

WSR 23-06-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-29—Filed February 16, 2023, 4:05 p.m., effective February 17, 2023]

Effective Date of Rule: February 17, 2023.

Purpose: The purpose of this emergency rule is to open razor clam seasons for Copalis and Mocrocks beaches.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000V; 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 recreational harvest in Razor Clam Areas 4 and 5. Washington department of health has certified clams from Razor Clam Areas 4 and 5 to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 16, 2023.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. February 17, 2023, through 11:59 p.m. February 22, 2023, 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:

Table with 3 columns: Razor Clam Area, Date, Time. Row 1: Area 1, Closed, Closed.

Razor Clam Area	Date	Time
Area 2	Closed	Closed
Area 3	Closed	Closed
Area 4	February 18, 20, and 22	From 12:01 p.m. to 11:59 p.m.
Area 5	February 17, 19, and 21	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 23, 2023:

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

WSR 23-06-016

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed February 17, 2023, 8:27 a.m., effective February 17, 2023, 8:27 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-010 Prescription and chart order—Minimum requirements. The pharmacy quality assurance commission (commission) is extending emergency rules adopted to reduce burdens on practitioners prescribing Schedule II substances during the coronavirus disease 2019 (COVID-19) outbreak. Since the federal public health emergency is set to be in effect until May 11, 2023, this extension will continue to reduce the burden on practitioners through the end of the federal public health emergency. This adopted emergency rule will extend WSR 22-22-006 filed on October 20, 2022. This emergency rule was originally filed on April 21, 2020, under WSR 20-09-133. It was refiled on July 10, 2020, after the commission's new chapter went into effect under WSR 20-15-058. This emergency rule will continue the existing emergency rule amending WAC 246-945-010 to increase the duration of time a practitioner has to deliver a signed prescription of a Schedule II substance to the pharmacy from seven days to 15 days when a prescription is dispensed in an emergency. It also defines what a "signed prescription" means and allows for a practitioner to accomplish this requirement through paper, electronic transmission, facsimile, photograph, or scanned copy. These alternative methodologies support patients, practitioners, and pharmacists' efforts to practice social distancing and to help mitigate communal spread.

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

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

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

Reasons for this Finding: The immediate amendment of this existing rule is necessary for the preservation of public health, safety, and general welfare. This rule would allow patients and providers, especially pain patients, to limit their COVID-19 exposure both in the broader community and in the various health care settings. Interested parties and leaders from the pain community have highlighted this is an immediate need for Washingtonians. This emergency rule has been in effect since April 21, 2020. This emergency rule allows more time and more avenues for complying with the requirements throughout the duration of the federal public health emergency, reducing burdens on practitioners and pharmacists, and sustaining patient access during this difficult time. The emergency rules follow guidance from the United States Drug Enforcement Agency. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest.

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

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

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

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

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

Date Adopted: February 17, 2023.

Teri Ferreira, RPh
Pharmacy Quality Assurance Chair

OTS-2391.1

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

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

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

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

(a) Prescriber's name;

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

(c) Date of issuance;

(d) Drug name, strength, and quantity;

(e) Directions for use;

(f) Number of refills (if any);

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

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

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

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

(a) Patient's address;

(b) Dosage form;

(c) Prescriber's address;

(d) Prescriber's DEA registration number; and

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

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

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

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

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

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

(i) A paper prescription;

(ii) An electronic prescription;

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

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

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

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

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

WSR 23-06-017

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed February 17, 2023, 8:30 a.m., effective February 17, 2023, 8:30 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

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

This emergency filing replaces the emergency rules filed under WSR 22-22-014 on October 21, 2022. The agency is refiled to continue the emergency rule. The agency's CR-101 preproposal statement of inquiry, filed under WSR 20-15-077, remains in effect while the agency continues to monitor the changing conditions presented by COVID-19 and its variants.

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

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

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

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

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

Date Adopted: February 17, 2023.

Wendy Barcus
Rules Coordinator

OTS-2140.1

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

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

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

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

(i) Inpatient;

(ii) Outpatient surgery;

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

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

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

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

(A) Follow-up office visits;

(B) Medications, prior authorization requirements may apply;

(C) Respiratory services and supplies; and

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

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

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

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

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

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

(i) Medications;

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

(iii) Medical equipment and supplies;

(iv) Anesthesia, surgical, and recovery services;

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

(vi) Therapy services;

(vii) Emergency medical transportation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Hospital clinic services; or

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

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

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

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

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

(ii) Prenatal care, except labor and delivery;

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

(iv) School-based services;

(v) Personal care services;

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

(vii) Waiver services;

(viii) Nursing facility services;

(ix) Home health services;

(x) Hospice services;

(xi) Vision services;

(xii) Hearing services;

(xiii) Dental services;

(xiv) Durable and nondurable medical supplies;

(xv) Nonemergency medical transportation;

(xvi) Interpreter services; and

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

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

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

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

WSR 23-06-023
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 22, 2023, 8:40 a.m., effective February 22, 2023, 8:40 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: 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? and 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? The department of social and health services (department) is providing an extended time for long-term care workers to complete continuing education requirements in response to the COVID-19 public health emergency. The department will be granting 12 hours of on-the-job training continuing education. A set deadline of 120 days after the end of the gubernatorial waivers to complete any other continuing education that may become due while the waivers were in place.

In response to community partner concerns, the department is extending the deadline until August 31, 2023, to allow more time to complete continuing education requirements.

Citation of Rules Affected by this Order: Amending WAC 388-71-0992 and 388-112A-0613.

Statutory Authority for Adoption: RCW 74.39A.074 and 74.39A.341.

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: Long-term care workers hired or rehired during the COVID-19 public health emergency are required to complete 12 hours of continuing education annually by their birthdate. Stakeholders have reported that there are a significant number of workers still needing to complete continuing education hours that came due while the pandemic waivers were in place. This is affecting workers' ability to meet requirements for current renewal cycles because hours must be applied to the older renewal cycles first. This will result in long-term care workers being out of compliance and create risks to clients being able to access qualified workers for provision of their personal care services.

To prevent this, the department is extending the deadline until August 31, 2023, to allow more time to complete continuing education 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 2, 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 2, Repealed 0.

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

Date Adopted: February 22, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4971.1

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

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 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, home care 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 constituted 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-))~~) 388-71-0985.

(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 COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and 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 until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, 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. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE)~~) must complete all other continuing education requirements that came due while training waivers were in place in excess of the 12 hours of CE granted in section (4) of this section no later than August 31, 2023. Continuing education hours due for renewal cycles occurring between October 28, 2022, and August 31, 2023, must be completed no later than August 31, 2023.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-71-0992, filed 5/31/22, effective 7/1/22.]

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

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, home care 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 constituted 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 COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and 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 until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, 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. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE)~~) must complete all other continuing education requirements that came due while training waivers were in place in excess of the 12 hours of CE granted in section (4) of this section no later than August 31, 2023. Continuing education hours due for renewal cycles occurring between October 28, 2022, and August 31, 2023, must be completed no later than August 31, 2023.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-112A-0613, filed 5/31/22, effective 7/1/22.]

WSR 23-06-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-32—Filed February 22, 2023, 4:15 p.m., effective February 22, 2023, 4:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends coastal commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000N and 220-340-45000K; and amending WAC 220-340-420 and 220-340-450.

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

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

Reasons for this Finding: The stepped opening periods/areas accommodate delayed openings for state license holders as specified in state-tribal harvest management agreements and provide for fair start provisions. Provisions of the state/Makah harvest management agreement allow for the opening of Makah SMA to state license holders and specify a temporary pot limit. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 22, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000P Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until March 13, 2023 and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from January 31, 2023 through February 4, 2023, are only valid for the area south of 46°28.00 N. Lat.

