

WSR 18-20-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-253—Filed September 19, 2018, 4:56 p.m., effective September 19, 2018, 4:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000V; and amending WAC 220-358-030.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Sets the 2018 fall select area commercial seasons. The URB run-size was downgraded on September 17, 2018, but impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with the compact action of September 19, 2018. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the

2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at the Request of a 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: September 19, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000W Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) **Tongue Point/South Channel**

(a) **Dates:** Monday, Tuesday, Wednesday, and Thursday nights October 1-26

Open Hours: 4 PM - 10 AM

(b) **Area:** The Tongue Point Area is defined as those waters of the Columbia River bounded by a line from a regulatory marker (46.20863 degrees N, -123.75944 degrees W) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker (46.18270 degrees N, -123.74313 degrees W) located on the Oregon shore 300 yards northwest of the railroad bridge

crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

The South Channel Area is defined as those waters of South Channel bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(c) **Gear:** Gillnets with a 6-inch maximum mesh size. Maximum net length of 250 fathoms.

In the Tongue Point fishing area: weight not to exceed two pounds in any one fathom. Fishers participating in the Tongue Point fishery may have un-stored gillnets legal for the South Channel fishing area onboard their fishing vessel.

In the South Channel fishing area: no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(d) **Allowable Sales:** Chinook, coho, pink, and sockeye salmon, white sturgeon, and shad. A maximum of **six** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(e) **Miscellaneous:** Permanent transportation rules in effect.

(2) **Blind Slough/Knappa Slough Select Area**

(a) **Dates:** Sunday, Monday, Tuesday, Wednesday, Thursday nights September 23-28 Monday, Tuesday, Wednesday, and Thursday nights October 1 - 26

Open hours: 6 PM - 10 AM

(b) **Area:**

The Blind Slough Area is defined as those waters of Blind Slough and Gnat Creek from a north-south line formed by regulatory markers at the mouth of Blind Slough to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

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

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(c) **Gear:**

Gillnets with a maximum mesh size restriction of 9 3/4-inches. Maximum net length of 100 fathoms and no weight

restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(d) **Allowable sales:** Chinook, coho, pink, and sockeye salmon, white sturgeon, and shad. A maximum of **six** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(e) **Miscellaneous:** Permanent transportation rules in effect.

(3) **Deep River Select Area**

(a) **Dates:** Sunday, Monday, Tuesday, Wednesday, Thursday nights September 23 - 28 Monday, Tuesday, Wednesday, and Thursday nights October 1 - 12

Open hours: 6 PM - 9 AM

(b) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(c) **Gear:** Gillnets with a 6-inch maximum mesh size. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(d) **Allowable sales:** Chinook, coho, pink, and sockeye salmon, white sturgeon, and shad. A maximum of **six** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(e) **Miscellaneous:** Permanent transportation rules in effect.

(4) **24-hour** quick reporting is in effect for Washington buyers WAC 220-352-315. Permanent transportation rules in effect.

(5) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)).

(6) **Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000V Columbia River seasons below Bonneville. (18-237)

WSR 18-20-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-254—Filed September 20, 2018, 1:39 p.m., effective September 20, 2018, 1:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for Deep River.

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

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

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

Reasons for this Finding: This emergency rule is needed because the risk of impacts to the fall Chinook URB stock in select areas are negligible (near zero) in late September, and therefore select areas are being reopened to provide additional fishing opportunity. 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: September 19, 2018.

Joe Stohr
for Kelly Susewind
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective September 24, 2018:

WAC 220-312-03000D Freshwater exceptions to statewide rules—Southwest. (18-238)

WSR 18-20-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-258—Filed September 20, 2018, 5:46 p.m., effective September 20, 2018, 5:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for Willapa Bay and tributaries [tributaries].

Citation of Rules Affected by this Order: Amending WAC 220-312-020 and 220-313-070.

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

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

Reasons for this Finding: This emergency rule is needed to close salmon fisheries in Willapa Bay and its tributaries. Fall Chinook returning to tributaries of Willapa Bay have been significantly lower than preseason predictions in all fisheries and hatchery returns are lower than needed to make egg take at this time. Managers will continue to assess Chinook returns and reopen if warranted. 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 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: September 20, 2018.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000F Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective September 22, 2018 until further notice the following rules apply. Unless otherwise amended, all permanent rules remain in effect:

- (1) Salmon angling is closed in the following waters:
 - (a) Bear River (Pacific Co.)
 - (b) Naselle River (Pacific Co.)
 - (c) Nemah River, Middle (Pacific Co.)
 - (d) Nemah River, North (Pacific Co.)
 - (e) Nemah River, South (Pacific Co.)
 - (f) Willapa River (Pacific Co.)
 - (g) Willapa River, South Fork (Pacific, Co.)

