

WSR 22-04-004
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 20, 2022, 4:05 a.m., effective January 21, 2022]

Effective Date of Rule: January 21, 2022.

Purpose: The department is extending emergency amendments to WAC 388-412-0015 General information about your food assistance allotments, 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?

These emergency amendments have been in place under WSR 21-20-005. The department is actively undertaking procedures to adopt the permanent rule, including filing Preproposal statement of inquiry under WSR 21-19-152 on September 22, 2021.

Citation of Rules Affected by this Order: Amending WAC 388-412-0015, 388-450-0185, 388-450-0190, 388-450-0195, 388-470-0005, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050.

Other Authority: New standards issued by United States Department of Agriculture (USDA), Food and Nutrition Services.

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: USDA, Food and Nutrition Services issues annual updates to standards for the federal fiscal year, effective October 1, 2021. These updates affect the standard deduction, shelter deduction, homeless shelter deduction, utility deduction, minimum and maximum allotments, and resource limits for the basic food program.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: January 19, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4889.4

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

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

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

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

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

(3) **Maximum allotment:**

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-412-0015, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and

273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-412-0015, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 16-20-087, § 388-412-0015, filed 10/4/16, effective 2/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-412-0015, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-412-0015, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-412-0015, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0015, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-412-0015, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-412-0015, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 05-02-016, § 388-412-0015, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-22-038, § 388-412-0015, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. WSR 01-18-054, § 388-412-0015, filed 8/30/01, effective 9/30/01; WSR 99-16-024, § 388-412-0015, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-412-0015, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? (1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
3 or ((less)) fewer	((\\$167)) <u>\$177</u>
4	((\\$181)) <u>\$184</u>

Eligible AU members	Standard deduction
5	(\$212) <u>\$215</u>
6 or more	(\$243) <u>\$246</u>

(b) Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9

(a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0185, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0185, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9

(d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0185, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0185, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0185, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0185, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0185, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0185, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administra-

tive Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0185, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0185, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0185, filed 11/17/10, effective 12/18/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 U.S.C. 2014 (a) and (e) (1); 7 C.F.R. §§ 273.1 and 273.9 (d) (1). 10-16-104, § 388-450-0185, filed 8/2/10, effective 9/2/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and P.L. 107 - 171 § 4101. WSR 09-23-004, § 388-450-0185, filed 11/5/09, effective 11/15/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and Food and Nutrition Act of 2008, Title 7 Part 273 of the C.F.R. WSR 09-07-054, § 388-450-0185, filed 3/11/09, effective 4/11/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-450-0185, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0185, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0185, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0185, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0185, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0185, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-044, § 388-450-0185, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-450-0185, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0185, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

- (b) Property taxes;
 - (c) Homeowner's association or condo fees;
 - (d) Homeowner's insurance for the building only;
 - (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
 - (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
 - (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
 - (i) AU intends to return to the home;
 - (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
 - (iii) AU's home is not being leased or rented during your AU's absence.
 - (h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of one hundred (~~(fifty-seven)~~) fifty-nine dollars. If the homeless AU has shelter costs in excess of (~~one hundred fifty-seven dollars~~) this amount, the AU has the option to claim either:
 - (i) The homeless shelter deduction; or
 - (ii) Actual shelter costs.
- (2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2) (a) through (2) (d) from your AU's gross income. The result is your AU's countable income.
- (3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:
- (a) Up to a maximum of five hundred (~~(eighty-six)~~) ninety-seven dollars if no one in your AU is elderly or disabled; or
 - (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~(eighty-six)~~) ninety-seven dollars.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9

(a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0190, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0190, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9

(d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0190, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0190, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38,

dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0190, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0190, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0190, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0190, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.10. WSR 13-11-103, § 388-450-0190, filed 5/20/13, effective 6/20/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0190, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0190, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0190, filed 11/17/10, effective 12/18/10; WSR 09-24-001, § 388-450-0190, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-450-0190, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0190, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0190, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0190, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0190, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-07-138, § 388-450-0190, filed 3/22/04, effective 5/1/04; WSR 03-21-030, § 388-450-0190, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0190, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0190, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 01-06-030, § 388-450-0190, filed 3/2/01, effective 4/2/01; WSR 99-16-024, § 388-450-0190, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0190, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~forty-nine~~) fifty-nine dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred (~~forty-nine~~) fifty-nine dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred (~~fifty-two~~) sixty-one dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of fifty-nine dollars.

(3) "Utility costs" include the following:

(a) Heating or cooling fuel;

(b) Electricity or gas;

(c) Water;

(d) Sewer;

(e) Well installation/maintenance;

(f) Septic tank installation/maintenance;

(g) Garbage/trash collection; and

(h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9

(a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR

21-13-122, § 388-450-0195, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR

20-04-021, § 388-450-0195, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9

(d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0195, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and

74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0195, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 273.9 (d)(6)(iii)(B). WSR 17-10-069, § 388-450-0195, filed 5/3/17, effective 6/3/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0195, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0195, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0195, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090 and Agricultural Act of 2014. WSR 14-12-085, § 388-450-0195, filed 6/3/14, effective 7/4/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0195, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0195, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9 (d)(6)(3). WSR 10-18-050, § 388-450-0195, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-450-0195, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 08-21-106, § 388-450-0195, filed 10/16/08, effective 11/16/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-036, § 388-450-0195, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. 273.9 (d)(6)(iii)(b). WSR 06-21-011, § 388-450-0195, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-10-056, § 388-450-0195, filed 5/1/06, effective 6/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9. WSR 05-19-062, § 388-450-0195, filed 9/16/05, effective 10/17/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-09-087, § 388-450-0195, filed 4/19/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0195, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0195, filed 10/7/03,

effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0195, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0195, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510. WSR 00-22-065, § 388-450-0195, filed 10/27/00, effective 11/1/00. Statutory Authority: RCW 74.040.510 [74.04.510]. WSR 99-24-052, § 388-450-0195, filed 11/29/99, effective 12/1/99. Statutory Authority: RCW 74.04.510. WSR 99-09-055, § 388-450-0195, filed 4/19/99, effective 5/20/99. Statutory Authority: RCW 74.04.510 and 7 C.F.R. 273.9 (d)(6). WSR 99-01-069, § 388-450-0195, filed 12/14/98, effective 1/14/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0195, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 19-01-105, filed 12/18/18, effective 2/1/19)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

- (a) **"We"** means the department of social and health services.
 - (b) **"You"** means a person applying for or getting benefits from the department.
 - (c) **"Fair market value"** or **"FMV"** means the price at which you could reasonably sell the resource.
 - (d) **"Equity value"** means the FMV minus any amount you owe on the resource.
 - (e) **"Community property"** means a resource in the name of the husband, wife, or both.
 - (f) **"Separate property"** means a resource of a married person that one of the spouses:
 - (i) Had possession of and paid for before they were married;
 - (ii) Acquired and paid for entirely out of income from separate property; or
 - (iii) Received as a gift or inheritance.
- (2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:
- (a) It is a resource we must count under WAC 388-470-0045 for cash assistance or WAC 388-470-0055 for basic food;
 - (b) You own the resource and we consider you to own a resource if:
 - (i) Your name is on the title to the property; or
 - (ii) You have property that does not have a title;
 - (c) You have control over the resource, which means the resource is actually available to you; and
 - (d) You could legally sell the resource or convert it into cash within twenty days.
 - (3) For cash assistance, you must try to make your resources available even if it will take you more than twenty days to do so, unless:
 - (a) There is a legal barrier; or
 - (b) You must petition the court to release part or all of a resource.
 - (4) When you apply for assistance, we count your resources as of:

- (a) The date of your interview, if you are required to have an interview; or
- (b) The date of your application, if you are not required to have an interview.
- (5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.
- (6) For cash assistance, there is an equity value resource limit of six thousand dollars.
- (7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for basic food.
- (8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:
- (a) Three thousand (~~(five)~~) seven hundred fifty dollars if your AU has either an elderly or disabled individual; or
- (b) Two thousand (~~(two)~~) five hundred (~~(fifty)~~) dollars for all other AUs.
- (9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:
- (a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.
- (b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.
- (10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.
- (11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.
- (12) We do not count the resources of victims of family violence when:
- (a) The resource is owned jointly with members of the former household;
- (b) Availability of the resource depends on an agreement of the joint owner; or
- (c) Making the resource available would place the client at risk of harm.
- (13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:
- (a) Who owns a resource;
- (b) Who has legal control of a resource;
- (c) The value of a resource;
- (d) The availability of a resource; or
- (e) The portion of a property you or another person owns.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 19-01-105, § 388-470-0005, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-470-0005, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-470-0005, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057,

74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 11-37, "Supplemental Nutrition Assistance Program FY 2012 Asset Limit Increase for Households with and [an] Elderly or Disabled Member." WSR 11-24-028, § 388-470-0005, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0005, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 21-13-122, filed 6/21/21, effective 7/22/21)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section.

~~((a))~~ The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

~~((b) From January 1, 2021 through June 30, 2021, the maximum monthly food assistance benefit your AU could receive is listed in column E of this subsection.)~~

EFFECTIVE ~~((10/1/2020))~~ 10/1/2021

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net (Countable) Monthly Income	Column D Maximum Allotment	((Column E 15% Max Allotment))	Column ((F)) <u>E</u> 165% of Poverty Level
1	((1,383)) <u>\$1,396</u>	((1,064)) <u>\$1,074</u>	((204)) <u>\$250</u>	((234))	((1,755)) <u>\$1,777</u>
2	((1,868)) <u>1,888</u>	((1,437)) <u>1,452</u>	((374)) <u>459</u>	((430))	((2,371)) <u>2,396</u>
3	((2,353)) <u>2,379</u>	((1,810)) <u>1,830</u>	((535)) <u>658</u>	((616))	((2,987)) <u>3,020</u>
4	((2,839)) <u>2,871</u>	((2,184)) <u>2,209</u>	((680)) <u>835</u>	((782))	((3,603)) <u>3,644</u>
5	((3,324)) <u>3,363</u>	((2,557)) <u>2,587</u>	((807)) <u>992</u>	((929))	((4,219)) <u>4,268</u>
6	((3,809)) <u>3,855</u>	((2,930)) <u>2,965</u>	((969)) <u>1,190</u>	((1,114))	((4,835)) <u>4,893</u>
7	((4,295)) <u>4,347</u>	((3,304)) <u>3,344</u>	((1,071)) <u>1,316</u>	((1,232))	((5,451)) <u>5,517</u>
8	((4,780)) <u>4,839</u>	((3,677)) <u>3,722</u>	((1,224)) <u>1,504</u>	((1,408))	((6,067)) <u>6,141</u>
9	((5,266)) <u>5,331</u>	((4,051)) <u>4,101</u>	((1,377)) <u>1,692</u>	((1,584))	((6,683)) <u>6,766</u>
10	((5,752)) <u>5,823</u>	((4,425)) <u>4,480</u>	((1,530)) <u>1,880</u>	((1,760))	((7,299)) <u>7,391</u>
Each Additional Member	((+486)) <u>+492</u>	((+374)) <u>+379</u>	+153	((+176))	((+616)) <u>+625</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9

(a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-478-0060, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-478-0060, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9

(d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-478-0060, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-478-0060, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-478-0060, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-478-0060, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-478-0060, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-478-0060, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated

August 6, 2012. WSR 12-24-018, § 388-478-0060, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-478-0060, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-478-0060, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-478-0060, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-478-0060, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-478-0060, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-478-0060, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-478-0060, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-478-0060, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-478-0060, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-21-050, § 388-478-0060, filed 10/14/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-478-0060, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510, 74.08.090. WSR 00-23-013, § 388-478-0060, filed 11/3/00, effective 12/4/00. Statutory Authority: RCW 74.04.510. WSR 99-24-053, § 388-478-0060, filed 11/29/99, effective 12/30/99. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-478-0060, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090. WSR 99-05-074, § 388-478-0060, filed 2/17/99, effective 3/20/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0060, filed 7/31/98, effective 9/1/98.]