(2) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47°00.00 N. Lat., provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator must call 360-580-6200, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

(3) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning 8:00 A.M. March 5, 2023, until 8:00 A.M. April 4, 2023. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- E-mail to Jamie Fuller at Jamie.Fuller@dfw.wa.gov; or
- Telephone call to Jamie Fuller at 360-580-0875.

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

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

NEW SECTION

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

(1) Open area: The area from the WA/OR border (46°15.00) to the US/Canada border including Grays Harbor and Willapa Bay.

(a) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from fishing in the following areas for the durations specified:

i. The waters between Oysterville (46°33.00) and US/Canada Border until 8:00 A.M. March 13, 2023.

(2) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

- | | |
|---------------------------------------|--------------------------------------|
| (a) Northeast Corner (Raft River): | 47°28.00' N. Lat. 124°20.70' W. Lon. |
| (b) Northwest Corner: | 47°28.00' N. Lat. 124°34.00' W. Lon. |
| (c) Southwest Corner: | 47°08.00' N. Lat. 124°25.50' W. Lon. |
| (d) Southeast Corner (Copalis River): | 47°08.00' N. Lat. 124°11.20' W. Lon. |

(3) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

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

(4) The Makah special management area (SMA) is closed to fishing until 8:00 AM March 5, 2023. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

- | | |
|-----------------------|--------------------------------------|
| (a) Northeast Corner: | (Tatoosh Island) |
| (b) Northwest Corner: | 48°19.50' N. Lat. 124°50.45' W. Lon. |
| (c) Southwest Corner: | 48°02.15' N. Lat. 124°50.45' W. Lon. |
| (d) Southeast Corner: | 48°02.15' N. Lat. 124°41.00' W. Lon. |

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

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|--------------------|---|
| WAC 220-340-42000N | Commercial crab fishery—Unlawful acts. (23-06) |
| WAC 220-340-45000K | Commercial crab fishery—Season and areas—Coastal. (23-06) |

WSR 23-06-029

EMERGENCY RULES

RENTON TECHNICAL COLLEGE

[Filed February 22, 2023, 4:20 p.m., effective February 22, 2023, 4:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Rule changes support requirements laid out in HB [2SHB] 1751 (also known as "Sam's Law") and support existing efforts to protect students from dangers of hazing.

Citation of Rules Affected by this Order: New WAC 495E-110-045; and amending WAC 495E-110-030, 495E-110-050, and 495E-110-060.

Statutory Authority for Adoption: 2SHB 1751, section 4(1) (requiring colleges to issue reports of violations of actual findings of violations to college's "code of conduct, antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault."); RCW 28B.10.900 (as amended by 2SHB 1751), RCW 28B.10.090 (as amended by 2SHB 1751) defining "hazing" to include activities associated with recruitment, initiation, pledging, admission into, or affiliation with "student organization, athletic team, or living group," RCW 28B.10.901 (2) and (3), 28B.10.901(3), 28B.10.902(1), 28B.10.902(2).

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: HB [2SHB] 1751 instructs institutions of higher learning to enact its provisions in the 2022-23 academic year.

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 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 0, Amended 0, Repealed 0.

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

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

Date Adopted: February 22, 2023.

Jacob Jackson
Vice President of Administration and Finance

OTS-4286.1

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

WAC 495E-110-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student or student group, who commits (~~((or attempts to commit), or)~~), attempts to commit, aids, abets, incites, encourages or assists another person to commit, an

act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each faculty course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this section, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's

email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group;

(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(10) Alcohol, drug, and tobacco violations.

(a) **Alcohol.** The use, possession, delivery, or sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug including, anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff. There are designated smoking areas on campus.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. (Supplemental Title IX student conduct procedures.)

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including, unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limi-

ted to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of (~~eighteen~~) 18.

(iv) Statutory rape. Consensual intercourse between a person who is (~~eighteen~~) 18 years of age or older, and a person who is under the age of (~~sixteen~~) 16.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this chapter, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, in-

cluding tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: Title IX of Education Amendments of 1972 and RCW 28B.50.140. WSR 21-10-038, § 495E-110-030, filed 4/28/21, effective 5/29/21. Statutory Authority: RCW 28B.50.140(13), Violence Against Women Act of 1994, and Title IX of Education Amendments of 1972. WSR 15-11-013, § 495E-110-030, filed 5/8/15, effective 6/8/15.]

NEW SECTION

WAC 495E-110-045 Hazing prohibited, sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 495E-110-030(9).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college anti-hazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

[]

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

WAC 495E-110-050 Statement of jurisdiction. (1) The student conduct code shall apply to ~~((student))~~ conduct by students and student groups that occurs:

(a) On college premises;
 (b) At or in connection with college-sponsored activities; or
 (c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from ~~((the time of application for admission))~~ notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The ~~((college))~~ student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off campus.

[Statutory Authority: Title IX of Education Amendments of 1972 and RCW 28B.50.140. WSR 21-10-038, § 495E-110-050, filed 4/28/21, effective 5/29/21. Statutory Authority: RCW 28B.50.140(13), Violence Against Women Act of 1994, and Title IX of Education Amendments of 1972. WSR 15-11-013, § 495E-110-050, filed 5/8/15, effective 6/8/15.]

AMENDATORY SECTION (Amending WSR 21-10-038, filed 4/28/21, effective 5/29/21)

WAC 495E-110-060 Definitions. The following definitions shall apply for purpose of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) A "complainant" is an alleged victim of sexual misconduct.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(5) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(6) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ~~((ten))~~ 10 instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(7) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) "Respondent" is the student against whom disciplinary action is initiated.

(9) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(10) "Sexual misconduct" has the meaning ascribed to this term in WAC 495E-110-030(13).

(11) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(12) "Student conduct officer" is a college administrator designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code.

(13) "Student group" for purposes of this code, is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(14) "The president" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

[Statutory Authority: Title IX of Education Amendments of 1972 and RCW 28B.50.140. WSR 21-10-038, § 495E-110-060, filed 4/28/21, effective

5/29/21. Statutory Authority: RCW 28B.50.140(13), Violence Against Women Act of 1994, and Title IX of Education Amendments of 1972. WSR 15-11-013, § 495E-110-060, filed 5/8/15, effective 6/8/15.]

WSR 23-06-030
EMERGENCY RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 22, 2023, 4:26 p.m., effective February 22, 2023, 4:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Update WAC with new language to align with newly adopted federal licensing guidelines for military servicemembers or their spouses. Newly adopted federal licensing guidelines for military servicemembers and their spouses requires alignment in state policy to avoid confusion in the field.

Citation of Rules Affected by this Order: Amending WAC 181-78A-257.

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

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

Reasons for this Finding: Federal rule requires immediate adoption of this rule to align state policy.

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

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

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

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

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

Date Adopted: February 22, 2023.

Jisu Ryu
Rules Coordinator

OTS-4376.1

AMENDATORY SECTION (Amending WSR 21-19-131, filed 9/21/21, effective 10/22/21)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2), and the specific requirements for the certificate being sought in chapter 181-77 or 181-79A WAC including, but not limited to, degree, continuing education credit hours, and certification/licensure, shall be eligible for Washington certificates as follows:

(1) **Residency or initial certificates.** The residency or initial certificate shall be issued by the superintendent of public instruction to any candidate who meets requirements for the certificate in-

cluding testing requirements as described in RCW 28A.410.220, and chapters 181-01 and 181-02 WAC, and who meets one of the following:

(a) Has completed a state approved preparation program in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

(b) If a candidate for teacher, administrator, or educational staff associate certification does not meet the qualifications described in (a) of this subsection, a residency or initial certificate shall be issued to a candidate who holds or has held a certificate in the role, comparable to a residency or initial certificate, issued by another state and has practiced at the P-12 level in the role outside the state of Washington for at least three years.

