

WSR 21-11-002
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed May 6, 2021, 1:39 p.m., effective May 6, 2021, 1:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is establishing chapter 182-521 WAC, Public health emergency rules; and creating a new section under WAC 182-521-0100 Disregarded income, to identify income that the agency does not count when determining apple health eligibility.

Citation of Rules Affected by this Order: New WAC 182-521-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Not applicable.

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

Reasons for this Finding: In response to the current public health emergency surrounding the outbreak of the coronavirus disease (COVID-19), along with the governor of Washington's emergency proclamations related to COVID-19, this rule making is necessary to preserve the public health, safety, and general welfare by identifying income that the health care authority (HCA) does not count when determining apple health eligibility.

This emergency filing is necessary to renew the current emergency rule which is set to expire on May 29, 2021, while the permanent rule-making process proceeds. Since the previous emergency filing under WSR 20-20-075, HCA sent a draft of the rules to external stakeholders for feedback. As a result of comments received, HCA revised these emergency rules to include changing the end date of lost wage assistance to September 6, 2021, and adding the following to the items listed as income disregards: (1) Unemployment compensation received during the public health emergency for certain non-MAGI eligibility groups, (2) payments from the pandemic relief program as authorized by the governor, and (3) federal pandemic unemployment compensation authorized by the Coronavirus Aid, Relief, and Economic Security Act of 2020 and extended by the American Rescue Plan Act of 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: May 6, 2021.

Wendy Barcus
Rules Coordinator

Chapter 182-521 WAC

PUBLIC HEALTH EMERGENCY RULES

NEW SECTION

WAC 182-521-0100 Disregarded income and resources. (1) The health care authority (agency) does not count as income when determining apple health eligibility any Federal Pandemic Unemployment Compensation (FPUC) or Recovery Rebates authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act or other needs-based assistance authorized as a result of the COVID-19 public health emergency as described in this section.

(2) The agency disregards as income for medicaid determinations and eligibility cost-sharing calculations all of the following:

(a) An emergency increase in unemployment compensation benefits of an additional six hundred dollars per week issued as compensation for the period of March 18, 2020, through July 31, 2020;

(b) Unemployment compensation issued due to the federal Disaster Relief Fund authorized for states to off-set lost wages due to the COVID-19 pandemic, known as Lost Wage Assistance (LWA). This income is intended for weeks ending August 1, 2020, through September 6, 2021. The weekly amount for this benefit is three hundred dollars per week;

(c) Unemployment compensation received during the public health emergency for all nonmodified adjusted gross income (non-MAGI) eligibility groups, except for individuals receiving a special income disregard as described in WAC 182-512-0840. For these individuals, unemployment compensation is counted to determine continued eligibility for that coverage. If the result is medically needy coverage, then the disregard is applied;

(d) Payments from the pandemic relief payment program as authorized by Governor Jay Inslee on December 27, 2020; and

(e) Federal Pandemic Unemployment Compensation authorized by the Coronavirus Aid, Relief, and Economic Security Act of 2020 and extended by the American Rescue Plan Act of 2021 through September 6, 2021, in the amount of three hundred dollars per week.

(3) The agency considers Pandemic Recovery Rebates (stimulus checks) to be exempt as income and does not count them as a resource for twelve months after receipt.

(4) The agency considers needs-based assistance from other agencies or tribal entities to be exempt as income.

(5) The agency excludes income described in this section from the post-eligibility treatment of income (PETI) calculation.

(6) Any income received as unemployment compensation not described within this section is otherwise countable

and the agency counts it when determining MAGI-based apple health eligibility.

(7) These rules are in effect until the later of:

(a) The date the client is receiving any benefits described in this rule; or

(b) The end of the month the Secretary of the U.S. Department of Health and Human Services declares the COVID-19 public health emergency to be over.

WSR 21-11-005
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed May 7, 2021, 10:02 a.m., effective May 9, 2021]

Effective Date of Rule: May 9, 2021.

Purpose: The department is adopting WAC 388-437-0015 Good cause extension of Social Security number (SSN) requirement for basic food applicants during COVID-19, to comply with approval from the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) and extend the amount of time an applicant or recipient can provide their SSN during the COVID-19 pandemic. The department is also amending WAC 388-476-0005 Social Security number requirements, to better align rule language with federal regulations governing the Supplemental Nutrition Assistance Program (SNAP).

The department filed a CR-101 Preproposal statement of inquiry for WAC 388-437-0015 as WSR 21-03-009 on January 8, 2021, a CR-101 Preproposal statement of inquiry for WAC 388-476-0005 as WSR 20-22-079 on November 3, 2020, and a CR-102 Proposed rule making as WSR 21-10-055 on April 29, 2021, as part of the permanent rule-making process.

Citation of Rules Affected by this Order: New WAC 388-437-0015; and amending WAC 388-476-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

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: Under current federal law, all applicants and recipients must have a valid SSN to receive basic food benefits. For those who do not yet have an SSN, they are given the month of application and the month following to provide this information. In addition, they may be extended on a month-by-month basis upon continued showing of good cause. Due to the conditions of the COVID-19 pandemic, FNS approved a waiver allowing the good cause period to be extended to the month of application plus four additional months. This filing aligns rule with this waiver approval, which supports access to basic food benefits.

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

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

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

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

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

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

Date Adopted: May 7, 2021.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-437-0015 Good cause extension of Social Security number (SSN) requirement for basic food applicants during COVID-19. Applicants for food benefits must provide an SSN under WAC 388-476-0005(1) to qualify. For those who do not have an SSN, they must apply for one and provide it to DSHS when issued.

(1) For applicants with an initial application date of March 1, 2020, or later, who have established good cause for failure to provide an SSN, the good cause period is extended for three months, in addition to the application month and the next month under WAC 388-476-0005 (5)(a), for a total of up to five months.

(2) To continue receiving benefits beyond the five month good cause period, the applicant must show good cause for failure to apply for an SSN on a monthly basis in accordance with WAC 388-476-0005 (5)(b).

(3) Adjustments under subsection (1) of this section will continue each month until the U.S. Department of Agriculture, Food and Nutrition Service no longer approves these adjustments.

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-476-0005 Social Security number requirements. (1) With certain exceptions, each person who applies for or receives cash or food assistance benefits must provide to the department a Social Security number (SSN), or numbers if more than one has been issued. For SSN requirements for immigrants, see WAC 388-424-0009.

(2) If the person is unable to provide the SSN, either because it is not known or has not been issued, the person must:

- (a) Apply for the SSN;
- (b) Provide proof that the SSN has been applied for; and
- (c) Provide the SSN when it is received.

(3) Assistance will not be delayed, denied or terminated pending the issuance of an SSN by the Social Security Administration. However, a person who does not comply with these requirements is not eligible for assistance.

(4) For cash and food assistance benefits, a person cannot be disqualified from receiving benefits for refusing to apply for or supply an SSN based on religious grounds.

(5) For food assistance programs:

(a) A person can receive benefits for the month of application and the following month if the person attempted to apply for the SSN and made every effort to provide the needed information to the Social Security Administration.

(b) For a person to receive benefits after the time period provided in subsection (5)(a) of this section, good cause for failure to apply for the SSN must be shown monthly.

(c) If a person is unable to provide proof of application for a SSN for a newborn:

(i) The newborn can receive basic food with the household (~~while effort is being made~~) makes efforts to get the SSN.

(ii) For the newborn to continue receiving basic food benefits; the household must provide proof of application for SSN or the SSN for the newborn, at the next recertification, or within six months following the month the baby is born, whichever is later.

(6) (~~There is~~) No SSN (~~(requirement)~~) is required for the following programs:

- (a) The consolidated emergency assistance program; and
- (b) The refugee cash assistance program.

WSR 21-11-007

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed May 7, 2021, 10:46 a.m., effective May 7, 2021, 10:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The emergency rule provides clarity for which unemployment insurance benefit claimants are subject to a one week waiting period and which claimants are exempt. The department filed WSR 21-03-007 on January 7, 2021, to adopt WAC 192-110-006. This emergency rule replaces WAC 192-110-006 to reflect changes required due to the passage of the federal American Rescue Plan Act of 2021.

Citation of Rules Affected by this Order: New WAC 192-110-006.

Statutory Authority for Adoption: RCW 50.12.040.

Other Authority: Proclamation by the Governor 20-21 through 20-21.11.

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: On March 28, 2020, pursuant to the governor's emergency powers, the governor issued Proclamation 20-21, which waived the statutory requirement that unemployment insurance claimants serve an unpaid waiting week before claimants can receive unemployment benefits. Since that time, leaders in the legislature repeatedly authorized the extension of this proclamation and the statutory waiver until December 28, 2020, at which time, the proclamation expired.