WSR 22-04-008
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 21, 2022, 5:03 a.m., effective January 21, 2022, 5:03 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is requiring long-term care workers (LTCW) to complete training requirements by certain dates that would potentially be before the suspension of the training requirements ends. The department is dividing the group of LTCWs who are working now and started within 120 days of when the suspension went into place in early 2020, into cohorts based on length of time working. The rule would then require each cohort to complete the requirements by deadlines in rule with the "oldest" LTCWs having the first deadline and then working through the groups chronologically.

Citation of Rules Affected by this Order: New WAC 388-71-0876, 388-71-0992, 388-112A-0081, and 388-112A-0613.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: ESHB 1120.

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: LTCWs are required to complete certain training requirements within specific deadlines. Under ESHB 1120 during the 2021 legislative session, the suspension of training requirements deadlines will end when the public health emergency ends or if the governor or the legislature acts. The department of social and health services anticipates that the end of the suspension of LTCW training requirements would create a sudden surge in demand for training that would likely exceed capacity of training entities and result in LTCWs failing to complete the requirements in time.

This filing continues the emergency filed as WSR 21-20-004. The department filed a CR-101 Preproposal under WSR 21-21-075 to begin the permanent rule-making process.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 0, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: January 21, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4888.8

NEW SECTION

WAC 388-71-0876 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic 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	Standard training requirement

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	7/19/2022
10/1/2020 to 4/30/2021	9/18/2022
5/1/2021 to 3/31/2022	11/19/2022
After 3/31/2022	Based on hire date

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 11/17/2019 and 3/31/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

[]

NEW SECTION

WAC 388-71-0992 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic? (1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and Febru-

ary 28, 2021, required emergent and intensive on-the-job training. Long-term care workers 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 workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, homecare agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss 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, long-term care workers 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 is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (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 no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of CE granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers shall have 120 days from the end of the federal 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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NEW SECTION

WAC 388-112A-0081 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a

long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic 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	Standard training requirement

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	7/19/2022
10/1/2020 to 4/30/2021	9/18/2022
5/1/2021 to 3/31/2022	11/19/2022
After 3/31/2022	Based on hire date

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 11/17/2019 and 3/31/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

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NEW SECTION

WAC 388-112A-0613 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?

(1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers 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 workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, homecare agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss 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, long-term care workers 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 is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (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 no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of CE granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers shall have 120 days from the end of the federal 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 22-04-009

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed January 21, 2022, 8:13 a.m., effective January 22, 2022]

This memo serves as notice that effective January 22, 2022, the department of health, dental quality assurance commission (commission) is rescinding the CR-103E for WAC 246-817-581 Novel coronavirus disease 2019, which was filed October 15, 2021, and published in WSR 21-21-052.

The commission is rescinding this CR-103E because beginning January 22, 2022, it will no longer be needed. The permanent rule for WAC 246-817-581 Novel coronavirus disease 2019, which will replace the emergency rule, was filed December 22, 2021, and published in WSR 22-02-005. The permanent rule will become effective on January 22, 2022.

Individuals requiring information on this rule should contact Bruce Bronoske, Jr., program manager, at bruce.bronoske@doh.wa.gov or 360-236-4843.

Tami M. Thompson
Regulatory Affairs Manager

WSR 22-04-010
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed January 21, 2022, 8:33 a.m., effective January 21, 2022, 8:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-358 WAC, Temporary worker housing. The department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed subsequent emergency rules through September 24, 2021, (WSR 21-20-022 and 21-20-023) to protect occupants from COVID-19 hazards in licensed temporary worker housing.

Except as described below, this emergency rule continues the requirements under the previous emergency rules that operators: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants face coverings for use in accordance with DOH guidelines or L&I safety rules and instruct occupants, and as updated visitors, to use face covering in public and at housing, as recommended in the public health orders; (3) ensure physical distancing of occupants who are not fully vaccinated when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters and sleeping quarters with only fully vaccinated occupants, prohibit the use of the top of bunk beds; (5) ensure the ventilation requirements are met, including specific requirements for mechanical ventilation systems or that windows are open in buildings without mechanical ventilation; (6) ensure frequent cleaning and disinfecting of surfaces; (7) identify and isolate occupants with suspect and confirmed positive cases and quarantine all occupants except those who are fully vaccinated when exposed to COVID-19; (8) ensure quarantine and isolation requirements are met including medical monitoring by a licensed health care provider; (9) report to L&I division of occupational safety and health (DOSH) within 24 hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (10) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

The rule keeps the group shelter provisions. A group shelter is where a cohort of up to 15 occupants stay together and separated from others for housing, work, and transportation. All dwelling units, facilities, and services must only be used by the group shelter members. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements. Under the group shelter options, both the top and bottom bunk of bunk beds may be used, although the occupants must sleep head-to-toe.

Changes to this emergency rule include: (a) Revised all references of "cloth face coverings" to "face coverings" to be consistent with the revised definition of "face coverings." This allows for more flexibility in types used; (b) requires operator to educate all occupants, including those who are fully vaccinated, on how and where they can get answers to vaccine questions. This will promote dissemination of booster information; (c) requires screening and isolation of all suspect SARS-CoV-2 and positive SARS-CoV-2 cases regardless of vacci-

nation status. This aligns with updated information regarding transmission of SARS-CoV-2 among fully vaccinated individuals; (d) revises the language that quarantine after close contact with symptomatic suspect cases or confirmed positive cases is not required for individuals who are fully vaccinated. The revision replaces "fully vaccinated" with "up-to-date on COVID-19 vaccinations." It also adds language that following the exposure, individuals who are up-to-date on their COVID-19 vaccinations shall self-monitor for symptoms and wear a mask during the post-exposure period; and (e) revises the "fully vaccinated" definition for vaccination verification for occupants who are vaccinated against COVID-19 to reference the "current Washington State DOH guidance" rather than specific vaccine types and regimens. The current DOH guidance for "fully vaccinated" is the same as [it] was in the previous emergency rule which does not include boosters.

Both L&I and DOH each filed a Preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-10-050, regarding permanent amendments to the existing permanent rules to address hazards from COVID-19 or other outbreaks of airborne infectious diseases. Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation and isolation requirements during an outbreak.

Citation of Rules Affected by this Order: New WAC 246-358-002.

Statutory Authority for Adoption: RCW 70.114A.065.

Other Authority: RCW 43.70.335.

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: DOH and L&I continue to take action to help prevent the spread of COVID-19. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the first emergency rule, the Governor issued Proclamations 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place, the requirements covered by the rule were not included in the governor's order. Proclamation 20-57.1 was rescinded on July 1, 2021, to align agriculture workplace with the other industries covered under the Governor Proclamation 20-25.14, "Washington Ready" and the specific requirements applicable to temporary worker housing had been previously incorporated into the emergency rules.

This emergency rule incorporates the governor's current Proclamation - Washington Ready 20-25.17 and Secretary of Health's Order 20-03.6 for masking. As new information, data, and science becomes available, it is important that DOH and L&I continue to update and immediately amend existing rules to help prevent the spread of COVID-19. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the 2022 growing season.

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 1, 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: January 21, 2022.

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

OTS-2301.15

NEW SECTION

WAC 246-358-002 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure. (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from the hazards posed by SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19):

(a) Educate occupants and allow entry of community workers:

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing, the use of face coverings, proper respiratory etiquette, the importance of prompt sanitizing of frequently touched items; common symptoms and risk factors; how to get a vaccine and where to get answers about vaccine questions; and what to do if they develop symptoms.

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information. For the purposes of this section, a community health worker is defined as a frontline public health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the worker to serve as a liaison/link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A community-based outreach worker is defined as a legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to secure medical treatment - all in a language commonly understood by the occupants.

(c) The operator must provide at no cost an adequate number of face coverings for occupants to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules. The operator must instruct occupants and any visitors to use face coverings in public and at housing, as recommended in the public health orders.

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities. Fully vaccinated occupants are not required to physically distance except as indicated in (d)(ii)(B) of this subsection.

(i) If needed to facilitate physical distancing, the operator must provide additional temporary cooking, bathing, washing, and toilet facilities.

(ii) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe in sleeping quarters where not all occupants are fully vaccinated. Except as allowed under (f) of this subsection, only the bottom bed of bunk beds may be used.

(B) In sleeping quarters where all occupants are fully vaccinated, bed spacing must meet the requirements under WAC 246-358-135 and both bunks of bunk beds may be used.

(iii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time and where physical distancing cannot be maintained. Any barriers placed near cooking equipment must be fire retardant.

(iv) If needed to facilitate physical distancing in common areas, the operator must provide additional facilities or services that meet the requirements of this chapter, such as additional refrigeration or portable sinks.

(e) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility or building has a mechanical ventilation system, maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. TWH operators must have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation or the percentage of outside air that circulates into the system and verify the following:

(A) Make sure all HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) Maximize the HVAC system's outdoor air intake. Make sure exhaust air is not pulled back into the building through the HVAC air intakes or open windows. Reductions in outside air intake may be made

when there are hazardous external conditions including, but not limited to, wildfire smoke.

(D) Use appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) when changing filters.

(E) Maintenance checks must occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks must occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turned on mechanical ventilation systems (i.e., HVAC) or open windows whenever the TWH facility or building is occupied.

(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.