(c) Holds an appropriate degree from an accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(d) Holds a valid Nationally Certified School Psychologist (NCSP) credential issued by the National Association of School Psychologists (NASP); and applies for a residency educational staff associated school psychologist certificate.

(2) **Professional certificate.** The professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the initial or residency certificate including testing requirements as described in RCW 28A.410.220 and chapters 181-01 and 181-02 WAC, meets the issues of abuse or emotional or behavioral distress requirement as described in WAC 181-79A-200, and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards.

(3) **Military servicemembers and spouses of military servicemembers.**

(a) A residency or initial certificate shall be issued by the superintendent of public instruction to any candidate who holds a valid certificate in the role, comparable to a residency or initial certificate, who:

(i) Is a military servicemember or spouse of a military servicemember; and

(ii) Provides a copy of military relocation orders to Washington state for military service; and

(iii) Remains in good standing with the licensing authority that issued the certificate, and with every other licensing authority that has issued the servicemember or the spouse of a servicemember a license valid at a similar scope of practice.

(b) Military servicemembers or spouses issued certificates under this subsection are considered to have met assessment requirements per chapters 181-01 and 181-02 WAC.

(c) Under RCW 18.340.020 out-of-state candidates who are military spouses shall receive expedited issuance of the appropriate certificate in accordance with this section.

(4) Out-of-state candidates must meet the assessment requirements per chapters 181-01 and 181-02 WAC. Equivalent assessments will be published by the board.

(5) Out-of-state candidates for educational staff associate certificates under WAC 181-79A-223 are considered to have met the requirement for the professional transitions to public schools course work provided they meet one or more of the following:

(a) Have completed a state-approved program as an educational staff associate in the role; or

(b) Hold or have held a certificate in the role, comparable to a residency or initial certificate, issued by another state and have practiced at the P-12 school level in the role outside the state of Washington for at least three years; or

(c) Hold an appropriate degree from an accredited college or university and have practiced three years as an educational staff associate in that role in a state where such certificate was not required.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-19-131, § 181-79A-257, filed 9/21/21, effective 10/22/21; WSR 21-08-024, § 181-79A-257, filed 3/29/21, effective 4/29/21. Statutory Authority: RCW 28A.410.220. WSR 18-21-011, § 181-79A-257, filed 10/4/18, effective 11/4/18. Statutory Authority: RCW 28A.410.210. WSR 15-23-013, § 181-79A-257, filed 11/6/15, effective 12/7/15; WSR 14-13-006, § 181-79A-257, filed 6/5/14, effective 7/6/14; WSR 11-15-038, § 181-79A-257, filed 7/13/11, effective 8/13/11; WSR 09-16-018, § 181-79A-257, filed 7/24/09, effective 8/24/09; WSR 07-20-047, § 181-79A-257, filed 9/26/07, effective 10/27/07; WSR 06-14-010, § 181-79A-257, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-257, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 05-04-054, § 180-79A-257, filed 1/28/05, effective 2/28/05; WSR 04-21-005, § 180-79A-257, filed 10/7/04, effective 11/7/04; WSR 04-04-011, § 180-79A-257, filed 1/23/04, effective 2/23/04; WSR 04-04-009, § 180-79A-257, filed 1/23/04, effective 2/23/04; WSR 01-18-043, § 180-79A-257, filed 8/29/01, effective 9/29/01; WSR 01-13-108, § 180-79A-257, filed 6/20/01, effective 7/21/01; WSR 00-23-005, § 180-79A-257, filed 11/2/00, effective 12/3/00; WSR 00-03-048, § 180-79A-257, filed 1/14/00, effective 2/14/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-257, filed 12/23/98, effective 1/23/99.]

WSR 23-06-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-30—Filed February 22, 2023, 5:17 p.m., effective March 1, 2023]

Effective Date of Rule: March 1, 2023.

Purpose: The purpose of this emergency rule is to set spring Chinook seasons for the Columbia River, from Buoy 10 to the Washington/Oregon border at Highway 730. Additionally, this rule sets spring Chinook seasons in Deep River.

Citation of Rules Affected by this Order: Amending WAC 220-312-030 and 220-312-060.

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

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

Reasons for this Finding: Sets the 2023 spring recreational salmon season in the Columbia River from Buoy 10 upstream to the Oregon/Washington border, including shad and hatchery steelhead. The Endangered Species Act (ESA) impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *United States v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 22, 2023. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under 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 *United States v. Oregon* Management Agreement. Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: February 22, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000K Freshwater exceptions to statewide rules—Columbia. Effective March 1, through May 6, 2023, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to Hwy. 730 at the Washington/Oregon border, and shad seasons from the mouth to the Bonneville Dam, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From a true north-south line through Buoy 10, upstream to a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

(a) Salmon and steelhead: Effective March 1 through April 7, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(b) Shad: Effective March 1 through April 7, 2023: No min. size. No daily limit.

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

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

(b) Salmon and steelhead: Effective March 1 through April 7, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(c) Shad: Effective March 1 through April 7, 2023: No minimum size. No daily limit.

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

(a) Effective March 16 through May 6, 2023: Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Effective March 1 through March 31, 2023: Daily limit is 2. Release all salmon.

(c) Effective April 1 through May 6, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

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

(a) Effective March 1 through March 31, 2023: Daily limit is 2. Release all salmon.

(b) Effective April 1 through May 6, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

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

(a) Effective April 1 through May 6, 2023: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

[]

NEW SECTION

WAC 220-312-03000W Freshwater exceptions to statewide rules—Southwest. Effective March 1 through April 7, 2023, the provisions of WAC 220-312-030 regarding Deep River salmon and steelhead seasons shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

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

Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

[]

WSR 23-06-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-31—Filed February 22, 2023, 5:20 p.m., effective February 27, 2023]

Effective Date of Rule: February 27, 2023.

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

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

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

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

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

Reasons for this Finding: This rule sets the tribal winter sturgeon setline fisheries in Bonneville and The Dalles pools. This rule is consistent with actions of the Columbia River Compact on January 24, February 9, 14, and 22, 2023. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

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

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

Date Adopted: February 22, 2023.

Kelly Susewind
Director

NEW SECTION

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

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

(a) Season: 6 AM Monday February 27, until 6 PM Wednesday, March 1, 2023.

(b) Gear: Standard setline gear including no more than 100 single-point hooks per set line and a minimum hook size of 9/0.

(c) Allowable sale: Sturgeon from 38 to 54 inches fork length caught in Bonneville Pool may be sold or kept for subsistence purposes.

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

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

(a) Season: 6 AM Monday March 6, until 6 PM Thursday, March 9, 2023.

(b) Gear: Standard setline gear including no more than 100 single-point hooks per set line and a minimum hook size of 9/0.

(c) Allowable sale: 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.

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

(a) Season: Immediately through 6 PM Saturday, March 18, 2023.

(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.