NEW SECTION

WAC 220-313-07000K Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-070, effective September 22, 2018 until further notice the following rules apply. Unless otherwise amended, all permanent rules remain in effect: Salmon angling is closed in the waters of Willapa Bay (Marine Area 2-1).

been significantly lower than preseason predictions in all fisheries and hatchery returns are lower than needed to make egg take at this time. Managers will continue to assess Chinook returns and reopen if warranted. 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: September 21, 2018.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000A Willapa Bay salmon fall fishery. Notwithstanding the provisions of WAC 220-354-250, effective September 22, 2018, until further notice it is unlawful to fish for commercial purposes in Willapa Bay Salmon Management and Catch reporting Areas 2N, 2M, 2U and 2T.

**WSR 18-20-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-257—Filed September 21, 2018, 10:12 a.m., effective September 22, 2018]

Effective Date of Rule: September 22, 2018.

Purpose: Amend Willapa Bay commercial fishery.

Citation of Rules Affected by this Order: Amending WAC 220-354-250.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.045 [77.12.045], and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to close the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2N, 2M, 2U and 2T. Fall Chinook salmon returning to tributaries of Willapa Bay have

**WSR 18-20-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-256—Filed September 21, 2018, 2:38 p.m., effective September 21, 2018, 2:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial salmon rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07000J; and amending WAC 220-354-120 and 220-354-160.

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

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

Reasons for this Finding: This emergency rule is needed to close commercial salmon fisheries in Catch Reporting Area 8A in order to meet objectives for Snohomish River natural coho escapement. Landed catch of coho for this area has already exceeded preseason forecasted levels of harvest. WAC 220-313-07000J is being repealed as a housekeeping matter to fully implement Willapa Bay recreational salmon rules filed on September 20. 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 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: September 21, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000E Puget Sound salmon—Purse seine—Open periods. Notwithstanding the provisions of WAC 220-354-120, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect: Catch Reporting Area 8A closed to Purse seine fishing September 24, 2018.

NEW SECTION

WAC 220-354-16000F Puget Sound salmon—Gillnet—Open periods. Notwithstanding the provisions of WAC 220-354-160, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect: Catch Reporting Area 8A closed to Gillnet fishing September 25 and September 27, 2018.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 22, 2018:

WAC 220-313-07000J Coastal salmon—Saltwater seasons and daily limits. (18-224)

WSR 18-20-020 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 18-259—Filed September 21, 2018, 4:06 p.m., effective September 21, 2018, 4:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial smelt fishing rules for Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-356-19000B; and amending WAC 220-356-190.

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

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

Reasons for this Finding: This emergency rule is needed to close Puget Sound to commercial smelt fishing, as the annual quota is expected to be 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 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: September 21, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-356-19000B Puget Sound smelt commercial fishery—Seasons. Notwithstanding the provisions of WAC 220-356-190, effective 10:00 p.m. September 24

through December 31, 2018, it is unlawful to take, fish for or possess smelt for commercial purposes in Puget Sound.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2019:

WAC 220-356-19000B Puget Sound smelt commercial fishery—Seasons.

WSR 18-20-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-261—Filed September 24, 2018, 4:34 p.m., effective October 1, 2018, 8:00 a.m.]

Effective Date of Rule: October 1, 2018, 8:00 a.m.

Purpose: Amend commercial crab fishery rules for Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-340-420, 220-340-455, and 220-352-340.

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

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

Reasons for this Finding: The provisions of this rule will reopen the commercial crab harvest areas at 8 a.m., October 1, 2018, in Puget Sound with a limit of fifty pots per license per buoy tag number in all commercial crab regions. There is sufficient allocation available in all of the commercial regions to accommodate this opening. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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 3, Amended 0, Repealed 0.

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

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

Date Adopted: September 24, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

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

(1) It is permissible to deploy Dungeness crab pots for commercial purposes starting at 8:00 a.m. October 1, 2018 until 7:00 p.m. October 2, 2018, in Region 1, Region 3-1 and Region 3-3 from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and prior notice has been given as provided below. Crab pots may only be deployed during daylight hours.

(2) Barging is not allowed in Region 2 East, Region 2 West and Region 3-2. This includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, 26A-E, 25B, 25D, 26A-W, 23D, 25A and 25E.