(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

(f) Group shelter plans can be utilized if all occupants are not fully vaccinated. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "Group shelter" means a dwelling unit or cluster of dwelling units with sleeping facilities for up to 15 occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

(i) Sleeping quarters. In group shelters, the operator must:

(A) Arrange beds so that the heads of beds are as far apart as possible - at least six feet apart. Both beds of bunk beds may be used. Bunk bed occupants must sleep head to toe.

(B) Maintain egress requirements.

(C) Provide all occupants suitable storage space including personal storage space for clothing and personal articles. Ensure all or a portion of the space is enclosed and lockable.

(ii) Common areas. In group shelters, the operator must instruct occupants to maintain physical distancing and wear face coverings whenever possible.

(iii) Multiple group shelters. More than one group shelter may share facilities and common areas as long as:

(A) The facilities and areas are used by only one group shelter at a time;

(B) Adequate time is given to each group to accomplish daily activities;

(C) All high contact surfaces are sanitized between each group; and

(D) Schedules are shared and conspicuously posted.

(iv) Transportation and work. To utilize the group shelter option, the operator must ensure that members of each shelter group stay together and separate from other groups, occupants, or workers, including during transportation and work. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements.

(v) The operator must encourage each group shelter to designate one or two occupants to run errands if items cannot be provided by the operator. These designated occupants can be the main contact for procuring groceries or other items for the group shelter in order to limit public contact and potential disease transmission.

(vi) The operator must quarantine or test all members of a group shelter if a member of the group shelter develops symptoms of COVID-19, as directed by the local health agency.

(g) Clean and disinfect surfaces. The operator must:

(i) Clean common areas on a regular schedule, at least as frequently as required by this chapter.

(ii) Provide adequate cleaning supplies to occupants for cleaning and disinfection of living spaces of dwelling units, family shelters, and group shelters.

(iii) Clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or confirmed SARS-CoV-2 positive cases have been, according to CDC guidelines and before the space is used by others.

(iv) Ensure adequate supplies of soap and single-use paper towels at all sinks to allow for frequent handwashing. In addition, portable handwashing stations or hand sanitizer may be provided.

(v) Provide training in a language or languages understood by contracted workers regarding COVID-19 cleaning, disinfecting, and sanitizing protocols for any contracted cleaning labor prior to their arrival to clean temporary worker housing. In addition to any personal protective equipment required under L&I rules to perform the cleaning activities, provide and require that those contracted workers use disposable gloves and wear face coverings covering nose and mouth while working at the site.

(2) COVID-19 screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases.

(a) The operator must develop and implement a plan to identify and isolate occupants with suspect SARS-CoV-2 and positive SARS-CoV-2, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, and loss of taste or smell. The operator must provide each occupant with a thermometer or must designate and train a person to use a "no touch" or "no contact" thermometer to check all occupants' temperatures daily. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

(ii) A "suspect SARS-CoV-2 case" is defined as a person with signs and symptoms compatible with COVID-19 above who has not been tested yet, or refuses testing. Upon identification of suspect SARS-

CoV-2 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect SARS-CoV-2 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(iv) Other individuals who have been in close contact of the symptomatic suspect SARS-CoV-2 case or confirmed SARS-CoV-2 positive must be quarantined, and remain separated from others in the housing. Individuals who are up-to-date on COVID-19 vaccinations per CDC guidelines are not required to quarantine. Members of a group shelter will quarantine together. Individuals may leave quarantine when they meet Washington state department of health (DOH) guidance for quarantine or when released from quarantine by the local health officer. Anyone becoming symptomatic or testing positive for SARS-CoV-2 during quarantine will be moved to isolation.

(v) Any occupant in quarantine, regardless of vaccination status, must continue to be screened for symptoms of COVID-19 as described in (a) (i) in this subsection.

(vi) Confirmed SARS-CoV-2 positive cases must be isolated and only housed with other confirmed cases and must have separated bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the confirmed occupant will have the option to isolate with family members.

(vii) The operator must report suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants in isolation to the department of labor and industries' division of occupational safety and health (DOSH) within 24 hours after placement. This notification can be made by telephone to the department of labor and industries toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits or assesses occupants daily, at the employer's expense to perform a health check for each individual in isolation. Evaluations by licensed health care providers may be performed in-person, using audio telemedicine, or video telemedicine. At a minimum, the health care professional must review symptoms; temperature; oxygen saturation via pulse oximetry; and determine if additional medical services are needed, such as an in-person evaluation or treatment. If the licensed health care professional is not already familiar with the occupant's medical history, the licensed health care professional must obtain relevant medical history from the occupant.

(ii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services. If the health care provider has a question about the safety, health, or well-being for the occupant in isolation, they may contact the housing operator for further information.

(iii) For evaluations done by telehealth, the operator must ensure each occupant in isolation has or is provided a working telephone with a clear connection. The operator must also provide the occupant with a U.S. Food and Drug Administration approved pulse oximeter and thermometer with written and verbal instructions on use and interpretation of their results in the occupant's preferred language.

(iv) If an occupant prefers not to self-operate the pulse oximeter, and/or thermometer, the employer must ensure that they have competent assistance.

(v) Interpretation services must be provided when the medical professional is not fluent in the occupant's preferred language.

(vi) For the purposes of this subsection, a licensed health care professional means:

(A) An individual licensed under chapter 18.79 RCW as a registered nurse;

(B) An individual licensed under chapter 18.71 RCW as a physician;

(C) An individual licensed under chapter 18.71A RCW as a physician assistant;

(D) An individual licensed under chapter 18.57 RCW as an osteopathic physician;

(E) An individual licensed under chapter 18.57A RCW as an osteopathic physician assistant;

(F) An individual licensed under chapter 18.79 RCW as an advanced registered nurse practitioner; and

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) and authorized to monitor suspect SARS-CoV-2 cases or SARS-CoV-2 positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

(H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner.

(vii) Facilitate transportation for in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.

(viii) Guarantee that the occupants have ready access to telephone service to summon emergency care.

(ix) Provide occupants with information about paid leave and workers compensation.

(x) Permit access to other medical professionals who offer health care services in addition to the licensed health care professional(s) contracted to provide health checks.

(xi) The operator must provide food and water.

(xii) If the operator uses other isolation facilities, such as hotels, the operator must verify that the isolation facility complies with requirements of this section prior to transporting workers to the facility. Isolated workers may also be housed in county or state run isolation centers.

(3) The operator must revise the facility's written TWH management plan to include implementation of the requirements in this section, as applicable.

(a) The plan must identify a single point of contact at the TWH for COVID-19 related issues.

(b) The operator must share the plan with all occupants on the first day the plan is operational or the first day the occupant arrives at the TWH. The operator must designate a person that will en-

sure all occupants are aware of all aspects of the plan and be available to answer questions.

(c) If changes are made to the TWH management plan, the operator must submit the revised TWH management plan to the state department of health within 10 calendar days of the effective date of this section.

(d) Failure to submit a revised plan or properly implement the requirements of this section may result in administrative action, including license suspension or fines.

(4) Consistent with WAC 246-358-040(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(5) Vaccination verification.

(a) Occupants who are vaccinated against COVID-19 in accordance with current Washington state department of health guidance, are considered "fully vaccinated" two weeks after the final dose of vaccine (the second dose for a two-dose regimen, or the single dose for a single-dose regimen). Occupants who have been vaccinated outside the United States with a vaccine that has received World Health Organization (WHO) Emergency Use Listing (EUL) are considered fully vaccinated if:

(i) The occupant has completed the full vaccination series;

(ii) The appropriate amount of time has passed according to the manufacturer's guidance for the occupant to be fully protected.

(b) Occupants who have not received an FDA-authorized or WHO Emergency Use Listing COVID-19 vaccine must not be considered fully vaccinated.

(c) The operator is not required to verify vaccination status if masking and physical distancing are to be maintained; operators have the choice to maintain masking and physical distancing in their housing.

(d) If an occupant declines to provide verification of their vaccination status, they are not considered fully vaccinated.

(e) The operator must have a demonstratable process to verify vaccination status, but is not required to keep a copy of the occupant's vaccination records, which may require secure and confidential handling as a medical record. The operator must establish a way of demonstrating they have verified vaccination status for occupants who are not being required to maintain a six-foot physical distance. Examples may include:

(i) Creating a log of the names of occupants who have been verified as fully vaccinated and the date that the verification was done;

(ii) Marking an occupant's badge, site credential, or other individually identified item to indicate the occupant's status as fully vaccinated;

(iii) Documented occupant attestations of vaccination; or

(iv) Other methods that demonstrate an operator has verified an occupant has been fully vaccinated.

(f) To verify vaccination status, operators can require occupants to provide proof of vaccination status or signed document attesting to the employee's fully vaccinated status.

(i) Proof of vaccination means one of the following:

(A) A CDC vaccination card, which includes name of person vaccinated, type of vaccine provided, and date last dose was administered;

(B) A photo of a CDC vaccination card as a separate document or a photo of the occupant's vaccine card stored on a phone or electronic device; or

(C) Documentation of vaccination from a health care provider electronic health record or state immunization information system record.

(ii) Signed self-attestation may be done in hard copy or electronically.

(g) The operator must provide evidence of their process to verify occupant vaccination status to the department upon request.

(6) In the event that any provisions of this section are in conflict with other regulations in this chapter, such other regulation shall be deemed superseded for purposes of this chapter.

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

WSR 22-04-011
EMERGENCY RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed January 21, 2022, 9:56 p.m., effective January 21, 2022, 9:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend WAC 363-116-078 Pilot training program, in order to address the Governor's State of Emergency Proclamation 20-05 concerning novel coronavirus/COVID-19.

Citation of Rules Affected by this Order: Amending WAC 363-116-078.

Statutory Authority for Adoption: Chapter 88.16 RCW.

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

Reasons for this Finding: Governor Inslee declared a State of Emergency via Proclamation 20-05 in response to coronavirus/COVID-19. To minimize the risk of introducing vectors of exposure onto a vessel or to pilot trainees, the board may suspend or adjust the pilot training program. Trainees will be allowed to resume regular training at a time determined by the board. Trainees will need to complete at least 12 training program trips to receive maximum stipend during this training program suspension or adjustment. The board may also consider additional training opportunities for pilot trainees, such as distance learning or completion if they are nearing the end of their program, as determined by the trainee evaluation committee.

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

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

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

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

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

Date Adopted: January 20, 2022.

Jaimie C. Bever
Executive Director

OTS-2151.2

AMENDATORY SECTION (Amending WSR 19-03-141, filed 1/22/19, effective 2/22/19)

WAC 363-116-078 Pilot training program. After passing the written examination and simulator evaluation, pilot candidates pursuing a pilot license are positioned on a list for the applicable pilotage district(s) and must enter and successfully complete a training program specified by the board before consideration for licensure.