[]

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

REPEALER

The following section of Washington Administrative Code is repealed, effective February 27, 2023:

WAC 220-359-02000N Columbia River salmon seasons above Bonneville Dam. (23-28)

WSR 23-06-043
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 24, 2023, 8:02 a.m., effective February 24, 2023, 8:02 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In 2022, the Washington state legislature passed 2SHB 1988, chapter 185, Laws of 2022, and ESSB 5714, chapter 161, Laws of 2022. 2SHB 1988 and ESSB 5714 allow for tax deferrals on investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage, as well as solar canopies when the project meets certain labor standards and is certified by the department of labor and industries (L&I), supporting Washington's clean energy economy and transitioning to a clean, affordable, and reliable energy future.

The emergency rules address:

- Standards for certification for:
 - o Procurement from and contracts with women-, minority-, and veteran-owned businesses, which will include a requirement that the recipient of the deferral consult with the office of minority and women's business enterprises and the department of veterans affairs to develop a plan to meet the standards or good faith efforts;
 - o Procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations;
 - o Apprenticeship utilization;
 - o Preferred entry for workers living in the area where the project is being constructed;
 - o Payment of prevailing wages; and
 - o Project labor agreements and community workforce agreements.
- Requirements for and processes related to application, records and documentation, and certification;
- Reorganizing and adding to the definition section, to provide clarity on each type of qualifying clean energy project identified under the rules as well as which definitions apply to different sections of chapter 296-140 WAC, Clean energy labor standards certification;
- Clarifies the labor standard for procurement from and contracts with women-, minority-, or veteran-owned businesses is based on the percent of contract dollars awarded. The clarification is also made to the requirement under WAC 296-140-002 for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962.

Citation of Rules Affected by this Order: New WAC 296-140-005, 296-140-006, 296-140-007 and 296-140-008; and amending WAC 296-140-001, 296-140-002, and 296-140-004.

Statutory Authority for Adoption: Section 7, chapter 185, Laws of 2022, and section 6, chapter 161, Laws of 2022.

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

Reasons for this Finding: L&I is required to adopt emergency and permanent rules to implement both of these bills. These emergency rules will provide criteria necessary to certify labor standard requirements in order to qualify for tax deferral on investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage, as well as solar canopies while permanent rules are being developed. L&I filed a CR-101 (WSR 22-13-148) on June 21, 2022, and was required to have rules in place by July 1, 2022. An initial emergency rule was filed on July 1, 2022 (WSR 22-14-094), and again on October 28, 2022 (WSR 22-22-059). This rule making renews the emergency rules while the permanent rule-making process continues.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 3, Repealed 0.

Date Adopted: February 24, 2023.

Joel Sacks
Director

OTS-3903.4

AMENDATORY SECTION (Amending WSR 21-21-043, filed 10/13/21, effective 11/13/21)

WAC 296-140-001 Definitions. (1) (~~"Category 1 clean energy project" means a project to:~~

~~(a) Develop a facility capable of generating not less than 1000 watts AC of electricity using any of the following principal sources of power: Fuel cells; wind; biomass energy; geothermal resource; tidal or wave energy; or technology that converts otherwise lost energy from exhaust;~~

~~(b) Develop solar energy systems capable of generating not less than 500 kilowatts AC of electricity.~~

~~(2) "Category 2 clean energy project" means a project to develop solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.~~

~~(3))~~ The following definitions apply to the entire chapter:

(a) "Community workforce agreement (CWA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a sin-

gle construction project, the CWA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

~~((4))~~ (b) "Department" means the department of labor and industries.

~~((5))~~ (c) "Good faith efforts" means the efforts by the project developer or its designated principle contractor that maximize the likelihood that the project will be built in compliance with the standards for certification. The totality of the circumstances and factors will be reviewed to determine good faith. Good faith efforts are not necessary when the standard requirements have been met.

~~((6))~~ (d) "Labor hours" means the total hours of laborers, workers, or mechanics receiving an hourly wage who are directly employed by the contractor and all subcontractors working upon the project. Labor hours does not include hours worked by foremen, superintendents, or owners except where the hours worked are counted in satisfying the required apprentice to journey supervision ratio as required by apprenticeship standards.

~~((7))~~ (e) "Local resident" means Washington laborers, workers, or mechanics receiving an hourly wage who live within 50 miles of the project being constructed unless the project is being constructed in a rural county, then it is defined as Washington workers who live within 200 miles of the project.

~~((8))~~ "~~Machinery and equipment~~" means ~~fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust.~~ "Machinery and equipment" does not include:

- ~~(a) Hand-powered tools;~~
- ~~(b) Property with a useful life of less than one year;~~
- ~~(c) Repair parts required to restore machinery and equipment to normal working order;~~
- ~~(d) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment;~~
- ~~(e) Buildings; or~~
- ~~(f) Building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.~~

~~(9))~~ (f) "Minority-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a minority business enterprise (MBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

~~((10))~~ (g) "Person" has the same meaning as in RCW 82.04.030.

(h) "Project labor agreement (PLA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the PLA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

~~((11))~~ (i) "Registered apprentice" means an apprentice registered in an apprenticeship program approved by the Washington state apprenticeship and training council according to chapters 49.04 RCW and 296-05 WAC.

~~((12))~~ (j) "Rural county" has the same definition as RCW 82.14.370(5).

~~((13))~~ (k) "Women-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a women business enterprise (WBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

~~((14))~~ (l) "Veteran-owned business" means a business certified by the Washington state department of veteran affairs under RCW 43.60A.190 or a business considered a veteran-owned business under 38 C.F.R. Part 74.

(2) The following definitions apply to WAC 296-140-002 through 296-140-004:

(a) "Category 1 clean energy project" means a project under RCW 82.08.962 and 82.12.962 to:

(i) Develop a facility capable of generating not less than 1,000 watts AC of electricity using any of the following principal sources of power: Fuel cells, wind, biomass energy, geothermal resource, tidal or wave energy, or technology that converts otherwise lost energy from exhaust;

(ii) Develop solar energy systems capable of generating not less than 500 kilowatts AC of electricity.

(b) "Category 2 clean energy project" means a project under RCW 82.08.962 and 82.12.962 to develop solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.

(c) "Machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, biomass energy, tidal or wave energy, geothermal resources, or technology that converts otherwise lost energy from exhaust. "Machinery and equipment" does not include:

(i) Hand-powered tools;

(ii) Property with a useful life of less than one year;

(iii) Repair parts required to restore machinery and equipment to normal working order;

(iv) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment;

(v) Buildings; or

(vi) Building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(3) The following definitions apply to WAC 296-140-005 and 296-140-006:

(a) "Eligible investment project" means an investment project of at least \$2,000,000 in either qualified buildings or qualified machinery and equipment, or both, for any of the following new, renovated, or expanded:

(i) Manufacturing operations;

(ii) Facilities to produce clean fuels, subject to the limitations in RCW 82.89.010 (8)(d), renewable hydrogen, green electrolytic hydrogen, or green hydrogen carriers; or

(iii) Storage facilities.

(b) "Green electrolytic hydrogen" means hydrogen produced through electrolysis and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(c) "Green hydrogen carrier" means a chemical compound, created using electricity or renewable resources as energy input and without

use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

(d) (i) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the eligible investment project, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020;

(C) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.89.020.

(ii) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(e) "Investment project" means an investment in either qualified buildings or qualified machinery and equipment, or both, including labor and services rendered in the planning, installation, and construction of the project.

(f) "Manufacturing" has the same meaning as "to manufacture" in RCW 82.04.120.