On February 8, 2021, the governor signed ESSB 5061, chapter 2, Laws of 2021. Section 8 of ESSB 5061 allows for waiting weeks for unemployment insurance benefits to be waived when the federal government pays or reimburses the first week of benefits. In March of 2021, Congress passed, and the president signed the American Rescue Plan Act of 2021. The act provides that from the week ending April 4, 2020, through the week ending September 4, 2021, the federal government will fully reimburse employment security for the first week of benefits during any week for which there is no requirement that claimants serve a waiting week in order to receive benefits.

This emergency rule is necessary to prevent further economic hardship on Washington employers who had to lay off employees as a result of COVID-19, especially in light of the fact that the first week an individual was unemployed has traditionally been an unpaid week, as well as the fact that the first week of benefits is currently being fully reimbursed by the federal government.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 7, 2021.

Dan Zeitlin
Policy Director

NEW SECTION

WAC 192-110-006 Waiving the week requirement when the first week of unemployment benefits are federally funded. Starting after the week ending March 7, 2020, through the week ending September 4, 2021, and any other week where the one week waiting period is fully paid or fully reimbursed by the federal government, you will not be required to serve an unpaid waiting week before you receive unemployment insurance benefits.

WSR 21-11-008

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 7, 2021, 10:47 a.m., effective May 9, 2021]

Effective Date of Rule: May 9, 2021.

Purpose: Clarify that the department does not regulate community-based quarantine and isolation facilities operated by or under contract with a local government.

Citation of Rules Affected by this Order: Amending WAC 110-145-1305.

Statutory Authority for Adoption: RCW 74.13.031 and 74.15.030.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. WAC 110-145-1305 was adopted under WSR 20-19-052, 20-11-014, and 21-03-016 on May 12, September 10, 2020, and January 8, 2021, respectively, to allow for the expedient delivery of life saving services to a highly vulnerable population in Washington state—homeless youth who have recently been diagnosed with, infected by, or who came into contact with COVID-19. Circumstances changed under Proclamations 20-25 through 20-25.12 "Safe Start - Stay Health[y]" County-by-County Phased Reopening, but conditions prompting the state of emergency declaration still exist and justify the need for WAC 110-145-1305 to remain in effect.

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

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

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

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

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

Date Adopted: May 7, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-145-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and emotional condition.

"Business hours" means hours during the day in which state business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

"Capacity" means the age range, gender, and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Chapter" means chapter 110-145 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

(a) Under eighteen years old;

(b) Up to twenty-one years of age and enrolled in services through the department of social and health services developmental disabilities administration (DDA) the day prior to their eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

(c) Up to twenty-one years of age and participates in the extended foster care program;

(d) Up to twenty-one years of age with intellectual and developmental disabilities;

(e) Up to twenty-five years of age and under the custody of juvenile rehabilitation.

"Community-based COVID-19 isolation and quarantine facility" means any person, firm, partnership, association, corporation, or facility operated by or pursuant to a contract with a county in Washington state, and that provides temporary isolation and quarantine services to homeless youth who have been diagnosed with, infected with, or exposed to COVID-19. A community-based COVID-19 isolation and quarantine facility does not qualify as an "agency" under RCW 74.15.020(1). Such facilities are exempt from department licensing under RCW 74.15.020 (2)(1).

"Child placing agency" or "CPA" means an agency licensed to place children for temporary care, continued care, or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"Crisis residential center (secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family or in need of emergency placement.

"CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

"DDA" means the developmental disabilities administration. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department" or "DCYF" means the department of children, youth, and families.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care" means direct, hands-on personal care and supervision to group care children and youth.

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center (ERC)" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through seventeen years for up to seventy-two hours to prevent child abuse or neglect per RCW 74.15.020 (d). ERCs may choose to be open up to twenty-four hours a day, seven days a week. Facilities may also provide family assessment, family support services and referral to community services.

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for thirty or fewer days.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns, and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

"LD" means the licensing division of DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of DCYF and the child's whereabouts are unknown, the child has left care without the permission of the child's caregiver or DCYF, or both. This does not include children in a dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at risk youth or children in need of services, and their parents.

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

- (a) A decision issued by an administrative law judge;
- (b) A final determination, decision, or finding made by an agency following an investigation;
- (c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;
- (d) A revocation, denial, or restriction placed on any professional license; or
- (e) A final decision of a disciplinary board.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or runaway youth in need of emergency sleeping arrangements.

Tami M. Thompson
Regulatory Affairs Manager

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant, and anti-anxiety medications.

"Relative" means a person who is related to a child per RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Staff" or "staff member" means a person who provides services for your facility and is paid by your facility. The definition of staff member includes paid interns.

"Staffed residential home" means a licensed facility that provides twenty-four-hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Volunteer" means a person who provides services for your facility without compensation.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We, our, and us" refers to DCYF and its staff.

"Young child" refers to a child age twelve months through eight years old.

WSR 21-11-011

RECISSION OF EMERGENCY RULES DEPARTMENT OF HEALTH

[Filed May 7, 2021, 12:16 p.m., effective May 9, 2021]

This memo serves as notice that, effective May 9, 2021, the department of health dental quality assurance commission (commission) is rescinding the CR-103E for WAC 246-817-120 Examination content, which was filed April 8, 2021, and published in WSR 21-09-009.

The commission is withdrawing this CR-103E because it is no longer needed. The CR-103 permanent rule was filed for WAC 246-817-120, Examination content, on April 8, 2021, published in WSR 21-09-011, and becomes effective on May 9, 2021. The permanent rule supersedes the emergency rule.

Individuals requiring information on this rule should contact Jennifer Santiago, program manager, at jennifer.santiago@doh.wa.gov or 360-236-4893.

WSR 21-11-012

EMERGENCY RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed May 7, 2021, 12:51 p.m., effective May 9, 2021]

Effective Date of Rule: May 9, 2021.

Purpose: Purpose: Chapter 296-307 WAC, Temporary worker housing, the department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed a second emergency rule on September 10, 2020, WSR 20-19-048 and 20-19-049, and a third emergency rule on January 8, 2021, WSR 21-03-012 and 21-03-013, to protect occupants from COVID-19 hazards in licensed temporary worker housing.

This emergency rule continues the requirements under the previous emergency rules that operators: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters, prohibit the use of the top of bunk beds; (5) ensure the ventilation requirements are met, including specific requirements for mechanical ventilation systems or that windows are open in buildings without mechanical ventilation; (6) ensure frequent cleaning and disinfecting of surfaces; (7) identify and isolate occupants with suspect and confirmed positive cases; (8) ensure isolation requirements are met; (9) report to L&I division of occupational safety and health (DOSH) within twenty-four hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (10) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

This emergency rule will continue to include an option for group shelters. A group shelter is where a cohort of up to fifteen occupants stay together and separated from others for housing, work, and transportation. The maximum number of occupants, fifteen, will not change. All dwelling units, facilities, and services must be only used by the group shelter members. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements. Under the group shelter options, both the top and bottom bunk of bunk beds may be used, although the occupants must sleep head to toe.

Changes to this emergency rule include:

- Allows multiple fully vaccinated group shelters to share common areas, including kitchens and bathrooms, at the same time with physical distancing and mask use. Also allows multiple fully vaccinated group shelters to be transported together when using appropriate personal protective equipment.
- Revises the requirements for licensed health care professionals monitoring of occupants in isolation.
 - o Visits are now required to be daily rather than twice daily and may be performed in-person or through telemedicine with a review of symptoms, temperature, and pulse oximetry.
 - o For telemedicine visits, the operator must provide a pulse oximeter and thermometer for the occupants' use and ensure there is a working telephone with a clear connection.
 - o Adds language to ensure that interpretative services are provided when needed.
 - o Removes the requirements that isolation facilities be located within specified distances to key medical services but ensures the health care professional conducting the visits knows the distance from the isolation facilities [facilities] to the key medical services.
 - o Language is added to ensure that operators facilitate transportation for occupants in isolation to in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.
- Clarifies that all occupants, except those who are fully vaccinated, must be quarantined when exposed to COVID-19. All workers in quarantine who develop symptoms or test positive must be moved to isolation.
- Clarifies the requirement to allow entry by community health workers and community-based outreach workers by adding definitions.
- Makes other changes for consistency and clarity.

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

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

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

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

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay

Healthy, and the amendments transitioning to a phased-in approach to reopening Washington state under the current Proclamation 20-25.12 "Healthy Washington - Roadmap to Recovery." Under Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of DOH, L&I, and the Centers for Disease Control and Prevention. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the first emergency rule, the governor issued Proclamation 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place, the requirements covered by the rule were not included in the governor's order.

As new information, data, and science becomes available, it is important that DOH and L&I continue to update and immediately amend existing rules to help prevent the spread of COVID-19. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the 2021 growing season. The governor's Stay Home, Stay Healthy order as amended to the Roadmap for Recovery and Proclamation 20-57.1 are currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

Date Adopted: May 7, 2021.

Joel Sacks
Director

NEW SECTION

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

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

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

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

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

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

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

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities.

