sales limit applies to all Select Area fisheries.

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

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

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

tached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

REPEALER

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

WAC 220-358-03000F Columbia River seasons below
Bonneville. (21-219)

WSR 21-21-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-234—Filed October 18, 2021, 4:49 p.m., effective October 18, 2021, 4:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open recreational fishing in the Skagit River from the Highway 9 Bridge to the Baker River on October 19, 2021.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000T; 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: The Skagit River from Highway 9 to Baker River was scheduled to be closed October 19 to avoid gear conflicts with tribal fisheries. The October 19 closure is no longer necessary so the section will open immediately and remain open through the next scheduled closures outlined above.

The Skagit River coho return remains sufficient to allow for the recreational salmon season to extend through October 24. Additional recreational opportunity is being evaluated and will be announced as soon as possible.

Washington department of fish and wildlife asks anglers to respect tribal fishers and not to interfere with tribal fisheries. Conflicts that arise during ongoing fisheries may necessitate additional time and area closures in the future to reduce conflicts.

Immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. 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: October 18, 2021.

Amy H. Windrope
Director

NEW SECTION

WAC 220-312-04000U Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through October 24, 2021 recreational fishing seasons for the Skagit River and Cascade River, shall be modified as follows, during dates listed below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

(1) Skagit River (Skagit County):

(a) From Highway 9 Bridge at Sedro Woolley to the Baker River: All recreational fishing is closed October 20 and 21, 2021.

(b) From mouth to Cascade River Rd. (Marblemount Bridge): Recreational salmon fishing is open immediately through October 24, except in areas and times listed in subsection (1) (a) of this rule:

(i) Daily limit 4, of which up to 2 may be coho. Release Chinook and chum.

(ii) Night Closure in effect.

(2) Cascade River (Skagit County): From the mouth to Rockport-Cascade Road Bridge:

Recreational salmon fishing is open immediately, through October 24, 2021, seven days per week:

(a) Daily limit 4. Release all salmon other than coho.

(b) Night Closure in effect.

(c) Anti-snagging Rule in effect.

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REPEALER

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

WAC 220-312-04000T Freshwater exceptions to statewide rules—Puget Sound. (21-230)

WSR 21-21-098
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 19, 2021, 4:44 p.m., effective October 19, 2021, 4:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is:

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

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

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

Statutory Authority for Adoption: RCW 28A.190.070 and 28A.175.100.

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

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

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

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

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

Date Adopted: October 19, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3392.1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTS-3393.1

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

WAC 392-122-221 State institutional education program—Enrollment exclusions. (1) The following may not be counted as an enrolled institutional education program student:

(a) A person whose educational activity under WAC 392-122-212 has terminated.

(b) A person who has transferred to another institution, school district, or charter school.

(c) A person residing in a state institution who:

(i) Has not engaged in educational activity under WAC 392-122-212 in the past five school days, excluding days of excused absence;

(ii) Has not engaged in educational activity in the past ten school days under WAC 392-122-212, including days of excused absence; or

(iii) Is claimed by any school district or charter school as an enrolled student eligible for state basic education support (~~(pursuant to)~~) under chapter 392-121 WAC where the school district's count date occurs prior to the institution's count date for the month, except if the student is enrolled in a youth reengagement program under chapter 392-700 WAC.

(2) When the institution's count date and the school district's or charter school's count date are on the same date, institutions shall have priority for counting the student.

(3) As used in this section, "excused absence" means an absence from scheduled educational activity which certificated staff determine to be due to one or more of the following:

(a) Illness;

(b) Attendance in court; or

(c) Meeting with a lawyer, case worker, counselor, physician, dentist, nurse, or other professional service provider.

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

OTS-2253.6

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

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

- (1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.
- (2) **"Annual average full-time equivalent (AAFTE)"** means the total monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.
- (3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month. For the 2021-22 school year, face-to-face interaction means in-person, or synchronous communication using interactive digital tools, including real-time online applications, or voice or video communication technology.
- (4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.
- (5) **"College"** means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.
- (6) **"College level class"** is a class provided by a college that is one hundred level or above.
- (7) **"Consortium"** means a regional group of organizations that consist of districts, tribal compact schools, charter schools and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts, tribal compact schools, and charter schools and reduce the administrative burden.
- (8) **"Consortium agreement"** means the agreement that is signed by the authorized consortium lead and all district, tribal compact school, and charter school superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts, tribal compact schools, and charter schools.
- (9) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).
- (10) **"Count day"** is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.
- (11) **"Credential"** is identified as one of the following:
- (a) High school diploma; or
 - (b) Associate degree.
- (12) **"Enrolled student"** is an eligible student whose enrollment and attendance meets the criteria outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding. An enrolled student can be further defined as one of the following:
- (a) **New student** is an enrolled student who is being claimed for state funding for the first time by the program.
 - (b) **Continuing student** is an enrolled student who has continuously been enrolled in the program and claimed for state funding on at least one count day.
 - (c) **Returning student** is an enrolled student who has returned to the program after not receiving program services for a period of at least one count day and not more than ten count days.
 - (d) **Reenrolling student** is an enrolled student who has reenrolled in the program after not receiving program services for a period of eleven count days or more.