(g) "Manufacturing operation" means manufacturing tangible personal property exclusively incorporated as an ingredient or component of or used in the generation of:

(i) Passenger cars, light duty trucks, medium duty passenger vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or motorcycles that emit no exhaust gas from the onboard source of power, other than water vapor;

(ii) Charging and fueling infrastructure for electric, hydrogen, or other vehicle types that emits no exhaust gas from the onboard source of power, other than water vapor;

(iii) Renewable and green electrolytic hydrogen, including preparing renewable and green electrolytic hydrogen for distribution or converting it to a green hydrogen carrier;

(iv) Clean fuel with associated greenhouse gas emissions not exceeding 80 percent of the 2017 levels established under RCW 70A.535.020 or its successor statute under chapter 70A.535 RCW;

(v) Electricity from renewable resources; or

(vi) Storage facilities.

(h) "Operationally complete" means the eligible investment project is capable of being used for its intended purpose as described in the application.

(i) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw materials or finished goods if the facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax defer-

ral must be determined by apportionment of the costs of construction under rules adopted by the department.

(j) "Qualified machinery and equipment" means all new industrial fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control, monitor, or operate the machinery.

(k) "Recipient" means a person receiving a tax deferral under chapter 82.89 RCW.

(l) "Renewable resource" has the same meaning as in RCW 82.08.816.

(m) "Storage facility" means a facility that:

(i) Accepts electricity as an energy source and uses a chemical, thermal, mechanical, or other process to store energy for subsequent delivery or consumption in the form of electricity; or

(ii) Stores renewable hydrogen, green electrolytic hydrogen, or green hydrogen carrier for subsequent delivery or consumption.

(4) The following definitions apply to WAC 296-140-007 and 296-140-008:

(a) "Eligible area" means a qualifying commercial center.

(b) "Eligible investment project" means an investment project that is located, as of the date the application required by RCW 82.90.030, is received by the department, in an eligible area.

(c) (i) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the eligible investment project, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080; or

(C) Tenant improvements for the eligible investment project, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.90.080.

(ii) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(d) "Investment project" means an investment in a qualified solar canopy including labor and services rendered in the planning, installation, and construction of the project.

(e) "Operationally complete" means the solar canopy has received its final electrical inspection and is connected to the electrical grid.

(f) "Qualified solar canopy" means construction of a new solar canopy that has an area of at least 50,000 square feet.

(g) "Qualifying commercial center" means a property currently used for retail, industrial, office, or other commercial purposes, containing a parking area or other area dedicated for both vehicle use and placement of a solar canopy.

(h) "Recipient" means a person receiving a tax deferral under chapter 82.90 RCW.

(i) "Solar canopy" means an elevated structure, or multiple structures, containing a solar energy system, as defined in RCW 82.16.110, with a nameplate capacity of at least one megawatt of alternating current.

"Solar canopy" includes the solar energy system, power lines, and any equipment required to connect the solar canopy to the electrical grid.

[Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-001, filed 10/13/21, effective 11/13/21.]

AMENDATORY SECTION (Amending WSR 21-21-043, filed 10/13/21, effective 11/13/21)

WAC 296-140-002 Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962. (1) To qualify for department certification for the 50 percent retail sales and use tax remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Have 21 percent of the contract((s)) dollars awarded to women-owned businesses, minority-owned businesses, or veteran-owned businesses; or

(ii) Good faith efforts which include, but are not limited to:

(A) Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(D) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(E) Apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation and where possible, establishing flexible time frames for performance to encourage participation;

(F) Adequately researching interested subcontractors and their capabilities before rejecting their proposals; and

(G) Not relying on price alone in the selection of subcontractors and considering reasonable quotes from women, minority, and veteran-owned businesses, even if other quotes are less expensive.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the 24 month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws.

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals.

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Requesting the dispatch of local workers through union halls;

(C) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(D) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(E) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary

to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for department certification for the 75 percent retail sales and use tax remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent tax remittance under WAC 296-140-002(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for department certification for the 100 percent retail sales and use remittance for machinery and equipment installed and the labor and services rendered in respect to installing the machinery and equipment, a Category 1 clean energy project must have a signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the 50 percent and 75 percent tax remittance under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-002, filed 10/13/21, effective 11/13/21.]

AMENDATORY SECTION (Amending WSR 21-21-043, filed 10/13/21, effective 11/13/21)

WAC 296-140-004 Application, records and documentation, and certification for Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962.

(1) For Category 1 and Category 2 clean energy projects under RCW 82.08.962 and 82.12.962, businesses applying for department certification must complete an application in a form required by the department prior to the start of the project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contract(~~s~~) dollars with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) Documentation and evidence to support good faith efforts as necessary; and

(iv) Other records and documentation requested by the department.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

(ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;

(iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;

(iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;

(v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;

(vi) Documentation and evidence to support good faith efforts as necessary; and

(vii) Other records and documentation requested by the department.

(d) Standard for preferred entry by local workers.

(i) The total number of workers performing labor hours on the project;

(ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;

(iii) Employment records that contain the address of individuals hired to work on the project;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(e) Standard for payment of prevailing wages.

(i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and

(ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.

(f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.

(3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.

(4) For Category 1 clean energy projects seeking certification for the 50 and 75 percent tax remittance and Category 2 clean energy projects seeking certification for the 50 percent tax remittance, businesses must submit notice of project completion in a form required by the department. After receiving the notice of competition, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For Category 1 clean energy projects seeking certification for the 100 percent tax remittance, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for the construction and installation of the energy producing equipment have all been signed.

[Statutory Authority: RCW 82.08.962 and 82.12.962. WSR 21-21-043, § 296-140-004, filed 10/13/21, effective 11/13/21.]

NEW SECTION

WAC 296-140-005 Labor standard certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW. (1) To qualify for department certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid for under RCW 82.89.060, the eligible investment projects must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts before the initiation of construction of the investment project; and

(ii) Have 15 percent of contracts awarded to minority and women-owned businesses and five percent of contracts awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. Good faith efforts which include, but are not limited to:

(A) Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(D) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans,

specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(E) Apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation and where possible, establishing flexible time frames for performance to encourage participation;

(F) Adequately researching interested subcontractors and their capabilities before rejecting their proposals; and

(G) Not relying on price alone in the selection of subcontractors and considering reasonable quotes from women, minority, and veteran-owned businesses, even if other quotes are less expensive.

(H) Other efforts identified by OMWBE or DVA included in the plan required by (a) (i) of this subsection.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the 24-month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws;

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals; and

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or

(VI) Not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

- (i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or
- (ii) Good faith efforts which include, but are not limited to:
- (A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;
- (B) Requesting the dispatch of local workers through union halls;
- (C) Informing community partners/organizations of opportunities in advance of the start of the project or contract;
- (D) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and
- (E) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.
- (2) To qualify for department certification for the 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, the eligible investment projects must meet the following minimum requirements:
- (a) Meet the standards for certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, under subsection (1) of this section; and
- (b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.
- (3) To qualify for department certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, the eligible investment projects must have a signed PLA or CWA for the project prior to the initiation of construction of the investment project on the project. Separately meeting the standards for certification for the 50 percent and 75 percent certification under subsections (1) and (2) of this section are not required.
- (4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[]

NEW SECTION

- WAC 296-140-006 Application, records and documentation, and certification for projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage under chapter 82.89 RCW.** (1) Recipients applying for department certification under chapter 82.89 RCW, must complete an application in a form required by the department prior to the initiation of construction of the investment project.
- (2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:
- (a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:
- (i) A list of all businesses that have had contracts on the project, including information about their certifications for the wom-

en-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE or DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the plan; and

(v) Other records and documentation requested by the department.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

(ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;

(iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;

(iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;

(v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;

(vi) Documentation and evidence to support good faith efforts as necessary; and

(vii) Other records and documentation requested by the department.