(1) Notification. Pilot candidates on a list as described in subsection (2) of this section, waiting to enter a training program shall provide the board with the best address for notification to enter into a training program. In addition, a pilot candidate shall provide the board with other means of contact such as postal mailing or email address, phone number, and/or fax number. The email address with a read receipt request, however, will be considered the primary means of notification by the board. It will be the responsibility of the pilot candidate to ensure the board has current contact information at all times. If a pilot candidate cannot personally receive postal or electronic mail at the address(es) provided to the board for any period of time, another person may be designated in writing as having power of attorney specifically to act in the pilot candidate's behalf regarding such notice. If notice sent to the email address provided by the pilot candidate is not acknowledged after three attempts or if notice sent via certified mail is returned after three attempts to deliver, that pilot candidate will be skipped and the next pilot candidate on the list will be contacted for entry into a training program. A person so skipped will remain next on the list. A pilot candidate or his/her designated attorney-in-fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into a training program.

(2) Entry. At such time that the board chooses to start a pilot candidate or candidates in a training program for either pilotage district, notification shall be given as provided in subsection (1) of this section. Pilot candidates shall be ranked in accordance with a point system established by the board based on overall performance on the written examination and simulator evaluation. Candidates shall be eligible to enter a training program for a pilotage district in the order of such rankings or as otherwise may be determined by the board. A pilot candidate who refuses entry into a program will be removed from the waiting list with no further obligation by the board to offer a position in that district's training program to such pilot candidate. If the pilot candidate indicated interest in the other pilotage district on the application for the written examination, the candidate shall remain available for that other district's training program in accordance with his/her position on that list.

(a) A pilot candidate who is not able to start a training program within two months of the board's specified entry date may, with written consent of the board, delay entry into that training program. When a pilot candidate delays entry into a training program by more than two months, the board gives notice to the next pilot candidate on the list for that pilotage district to enter a training program. The pilot candidate who delays entry shall remain eligible for the next position in that district provided that the next position becomes available within the earlier of:

(i) Four years from the pilot candidate's taking the written examination; or

(ii) The date scheduled for the next pilotage examination for the district.

(b) A pilot candidate not able to start in a training program within two months of the board's specified entry date and who does not obtain the board's written consent to delay entry into a training program shall no longer be eligible for that district's training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license pilot candidates must pass a physical examination by a board-designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot candidates. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot candidate's fitness to pilot. The physical examination must be taken not more than ninety days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ninety days prior to the anniversary date of that training license. Training license physical examinations will be at the expense of the pilot candidate. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into a training program as set forth in this section, the pilot candidate shall provide a completed experience questionnaire to the trainee evaluation committee (TEC), a committee created per subsection (11) of this section. The training program consists of three phases: Observation trips, training trips, and evaluation trips, and such other forms of learning and instruction that may be designated. The TEC shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the pilot candidate. If the pilot candidate agrees in writing to the training program, the board shall issue a training license to the pilot candidate, which license shall authorize the pilot candidate to take such actions as are contained in the training program. If the pilot candidate does not agree to the terms of a training program, in writing, within fifteen business days of it being received by certified mail return receipt, or by email read receipt requested, that pilot candidate shall no longer be eligible for entry into that pilotage district's training program and the board may give notice to the next available pilot candidate that he/she is eligible for entry into a training program pursuant to the terms in subsections (1) and (2) of this section.

(5) Initial assigned route.

(a) The TEC shall assign an initial route to each trainee at the beginning of his/her training program between a commonly navigated port or terminal and the seaward boundary of the pilotage district.

(b) Unless an extension of time is granted by the board, within eight months of the beginning of the training program if the trainee is continuously on stipend, plus an additional month for every month a trainee is off stipend (up to a maximum of fifteen months), the trainee must:

(i) Take and pass with a minimum score of eighty percent all conning quizzes provided by the board applicable to the initial assigned route as described in subsection (8) of this section. These quizzes

may be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed within the time period specified in (b) of this subsection; and

(ii) Take and pass with a minimum score of eighty-five percent the local knowledge examination(s) provided by the board applicable to the initial assigned route as described in subsection (8) of this section. These examinations can be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed before the expiration date time period specified in (b) of this subsection; and

(iii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States Coast Guard license to pilot on the initial assigned route.

(6) Specification of trips. To the extent possible, a training program shall provide a wide variety of assigned requirements in three phases: Observation, training, and evaluation trips. A training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the TEC or with pilots designated by the TEC. In the Puget Sound pilotage district, pilot trainees shall complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot trainees in the Grays Harbor pilotage district. The total number of trips in a training program shall be established by the board based on the recommendation of the TEC. The board will ensure that during a training program the pilot trainee will get significant review by supervising pilots and the pilot members of the TEC or with pilots designated by the TEC.

(7) Length of training program. For the Puget Sound district the length of the program shall not exceed thirty-six months. For the Grays Harbor district the length of the program will be determined at the time the training program is written.

(8) Local knowledge conning quizzes and local knowledge exams. A training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the pilotage district for which he/she is applying. Each conning quiz will be organized by main channel routes, ports, and approaches. A conning quiz is not intended to replace a local knowledge exam as specified in subsection (5)(b)(ii) of this section, but there will be some overlap of subject matter. A pilot trainee shall pass a conning quiz or quizzes related to the route or harbor area to move from the observation phase to the training phase of his/her training program for that route or harbor area. After a trainee has successfully passed a conning quiz on a main channel route or a port and approach, he/she will be eligible to take the conn on that route or approach unless it is a U.S. flag vessel and the required federal pilotage endorsement has not been obtained. The local knowledge exam for the initial route must be completed within eight months of the training start date if the trainee is taking the stipend. For each month the trainee is off stipend, an additional month is added up to a maximum of fifteen months to successfully pass the appropriate

local knowledge exam. The final local knowledge exam must be completed before consideration for licensing and must be successfully passed before the expiration date of the training program. The conning quizzes and local knowledge exams will be administered at the offices of the board of pilotage commissioners. Eighty percent is the passing grade for conning quizzes, and eighty-five percent is required for the local knowledge exams. If a trainee fails a conning quiz or local knowledge exam, it may be retaken after seven days, but must be passed within the timing deadlines discussed above. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

- (a) Area geography;
 - (b) Waterway configurations including channel depths, widths and other characteristics;
 - (c) Hydrology and hydraulics of large ships in shallow water and narrow channels;
 - (d) Tides and currents;
 - (e) Winds and weather;
 - (f) Local aids to navigation;
 - (g) Bottom composition;
 - (h) Local docks, berths and other marine facilities including length, least depths and other characteristics;
 - (i) Mooring line procedures;
 - (j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;
 - (k) Vessel traffic system;
 - (l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;
 - (m) Air draft and keel clearances;
 - (n) Submerged cable and pipeline areas;
 - (o) Overhead cable areas and clearances;
 - (p) Bridge transit knowledge - Signals, channel width, regulations, and closed periods;
 - (q) Lock characteristics, rules and regulations;
 - (r) Commonly used anchorage areas;
 - (s) Danger zone and restricted area regulations;
 - (t) Regulated navigation areas;
 - (u) Naval operation area regulations;
 - (v) Local ship assist and escort tug characteristics;
 - (w) Tanker escort rules - State and federal;
 - (x) Use of anchors and knowledge of ground tackle;
 - (y) Applicable federal and state marine and environmental safety law requirements;
 - (z) Marine security and safety zone concerns;
 - (aa) Harbor safety plan and harbor regulations;
 - (bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and
 - (cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.
- (9) Rest. It is the responsibility of the pilot trainee to obtain adequate rest. Pilot trainees shall observe the rest rules for pilots in place by federal or state law or regulation and rules established

in the applicable pilotage district in which they will train, or any other rest requirements contained in a training program.

(10) Stipend.

(a) At the initial meeting with the TEC the pilot trainee shall indicate whether he/she wishes to receive a stipend during their training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, pilot trainees will agree to forego during their training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of their training program. With the consent of the TEC, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during their training program provided that such change request is provided in writing from the trainee. If the trainee intends to be in nonstipend status more than four consecutive months, his/her particular training program may be constructed to provide re-ency and/or a change in seniority placement prior to resuming the training program. In the Puget Sound pilotage district the stipend paid to pilot trainees shall be a maximum of six thousand dollars per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-300 sufficient to cover the expense of the stipend, and shall be paid from a pilot training account as directed by the board. In the Grays Harbor pilotage district the stipend paid to pilot trainees shall be determined by the board and shall be contingent upon the board's receipt of funds, from any party collecting the tariff or providing funds, sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board.

Determinations as to stipend entitlement will be made on a full calendar month basis and documentation of trips will be submitted to the board by the third day of the following month. Proration of the stipend shall be allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(i) For the first and last months of a training program (unless the training program starts on the first or ends on the last day of a month); or

(ii) For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month.

(b) (i) In the Puget Sound pilotage district a minimum of twelve trips are required each month for eligibility to receive the minimum stipend amount as set by the board, or eighteen trips to receive the maximum stipend amount as set by the board. A trainee may make more than eighteen trips in a calendar month, but no further stipend will be earned for doing so. In the Grays Harbor pilotage district the minimum number of trips each month for eligibility to receive the stipend is seventy percent or such number or percentage of trips that may be set by the board of the total number of vessel movements occurring in this district during that month. Only trips required by the training program can be used to satisfy these minimums. Trips will be documented at the end of each month.

(ii) Whenever the governor issues a proclamation declaring a state of emergency, the board may determine whether there is a threat to trainees, pilots, vessel crews, or members of the public. Notwithstanding the other provisions of this chapter, the board, at its discretion, may suspend or adjust the pilot training program during the pendency of a state of emergency lawfully declared by the governor. If

the board suspends or adjusts the pilot training program, pilot trainees will continue to receive the maximum stipend allowable under this section if a trainee has taken at least twelve trips per month, until the board determines otherwise. The trainee evaluation committee may further consider additional nonshipboard pilot training including, but not limited to, distance learning.

(c) The TEC will define areas that are considered to be hard-to-get, which many differ for trainees depending on their date of entry. It is the pilot trainee's responsibility to make all available hard-to-get trips, as defined and assigned by the TEC. The board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.

(d) The TEC, with approval by the board may allocate, assign or specify training program trips among multiple pilot trainees. Generally, the pilot trainee who entered his/her training program earlier has the right of first refusal of training program trips provided that the TEC may, with approval by the board, allocate or assign training trips differently as follows:

(i) When it is necessary to accommodate any pilot trainee's initial route;

(ii) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the TEC, that trip will not be considered "available" under (c) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

(e) If a pilot trainee elects to engage in any full-or part-time employment, the terms and conditions of such employment must be submitted to the TEC for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

(f) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days beginning at the beginning of a month, provided that before any change takes effect, a request is made to the TEC in writing. The requirement for designated hard-to-get trips is waived during the time the pilot trainee is authorized to be in nonstipend status.