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

(ii) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe; **OR**

(B) Beds are separated by a bed length, floor to near ceiling temporary nonpermeable barrier (e.g., plexiglass, plastic sheeting, etc.) placed perpendicular to wall such that a thirty-six inch minimum aisle exists between the bed and the temporary barrier and occupants sleep head toward wall. The temporary barriers:

(I) Must be made of fire resistant or fire retardant treated material;

(II) Do not impede required egress;

(III) Do not compromise ventilation/air flow; and

(IV) Are cleaned at least daily.

(C) Except as allowed under (f) of this subsection, only the bottom bed of bunk beds may be used.

(ii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time. Any barriers placed near cooking equipment must be fire retardant.

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

(v) The operator must discourage occupants from visiting buildings or sleeping quarters that are not their assigned living spaces, to minimize potential cross-contamination.

(e) Ventilation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: Consider using portable high-efficiency particulate air (HEPA) fan/filtration systems to increase clean air, especially in higher-risk areas.

(f) Group shelters. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "Group shelter" means a dwelling unit or cluster of dwelling units with sleeping facilities for up to fifteen occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

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

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

(B) Maintain egress requirements.

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

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

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

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

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

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

(D) Schedules are shared and conspicuously posted.

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

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

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

(g) A fully vaccinated group shelter is one where all occupants are themselves fully vaccinated. Occupants who are vaccinated against COVID-19 by a two-dose mRNA vaccine (such as Moderna and Pfizer), or a single dose vaccine (such as Johnson & Johnson), are considered "fully vaccinated" two weeks after the final dose of vaccine (the second dose for a two-dose regimen, or the single dose for a single-dose regimen).

(i) Vaccination status must be determined by the housing operator. The following are acceptable as proof of full vaccination: A vaccination card (which includes name of person vaccinated, type of vaccine provided, and date last dose administered); or a photo of a vaccination card as a separate document; or a photo of the attendee's vaccine card stored on a phone or electronic device; or documentation of vaccination from a health care provider electronic health record or state immunization information system record. Self-reported vaccination records that are not verified by a health care provider cannot be accepted.

(ii) The vaccination records must be provided on request of the department.

(iii) Fully vaccinated group shelters may share common areas, including kitchens and bathrooms. Physical distancing and masks are required in these areas.

(iv) Occupants of fully vaccinated group shelters may be transported together with occupants of other fully vaccinated group shelters using appropriate personal protective equipment.

(v) Operators must maintain a list of occupants assigned to fully vaccinated group shelters, including the date each occupant was assigned and the date each occupant's vaccination status was verified.

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

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

(ii) Wipe down and disinfect surfaces that are touched by multiple individuals at least daily using an EPA-approved disinfectant or diluted bleach solution.

(iii) Provide adequate supplies and instructions to occupants for cleaning and disinfecting of living spaces of dwelling units, family shelters, and group shelters. Occupants must be able to clean and disinfect frequent touched surfaces, bathroom, and cooking areas as needed. Chemicals used for cleaning and disinfecting must be labeled as to its intended purpose in a language commonly understood by the occupants using labeling requirements in chapter 296-901 WAC, Globally harmonized system for hazard communication.

(iv) Ensure adequate supplies of single-use soap and paper towels at all sinks to allow for frequent handwashing.

Portable handwashing stations or hand sanitizer may be provided in addition to required facilities.

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

(vi) Clean and disinfect areas where occupants with suspect COVID-19 exposure have been according to CDC guidelines and before the space is used by others.

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

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

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

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

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

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

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

(vi) Confirmed SARS-CoV-2 positive cases must be isolated and only housed with other confirmed cases and must

have separate bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the confirmed occupant will have the option to isolate with the family members.

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

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

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

(i) Daily well-being checks must be done in person by the employer or housing operator.

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

(iii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xi) The operator must provide food and water.

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

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

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

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

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

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

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

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

WSR 21-11-016

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed May 7, 2021, 5:19 p.m., effective May 9, 2021]

Effective Date of Rule: May 9, 2021.

Purpose: Chapter 246-358 WAC, Temporary worker housing, the department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed a second emergency rule on September 10, 2020, WSR 20-19-048 and 20-19-049, and a third emergency rule on January 8, 2021, WSR 21-03-012 and 21-03-013, to protect occupants from COVID-19 hazards in licensed temporary worker housing.

This emergency rule continues the requirements under the previous emergency rules that operators: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters, prohibit the use of the top of bunk beds; (5) ensure the ventilation requirements are met, including specific requirements for mechanical ventilation systems or that windows are open in buildings without mechanical ventilation; (6) ensure frequent cleaning and disinfecting of surfaces; (7) identify and isolate occupants with suspect and confirmed positive cases; (8) ensure isolation requirements are met; (9) report to L&I division of occupational safety and health (DOSH) within twenty-four hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (10) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

This emergency rule will continue to include an option for group shelters. A group shelter is where a cohort of up to fifteen occupants stay together and separated from others for housing, work, and transportation. The maximum number of occupants, fifteen, will not change. All dwelling units, facilities, and services must be only used by the group shelter members. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements. Under the group shelter options, both the top and bottom bunk of bunk beds may be used, although the occupants must sleep head to toe.

Changes to this emergency rule include:

(1) Allows multiple fully vaccinated group shelters to share common areas, including kitchens and bathrooms, at the same time with physical distancing and masks use. Also allows multiple fully vaccinated group shelters to be transported together with occupants of other fully vaccinated group shelters when using appropriate personal protective equipment.

(2) Revises the requirements for licensed health care professionals monitoring of occupants in isolation. Including:

(a) Visits are now required to be daily rather than twice daily and may be performed in-person or through telemedicine with a review of symptoms, temperature, and pulse oximetry;

(b) For telemedicine visits, the operator must provide a pulse oximeter and thermometer for the occupants' use and ensure there is a working telephone with a clear connection;

(c) Adds language to ensure that interpretative services are provided when needed; and

(d) Removes the requirements that isolation facilities be located within specified distances to key medical services but ensures the health care professional conducting the visits knows the distance from the isolation facilitates to the key medical services; language is added to ensure that operators facilitate transportation for occupants in isolation to in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.

(3) Clarifies that all occupants, except those who are fully vaccinated, must be quarantined when exposed to COVID-19. All workers in quarantine who develop symptoms or test positive must be moved to isolation.

(4) Clarifies the requirement to allow entry by community health workers and community-based outreach workers by adding definitions.

(5) Makes other changes for consistency and clarity.

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

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

Statutory Authority for Adoption: RCW 70.114A.065.

Other Authority: RCW 43.70.335.

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

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy, and the amendments transitioning to a phased-in approach to reopening Washington state under the current Proclamation 20-25.12 "Healthy Washington - Roadmap to Recovery." Under Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of DOH, L&I, and the Centers for Disease Control and Prevention. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements

requiring emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the first emergency rule, the governor issued Proclamation 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place, the requirements covered by the rule were not included in the governor's order.

As new information, data, and science becomes available, it is important that DOH and L&I continue to update and immediately amend existing rules to help prevent the spread of COVID-19. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the 2021 growing season. The governor's Stay Home, Stay Healthy order as amended to the Roadmap for Recovery and Proclamation 20-57.1 are currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

Date Adopted: May 7, 2021.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

NEW SECTION

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

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

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing, the use of cloth face coverings, proper respiratory etiquette, and the importance of prompt sanitizing of frequently touched items;

common symptoms and risk factors; and what to do if they develop symptoms.

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

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

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

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities.

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

(ii) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe; **OR**

(B) Beds are separated by a bed length, floor to near ceiling temporary nonpermeable barrier (e.g., plexiglass, plastic sheeting, etc.) placed perpendicular to wall such that a thirty-six inch minimum aisle exists between the bed and the temporary barrier and occupants sleep head toward wall. The temporary barriers:

(I) Must be made of fire resistant or fire retardant treated material;

(II) Do not impede required egress;

(III) Do not compromise ventilation/air flow; and

(IV) Are cleaned at least daily.

(C) Except as allowed under (f) of this subsection, only the bottom bed of bunk beds may be used.

(iii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time. Any barriers placed near cooking equipment must be fire retardant.

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

(v) The operator must discourage occupants from visiting buildings or sleeping quarters that are not their assigned living spaces, to minimize potential cross-contamination.

(e) Ventilation.

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

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

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

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

(C) The maximum use of the HVAC system's outdoor air intake, making sure that the exhaust air is not pulled back into the building through the HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions including, but not limited to, wildfire smoke.

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

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

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

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

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

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

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

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

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields

near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

(f) Group shelters. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "Group shelter" means a dwelling unit or cluster of dwelling units with sleeping facilities for up to fifteen occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

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

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

(B) Maintain egress requirements.

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

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

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

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

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

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

(D) Schedules are shared and conspicuously posted.