(d) Standard for preferred entry by local workers.

(i) The total number of workers performing labor hours on the project;

(ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;

(iii) Employment records that contain the address of individuals hired to work on the project;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(e) Standard for payment of prevailing wages.

(i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and

(ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.

(f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.

(3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.

(4) For eligible investment projects seeking certification for the 50 and 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, recipients must submit notice of the project is operationally complete in a form required by the department. After receiving the notice project is operationally complete, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For eligible investment projects seeking certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.89.060, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for all phases have all been signed.

[]

NEW SECTION

WAC 296-140-007 Labor standard certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW. (1) To qualify for department certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the eligible investment projects must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Consult with OMWBE and DVA to develop a plan to meet the standards or good faith efforts; and

(ii) Have 15 percent of contract dollars awarded to minority and women-owned businesses and five percent of contract dollars awarded to veteran-owned businesses; or

(iii) Demonstrate good faith efforts included in the plan required by (a)(i) of this subsection. Good faith efforts which include, but are not limited to:

(A) Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(D) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(E) Apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation and where possible, establishing flexible time frames for performance to encourage participation;

(F) Adequately researching interested subcontractors and their capabilities before rejecting their proposals; and

(G) Not relying on price alone in the selection of subcontractors and considering reasonable quotes from women, minority, and veteran-owned businesses, even if other quotes are less expensive.

(H) Other efforts identified by OMWBE or DVA included in the plan required by (a) (i) of this subsection.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the 24-month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws;

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals; and

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of 15 percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or

(VI) Not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of 35 percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of 20 percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Requesting the dispatch of local workers through union halls;

(C) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(D) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(E) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for department certification for the 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the eligible investment projects must meet the following minimum requirements:

(a) Meet the standards for certification for the 50 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, under WAC 296-140-005(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for department certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the eligible investment projects must have a signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the 50 percent and 75 percent certification under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[]

NEW SECTION

WAC 296-140-008 Application, records and documentation, and certification for solar canopies placed on large-scale commercial parking

lots and other similar areas under chapter 82.90 RCW. (1) Recipients applying for department certification for solar canopies placed on large-scale commercial parking lots and other similar areas under chapter 82.90 RCW must complete an application in a form required by the department prior to the initiation of construction of the investment project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) A copy of the plan to meet the standards or good faith efforts developed in consultation with OMWBE or DVA;

(iv) A copy of OMWBE's or DVA's review to determine compliance with the plan; and

(v) Other records and documentation requested by the department, OMWBE or DVA.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

(ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;

(iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;

(iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;

(v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;

(vi) Documentation and evidence to support good faith efforts as necessary; and

(vii) Other records and documentation requested by the department.

(d) Standard for preferred entry by local workers.

(i) The total number of workers performing labor hours on the project;

(ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;

(iii) Employment records that contain the address of individuals hired to work on the project;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(e) Standard for payment of prevailing wages.

(i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and

(ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.

(f) Records and documents for a standard PLA or CWA. A signed copy of the PLA or CWA for the project.

(3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.

(4) For eligible investment projects seeking certification for the 50 and 75 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, recipients must submit notice of the project is operationally complete in a form required by the department. After receiving the notice project is operationally complete, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.

(5) For eligible investment projects seeking certification for the 100 percent reduction in the amount of deferred state sales and use tax to be repaid under RCW 82.90.060, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project. In the event there are separate PLAs or CWAs for different phases of construction, all PLAs and CWAs for the project must be submitted to the department before the start of each phase and the department will not certify the project until the PLAs or CWAs for all phases have all been signed.

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WSR 23-06-047
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 24, 2023, 2:38 p.m., effective February 24, 2023, 2:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The developmental disabilities administration is amending WAC 388-829-0087 to extend due dates for continuing education credits required under chapter 388-829 WAC.

Citation of Rules Affected by this Order: Amending WAC 388-829-0087.

Statutory Authority for Adoption: RCW 71A.12.030 and 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: Direct service providers and other staff will benefit from extra time provided to complete continuing education credits that are required as part of being a qualified provider. Failing to enact these extended deadlines may result in provider citations, which could affect client access to service providers.

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

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

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

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

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

Date Adopted: February 24, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4973.2

AMENDATORY SECTION (Amending WSR 22-14-062, filed 6/29/22, effective 7/30/22)

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. The hours must be applied no later than December 31, 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.

(a) All direct support professionals have until ((December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later,)) August 31, 2023, to complete any additional CE that may have become due ((while training waivers were in place)) between January 1, 2020, and February 28, 2023, in excess of the 12 hours of CE granted in subsection (4) of this section.

(b) For an employee required to complete training by their birthday under WAC ((388-101D-0085)) 388-829-0085 (1)(b), the employee ((will have 120 days from the end of the training waivers)) has until August 31, 2023, to complete ((the required CE if the employee's birthday is fewer than 120 days after the training waivers are lifted)) any additional CE that may have become due between January 1,

2020, and February 28, 2023, in excess of the 12 hours of CE granted in subsection (4) of this section.

[Statutory Authority: RCW 74.39A.074 and 71A.12.030. WSR 22-14-062, § 388-829-0087, filed 6/29/22, effective 7/30/22.]

WSR 23-06-057

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 27, 2023, 3:01 p.m., effective March 1, 2023]

Effective Date of Rule: March 1, 2023.

Purpose: These changes to chapter 388-845 WAC are necessary to implement amendments to the developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers as approved by the federal Centers for Medicare and Medicaid Services (CMS). Major changes to the chapter: Adjust the yearly limits applicable to certain waivers; add assistive technology to multiple waivers; remove the positive behavior support and consultation service from all waivers except the community protection waiver; amend the definition of the specialized evaluation and consultation service; amend the definition of community engagement; add teleservice as a service delivery method; add remote supports to multiple waivers; and make other changes necessary to implement amendments to DDA's HCBS waivers as approved by CMS.

Citation of Rules Affected by this Order: New WAC 388-845-0113, 388-845-0945, 388-845-0950, 388-845-0955, 388-845-2141, 388-845-2142 and 388-845-2143; repealing WAC 388-845-0501 and 388-845-0506; and amending WAC 388-845-0001, 388-845-0005, 388-845-0010, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0070, 388-845-0100, 388-845-0105, 388-845-0110, 388-845-0111, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0415, 388-845-0425, 388-845-0500, 388-845-0505, 388-845-0510, 388-845-0515, 388-845-0525, 388-845-0650, 388-845-0660, 388-845-0800, 388-845-0805, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0910, 388-845-0940, 388-845-1030, 388-845-1040, 388-845-1163, 388-845-1190, 388-845-1192, 388-845-1195, 388-845-1197, 388-845-1600, 388-845-1607, 388-845-1620, 388-845-1660, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-1865, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2000, 388-845-2005, 388-845-2010, 388-845-2130, 388-845-2150, 388-845-2155, 388-845-2200, 388-845-2205, 388-845-2210, 388-845-2260, 388-845-2270, 388-845-2283, 388-845-2285, 388-845-2290, 388-845-3055, 388-845-3056, 388-845-3065, 388-845-3075, 388-845-3080, 388-845-4000, and 388-845-4005.

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

Other Authority: 42 C.F.R. 441.301, Section 1915(c) of the Social Security Act.