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

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

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

- (a) Earns at minimum a 0.25 high school credit;
 - (b) Earns at minimum a whole college credit;
 - (c) Receives a college certificate after completion of a college program requiring at least forty hours of instruction;
 - (d) Receives an industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction;
 - (e) Passes one or more tests or benchmarks that would satisfy the state board of education's graduation requirements as provided in chapter 180-51 WAC;
 - (f) Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;
 - (g) Makes a significant gain in a core academic subject based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);
 - (h) Successfully completes a grade level curriculum in a core academic subject that does not earn high school or college credit;
 - (i) Successfully completes college readiness course work with documentation of competency attainment;
 - (j) Successfully completes job search and job retention course work with documentation of competency attainment;
 - (k) Successfully completes a paid or unpaid cooperative work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);
 - (l) Enrolls in a college level class for the first time (limited to be claimed once per enrolled student);
 - (m) Successfully completes an English as a second language (ESL) class;
 - (n) Successfully completes an adult basic education (ABE) class;
- or
- (o) Successfully completes a series of short-term industry recognized certificates equaling at least forty hours.

(16) **"Institutional education program"** means a program that meets a definition under WAC 392-122-205.

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

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

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

~~((17))~~ (18) "**Letter of intent**" means the document signed by the district, tribal compact school, charter school, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, tribal compact school, charter school, college, or agency agree to implement.

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

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

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

~~((21))~~ (22) "**School year**" is the twelve-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

~~((22))~~ (23) "**Scope of work**" means the document signed by district, tribal compact school, or charter school superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district, tribal compact school, or charter school, and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district, tribal compact school, or charter school agree to implement.

~~((23))~~ (24) "**Resident district**" means the district where the student resides or a district that has accepted full responsibility for a student who lives outside of the district through the choice transfer process pursuant to RCW 28A.225.200 through 28A.225.240. For students enrolled in a tribal compact school or charter school, the tribal compact school or charter school is the student's resident district.

~~((24))~~ (25) "**Weekly status check**" means individual communication from a designated program staff to a student. Weekly status check:

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

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

(c) Must be documented; and

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

~~((25))~~ (26) "**Tribal compact school**" means a school that is the subject of a state-tribal education compact operated according to the terms of its compact executed in accordance with RCW 28A.715.010.

~~((26))~~ (27) "**Charter school**" means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school board, and operated according to the terms of a charter contract executed under chapter 28A.710 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- WAC 392-700-160 Reporting of student enrollment.** (1) For all programs, the following will apply when reporting student enrollment for each monthly count day:
- (a) Met all eligibility criteria pursuant to WAC 392-700-035;
 - (b) Been accepted for enrollment by the reporting district, tribal compact school, charter school, or the direct-funded technical college;
 - (c) Enrolled in an approved program pursuant to WAC 392-700-042;
 - (d) For continuing students, met the attendance period requirement pursuant to WAC 392-700-015(3);
 - (e) For continuing students, met the weekly status check requirement pursuant to WAC 392-700-015(~~((+24))~~) (25);
 - (f) Has not withdrawn or been dropped from the program on or before the monthly count day;
 - (g) Is not enrolled in course work that has been reported by a college for postsecondary funding;
 - (h) (~~(Is not eligible to be claimed by a state institution pursuant to WAC 392-122-221;~~
 - ~~(i))~~) Is not enrolled in a high school class, including alternative learning experience, college in the high school, or another reengagement program, excluding Jobs for Washington's Graduates, special education and/or transitional bilingual instructional program;
 - (~~((j))~~) (i) If concurrently enrolled in a special education, transitional bilingual instruction, skills center, (~~((e#))~~) running start, or institutional education programs, does not exceed the FTE limitation (~~(pursuant to)~~) under WAC 392-121-136; and
 - (~~((k))~~) (j) A student's enrollment in the program is limited to the following:
 - (i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined FTE does not exceed 1.0 FTE in any month.
 - (ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined AAFTE does not exceed 1.0 AAFTE for the school year.
- (2) For all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress.
- (a) Satisfactory progress is defined as the documented attainment of at least one indicator of academic progress identified in WAC 392-700-015(~~((+15))~~) (16).
 - (b) Continuing students and returning students who, after being claimed for state funding for three count days excluding the September count day, have not earned an indicator of academic progress cannot be claimed for state funding until an indicator of academic progress is earned.
 - (i) During this reporting funding exclusion period, the program may permit the student to continue to attend;
 - (ii) When the student achieves an indicator of academic progress, the student may be claimed for state funding on the following count day; and
 - (iii) Rules governing the calculation of the three count day period are:

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

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

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

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

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

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

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

(i) Fifteen college credits equal 1.0 FTE;

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

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

(b) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.

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