(g) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. In the Grays Harbor pilotage district, if there is no separate training surcharge in the tariff, any organization collecting the pilotage tariff levied by WAC 363-116-185 shall transfer sufficient funds to pay the stipend to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a monthly basis or at such

other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges. The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee (TEC) to which members shall be appointed by the board. The TEC shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the pilotage district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The TEC may include such other persons as may be appointed by the board. The TEC shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the TEC cannot reach consensus with regard to any issue it shall report both majority and minority opinions to the board.

(12) Supervising pilots. The board shall designate as supervising pilots those pilots who are willing to undergo such specialized training as the board may require and provide. Supervising pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of supervising pilots available for public inspection at all times. All pilot members TEC shall also be supervising pilots.

(13) Training program trip reports. After each training program trip, the licensed or supervising pilot shall complete a training program trip report form (TPTR) provided by the board. Training program trip report forms prepared by licensed pilots who are supervising pilots shall be used by the TEC and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to a training program. Licensed pilots who are not supervising pilots may only have trainees on board for observation trips. All trip report forms shall be delivered or mailed by the licensed or supervising pilot to the board. They shall not be given to the pilot trainee. The licensed or supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The TEC shall review these training program trip report forms from time to time and the chairperson of the TEC shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the TEC may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the number of trips in a training program.

(14) Termination of and removal from a training program. A pilot trainee's program may be immediately terminated and the trainee removed from a training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district while receiving a stipend;

(d) The pilot trainee is not physically fit to pilot;

(e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in a training program;

(f) Inadequate performance on examinations or other actions required by a training program;

(g) Failure to complete the initial route requirements specified in subsection (5) of this section within the time periods specified;

(h) Inadequate, unsafe, or inconsistent performance in a training program and/or on training program trips as determined by the supervising pilots, the TEC and/or the board; or

(i) Violation of a training program requirement, law, regulation or directive of the board.

(15) Completion of a training program shall include the requirements that the pilot trainee:

(a) Successfully complete all requirements set forth in the training program including any addendum(s) to the program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot candidate seeks a license; and

(c) Complete portable piloting unit (PPU) training as defined by the TEC.

[Statutory Authority: Chapter 88.16 RCW. WSR 19-03-141, § 363-116-078, filed 1/22/19, effective 2/22/19; WSR 13-08-025, § 363-116-078, filed 3/27/13, effective 4/27/13; WSR 12-05-064, § 363-116-078, filed 2/15/12, effective 3/17/12; WSR 10-04-100, § 363-116-078, filed 2/3/10, effective 3/6/10. Statutory Authority: Chapter 88.16 RCW and 2008 c 128. WSR 08-15-119, § 363-116-078, filed 7/21/08, effective 8/21/08. Statutory Authority: RCW 88.16.105. WSR 06-20-107, § 363-116-078, filed 10/4/06, effective 11/4/06. Statutory Authority: Chapter 88.16 RCW and 2005 c 26. WSR 05-18-021, § 363-116-078, filed 8/29/05, effective 10/1/05.]

**WSR 22-04-014
EMERGENCY RULES****LOWER COLUMBIA COLLEGE**

[Filed January 21, 2022, 11:51 a.m., effective January 21, 2022, 11:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Lower Columbia College must amend WAC 132M-126-115, 132M-126-145, and 132M-126-155 to meet new case law and guidance from the Department of Education (DOE) regarding the federal regulations for Title IX of the Education Amendments of 1972 (Title IX) that specify how recipients of federal financial assistance covered by Title IX, including postsecondary institutions, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.

Citation of Rules Affected by this Order: Amending WAC 132M-126-115, 132M-126-145, and 132M-126-155.

Statutory Authority for Adoption: RCW 28B.50.140(13).

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: New caselaw and guidance from DOE regarding regulations for Title IX that specify how recipients of federal financial assistance covered by Title IX, including postsecondary institutions, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.

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

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

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

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

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

Date Adopted: January 19, 2022.

Sue Orchard
Vice President of Student Services

OTS-3298.1

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-115 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132M-126-005 through 132M-126-110, these

supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-115, filed 12/17/20, effective 1/17/21.]

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-155 Appeals. (1) ~~((The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132M-126-090.~~

(2)) All parties, including the student conduct officer, in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanction(s) and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).

((3)) (5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-155, filed 12/17/20, effective 1/17/21.]

OTS-3305.1

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

WAC 132M-126-145 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

~~((6))~~ **(5) Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: RCW 28B.50.140. WSR 21-01-145, § 132M-126-145, filed 12/17/20, effective 1/17/21.]

WSR 22-04-017
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 21, 2022, 3:02 p.m., effective January 21, 2022, 3:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 296-307 WAC, Temporary worker housing. The department of health (DOH), in conjunction with the department of labor and industries (L&I), continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule for temporary worker housing. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed subsequent emergency rules through September 24, 2021, (WSR 21-20-022 and 21-20-023) to protect occupants from COVID-19 hazards in licensed temporary worker housing.

Except as described below, this emergency rule continues the requirements under the previous emergency rules that operators: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants face coverings for use in accordance with DOH guidelines or L&I safety rules and instruct occupants and, as updated, visitors, to use face coverings in public and at housing, as recommended in the public health orders; (3) ensure physical distancing of occupants who are not fully vaccinated when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters and sleeping quarters with only fully vaccinated occupants, prohibits the use of the top of bunk beds; (5) ensure the ventilation requirements are met, including specific requirements for mechanical ventilation systems or that windows are open in buildings without mechanical ventilation; (6) ensure frequent cleaning and disinfecting of surfaces; (7) identify and isolate occupants with suspect and confirmed positive cases and quarantine all occupants except those who are fully vaccinated when exposed to COVID-19; (8) ensure quarantine and isolation requirements are met including medical monitoring by a licensed health care provider; (9) report to L&I division of occupational safety and health (DOSH) within 24 hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (10) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH. The rule keeps the group shelter provisions. A group shelter is where a cohort of up to 15 occupants stay together and separated from others for housing, work, and transportation. All dwelling units, facilities, and services must be only used by the group shelter members. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements. Under the group shelter options, both the top and bottom bunk of bunk beds may be used, although the occupants must sleep head-to-toe.

Changes to this emergency rule include:

- Revised all references of "cloth face coverings" to "face coverings" to be consistent with the revised definition of "face coverings." This allows for more flexibility in types used;
- Requires operator to educate all occupants, including those that are fully vaccinated, on how and where they can get answers to

vaccine questions. This will promote dissemination of booster information;

- Requires screening and isolation of all suspect SARS-CoV-2 and positive SARS-CoV-2 cases regardless of vaccination status. This aligns with updated information regarding transmission of SARS-CoV-2 among fully vaccinated individuals;
- Revises the language that quarantine after close contact with symptomatic suspect cases or confirmed positive cases is not required for individuals who are fully vaccinated to replace "fully vaccinated" with "up-to-date on COVID-19 vaccinations." Also adds language that, following exposure, individuals who are up-to-date on their COVID-19 vaccinations self-monitor for symptoms and wear a mask during the post-exposure period; and
- Revises the "fully vaccinated" definition for vaccination verification for occupants who are vaccinated against COVID-19 to reference the "current Washington State Department of Health guidance" rather than specific vaccine types and regimens. The current DOH guidance for "fully vaccinated" is the same as was in the previous emergency rule.

Both L&I and DOH each filed a Preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-10-050, regarding permanent amendments to the existing permanent rules to address hazards from COVID-19 or other outbreaks of airborne infectious diseases. Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation requirements, and isolation requirements during an outbreak.

Citation of Rules Affected by this Order: New WAC 296-307-16102.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.240.

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

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements resulting in the need for emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the first emergency rule, the Governor issued Proclamation 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. The requirements covered by the rule were not included in the governor's order. Proclamation 20-57.1 was rescinded on July 1, 2021, to align agriculture workplace with the other industries covered under the Governor Proclamation 20-25.14, "Washington Ready" and the specific requirements applicable to temporary worker housing had been previously incorporated into the emergency rules.

This emergency rule includes requirements under the Governor's current Proclamation - Washington Ready 20-25.17 and Secretary of Health's Order 20-03.6 for masking. As new information, data, and science becomes available, it is important that DOH and L&I continue to update and immediately amend existing rules to help prevent the spread

of COVID-19. The omicron variant and the availability for boosters has presented a change in circumstance. Based on information for the omicron variant, changes to the emergency rule were needed to address updates to CDC and DOH guidelines regarding quarantine for occupants with exposures who are fully vaccinated but had not received a booster when eligible. Other changes reflect education of fully vaccinated occupants on vaccines due to boosters now available and recommended. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the 2022 growing season.

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 1, 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: January 21, 2022.

Joel Sacks
Director

OTS-2279.13

NEW SECTION

WAC 296-307-16102 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure. (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from the hazards posed by SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19):

(a) Educate occupants and allow entry of community workers:

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing, the use of face coverings, proper respiratory etiquette, the importance of prompt sanitizing of frequently touched items; common symptoms and risk factors; how to get a vaccine and where to get answers about vaccine questions; and what to do if they develop symptoms.

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information. For the purposes of this section, a community health worker is defined as a frontline public health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the worker to serve as a liaison/

link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A community-based outreach worker is defined as a legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

Note: When there is a designated or recognized office at an employer's establishment, all visitors should check in to provide their name and contact information and complete a screening to ensure they are symptom free. To the extent possible, a minimum number of visitors should be allowed at a time and 6-foot physical distancing should be maintained. Personal protective equipment must be worn at all times.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to secure medical treatment - all in a language commonly understood by the occupants.

(c) The operator must provide at no cost an adequate number of face coverings for occupants to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules. The operator must instruct occupants and any visitors to use face coverings in public and at housing, as recommended in the public health orders.

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities. Fully vaccinated occupants are not required to physically distance except as indicated in (d)(ii)(B) of this subsection.

(i) If needed to facilitate physical distancing, the operator must provide additional temporary cooking, bathing, washing, and toilet facilities.

(ii) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe in sleeping quarters where not all occupants are fully vaccinated. Except as allowed under (f) of this subsection, only the bottom bed of bunk beds may be used.

(B) In sleeping quarters where all occupants are fully vaccinated, bed spacing must meet the requirements under WAC 296-307-16170 and both bunks of bunk beds may be used.

(iii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time and where physical distancing cannot be maintained. Any barriers placed near cooking equipment must be fire retardant.