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: Filing these amendments on an emergency basis is necessary to ensure federal compliance and maintain federal funding for the state. This is the third emergency filing on these sections and is necessary to keep the rules effective until DDA completes the permanent rule-making process. This subsequent filing incorporates additional changes recently approved by CMS; the rule text now contains CMS-approved changes effective September 1, 2022, and March 1, 2023. This filing supersedes WSR 23-02-022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 7, Amended 72, Repealed 2; 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 7, Amended 72, Repealed 2.

Date Adopted: February 27, 2023.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 23-08 issue of the Register.

**WSR 23-06-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 23-33—Filed February 27, 2023, 3:11 p.m., effective February 27, 2023, 3:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open razor clam seasons for Copalis and Mocrocks beaches.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000W; 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 recreational harvest in Razor Clam Areas 4 and 5. The Washington department of health has certified clams from Razor Clam Areas 4 and 5 to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 27, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000W 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. March 3, 2023 through 11:59 p.m. March 8, 2023, 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	Closed	Closed

Razor Clam Area	Date	Time
Area 2	Closed	Closed
Area 3	Closed	Closed
Area 4	March 4, 6, and 8	From 12:01 p.m. to 11:59 p.m.
Area 5	March 3, 5, and 7	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.

[]

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 9, 2023:

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

WSR 23-06-064

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed February 28, 2023, 10:52 a.m., effective February 28, 2023, 10:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Drinking water state revolving fund (DWSRF) loan program, loans for lead service line (LSL) identification and replacement. The department of health (department) is amending sections of chapter 246-296 WAC to redefine the term "disadvantaged community," update application requirements, and clarify loan rating and ranking criteria to conform with requirements in the federal bipartisan infrastructure law (BIL). The amendments allow the department to conform to the United States Environmental Protection Agency tools for identifying disadvantaged communities, modernizes the calculation for water systems to qualify as a disadvantaged community, removes water system plan requirements for those systems that are seeking a loan to address LSL identification and replacement, and removes obsolete priority rating and ranking criteria to allow more water systems to qualify for loans.

Citation of Rules Affected by this Order: Amending WAC 246-296-020, 246-296-100, and 246-296-130.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: Federal Safe Drinking Water Act, 40 C.F.R. Part 35 Subpart L; and BIL, P.L. 117-58.

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

Reasons for this Finding: The rule amendment is necessary for the preservation of the public health, safety, and general welfare of state citizens so that applicants can apply for LSL identification and replacement loans during the loan cycle that opens April 1, 2023, and closes April 28, 2023, which allows for up to full principal forgiveness to communities that qualify as disadvantaged in conformance with the requirements under BIL. This rule amendment increases public health protection by broadening the types of qualifying infrastructure improvements as outlined in BIL, in addition to traditional funding uses such as replacing aging infrastructure, installing treatment to remove regulated contaminants, restructuring failing water systems, and responding to public health emergency events.

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

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

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

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

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

Date Adopted: February 28, 2023.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4380.4

AMENDATORY SECTION (Amending WSR 22-07-025, filed 3/9/22, effective 4/9/22)

WAC 246-296-020 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Affordability" means a community's ability, on a per household basis, to pay for rate increases that result from a DWSRF loan project.

(2) "Application" means the DWSRF loan request form provided by the department.

(3) "Application package" means the DWSRF loan application form(s), requirements, terms of assistance, and related information created by the department.

(4) "Borrower" means the person that has legal and financial responsibility for the DWSRF loan.

(5) "Capitalization grant" means an award by EPA of funds to a state for the DWSRF and other purposes as authorized in Section 1452 of the SDWA.

(6) "Construction completion report" means a form provided by the department and completed for each specific construction project to document:

(a) Project construction in accordance with chapter 246-290 WAC and general standards of engineering practice;

(b) Physical capacity changes;

(c) Satisfactory test results; and

(d) The completed form is stamped with an engineer's seal, and signed and dated by a professional engineer.

(7) "Default" means failure to meet a financial obligation such as a DWSRF loan payment.

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

(9) "Disadvantaged community" means the service area of a proposed project within a public water system (~~where the project will result in:~~

~~(a) Water rates that are more than one and one-half percent of the MHI of the service area; or~~

~~(b) Restructuring, when one or more public water systems are having financial difficulties.)) and the water system:~~

(a) Serves less than 3,300 people; and

(i) Is identified as a disadvantaged community in accordance with the United States Environmental Protection Agency Environmental Climate and Economic Justice Screening Tool; or

(ii) Is in a geographic area where a combined household burden indicator and poverty prevalence indicator results in a moderate-high burden or above; or

(b) Service area is located in a rural county as defined by the office of financial management; and

(i) Is identified as a disadvantaged community in accordance with the United States Environmental Protection Agency Environmental Climate and Economic Justice Screening Tool; or

(ii) Is in a geographic area where combined household burden indicator and poverty prevalence indicator results in a moderate-high burden or above.

(10) "DWSRF (drinking water state revolving fund)" means the program that meets the requirements of RCW 70A.125.160 to administer federal funds and other funds deposited in a dedicated account used to finance public water system infrastructure improvements and drinking water program activities.

(11) "DWSRF loan" means an agreement between the department and the borrower in which the DWSRF provides funds for eligible assistance and the borrower agrees to repay the principal sum, applicable interest, and DWSRF loan fee to the DWSRF.

(12) "DWSRF loan fee" means a nonrefundable fee that is charged on all DWSRF loans, including DWSRF loans for which all or part of the principal is forgiven.

(13) "Ecology" means the Washington state department of ecology.

(14) "Eligible public water system" means a Group A community public water system, either privately or publicly owned, or a non-profit Group A noncommunity public water system.

(15) "Emergency" means an event such as a natural disaster or other unforeseen or unavoidable circumstances that causes damage or disrupts normal public water system operations and requires immediate action to protect public health and safety. A failure to maintain, replace, reconstruct, upgrade, or make necessary infrastructure improvements does not constitute an emergency.

(16) "EPA" means the United States Environmental Protection Agency.

(17) "Green project" means a public water system infrastructure improvement project that includes water efficiency, energy efficiency, or environmental innovations as follows:

(a) Water efficiency projects use improved technologies and practices to deliver equal or better service with less water, including preventing water loss and reducing customer demand to protect water resources;

(b) Energy efficiency projects use improved technologies and practices to reduce energy consumption or produce cleaner energy for use in water treatment;

(c) Environmentally innovative projects use new or innovative approaches to manage water resources in a more environmentally sustainable way. Projects that are considered environmentally innovative include those that:

(i) Prevent or remove pollution;

(ii) Help a community adapt to climate change through water resource protection programs; or

(iii) Result in other proven, sustainable environmental benefits.

(18) "Group A public water system" is defined and referenced under WAC 246-290-020.

(19) "Group B public water system" means a public water system that is not a Group A public water system and is defined and referenced under WAC 246-291-005.

(20) "Household burden indicator" means the total combined annual basic drinking water, wastewater, and storm water cost as a percent of the upper limit of the lowest 20th percentile household income.

(21) "Individual water supply system" means any water system that is not subject to chapter 246-290 or 246-291 WAC; and provides water to either one single-family residence, or to a system with four or fewer connections, all of which serve residences on the same farm.

~~((21))~~ (22) "IUP (intended use plan)" means the federally required document prepared each year by the department identifying the intended uses of the DWSRF funds and describing how those uses support the DWSRF goals.

~~((22))~~ (23) "Loan closeout" means a loan agreement is complete when the loan is repaid in full.

~~((23) "MHI (median household income)" means the midpoint or the average of two midpoints in the range of household incomes in the project's service area. The median divides the list of households in a service area into two parts; half of the households exceed the median, and half of the households are below the median.)~~

(24) "Multiple benefit" means projects that address more than one type of health risk.