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

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

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

(g) A fully vaccinated group shelter is one where all occupants are themselves fully vaccinated. Occupants who are vaccinated against COVID-19 by a two-dose mRNA vaccine (such as Moderna and Pfizer), or a single dose vaccine (such as Johnson & Johnson), are considered "fully vaccinated" two weeks after the final dose of vaccine (the second dose for a two-dose regimen, or the single dose for a single-dose regimen).

(i) Vaccination status must be determined by the housing operator. The following are acceptable as proof of full vaccination: A vaccination card (which includes name of person vaccinated, type of vaccine provided, and date last dose administered); or a photo of a vaccination card as a separate document; or a photo of the attendee's vaccine card stored on a phone or electronic device; or documentation of vaccination from a health care provider electronic health record or state immunization information system record. Self-reported vaccination records that are not verified by a health care provider cannot be accepted.

(ii) The vaccination records must be provided on request of the department.

(iii) Fully vaccinated group shelters may share common areas, including kitchens and bathrooms. Physical distancing and masks are required in these areas.

(iv) Occupants of fully vaccinated group shelters may be transported together with occupants of other fully vaccinated group shelters using appropriate personal protective equipment.

(v) Operators must maintain a list of occupants assigned to fully vaccinated group shelters, including the date each occupant was assigned and the date each occupant's vaccination status was verified.

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

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

(ii) Wipe down and disinfect surfaces that are touched by multiple individuals at least daily using an EPA-approved disinfectant or diluted bleach solution.

(iii) Provide adequate supplies and instructions to occupants for cleaning and disinfecting of living spaces of dwelling units, family shelters, and group shelters. Occupants must be able to clean and disinfect frequent touched surfaces, bathroom, and cooking areas as needed. Chemicals used for cleaning and disinfecting must be labeled as to its intended purpose in a language commonly understood by the occupants using labeling requirements in chapter 296-901 WAC, Globally harmonized system for hazard communication.

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

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

(vi) Clean and disinfect areas where occupants with suspect COVID-19 exposure have been according to CDC guidelines and before the space is used by others.

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

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

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

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

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

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

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

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

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

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

(i) Daily well-being checks must be done in person by the employer or housing operator.

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

(iii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xi) The operator must provide food and water.

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

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

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

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

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

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

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

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

WSR 21-11-018

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 10, 2021, 2:39 p.m., effective May 10, 2021]

Effective Date of Rule: May 10, 2021.

Purpose: The department is extending the amendment of the rules listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will continue to align state nursing home rules with federal rules that are suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to delay the requirement by thirty days for a pre-admission screening and resident review (PASRR) screening prior to admission to a nursing home. Federal rules also amended requirements that ensure residents can meet in groups. These rules also establish the right of residents to participate in resident groups.

The department filed a CR-101 Preproposal statement of inquiry as WSR 20-17-005 on August 5, 2020, to begin the permanent rule-making process. In addition, under the rule development phase of rule making, the department is in discussions about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID-19 is necessary. This CR-103E [Emergency] rule-making order cancels and supersedes the CR-103E filed as WSR 21-08-055 on April 5, 2021; circumstances have changed. The Centers for Medicare and Medicaid Services is reimplementing some of the federal rules they suspended due to COVID[-19] on May 10. This emergency filing aligns with those changes.

Citation of Rules Affected by this Order: Repealing WAC 388-97-0920; and amending WAC 388-97-1915 and 388-97-1975.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 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 continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities.

PASRR: Current nursing home rules require a PASRR screen, typically performed by hospital staff prior to admission to a nursing home, followed by further evaluation from state agency staff or contractors under certain circumstances. Hospital staff are experiencing an extremely high workload during the pandemic due to the increased number of admissions, coupled with a reduced number of available staff. Additionally, face-to-face evaluation of the transferring resident continues to be restricted in many counties. The PASRR amendment will align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 outbreak by shortening the transfer time from hospital to nursing home, and increasing the flexibility for nursing home staff to be able to prioritize immediate or emergency care needs of incoming residents.

Resident groups: Current rules establish resident rights to participate in resident groups and require the facility to assist with the organization of a group. Extending the amendment of these rules will permit facilities to restrict resident groups, and meets the state and federal recommendations for social distancing and limited gatherings. Extending this amendment also aligns state rules with federal rules that were suspended to accomplish social distancing recommendations.

These emergency rules continue to be needed to align state nursing home requirements with suspended or amended federal requirements. Ongoing conversations with stakeholders also support continuation of these emergency rules until a clear timeline for reimplementing, consistent with federal reimplementing, is established.

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

Rules or Standards: New 0, Amended 2, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 1.

Date Adopted: April 27, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1915 PASRR requirements (~~prior to admission of~~) for new residents. (~~Prior to every~~) Within thirty days of admission (~~of a new resident~~), the nursing facility must:

(1) Complete a PASRR level I screening, or verify that a PASRR level I screening has been completed (~~, and deny admission until that screening has been completed~~).

(2) Require a PASRR level II evaluation, or verify that a PASRR level II evaluation has been (~~completed~~) requested when the individual's PASRR level I screening indicates that the individual may have serious mental illness and/or intellectual disability or related condition (~~, and deny admission until that evaluation has been completed, unless all three of the following criteria apply and are documented in the PASRR level I screening:~~

(a) ~~The individual is admitted directly from a hospital after receiving acute inpatient care;~~

(b) ~~The individual requires nursing facility services for the condition for which he or she received care in the hospital; and~~

(c) ~~The individual's attending physician has certified that the individual is likely to require fewer than thirty days of nursing facility services).~~

(3) ~~((Decline to admit any individual whose PASRR level II evaluation determines that he or she does not require nursing facility services or that a nursing facility placement is otherwise inappropriate.~~

(4)) Coordinate with PASRR evaluators to the maximum extent practicable in order to avoid duplicative assessments and effort, and to ensure continuity of care for nursing facility residents with a serious mental illness and/or an intellectual disability or related condition.

AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1975 PASRR requirements after admission of a resident. (~~Following~~) After the thirtieth day of a resident's admission, the nursing facility must:

(1) Review all level I screening forms for accuracy. If at any time the facility finds that the previous level I screening was incomplete, erroneous or is no longer accurate, the facility must immediately complete a new screening using the department's standardized level I form, following the directions provided by the department's PASRR program. If the corrected level I screening identifies a possible serious mental illness or intellectual disability or related condition, the facility must notify DDA and/or the mental health PASRR evaluator so a level II evaluation can be conducted.

(2) Record the evidence of the level I screening and level II determinations (and any subsequent changes) in the resident assessment in accordance with the schedule required under WAC 388-97-1000.

(3) Maintain the level I form and the level II evaluation report in the resident's active clinical record.

(4) Immediately complete a level I screening using the department's standardized form if the facility discovers that a resident does not have a level I screening in his or her clinical record, following directions provided by the department's PASRR program. If the level I screening identifies a possible serious mental illness or intellectual disability or related condition, notify the DDA and/or mental health PASRR evaluator so a level II evaluation can be conducted.

(5) ~~((Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted on an exempted hospital discharge appears likely to need nursing facility services for more than thirty days, so a level II evaluation can be performed. This notification must occur as soon as the nursing facility anticipates that the resident may require more than 30 days of nursing facility services, and no later than the twenty-fifth day after admission unless good cause is documented for later notification.~~

(6)) Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted with an advance categorical determination appears likely to need nursing facility services for longer than the period specified by DDA and/or the mental health PASRR evaluator, so that a full assessment of the individual's need for specialized services can be performed. This notification must occur as soon as the nursing facility anticipates that the resident will require more than the number of days of nursing facility services authorized for the specific advance categorical determination and no later than five days before expiration of the period (three days for protective services) unless good cause is documented for later notification.

((7)) (6) Immediately notify the DDA and/or mental health PASRR evaluator for a possible resident review when there has been a significant change in the physical or mental condition, as defined in WAC 388-97-1910, of any resident who has been determined to have a serious mental illness or intellectual disability or related condition. Complete a new level I screening for the significant change.

((8)) (7) Provide or arrange for the provision of any services recommended by a PASRR level II evaluator that are within the scope of nursing facility services. If the facility believes that the recommended service either cannot or should not be provided, the facility must document the reason(s) for not providing the service and communicate the reason(s) to the level II evaluator.

~~((9))~~ (8) Immediately complete a new level I screening using the department's standardized form if the facility finds that a resident, not previously determined to have a serious mental illness, develops symptoms of a serious mental illness, and refer the resident to the mental health PASRR evaluator for further evaluation.

~~((10))~~ (9) Provide services and interventions that complement, reinforce and are consistent with any specialized services recommended by the level II evaluator. The resident's plan of care must specify how the facility will integrate relevant activities to achieve this consistency and the enhancement of the PASRR goals.