(iv) If needed to facilitate physical distancing in common areas, the operator must provide additional facilities or services that meet the requirements of this chapter, such as additional refrigeration or portable sinks.

(e) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility/building has a mechanical ventilation system, maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. TWH operators must have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation

or the percentage of outside air that circulates into the system and verify the following:

(A) Make sure all HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with a minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) Maximize the HVAC system's outdoor air intake. Make sure exhaust air is not pulled back into the building through HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions such as wildfire smoke.

(D) Use appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) when changing filters.

(E) Maintenance checks must occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks must occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turn on mechanical ventilation systems (i.e., HVAC) or open windows whenever the TWH facility or building is occupied.

(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.

(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

(f) Group shelter plans can be utilized if all occupants are not fully vaccinated. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "Group shelter" means a dwelling unit or cluster of dwelling units with sleeping facilities for up to 15 occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

(i) Sleeping quarters. In group shelters, the operator must:

(A) Arrange beds so that the heads of beds are as far apart as possible - at least six feet apart. Both beds of bunk beds may be used. Bunk bed occupants must sleep head to toe.

(B) Maintain egress requirements.

(C) Provide all occupants suitable storage space including personal storage space for clothing and personal articles. Ensure all or a portion of the space is enclosed and lockable.

(ii) Common areas. In group shelters, the operator must instruct occupants to maintain physical distancing and wear face coverings whenever possible.

(iii) Multiple group shelters. More than one group shelter may share facilities and common areas as long as:

(A) The facilities and areas are used by only one group shelter at a time;

(B) Adequate time is given to each group to accomplish daily activities;

(C) All high contact surfaces are sanitized between each group; and

(D) Schedules are shared and conspicuously posted.

(iv) Transportation and work. To utilize the group shelter option, the operator must ensure that members of each shelter group stay together and separate from other groups, occupants, or workers, including during transportation and work. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements.

(v) The operator must encourage each group shelter to designate one or two occupants to run errands if items cannot be provided by the operator. These designated occupants can be the main contact for procuring groceries or other items for the group shelter in order to limit public contact and potential disease transmission.

(vi) The operator must quarantine or test all members of a group shelter if a member of the group shelter develops symptoms of COVID-19, as directed by the local health agency.

(g) Clean and disinfect surfaces. The operator must:

(i) Clean common areas on a regular schedule, at least as frequently as required by this chapter.

(ii) Provide adequate cleaning supplies to occupants for cleaning and disinfecting of living spaces of dwelling units, family shelters, and group shelters.

(iii) Clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or confirmed SARS-CoV-2 positive cases have been, according to CDC guidelines and before the space is used by others.

(iv) Ensure adequate supplies of soap and single-use paper towels at all sinks to allow for frequent handwashing. In addition, portable handwashing stations or hand sanitizer may be provided.

(v) Provide training in a language or languages understood by contracted workers regarding COVID-19 cleaning, disinfecting, and sanitizing protocols for any contracted cleaning labor prior to their arrival to clean temporary worker housing. In addition to any personal protective equipment required under L&I rules to perform the cleaning activities, provide and require that those contracted workers use disposable gloves and wear face coverings covering nose and mouth while working at the site.

(2) COVID-19 screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases.

(a) The operator must develop and implement a plan to identify and isolate occupants with suspect SARS-CoV-2 and positive SARS-CoV-2, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC),

including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, and loss of taste or smell. The operator must provide each occupant with a thermometer or must designate and train a person to use a "no touch" or "no contact" thermometer to check all occupants' temperatures daily. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

(ii) A "suspect SARS-CoV-2 case" is defined as a person with signs and symptoms compatible with COVID-19 above who has not been tested yet, or refuses testing. Upon identification of suspect SARS-CoV-2 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect SARS-CoV-2 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(iv) Other individuals who have been in close contact of the symptomatic suspect SARS-CoV-2 case or confirmed SARS-CoV-2 positive must be quarantined, and remain separated from others in the housing. Individuals who are up-to-date on COVID-19 vaccinations per CDC guidelines are not required to quarantine, but should continue to wear well-fitting masks outside of their sleeping quarters for the full quarantine period, and should self-monitor for symptoms of COVID-19. Members of a group shelter will quarantine together. Individuals may leave quarantine when they meet Washington state department of health guidance for quarantine or when released from quarantine by the local health officer. Anyone becoming symptomatic or testing positive for SARS-CoV-2 during quarantine will be moved to isolation.

(v) Any occupant in quarantine, regardless of vaccination status, must continue to be screened for symptoms of COVID-19 as described in (a) (i) of this subsection.

(vi) Confirmed SARS-CoV-2 positive cases must be isolated and only housed with other confirmed cases and must have separate bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the confirmed occupant will have the option to isolate with the family members.

(vii) The operator must report suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants in isolation to the division of occupational safety and health (DOSH) within 24 hours after placement.

Note: This notification can be made by telephone to the department's toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits or assesses employees daily, at the employer's expense to perform a health check for each individual in isolation. Evaluations by licensed health care providers may be performed in-person, using audio telemedicine, or video telemedicine. At a minimum, the health care professional must review symptoms; temperature; oxygen saturation via pulse oximetry; and determine if additional medical services are needed, such as an in-person evaluation or treatment. If the licensed health care professional is not already familiar with the occupant's medical history,

the licensed health care professional must obtain relevant medical history from the occupant.

(ii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services. If the health care provider has a question about the safety, health, or well-being for the occupant in isolation, they may contact the housing operator for further information.

(iii) For evaluations done by telehealth, the operator must ensure each occupant in isolation has or is provided a working telephone with a clear connection. The operator must also provide the occupant with a U.S. Food and Drug Administration approved pulse oximeter and thermometer with written and verbal instructions on use and interpretation of their results in the occupant's preferred language.

(iv) If an occupant prefers not to self-operate the pulse oximeter, and/or thermometer, the employer must ensure that they have competent assistance.

(v) Interpretation services must be provided when the medical professional is not fluent in the occupant's preferred language.

(vi) For purposes of this subsection, a licensed health care professional means:

(A) An individual licensed under chapter 18.79 RCW as a registered nurse;

(B) An individual licensed under chapter 18.71 RCW as a physician;

(C) An individual licensed under chapter 18.71A RCW as a physician assistant;

(D) An individual licensed under chapter 18.57 RCW as an osteopathic physician;

(E) An individual licensed under chapter 18.57A RCW as an osteopathic physician assistant;

(F) An individual licensed under chapter 18.79 RCW as an advanced registered nurse practitioner; and

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) if authorized to monitor suspect SARS-CoV-2 cases or SARS-CoV-2 positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

(H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner.

(vii) Facilitate transportation for in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.

(viii) Guarantee that the occupants have ready access to telephone service to summon emergency care.

(ix) Provide occupants with information about paid leave and workers compensation.

(x) Permit access to other medical professionals who offer health care services in addition to the licensed health care professional(s) contracted to provide health checks.

(xi) The operator must provide food and water.

(xii) If the operator uses other isolation facilities, such as hotels, the operator must verify that the isolation facility complies with requirements of this section prior to transporting workers to the

facility. Isolated workers may also be housed in county or state run isolation centers.

(3) The operator must revise the facility's written TWH management plan to include implementation of the requirements in this section, as applicable.

(a) The plan must identify a single point of contact at the TWH for COVID-19 related issues.

(b) The operator must share the plan with all occupants on the first day the plan is operational or the first day the occupant arrives at the TWH. The operator must designate a person that will ensure all occupants are aware of all aspects of the plan and be available to answer questions.

(c) If changes are made to the TWH management plan, the operator must submit the revised TWH management plan to the state department of health within 10 calendar days of the effective date of this section.

(d) Failure to submit a revised plan or properly implement the requirements of this section may result in administrative action, including license suspension or fines.

(4) Consistent with WAC 296-307-16120(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(5) Vaccination verification.

(a) Occupants who are vaccinated against COVID-19 in accordance with current Washington state department of health guidance, are considered "fully vaccinated." Occupants who have been vaccinated outside the United States with a vaccine that has received World Health Organization (WHO) Emergency Use Listing (EUL) are considered fully vaccinated if:

(i) The occupant has completed the full vaccination series;

(ii) The appropriate amount of time has passed according to the manufacturer's guidance for the occupant to be fully protected.

(b) Occupants who have not received an FDA-authorized or WHO Emergency Use Listing COVID-19 vaccine must not be considered fully vaccinated.

(c) The operator is not required to verify vaccination status if masking and physical distancing are to be maintained; operators have the choice to maintain masking and physical distancing in their housing.

(d) If an occupant declines to provide verification of their vaccination status, they are not considered fully vaccinated.

(e) The operator must have a demonstrable process to verify vaccination status, but is not required to keep a copy of occupant's vaccination records, which may require secure and confidential handling as a medical record. The operator must establish a way of demonstrating they have verified vaccination status for occupants who are not being required to maintain a six-foot physical distance. Examples may include:

- Creating a log of the names of occupants who have been verified as fully vaccinated and the date that the verification was done;

- Marking an occupant's badge, site credential, or other individually identified item to indicate the occupant's status as fully vaccinated;

- Documented occupant attestations of vaccination; or

- Other methods that demonstrate an operator has verified an occupant has been fully vaccinated.

(f) To verify vaccination status, operators can require occupants to provide proof of vaccination status or signed document attesting to the employee's fully vaccinated status.

(i) Proof of vaccination means one of the following:

- A CDC vaccination card (which includes name of person vaccinated, type of vaccine provided, and date last dose administered);
- A photo of a CDC vaccination card as a separate document or a photo of the occupant's vaccine card stored on a phone or electronic device; or
- Documentation of vaccination from a health care provider electronic health record or state immunization information system record.

(ii) Signed self-attestation may be done in hard copy or electronically.

(g) The operator must provide evidence of their process to verify occupant vaccination status to the department upon request.

(6) In the event that any provisions of this section are in conflict with other regulations in this chapter, such other regulation shall be deemed superseded for purposes of this chapter.

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WSR 22-04-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-07—Filed January 21, 2022, 3:35 p.m., effective January 29, 2022]

Effective Date of Rule: January 29, 2022.

Purpose: The purpose of this emergency rule is to open recreational razor clam seasons from January 29 through February 3, 2022.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000H; and amending WAC 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 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: January 21, 2022.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. January 29 through 11:59 p.m. February 3, 2022, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	January 29 through February 2	From 12:01 p.m. to 11:59 p.m.
Area 2	Closed	Closed
Area 3	January 29, February 1, and 2	From 12:01 p.m. to 11:59 p.m.
Area 4	January 30, February 1, and 3	From 12:01 p.m. to 11:59 p.m.
Area 5	January 29, and February 2	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

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REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 4, 2022:

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

WSR 22-04-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-08—Filed January 21, 2022, 4:47 p.m., effective January 22, 2022]

Effective Date of Rule: January 22, 2022.