(25) "Municipality" means a city, town, special purpose district, or municipal corporation established according to the applicable laws of this state.

(26) "NEPA" means the National Environmental Policy Act of 1969, 42 United States Code 4321 et seq., PL-91-190.

(27) "Nonprofit organization" means an entity that has a federal tax exempt status identification number.

(28) "Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

(29) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(30) "Poverty prevalence indicator" is the result of the service area population below 200 percent of the federal poverty limit divided by the population for whom poverty status is determined.

(31) "Principal forgiveness" means that a reduction of a percentage of the total loan amount is not required to be paid back by the borrower. Principal forgiveness is applied when the project is complete.

~~((31))~~ (32) "Project report" means a department-approved document the borrower or borrower's agency develops under WAC 246-290-110.

~~((32))~~ (33) "Public water system" is defined and referenced under WAC 246-290-020.

~~((33))~~ (34) "Receivership" means the voluntary or involuntary transfer of ownership and operation of a public water system according to chapter 7.60 RCW and RCW 43.70.195.

~~((34))~~ (35) "Regional benefit" means project improvements that affect more than one public water system.

~~((35))~~ (36) "Restructuring" means changing public water system ownership including, but not limited to:

(a) Consolidation of two or more existing public water systems into a single public water system;

(b) Transfer of ownership; or

(c) Receivership.

~~((36))~~ (37) "SDWA (Safe Drinking Water Act)" means Public Law 93-523, including all amendments.

~~((37))~~ (38) "SEPA" means the State Environmental Policy Act under chapter 43.21C RCW.

~~((38))~~ (39) "Set-aside" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities under Section 1452 of the SDWA, to fund new programs, and for other drinking water program activities.

~~((39))~~ (40) "SERP (state environmental review process)" means the NEPA-like environmental review process adopted by Washington state to comply with the requirements of 40 C.F.R. 35.3140. SERP combines the SEPA review with additional elements to comply with federal requirements.

~~((40))~~ (41) "Surface water" means a body of water open to the atmosphere and subject to surface runoff.

~~((41))~~ (42) "Sustainable" means able to continue a benefit into the future as a result of appropriate public water system design, processes, operations, governance, and maintenance.

~~((42))~~ (43) "SWSMP (small water system management program)" means a document for a small nonexpanding Group A public water system developed and approved under WAC 246-290-105.

~~((43))~~ (44) "System capacity" means a public water system's operational, technical, managerial, and financial capability to achieve and maintain ongoing compliance with all relevant local, state, and federal plans and regulations.

~~((44))~~ (45) "Transfer of ownership" means to change legal ownership of a public water system from one person to another.

~~((45))~~ (46) "Water right" means a legal authorization, such as a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

~~((46))~~ (47) "WFI (water facilities inventory)" means a department form summarizing a public water system's characteristics.

~~((47))~~ (48) "WSP (water system plan)" means a document that a Group A community public water system submits to the department as required under WAC 246-290-100. The plan addresses a public water system's capacity to comply with relevant local, state, and federal plans and regulations, describes the public water system's present and future needs, and establishes eligibility for funding under this chapter.

[Statutory Authority: RCW 43.70.040 and 2020 c 20. WSR 22-07-025, § 246-296-020, filed 3/9/22, effective 4/9/22. Statutory Authority: RCW 70.119A.170 as amended by 2016 c 111. WSR 16-14-086, § 246-296-020, filed 7/5/16, effective 8/5/16. Statutory Authority: RCW 70.119A.170. WSR 16-06-100, § 246-296-020, filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-020, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-020, filed 10/24/01, effective 11/24/01.]

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

- WAC 246-296-100 DWSRF loan eligibility and application requirements.** To be eligible for a DWSRF loan, an applicant shall:
- (1) Document that the public water system has the system capacity to stay in compliance with applicable federal, state, and local drinking water requirements, unless:
 - (a) The funding will bring the public water system into compliance; and
 - (b) The owner of the public water system agrees to reasonable and appropriate changes to stay in compliance.
 - (2) ~~((Before applying for a DWSRF loan,))~~ Except when applying for a DWSRF loan that addresses lead service line identification or lead service line replacements; the applicant shall have a current department-approved WSP or SWSMP that:
 - (a) Includes the proposed project; and
 - (b) Addresses any difficulties with system capacity((?)).
 - (3) Comply with federal, state, and local drinking water requirements or a variance under WAC 246-290-060, unless the DWSRF loan will fund projects that result in public water system compliance;
 - (4) Comply with any department or EPA orders;
 - (5) Install a source meter on each source if meters are not already installed;
 - (6) Install service meters on all service connections if meters are not already installed within the project area, unless:
 - (a) The project is for a transient noncommunity public water system;
 - (b) The project is for a mobile home park with a source or master meter;
 - (c) The project is for an apartment building or complex with a source or master meter; or
 - (d) The department determines that installing meters is:
 - (i) Prohibitive for the DWSRF project as a whole; and
 - (ii) Waiving the meter requirement is necessary to award a DWSRF loan for a project to resolve high priority public health problems.
 - (7) Have no outstanding fees or penalties owed to the department.
 - (8) Provide documentation that the project has sufficient water rights as determined by ecology.
 - (9) Comply with the requirements of WAC 246-296-120(1).

[Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-100, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-100, filed 10/24/01, effective 11/24/01.]

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

- WAC 246-296-130 Project priority rating and ranking criteria.** The department shall, at a minimum, consider the following to assign points, and rate and rank proposed projects:
- (1) Criteria for risk categories and points based on:
 - (a) Type and significance of public health problems the project will resolve;

(b) If the project is needed to bring the public water system into compliance with federal, state, and local drinking water requirements;

(c) Current compliance status; and

(d) ~~((Affordability on a per household basis, determined by comparing the community's average water rate to the MHI in the community's service area, for a community public water system.))~~ Disadvantaged community status.

(2) Additional points based on the type of project being proposed, if the project:

(a) Is to restructure a public water system;

(b) Creates a sustainable regional public health benefit;

(c) Has multiple benefits that are sustainable;

(d) Is consistent with the Growth Management Act;

(e) Is financially sustainable; or

(f) Qualifies as a green project(~~(~~

~~g) Serves a disadvantaged community; or~~

~~(h) Results in service meters on existing services not currently metered)).~~

[Statutory Authority: RCW 70.119A.170 as amended by 2016 c 111. WSR 16-14-086, § 246-296-130, filed 7/5/16, effective 8/5/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-130, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-130, filed 10/24/01, effective 11/24/01.]

WSR 23-06-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-26—Filed February 28, 2023, 4:21 p.m., effective March 1, 2023]

Effective Date of Rule: March 1, 2023.

Purpose: The purpose of this emergency rule is to open harvest of red [sea] urchins in District 3.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000T; 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 opens harvest for red sea urchins in District 3 because there is quota remaining at the end of the harvest season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 28, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000U Commercial sea urchin fisheries. Effective March 1, 2023, 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 3 and District 4.

3. The maximum cumulative landings for red sea urchins for each weekly fishery opening period is 1,500 pounds per valid designated sea urchin harvest license.

4. The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1.

5. The maximum cumulative landings for green sea urchins for each weekly fishery opening period is 2,500 pounds per valid designated sea urchin harvest license.

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REPEALER

The following section of the Washington Administrative Code is repealed effective March 1, 2023:

WAC 220-340-75000T Commercial sea urchin fisheries.
(23-23)