~~((11))~~ (10) Discharge, in accordance with WAC 388-97-0120, any resident with a serious mental illness or intellectual disability or related condition who does not meet nursing facility level of care, unless the resident has continuously resided in the facility for at least thirty months and requires specialized services. The nursing facility must cooperate with DDA and/or mental health PASRR evaluator as it prepares the resident for a safe and orderly discharge.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-97-0920 Participation in resident and family groups.

WSR 21-11-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-63—Filed May 11, 2021, 4:49 p.m., effective May 13, 2021]

Effective Date of Rule: May 13, 2021.

Purpose: The purpose of this emergency rule is to open salmon and steelhead seasons in Drano Lake.

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

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

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

Reasons for this Finding: This rule is needed to modify salmon and steelhead seasons and daily limits within Drano Lake. This rule also carries forward rules regarding salmon and steelhead seasons and daily limits for Cowlitz, Kalama, Klickitat and Wind rivers, Salmon Creek previously put in place by emergency rule on March 3, 2021, in the filing of WSR 21-07-002. The previous rule for these waters [waters] is repealed by this filing in order to update Drano Lake.

Drano Lake was closed to salmon and steelhead angling in early May to ensure that expanded broodstock collection at Little White Salmon National Fish Hatchery (LWSNFH) was

achieved. Hatchery managers have indicated that the broodstock collection goal for LWSNFH has been met, making continued closure of the salmon and steelhead fisheries unnecessary. While the hatchery goal for this facility has been met, shortfalls at other Columbia Basin hatcheries that can utilize "Carson stock" remain uncertain, therefore managers are implementing a conservative daily limit to help support hatchery production throughout the region.

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 Non-governmental 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: May 11, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000X Freshwater exceptions to statewide rules—Southwest. Effective May 13, 2021, the provisions of WAC 220-312-030 regarding salmon seasons for Cispus River, Cowlitz River, Cowlitz Falls Reservoir, Kalama River and Klickitat River; steelhead seasons for Salmon Creek; and salmon and steelhead seasons for Drano Lake and Wind River shall be modified during the dates and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

1. **Cispus River (Lewis Co.):** Salmon: Effective immediately, until further notice: Closed.

2. **Cowlitz River (Cowlitz/Lewis Co.):** Salmon: Effective immediately, until further notice: Closed.

3. **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Salmon: Effective immediately, until further notice: Closed.

4. **Drano Lake (Skamania Co.):** Downstream of markers on a point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 bridge: Salmon and hatchery steelhead: Effective May 13, 2021, until further notice:

Daily limit 2, of which up to 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

5. **Kalama River (Cowlitz Co.):** From the mouth to 1,000 feet below fishway at Kalama Falls Hatchery: Salmon: Effective immediately, until further notice:

Daily limit 6. Up to 1 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

6. Klickitat River (Klickitat Co.):

(a) From the mouth to Fisher Hill Bridge:

(i) Effective immediately through May 28, 2021:

(A) Salmon and steelhead: Daily limit 2, of which up to 1 may be an adult salmon. Release wild Chinook.

(B) Open Mondays, Wednesdays, and Saturdays, only.

(ii) Effective May 29, 2021, until further notice: Salmon: Daily limit 6. Up to 1 adult salmon may be retained. Release wild Chinook.

(b) From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery: Salmon: Effective May 29, 2021, until further notice: Daily limit 6. Up to 1 adult salmon may be retained. Release wild Chinook.

7. Salmon Creek (Clark Co.): From the mouth to the 182nd Avenue Bridge: Steelhead: Effective immediately through May 28, 2021:

Daily limit 3. Selective Gear Rules in effect, except use of barbed hooks is allowed.

8. Wind River (Skamania Co.): from the mouth to 800 yards downstream of Carson National Fish Hatchery: Salmon and steelhead: Effective immediately, until further notice: Closed.**REPEALER**

The following section of Washington Administrative Code is repealed, effective May 13, 2021:

WAC 220-312-03000W Freshwater exceptions to statewide rules—Southwest. (21-28)

**WSR 21-11-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-65—Filed May 12, 2021, 12:43 p.m., effective May 12, 2021, 12:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close salmon seasons in the Snake River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000Q.

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: Based on in-season creel estimates through May 11, 2021, the harvest allocation has been reached. 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 12, 2021.

Kelly Susewind
Director**REPEALER**

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

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

**WSR 21-11-056
EMERGENCY RULES
DEPARTMENT OF HEALTH**

[Filed May 14, 2021, 8:55 a.m., effective May 14, 2021, 8:55 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-310-710 percutaneous coronary intervention (PCI) services concurrent review cycles. The department of health (department) is adopting a second emergency rule to extend deadlines for PCI services concurrent review cycle. This existing rule sets the deadlines for each step of the concurrent review process based on identified need for PCI services in Washington state. The amendments in this emergency rule are necessary due to the coronavirus disease 2019 (COVID-19) pandemic response. This filing continues WSR 21-03-073 filed on January 19, 2021, without change.

Citation of Rules Affected by this Order: Amending WAC 246-310-710.

Statutory Authority for Adoption: RCW 70.38.135.

Other Authority: None.

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

Reasons for this Finding: The amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare. This rule is necessary to amend the specific deadlines in rule for submitting and reviewing applications for PCI services to give applicants time and capacity to submit quality applications that satisfy regulatory requirements and identified community need. The report that these systems and facilities rely on to determine their ability

to fill need and request review was impacted by technology challenges that occurred because of the COVID-19 response updates. The resources needed to correct the output have been limited due to the more immediate need for COVID-19 response support. Changing the deadlines in rule will create the flexibility needed to produce the needed materials and preserve the time needed for complete applications in a time when the applicants are also strained in their own COVID-19 responses resources. This change will limit the impact on resources currently needed in the communities. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. Extending the next PCI services start cycle will allow time for applicants to receive and respond to identified need for services as well as responding to current needs.

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 Non-governmental 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: May 13, 2021.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

AMENDATORY SECTION (Amending WSR 09-01-113, filed 12/19/08, effective 12/19/08)

WAC 246-310-710 Concurrent review. The department shall review new adult elective percutaneous coronary intervention (PCI) services using the concurrent review cycle according to the following table:

Concurrent Review Cycle:

Application Submission Period	Letters of Intent Due	First working day through last working day of ((January)) <u>February</u> of each year.
	Receipt of Initial Application	First working day through last working day of ((February)) <u>March</u> of each year.
	End of Screening Period	Last working day of ((March)) <u>April</u> of each year.
	Applicant Response	Last working day of ((April)) <u>May</u> of each year.
Department Action	Beginning of Review Preparation	((May)) <u>June</u> 1 through ((May)) <u>June</u> 15

Application Review Period	Public Comment Period (includes public hearing if requested)	60-Day Public Comment Period	Begins ((May)) <u>June</u> 16 of each year or the first working day after ((May)) <u>June</u> 16.
	Rebuttal Period	30-Day Rebuttal period	Applicant and affected party response to public comment.
	Ex parte Period	45-Day Ex parte period	Department evaluation and decision.

(1) If the department is unable to meet the deadline for making a decision on the application, it will notify applicants fifteen days prior to the scheduled decision date. In that event, the department will establish a new decision date.

(2) The department may not accept new applications for a planning area if there are any pending applications in that planning area filed under a previous concurrent review cycle, or applications submitted prior to the effective date of these rules that affect any of the new planning areas, unless the department has not made a decision on the pending applications within the review timelines of nine months for a concurrent review and six months for a regular review.

(3) If the department determines that an application does not compete with another application, it may convert the review of an application that was initially submitted under a concurrent review cycle to a regular review process.

**WSR 21-11-065
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed May 14, 2021, 3:00 p.m., effective May 14, 2021, 3:00 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Under the emergency rule:

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

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

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

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

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

Reasons for this Finding: This emergency rule making readopts emergency rule adopted on January 12, 2021, filed as WSR 21-03-034. L&I has also filed a Preproposal statement of inquiry (CR-101) in accordance with 2021's ESSB 5092, section 220(8) related to infectious diseases to ensure the state has general guidelines to follow in the case of an infectious disease outbreak. This would include when there is an outbreak subject to a public health emergency under a national or state declared state of emergency.

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

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they needed to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by Proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." The "Safe Start" orders further build on these by continuing the safe start plan for county-by-county phased reopening where the subsequent "Stay Safe-Stay Healthy" orders rolled back the county-by-county phased reopening in response to a COVID-19 outbreak surge. The current "Healthy Washington - Roadmap to Recovery" order, Proclamation 20-25.12, takes a regional approach to easing of the rolled back restrictions. The order identifies eight regions that are largely based on the existing emergency medical services regions used for evaluating healthcare services given the concern for COVID-19's potential impact on the healthcare system. As the regions fall along county lines and are designed based on the available health care services in the area, there is a strong connection to the metrics for COVID-19 hospitalizations, case data, and general mobility of individuals.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID-19 from person-to-person interactions, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19

and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees. In setting the phases and conditions for businesses, statewide and county level data was considered. In setting the conditions for businesses under the "Healthy Washington - Roadmap to Recovery" order, the increase in cases and hospitalizations, evidence of how the virus is spread, and factors that increase the risk for person-to-person COVID-19 transmission was considered. Under this order, the phases and conditions for business in each region are based on consideration of four metrics - two metrics that measure community disease levels and two that measure health system capacity.