Purpose: The purpose of this emergency rule is to reopen gamefish seasons in the Nooksack River and its forks under permanent rules.

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

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: Recreational gamefish seasons were closed throughout the Nooksack River and its forks to maximize egg-take for the hatchery winter steelhead return in mid-December. Kendall Hatchery steelhead broodstock needs have been met and the fishing closure is no longer necessary.

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: January 21, 2022.

Kelly Susewind
Director

REPEALER

The following section of the Washington Administrative Code are repealed, effective January 22, 2022:

WAC 220-312-04000Y Freshwater exceptions to statewide rules—Puget Sound. (21-275)

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

WSR 22-04-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-09—Filed January 24, 2022, 12:13 p.m., effective January 24, 2022, 12:13 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes commercial harvest of red sea urchin in District 1 (20A, 20B, 22A) and parts of District 2 (21A, 21B, 22A, 22B).

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

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

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

Reasons for this Finding: This emergency rule closes harvest of red sea urchins in Sea Urchin District 1 (20A, 20B, 22A) and parts of District 2 (21A, 21B, 22A, 22B) because the quota for these areas have been reached. This closure is pursuant to fulfill obligations of state and tribal comanager agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 24, 2022.

Kelly Susewind
Director

NEW SECTION

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

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

(2) The following areas are open for red sea urchin harvest only, seven days-per-week: Sea Urchin District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23B, 25A, 25B, District 3 east of a line projected true north from the shoreline at 123°48.3'W longitude to the international border, and District 4 west of a line projected true north from the shoreline at 123°52.7'W longitude to the international border.

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

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

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REPEALER

The following section of Washington Administrative Code is repealed effective December 6, 2021:

WAC 220-340-75000G Commercial sea urchin fishery. (21-268)

WSR 22-04-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-11—Filed January 25, 2022, 3:29 p.m., effective January 26, 2022]

Effective Date of Rule: January 26, 2022.

Purpose: This rule sets a limited Columbia River commercial fishery for eulachon smelt.

Citation of Rules Affected by this Order: Repealing WAC 220-358-06000D; and amending WAC 220-358-060.

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

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

Reasons for this Finding: This rule sets a limited Columbia River commercial fishery for eulachon smelt. The regulation is consistent with a conservative research-level fishery, reduced from the level-one fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. The expected return of eulachon to the Columbia River in 2022 is expected to be larger than the run in 2021. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. National Oceanic and Atmospheric Administration Fisheries concurs that a limited fishery is consistent with recovery of eulachon smelt. Rule is consistent with Columbia River Compact action of January 25, 2022. The general public welfare is protected with the immediate and limited duration opening of the commercial smelt fishing in the mainstem Columbia River. This limited research-level harvest opportunity allows for maintenance and monitoring of a sustainable fish population. There is insufficient time to adopt permanent regulations.

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

Number of Sections Adopted at the Request of a 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: January 25, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-06000D Commercial fisheries—Columbia River below Bonneville Dam—Smelt. Notwithstanding the provisions of WAC 220-358-060, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: January 26 through February 28, 2022, open Mondays, Wednesdays, and Fridays only, 5:00 a.m. to 5:00 p.m. (12-hour periods).

Open Area: Columbia River - SMCRA 1A, 1B, 1C.

Gear: It is unlawful to use anything other than gillnets. Gillnets must meet the following specifications per WAC 220-358-060: mesh size not to exceed 2 inches stretch measure; not to exceed 1,500 feet in length along the cork line. Use of monofilament nets is permissible.

Allowable sales: Smelt.

Other: 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC. 220-352-315.

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

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

REPEALER

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

WAC 220-358-06000D Commercial fisheries—Columbia River
below Bonneville Dam—Smelt.

WSR 22-04-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-10—Filed January 25, 2022, 3:42 p.m., effective January 26, 2022]

Effective Date of Rule: January 26, 2022.

Purpose: This rule is needed to extend the season for sturgeon sport harvest in The Dalles Reservoir and close the retention of sturgeon in Bonneville Reservoir.

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

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

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

Reasons for this Finding: These populations are managed under sustainable harvest guidelines and these actions are taken to keep harvest within that guideline. This action is consistent with decisions made by the states of Washington and Oregon during the Columbia River compact hearing on December 15, 2021, and January 25, 2022. The general public welfare is protected with the immediate and limited duration opening of recreational sturgeon fishing in The Dalles and the closure of retention to recreational sturgeon fishing in Bonneville. These limited harvest opportunities allow for public use of the resource as well as the maintenance of a sustainable fish population. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 25, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia River. Effective January 26 through April 30, 2022 the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding white sturgeon retention seasons from Bonneville Dam to John Day

Dam shall be modified as follows. All other provisions of WAC 220-312-060, WAC 220-316-010, and WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From Bonneville Dam to The Dalles Dam, including adjacent tributaries:

Effective January 30, 2021, sturgeon retention is prohibited.

(2) From The Dalles Dam to John Day Dam, including adjacent tributaries:

(a) It is permissible to retain white sturgeon on the following dates: January 26, 29, 31, and February 2, 5, 7, 9, 12, 14, 16, 19, 21, 23, 26, 28, 2022.

(b) The daily limit of white sturgeon is one fish between 43 inches minimum and 54 inches maximum fork length.

(c) Catch and release angling for sturgeon is permissible on days not open to sturgeon retention.

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REPEALER

The following section of Washington Administrative Code is repealed, effective January 26, 2022:

WAC 220-312-06000G Freshwater exceptions to statewide rules—Columbia River. (21-276)

WSR 22-04-036
EMERGENCY RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed January 25, 2022, 3:55 p.m., effective January 25, 2022, 3:55 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Communities continue to experience a public health crisis related to the outbreak of the novel coronavirus, COVID-19. Educator preparation programs and their candidates face ongoing challenges related to this public health situation. These emergency rule changes would extend existing pandemic supports that address these challenges for educator preparation programs and candidates. The pandemic supports include:

- WAC 181-78A-027 Waiver of clinical practice and coursework by a preparation program provider: This section allows preparation program providers to review a candidate's work and learning experiences, and waive required clinical practice and/or coursework if the program determines the candidate has the knowledge and skills to be otherwise gained from the required clinical practice or coursework.
- WAC 181-79A-228 Emergency teacher certificates: This section allows for emergency certificates for teacher preparation program candidates who have not completed assessment requirements, but have completed all other program completion requirements. These emergency certificates are valid for one year.

Citation of Rules Affected by this Order: Amending WAC 181-78A-027 and 181-79A-228.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Reasons for this Finding: Changes in educational settings due to current public health concerns mean that some educator candidates are unable to complete clinical practice and coursework in traditional settings and may be unable to take required assessments (i.e. basic skills and content knowledge assessments) in a timely manner. WAC 181-78A-027 allows preparation programs to review a candidate's previous field experience and coursework to determine if the candidate has the requisite knowledge and skills. WAC 181-79A-228 would allow emergency certificates for candidates who have not completed assessment requirements. Emergency certificates allow candidates to serve in their educator role while they complete the assessment 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 0, Amended 2, Repealed 0.

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

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

Date Adopted: January 25, 2022.

Sophia Keskey
Rules Coordinator

OTS-3569.1

AMENDATORY SECTION (Amending WSR 20-16-033, filed 7/25/20, effective 8/25/20)

WAC 181-78A-027 Waiver of clinical practice and course work by a preparation program provider. (1) Based on review of current educational settings, and review of a candidate's previous course work, field experiences, work experiences, and alternative learning experiences, an educator preparation program provider may waive or reduce in length the required clinical practice, and/or waive required course work, if based on the review the provider determines that the candidate has the knowledge and skills to be otherwise gained from the required clinical practice or course work.

(2) Under this section, educator preparation program providers may waive or reduce in length the required clinical practice and/or course work through June 30, ((2021)) 2023.

[Statutory Authority: Chapter 28A.410 RCW. WSR 20-16-033, § 181-78A-027, filed 7/25/20, effective 8/25/20.]

OTS-3570.1

AMENDATORY SECTION (Amending WSR 21-08-001, filed 3/24/21, effective 4/24/21)

WAC 181-79A-228 Emergency teacher certificates. Emergency teacher certificates, valid for one year, may be issued by the superintendent of public instruction under the following conditions:

(1) A teacher preparation program approved by the professional educator standards board has recommended the candidate as having met all requirements for program completion with the exception of one or more of the following:

(a) The performance assessment as described in WAC 181-78A-232;
(b) The content knowledge assessment as described in chapter 181-78A WAC; and

(c) The basic skills assessment as described in WAC 181-78A-232.

(2) During the validity period of the certificate, preparation program providers are required to inform, advise, and support applicants on assessment requirements as described in WAC 181-78A-231(3).

(3) Teacher preparation programs may recommend candidates for an emergency certificate under this section through ~~((December 31, 2021))~~ June 30, 2023.

(4) One additional one-year emergency certificate may be issued upon recommendation by the preparation program provider. Teacher preparation programs may recommend candidates for this additional one-year emergency certificate through June 30, ~~((2022))~~ 2024.

(5) Candidates recommended for an emergency certificate under this section must apply for that certificate through the office of superintendent of public instruction no later than December 31, ~~((2022))~~ 2024.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-001, § 181-79A-228, filed 3/24/21, effective 4/24/21; WSR 20-16-034, § 181-79A-228, filed 7/25/20, effective 8/25/20.]

WSR 22-04-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-12—Filed January 25, 2022, 4:48 p.m., effective February 1, 2022]

Effective Date of Rule: February 1, 2022.

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

Citation of Rules Affected by this Order: Amending WAC 220-359-020.

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

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

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

Reasons for this Finding: This rule sets the 2022 tribal winter gillnet and platform, hook and line fisheries above Bonneville Dam. This rule is consistent with actions of the Columbia River Compact on January 25, 2022. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

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

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions

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

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

Number of Sections Adopted at the Request of a 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: January 25, 2022.

Kelly Susewind
Director

NEW SECTION

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

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

(a) Season: 6 AM Tuesday, February 1, 2022, until 6 PM Saturday, February 5, 2022.

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

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

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

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

(a) Season: 6 AM Tuesday, February 1, 2022, until 6 PM Saturday, February 12, 2022.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for

subsistence. Sturgeon from 43 to 54 inches fork length caught in the John Day Pool may be sold or kept for subsistence purposes.

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

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

(a) Season: 6 AM Tuesday, February 1, 2022, until 6 PM Saturday, March 19, 2022.