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

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

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

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

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

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

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

Date Adopted: May 14, 2021.

Joel Sacks
Director

NEW SECTION

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

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

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

WSR 21-11-069
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed May 17, 2021, 10:09 a.m., effective May 25, 2021]

Effective Date of Rule: May 25, 2021.

Purpose: The department is amending the rules listed below to assure nursing homes are not obstructed from offering the COVID-19 vaccine to residents and staff because of clinical interference from required tuberculosis (TB) testing. Current state rules specify that nursing homes administer TB testing to residents and staff within three days of employment or admission, unless the person is excluded from testing under the rules. The amendment permits the nursing home to defer TB testing if the person is in the process of receiving the COVID-19 vaccine, or if receiving the vaccine is of greater benefit and less risk than performing TB testing before administering the vaccine. The amendment does not permit the nursing facility to defer TB testing for reasons other than the COVID-19 vaccine, and requires the nursing home to complete the TB testing as soon as the COVID-19 vaccine recommendations permit. The rules also require screening for signs and symptoms of TB for those persons who are deferring TB testing.

Citation of Rules Affected by this Order: Amending WAC 388-97-1380 and 388-97-1580.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 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 threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Vaccine for COVID-19 is now available and vaccinating nursing home residents and staff is a high priority due to the heightened risk of COVID-19 in the nursing home setting. The

Centers for Disease Control and Prevention (CDC) issued recommendations about the coadministration of the COVID-19 vaccine and TB testing products. The CDC recommended that TB testing occur prior to COVID-19 vaccination, or if the vaccination process is underway or the vaccine is a higher priority than determining TB status, to defer TB testing until after the COVID-19 vaccination process is complete. Current nursing home rules require testing of nursing home residents and staff within three days of employment or admission. These rule amendments permit deferment of TB testing until the vaccination process is completed, in accordance with the CDC COVID-19 guidance. The department is proceeding with permanent adoption. A CR-101 was filed as WSR 21-11-061.

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

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

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

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

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

Date Adopted: May 14, 2021.

Katherine I. Vasquez
Rules Coordinator

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

WAC 388-97-1380 Tuberculosis—Testing required.

(1) Unless the nursing home decides to defer tuberculosis testing in accordance with subsection (2) of this section, or the resident or staff person is excluded from testing from WAC 388-97-1440, the nursing home must ((develop and implement a system to)):

(a) Ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission((-)); and

((2) The nursing home must also) (b) Ensure that facility personnel are tested annually.

((3)) (2) The nursing home may defer tuberculosis testing of facility personnel and residents to complete the COVID-19 vaccination process if the nursing home has considered the risks and benefits of such delay and if the delay is consistent with the current centers for disease control and prevention COVID-19 vaccination guidance.

(3) If testing is deferred for a resident or facility staff person, in accordance with subsection (2) of this section, the nursing home must:

(a) Assess the person for symptoms of tuberculosis within three days of employment or admission, and if the person has tuberculosis symptoms, follow WAC 388-97-1560; and

(b) Complete tuberculosis testing in accordance with WAC 388-97-1400 through 388-97-1580 as soon as indicated by the centers for disease control and prevention COVID-19 vaccination guidelines.

(4) For the purposes of WAC 388-97-1360 through 388-97-1580, "**person**" means facility personnel and residents.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1580 Tuberculosis—Test records. The nursing home must:

(1) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

(2) Keep the records of the tuberculosis symptom assessment and the documented rationale for deferring the tuberculosis testing in the nursing home, if tuberculosis testing is deferred in accordance with WAC 388-97-1380(2);

(3) Make the records readily available to the appropriate health authority and licensing agency;

~~((3))~~ (4) Retain the records for eighteen months beyond the date of employment termination; and

~~((4))~~ (5) Provide the tested person with a copy of ~~((his/her))~~ the test results.

WSR 21-11-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-67—Filed May 18, 2021, 3:00 p.m., effective May 18, 2021, 3:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to shift the southern boundary of the Quinault SMA to the Moclips River.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000M and 220-340-45000C; 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: Tribal special management area descriptions conform with recent state/tribal agreements and recent state/tribal discussions regarding in-season modifications.

The Westport Boat Basin is closed to commercial crab fishing to prevent conflicts with vessel traffic in a limited area.

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 Non-governmental 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: May 18, 2021.

Kelly Susewind
Director

NEW SECTION

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

(1) It is unlawful for a vessel to use more than 150 pots in the area between the Copalis River (47°08.00') and Moclips River (47°14.80') shoreward of a line approximating the 27-fathom depth curve, from 8:00 a.m. May 21, 2021, until further notice. 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:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596.

(2) It is unlawful for a vessel to use more than 100 pots in the area between Cape Johnson (47°58.00') and Destruction Island (47°40.50') shoreward of a line approximating the 30-fathom depth curve, from 8:00 am May 1, 2021 until 8:00 a.m. June 1, 2021. 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:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-470-8596.

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

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 220-340-45000D 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, Wil-

lapa 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-Canadian border. For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(2) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at 8:00 a.m., May 21, 2021, from the area shoreward of a line approximating the 27-fathom depth curve between the Moclips River (47°14.80) and Split Rock (47°24.50). This area will be closed until further notice. This SSMA is described by the following coordinates:

(a) Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.

(b) Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.

(c) Southwest Corner: 47°14.80' N. Lat. 124°28.43' W. Lon.

(d) Southeast Corner (Moclips River): 47°14.80' N. Lat. 124°13.20' W. Lon.

(3) It is unlawful to fish for Dungeness crab in the Westport Boat Basin as defined in WAC 220-300-320.

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-42000M Commercial crab fishery—Unlawful acts. (21-53)

WAC 220-340-45000C Commercial crab fishery—Seasons and areas—Coastal. (21-53)

**WSR 21-11-102
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-69—Filed May 19, 2021, 9:53 a.m., effective May 22, 2021]

Effective Date of Rule: May 22, 2021.

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

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

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed to open hatchery Chinook retention in the Icicle River. Returns of Icicle River hatchery spring Chinook salmon are sufficient to meet broodstock needs and to provide for sport angler harvest. 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 19, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000S Freshwater exceptions to statewide rules—Eastside. Effective 1 hour before official sunrise May 22 through 1 hour after official sunset June 30, 2021, provisions of WAC 220-312-050 regarding salmon seasons for the Icicle River shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

Icicle River:

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

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

(ii) Night closure in effect.

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

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

(ii) Night closure in effect.

WSR 21-11-104
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

Kelly Susewind
 Director

[Order 21-71—Filed May 19, 2021, 10:02 a.m., effective May 20, 2021]

Effective Date of Rule: May 20, 2021.

Purpose: The purpose of this emergency rule is to return salmon and steelhead fisheries within Drano Lake and Wind River to permanent rules.

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

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

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

Reasons for this Finding: This rule is needed to return salmon and steelhead seasons and daily limits within Drano Lake and Wind River to permanent rules. This rule also carries forward rules regarding salmon and steelhead seasons and daily limits for Cowlitz, Kalama, Klickitat, and Wind rivers, Salmon Creek previously put in place by emergency rule on March 3, 2021, in the filing of WSR 21-07-002 and 21-11-027 continued these rules on May 11, 2021. The previous rule for these waters is repealed by this filing in order to update Drano Lake and Wind River.

The Washington department of fish and wildlife has managed the Drano Lake and Wind River fisheries to ensure that increased broodstock goals at Carson and Little White Salmon National Fish Hatcheries (NFH) would be achieved for 2021. The broodstock collection goal for Little White Salmon NFH was met earlier in May and the Drano Lake fishery was reopened at a reduced daily limit to mitigate for production uncertainties at other Columbia Basin hatcheries. Broodstock collection at Carson NFH has increased rapidly during the last several days and is projected to be achieved. With broodstock collection at these (and other) facilities met or projected to be so, these fisheries can be reopened under permanent rules.

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 Non-governmental 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: May 19, 2021.

NEW SECTION

WAC 220-312-03000Y Freshwater exceptions to statewide rules—Southwest. Effective May 20, 2021, the provisions of WAC 220-312-030 regarding salmon seasons for Cispus River, Cowlitz River, Cowlitz Falls Reservoir, Kalama River and Klickitat River and steelhead seasons for Salmon Creek shall be modified during the dates and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

1. **Cispus River (Lewis Co.):** Salmon: Effective immediately, until further notice: Closed.

2. **Cowlitz River (Cowlitz/Lewis Co.):** Salmon: Effective immediately, until further notice: Closed.

3. **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Salmon: Effective immediately, until further notice: Closed.

4. **Kalama River (Cowlitz Co.):** From the mouth to 1,000 feet below fishway at Kalama Falls Hatchery: Salmon: Effective immediately, until further notice:

Daily limit 6. Up to 1 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

5. **Klickitat River (Klickitat Co.):**

(a) From the mouth to Fisher Hill Bridge:

(i) Effective immediately through May 28, 2021:

(A) Salmon and steelhead: Daily limit 2, of which up to 1 may be an adult salmon. Release wild Chinook.

(B) Open Mondays, Wednesdays, and Saturdays, only.

(ii) Effective May 29, 2021, until further notice: Salmon: Daily limit 6. Up to 1 adult salmon may be retained. Release wild Chinook.

(b) From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery: Salmon: Effective May 29, 2021, until further notice: Daily limit 6. Up to 1 adult salmon may be retained. Release wild Chinook.

6. **Salmon Creek (Clark Co.):** From the mouth to the 182nd Avenue Bridge: Steelhead: Effective immediately through May 28, 2021:

Daily limit 3. Selective Gear Rules in effect, except use of barbed hooks is allowed.

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 May 20, 2021:

WAC 220-312-03000X Freshwater exceptions to statewide rules—Southwest. (21-63)

WSR 21-11-112
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-68—Filed May 19, 2021, 10:49 a.m., effective May 19, 2021,
10:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close recreational salmon fishing in Marine Area 13.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000A.

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: Federal Endangered Species Act consultations on 2021-22 Puget Sound salmon fisheries have been completed (NMFS Consultation #WCR-2021-01008), and a biological opinion and incidental take statement have been issued. Accordingly, Marine Area 13 salmon fisheries can be reopened consistent with preseason fishing plans.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 19, 2021.

Kelly Susewind
Director

REPEALER

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

WAC 220-313-06000A Puget Sound salmon—Saltwater seasons and daily limits.

WSR 21-11-113
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 19, 2021, 11:05 a.m., effective May 19, 2021, 11:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To align the office of superintendent of public instruction rules under chapter 392-162 WAC regarding the learning assistance program with the statutory provisions under chapter 28A.165 RCW as amended with passage of SHB 1208, and to provide regulatory guidelines to districts who choose to use learning assistance program funds to implement the K-2 literacy screening and intervention requirements under RCW 28A.320.260.

Citation of Rules Affected by this Order: New WAC 392-162-016, 392-162-017 and 392-162-120; repealing WAC 392-162-020, 392-162-023, 392-162-025, 392-162-032, 392-162-033, 392-162-036, 392-162-041 and 392-162-080; and amending WAC 392-162-005, 392-162-010, 392-162-015, 392-162-054, 392-162-100, 392-162-110, 392-162-112, and 392-162-115.

Statutory Authority for Adoption: RCW 28A.165.075.

Other Authority: RCW 28A.300.730.

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

Reasons for this Finding: In accordance with section 17 of SHB 1208, the provisions of the legislative enactment are "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions and takes effect immediately."

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 3, Amended 8, Repealed 8.

Number of Sections Adopted at the Request of a Non-governmental 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: May 19, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-005 Authority. The authority for this chapter is RCW 28A.165.075, which authorizes the superintendent of public instruction to adopt rules ~~((and regulations))~~ for the administration of the learning assistance program.

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-010 Purpose. The learning assistance program requirements in this chapter are designed to:

~~(1) ((Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;~~

~~(2)) Promote the use of data when developing programs to assist students who are not meeting academic standards ((and reduce disruptive behaviors in the classroom)); and~~

~~((3)) (2) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist students who are not meeting academic standards ((and reduce disruptive behaviors in the classroom; and~~

~~(4) Guide school districts in providing extended learning opportunities to assist K-12 students who are not meeting academic standards in English language arts or mathematics; students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements)).~~

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-015 Definitions(~~(—Basic skills)~~). As used in this chapter, the terms:

(1) "Basic skills" means English language arts or mathematics, as well as readiness associated with these skills.

(2) "District" means a school district, public charter school, or school authorized to operate as a state-tribal education compact school in accordance with chapter 28A.715 RCW.

(3) "Literacy interventions" means interventions under RCW 28A.320.260(3) to support students in kindergarten through second grade who show indications of below grade level literacy development or indications of, or areas of weakness associated with, dyslexia.

(4) "Literacy screening tool" means one of the literacy screening tools identified and approved by the dyslexia advisory council and the office of the superintendent of public instruction in accordance with RCW 28A.300.700.

(5) "Statewide student assessments" means one or more of the assessments administered by school districts as required under RCW 28A.655.070.

(6) "Students who are not meeting academic standards" means students with the greatest academic needs in basic skills as identified by statewide, school, or district assessments or other performance measurement tools.

NEW SECTION

WAC 392-162-016 Application. (1) Immediately and through the later of:

(a) The expiration or termination of Proclamation 20-05, and any subsequent orders extending or amending the proclamation, declaring a state of emergency on February 29, 2020, for all counties in Washington due to COVID-19; or

(b) September 1, 2025, school districts must budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, to identify and address the academic and nonacademic needs of students who are not meeting academic standards resulting from and exacerbated by the COVID-19 pandemic.

(2) During the time period described in subsection (1) of this section, school districts are encouraged to budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

NEW SECTION

WAC 392-162-017 Community partnerships. A district may use up to fifteen percent of the district's learning assistance program allocation to deliver academic, nonacademic, and social-emotional supports and services to students who are not meeting academic standards through partnerships with community-based or other out-of-school organizations in accordance with RCW 28A.300.139. Any agreement entered into by a school district and a community partner in accordance with RCW 28A.300.139 must:

(1) Specify that learning assistance program funds may be used only to provide direct supports and services to students;

(2) Clearly identify the academic, nonacademic, or social-emotional supports and services that will be made available to students by the community partner and how those supports and services align to the needs of the students as identified in the student-level needs assessment under RCW 28A.300.139; and

(3) Identify the in-school supports that will be reinforced by the supports and services provided by the community partner to promote student progress towards meeting academic standards.

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-054 Allocation, supplement not supplant, and use of funds. (1) The funds for the learning assistance program shall be allocated according to WAC 392-122-605 for the learning assistance program base allocation and the learning assistance program high poverty-based school allocation.

(2) The learning assistance high poverty-based school allocation must be ~~((distributed to))~~ expended by the district for the schools ~~((building))~~ that generated the funding and may not supplant the learning assistance program base allocation expenditures for those schools.

(3) All learning assistance program funds must be expended for the purposes of RCW 28A.165.005 through 28A.165.065.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-100 Federal and state program coordination. (1) School districts may coordinate federal, state, and local programs in order to serve the maximum number of students who are ~~((below grade level in basic skills))~~ not meeting academic standards.

(2) ~~((Subject to guidelines provided by the United States Department of Education, districts with schoolwide buildings may use Title I, Part A funds to meet the requirement to focus first on students in kindergarten through fourth grade who are deficient in reading or literacy skills. Districts opting to use Title I, Part A funds in combination with or in place of learning assistance program funds must meet the requirements of chapter 28A.165 RCW, including implementing best practice strategies according to RCW 28A.165.035 and completing all reporting requirements outlined in this chapter.~~

~~((3))~~ Students receiving assistance in another special needs program may also be served in the learning assistance program if they ~~((meet student eligibility and selection requirements as identified in WAC 392-162-032 and 392-162-080))~~ are identified as students who are not meeting academic standards as defined under this chapter.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-110 Program requirements—District reporting. (1) Individual student records shall be recorded, beginning with the 2014-15 school year, in the statewide individual student data system annual entrance and exit performance data for each student participating in the learning assistance program according to specifications established by the office of the superintendent of public instruction's CEDARS manual.

(2) Districts shall submit to the superintendent of public instruction by the established due date an annual report in the electronic format provided by the superintendent of public instruction. The report must include the following:

(a) The amount of academic growth gained by students participating in the learning assistance program;

(b) The number of students who gain at least one year of academic growth;

(c) The specific practices, activities, and programs used by each school building that received learning assistance program funds; ~~((and))~~

(d) The percentage of learning assistance funding used to engage community partners, the number of students receiving direct supports and services from those community partners, and the types of supports and services; and

(e) The number of students served by the learning assistance program during the school year who were able to exit the program because student academic growth resulted in meeting the academic standard for grade level.

(3) The superintendent of public instruction ~~((will))~~ may withhold the monthly learning assistance program apportion-

ment payment to a school district, public charter school, or ~~state-tribal education compact school ((operated pursuant to a state-tribe education compact))~~ if the school district, charter school, or ~~state-tribal education compact school~~ fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-112 Carry over of funds. (1) Districts may carry over from one year to the next up to ten percent of the learning assistance program base allocation provided ~~((allocated))~~ under WAC 392-122-605~~((; however,))~~. Carry-over funds ~~((shall))~~ must be expended solely for ~~((the))~~ allowable learning assistance program costs.