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

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

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

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

WSR 22-04-038
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed January 26, 2022, 5:39 a.m., effective February 3, 2022]

Effective Date of Rule: February 3, 2022.

Purpose: The department is extending the amendment of the rules listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 epidemic [pandemic]. These amendments align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic.

(1) The federal rules related to quality assurance activities were amended to narrow the scope of the quality assurance program to reviewing and taking action on adverse events and infection control. Current state rules require the nursing facility to identify issues that may adversely affect residents, including resident input from grievances. The state amendment continues to require quality assurance activities, but mandatory review in quality assurance would be limited to adverse events and infection control.

(2) The federal rules suspended fire drills to reduce grouping of staff and/or residents that might increase the likelihood of transmitting COVID-19. Current state rules require periodic fire drills. The state amendment removes the requirement to have fire drills, but continues to require staff training on the fire plan.

(3) The federal rules requiring a window in each resident room were waived to permit use of space not normally used for resident care to be utilized as a resident room. Current state rules require each resident room have a transparent glass window located on an exterior wall, with additional size and location requirements for new construction. The state amendment removes the requirement to have a window in each resident room.

The department filed a CR-101 Preproposal under WSR 20-21-031 to begin the permanent rule[-making] process. In addition, under the rule development phase of permanent rule making, the department is in discussions with stakeholders about amending the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary.

Citation of Rules Affected by this Order: Amending WAC 388-97-1740, 388-97-1760, and 388-97-2400.

Statutory Authority for Adoption: RCW 74.42.620 and 18.51.070.

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

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities.

Fire drills (WAC 388-97-1740): Recent federal waivers suspended the requirement for nursing facilities to conduct fire drills. The majority of the rules around fire drills are in the federal Life Safety Code, and under the jurisdiction of the office of the state fire marshal. Nursing home rules also contain language requiring periodic

drills. Amendment of WAC 388-97-1740 will remove the requirement for conducting periodic fire drills, but does not remove the requirement to have an emergency plan that includes fire procedures and staff training on that plan.

Quality assessment and assurance (WAC 388-97-1760): Current nursing home rules require facilities to maintain a process for quality assurance that seeks out and incorporates input from resident and family groups, and individual residents. The rule also requires review of grievances and expressed concerns. The amended rule requires facilities to seek out and incorporate resident and resident representative input, but removes the reference to resident or family groups, as those groups are not currently permitted to meet in person. The amendment also sets a standard that, at a minimum, requires review of adverse events and infection control. These changes permit facilities to focus quality assurance efforts on issues that will assist them in managing COVID-19, and will align the state rule with federal waivers related to quality assurance.

Windows in resident rooms (WAC 388-97-2400): Current state nursing home rules require each resident room have a transparent glass window on an exterior wall. Federal rules also require a resident sleeping room to have a window. The federal rules were recently waived to accommodate facilities wanting to increase room capacity, and need to utilize spaces not normally used as a resident room as a resident room. Amendment of WAC 388-97-2400 removes the requirement to have a window in each resident room to align the state rule with the recently waived federal rule. This will provide nursing facilities with additional flexibility in redesigning their space to accommodate additional residents.

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

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

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

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

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

Date Adopted: January 26, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4816.2

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1740 Disaster and emergency preparedness. (1) The nursing home must develop and implement detailed written plans and

procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, and periodically review emergency procedures with existing staff (~~(, and carry out unannounced staff drills using those procedures)~~).

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1740, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1760 Quality assessment and assurance. (1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

(a) Seeks out and incorporates input from the (~~(resident and family councils, if any, or individual)~~) residents and (~~(support groups)~~) resident representatives; and

(b) At a minimum, reviews (~~(expressed concerns and grievances)~~) adverse events and infection control.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1760, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2400 Resident rooms. (1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor; and

(b) ~~((Is located on an exterior wall with a transparent glass window; and~~

~~(c))~~ Is located to prevent through traffic.

(2) **In a new building or addition, unless otherwise necessary for infection control,** each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least one-tenth of the bedroom usable floor area;

(ii) Located twenty-four feet or more from another building or the opposite wall of a court, or ten feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least ten feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-2400, filed 9/24/08, effective 11/1/08.]

WSR 22-04-048
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed January 27, 2022, 8:19 a.m., effective February 4, 2022]

Effective Date of Rule: February 4, 2022.

Purpose: The 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, 74.39A.074.

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 is a subsequent filing on these rules. This filing is necessary to keep the emergency rules enacted until DDA can complete the permanent rule-making process. DDA is currently collecting feedback on the draft rules from external stakeholders. RCW 74.39A.074 authorizes DSHS to enact rules necessary to allow long-term care workers additional time to complete training requirements.

Failing to enact these extended training deadlines could result in providers suddenly being out of compliance with training requirements, which would affect client access to qualified service providers. The department filed a CR-101 under WSR 21-20-130 and is working with stakeholders on language for permanent adoption.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 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: January 25, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4897.4

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.

[]

NEW SECTION

WAC 388-829-0087 What continuing education credit is granted to direct support professionals employed during the pandemic and when must continuing education be completed? (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 in-

tensive 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.

(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 federal 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 22-04-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-13—Filed January 27, 2022, 4:56 p.m., effective January 31, 2022]

Effective Date of Rule: January 31, 2022.

Purpose: Closes commercial harvest of red sea urchin in District 3 (23C, 23D) and part of District 2 (23A).

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

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

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

Reasons for this Finding: This emergency rule closes harvest of red sea urchins in Sea Urchin District 3 (23C, 23D) and part of District 2 (23A) because the quota for these areas is expected to be reached by the end of the day January 30, 2022. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 27, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000I Commercial sea urchin fishery. Effective January 31, 2022, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

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

(2) The following areas are open for red sea urchin harvest only, seven days-per-week: Sea Urchin District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 23B, 25A, 25B, and District 4 Marine Fish-Shellfish Management and Catch Reporting Area 23C west of a line projected true north from the shoreline at 123°52.7'W longitude to the international border.

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

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

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REPEALER

The following section of Washington Administrative Code is repealed effective January 31, 2022:

WAC 220-340-75000H Commercial sea urchin fishery. (22-09)

WSR 22-04-062

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed January 28, 2022, 8:16 a.m., effective January 28, 2022, 8:16 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-171 Retired active pharmacist license status, establishing a new section of rule. This adopted emergency rule will extend WSR 21-20-076 filed on September 30, 2021, without change. On March 26, 2020, Governor Inslee signed Proclamation 20-32 to help increase the number of health care workers available to meet the needs of patients during the coronavirus disease 2019 (COVID-19) pandemic. This proclamation included a provision that allows a pharmacist with a retired active pharmacist license status to practice pharmacy. Specifically, the proclamation amended WAC 246-863-080(2), which was effective at that time, to allow holders of a retired active pharmacist license status to practice pharmacy while the proclamation remains in effect.

The pharmacy quality assurance commission (commission) updated and consolidated all rules under its authority into one new chapter (chapter 246-945 WAC), effective July 1, 2020. In this rewrite process the requirements from WAC 246-863-080 and the retired active pharmacist license status were repealed. Beginning July 1, 2020, chapter 246-945 WAC took effect and the commission no longer enforces WAC 246-863-080. In order to meet the intent of the governor's proclamation and allow retired pharmacists to assist with the COVID[-19] response with pharmacy services such as vaccine administration, there must be a retired active pharmacist license rule in place. The adopted rule will reinstate the retired active pharmacist credential and allow a pharmacist to apply for a retired active pharmacist license status. The holder of a retired active pharmacist license is allowed to practice during emergent or intermittent circumstances and assist with the COVID-19 response. This emergency rule also establishes the criteria for returning to active status.

Citation of Rules Affected by this Order: New WAC 246-945-171.

Statutory Authority for Adoption: RCW 18.64.005, 18.64.205.

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

Reasons for this Finding: The immediate adoption of WAC 246-945-171 is necessary for the preservation of public health, safety, and general welfare. This rule allows retired pharmacists to assist in the response during public health emergencies such as the COVID-19 pandemic and is in line with the intent of Governor Inslee's Proclamation 20-32. This emergency rule allows retired pharmacists to help meet the needs of patients during the COVID-19 pandemic through performing pharmacy services such as vaccine administration. 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.

The commission authorized permanent rules and the CR-101 (WSR 21-09-063) was filed in April 2021, but will not be completed by the

time the current emergency rules expire. Necessary adjustments to the permanent rule language are currently under internal review.

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: January 26, 2022.

Teri Ferreira, RPh
Pharmacy Quality Assurance Chair

OTS-2798.2

NEW SECTION

WAC 246-945-171 Retired active pharmacist license status. (1) A pharmacist may apply for a retired active pharmacist license status if they:

(a) Hold an active pharmacist license issued by the commission under chapter 18.64 RCW that is in good standing;

(b) Submit an application on a form provided by the commission; and

(c) Pay the retired credential application fee as specified in WAC 246-907-030.

(2) A pharmacist with a retired active pharmacist license status shall practice only in emergent or intermittent circumstances.

(a) "Emergent" includes, but is not limited to, earthquakes, floods, times of declared war or other states of emergency.

(b) "Intermittent" means no more than a total of ninety days each year in Washington state.

(3) A pharmacist with a retired active pharmacist license status must renew every year, comply with WAC 246-12-130 and pay the retired credential renewal fee in WAC 246-907-030.

(4) To return to active status, a retired active pharmacist must comply with WAC 246-12-140 and pay the pharmacist license renewal fee in WAC 246-907-030.

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WSR 22-04-114
EMERGENCY RULES
GREEN RIVER COLLEGE

[Filed February 2, 2022, 8:49 a.m., effective February 2, 2022, 8:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The United States Department of Education (DOE) issued updated Title IX rules on May 22, 2020, which took effect August 14, 2020. These updated rules incorporate the Title IX regulations by amending Green River College's student conduct code requirements in chapter 132J-300 WAC. These rule changes are necessary to maintain compliance with DOE requirements. On August 24, 2021, DOE announced that it will no longer enforce the cross-examination requirement in the 2020 regulations. To comply with training and live hearing requirements in the 2020 federal regulations, the college rule changes also add authority to contract with the Washington office of administrative hearings and other contractors to help with these duties.

Citation of Rules Affected by this Order: Repealing WAC 132J-300-010.

Statutory Authority for Adoption: Title IX of Education Amendments of 1972; RCW 28B.50.140.

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: Repealing WAC 132J-300-010 is necessary for compliance with DOE updated Title IX rules issued on May 22, 2020, and requiring implementation of updated student conduct code requirements related to Title IX federal requirements. The college is already proceeding with permanent rule making on this subject.

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 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 20, 2022.

George P. Frasier
Vice President of College Advancement

OTS-3557.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132J-300-010 Grievance procedure—Sex discrimination.