(2) Districts may carry over from one year to the next up to ten percent of the learning assistance program high poverty-based school allocation provided under WAC 392-122-605. Carry-over funds must be expended solely for ~~((the))~~ allowable learning assistance program costs and for the specific schools ~~((generating))~~ that generated the ~~((allocation))~~ funding.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-115 Monitoring of districts. ~~((In order to insure))~~ To ensure that school districts are meeting the requirements of this chapter, the superintendent of public instruction shall monitor learning assistance programs using, at minimum, data reported as required under WAC 392-162-110, no less than once every four years by using the state program review process. The primary purpose of the monitoring is to evaluate the effectiveness of a district's allocation and expenditure of resources and to monitor school district fidelity in their implementation of best practices using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

NEW SECTION

WAC 392-162-120 Implementation of K-2 literacy screening requirements—Use of funds. (1) A school district that chooses to expend learning assistance program funds to implement the screening and intervention requirements under RCW 28A.320.260 may use the district's learning assistance program base allocation under WAC 392-122-605 to fund:

(a) The purchase of a literacy screening tool as defined under this chapter; and

(b) Literacy interventions as defined under this chapter.

(2) A school district that chooses to expend learning assistance program funds as permitted under this section must submit data according to specifications established by the office of the superintendent of public instruction in accordance with RCW 28A.165.100 and 28A.320.270.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-162-020 Definition—Learning assistance program (LAP).
- WAC 392-162-023 Definition—District.
- WAC 392-162-025 Definition—Statewide student assessments.
- WAC 392-162-032 Definition—Participating student.
- WAC 392-162-033 Definition—Students who are not meeting academic standards.
- WAC 392-162-036 Definition—Extended learning opportunities.
- WAC 392-162-041 Best practices.
- WAC 392-162-080 Program requirement—Selection of students.

WSR 21-11-116
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 19, 2021, 11:59 a.m., effective May 19, 2021, 11:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In 2019 the legislature passed ESHB 1817, Ensuring a skilled and trained workforce in high hazard facilities, codified under chapter 49.80 RCW, requires owners of petroleum refining or petrochemical manufacturing facilities use a skilled and trained workforce when contracting for construction, alteration, demolition, installation, repair, or maintenance work. A skilled and trained workforce means a workforce where all the workers are either registered apprentices in a Washington state apprenticeship and training council (WSATC) approved apprenticeship program or skilled journeypersons as defined by the statute. The law also requires a percentage of skilled journeypersons be graduates of a WSATC approved apprenticeship program beginning January 1, 2021. The percentage starts at twenty percent in 2021 and increases each year and caps out at sixty percent in 2024.

RCW 49.80.050 requires the department of labor and industries (L&I), in consultation with the WSATC, prioritize consideration of new apprenticeship programs for workers in high hazard facilities and for the WSATC to make a decision within six months of the acceptance of a completed application for consideration of a new state registered apprenticeship program for workers in high hazard facilities. Several employers turned in apprenticeship program applications, which garnered objections. The WSATC made decisions to send each programs receiving objections to the adjudication process through the WSATC or the office of administrative hearings (OAH) for the issuance of initial orders. Initial orders may be reviewed by the WSATC either by its own motion or upon petition from party, with final orders issued by the WSATC. However, there have been delays in the adju-

dications process due to COVID-19 and no initial orders were issued in 2020, which has delayed the issuance of final orders. Under the current rule, WAC 296-05-008, the approval or disapproval of programs can only occur at regularly scheduled quarterly meetings. Not only does this delay the decision for programs and make it more difficult to comply with the law, but also the WSATC may not have enough time at the regularly scheduled meeting to conduct all needed business and address these adjudicated matters.

In order to address the problem, L&I with approval of the WSATC, is adopting an emergency rule to allow for the special meetings to consider the record and enter a final order following an adjudication process. Specifically, the emergency rule language amends WAC 296-05-008 as follows:

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the record and enters a final order following an adjudication conducted under WAC 296-05-008(6).

This emergency rule supersedes and replaces WSR 21-03-076 filed on January 19, 2021. Permanent rule making is currently being stakeholdered under WSR 21-03-077 also filed on January 19, 2021. This emergency rule is necessary to cover the gap between the original emergency rule filing and the adoption of a permanent rule.

Citation of Rules Affected by this Order: Amending WAC 296-05-008.

Statutory Authority for Adoption: Chapter 49.04 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: Multiple new apprenticeship program application[s] were submitted following the adoption [of] 2019's ESHB 1817. While the legislation had a phased implementation schedule and contemplated there would be new applications for apprenticeship programs for employers with workers in high hazard facilities, the COVID[-19] delays in the adjudication process has impacted the issuance of initial orders for those programs in the adjudication process. The rule limitation on special meeting will cause further delays in the ability to issue final orders. This restriction on when the WSATC can consider the orders and issue final orders creates uncertainty for employers with applications in the adjudication process, their employees, and the refineries that contract with them. This has the potential to result in temporary layoffs for contractors and challenges with scheduling maintenance activities at refineries. In addition, if the WSATC does not have enough time at the regularly scheduled meeting to conduct all needed business, the ability of the WSATC to perform their statutory mandated activities to oversee apprentice programs is impacted. As such, observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be

contrary to the public interest. Special meetings for approval/disapproval of programs will only be used in conjunction with the adjudication process.

The department filed a Preproposal statement of inquiry (CR-101) to initiate permanent rule making.

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

Number of Sections Adopted at the Request of a Non-governmental 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: May 19, 2021.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 18-17-149, filed 8/21/18, effective 10/10/18)

WAC 296-05-008 Meetings and adjudicative proceedings. (1) Regular meetings: Convened on the third Thursday of January, April, July, and October, held at locations within Washington, and open to the general public. Members of the public cannot be required to register their name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(a) Notice of regular meetings: The supervisor must distribute notice not later than thirty calendar days prior to the meeting date to anyone who has requested notice of the regular meetings.

(b) The supervisor must send notices to all WSATC members, including ex officio members, and approved program sponsors.

(c) The following WSATC activities must take place in open public meetings:

- (i) All transactions of official business;
- (ii) All commitments or promises;
- (iii) All collective discussions;
- (iv) All collective decisions; and
- (v) All council actions.

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the

record and enters a final order following an adjudication conducted under WAC 296-05-088(6).

(2) Special meetings: Called at the request of the chair or by a majority of the WSATC members, and open to the general public.

(a) Procedure for special meetings: To call a special meeting, the calling members must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the business to be transacted at the meeting, either personally or by mail, at least seven calendar days before the specified date of the meeting, to each member of the WSATC, all approved program sponsors, and those who have requested prior notice of special meetings.

(ii) Waiver: The notice requirements to WSATC members may be waived in writing at or prior to the meeting, but all members must agree to waive notice and file the waiver with the supervisor.

(b) Content of special meetings: The subject matter of the special meeting must not exceed the scope of the written notice. If the WSATC takes action on a matter exceeding the scope of the written notice, the action is not final even if the members waive notice.

(c) Special meetings for rule changes: To call a special meeting to consider rule changes, the WSATC must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the rules to be changed at the meeting, either personally or by mail, at least twenty calendar days before the meeting.

(ii) Waiver: The notice requirements may not be waived for special meetings when rule changes are contemplated.

(3) Registered apprenticeship standards actions: When a party requests specific action from the WSATC related to apprenticeship standards, such request must:

(a) Be in writing; and

(b) Signed by the committee's elected chair and secretary, or by an authorized signer approved by the petitioning sponsor;

(c) Sent to the apprenticeship supervisor at least forty-five days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting.

(4) Other actions: When a party requests specific action or consideration from the WSATC on other issues, such requests must:

(a) Be in writing; and

(b) Sent to the apprenticeship supervisor at least fifteen business days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting unless waived by the supervisor.

(5) Voting: All council members, except ex officio members, appointed by the director of the department of labor and industries are voting members of the council.

(a) A quorum is two-thirds of the WSATC members entitled to vote.

(b) The chair shall establish a standing tie-breaker committee comprised of three WSATC members entitled to vote:

(i) An employer representative;

(ii) An employee representative; and

(iii) A public member.

(c) The apprenticeship supervisor or designee shall act as secretary to the tie-breaker committee and furnish all information necessary for a decision.

(d) In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within thirty calendar days.

(6) Adjudicative proceedings: All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapters 34.05 RCW and 10-08 WAC. The chair (or designee) is the presiding officer for adjudicative proceedings held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication is held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular quarterly meeting unless:

(a) The WSATC upon its own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for review of the initial order.

(7) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within thirty calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal;

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt;

(iii) The respondent parties may file with the director or designee written arguments within thirty calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in 29 C.F.R. 29.8 (b)(5).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

(8) Limitations: Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority person, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

(9) Retroactivity: The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.