(3) The licensed owner must leave a telephone message at the Mill Creek annex office, (425) 775-1311 ext. 126, or send an email to crabreport@dfw.wa.gov, detailing the following information:

- (a) Name and license number of licensed owner.
- (b) Name of designated primary operator if different from licensed owner.
- (c) Name of alternate operator if used to deploy pots from a non-designated vessel.
- (d) Buoy brand number and number of pots to be deployed from a non-designated vessel.
- (e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(4) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

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

(1) Effective 8:00 a.m. October 1, 2018, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1, Region 2 East, Region 2 West, Region 3-1, Region 3-2, Region 3-3 East or

Region 3-3 West. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 23C, 24A, 24B, 24C, 24D, 25B, 25D, 26A East, 26A West and 29.

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

(3) Effective 8:00 a.m. October 1, 2018, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

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

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

(4) Effective 8:00 a.m. October 1, 2018, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

(5) Effective 8:00 a.m. October 1, 2018, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Port Gardner: That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

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

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

(6) Effective 8:00 a.m. October 1, 2018, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

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

NEW SECTION

WAC 220-352-34000A Puget Sound crab—Additional reporting requirements. Notwithstanding the provisions of WAC 220-352-340, effective 8:00 am, October 1, 2018, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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.

WSR 18-20-031 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 18-260—Filed September 24, 2018, 4:34 p.m., effective October 1, 2018]

Effective Date of Rule: October 1, 2018.

Purpose: Amend commercial sea urchin fishery rules for Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-340-75000F [220-340-750].

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

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

Reasons for this Finding: This emergency rule is needed to allow for commercial harvest of green sea urchins because harvestable surpluses of green sea urchin exist in the areas specified. 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: September 24, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000F Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, effective October 1, 2018, until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island. It is unlawful to fish for, take, or possess green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

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

WSR 18-20-041

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed September 25, 2018, 3:13 p.m., effective October 1, 2018]

Effective Date of Rule: October 1, 2018.

Purpose: The Washington state legislature provided funding to increase the medication assisted treatment (MAT) rate for opioid use disorder to match the medicare rate in order to encourage more providers to treat patients with opioid use disorder. This represents an exception to current payment methodology and needs to be described in the administrative code.

Citation of Rules Affected by this Order: New WAC 182-531-2040 Enhanced reimbursement—Medication

assisted treatment for opioid use disorder; and amending WAC 182-531-0050 Physician-related services definitions.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESSB 6032 - 2017-2019 Omnibus operating budget - 2018 Supplemental.

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

Reasons for this Finding: See purpose.

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

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

Date Adopted: September 25, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-21-040, filed 10/12/17, effective 11/12/17)

WAC 182-531-0050 Physician-related services definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC, apply to this chapter.

"**Acquisition cost**" - The cost of an item excluding shipping, handling, and any applicable taxes.

"**Acute care**" - Care provided for clients who are not medically stable. These clients require frequent monitoring by a health care professional in order to maintain their health status. See also WAC 246-335-015.

"**Acute physical medicine and rehabilitation (PM&R)**" - A comprehensive inpatient and rehabilitative program coordinated by a multidisciplinary team at an agency-approved rehabilitation facility. The program provides twenty-four hour specialized nursing services and an intense level of specialized therapy (speech, physical, and occupational) for a diagnostic category for which the client shows significant potential for functional improvement (see WAC 182-550-2501).

"**Add-on procedure(s)**" - Secondary procedure(s) that are performed in addition to another procedure.

"**Admitting diagnosis**" - The medical condition responsible for a hospital admission, as defined by the ICD diagnostic code.

"**Advanced registered nurse practitioner (ARNP)**" - A registered nurse prepared in a formal educational program to assume an expanded health services provider role in accordance with WAC 246-840-300 and 246-840-305.

"Allowed charges" - The maximum amount reimbursed for any procedure that is allowed by the agency.

"Anesthesia technical advisory group (ATAG)" - An advisory group representing anesthesiologists who are affected by the implementation of the anesthesiology fee schedule.

"Bariatric surgery" - Any surgical procedure, whether open or by laparoscope, which reduces the size of the stomach with or without bypassing a portion of the small intestine and whose primary purpose is the reduction of body weight in an obese individual.

"Base anesthesia units (BAU)" - A number of anesthesia units assigned to a surgical procedure that includes the usual preoperative, intraoperative, and postoperative visits. This includes the administration of fluids and/or blood incident to the anesthesia care, and interpretation of noninvasive monitoring by the anesthesiologist.

"Bundled services" - Services integral to the major procedure that are included in the fee for the major procedure. Bundled services are not reimbursed separately.

"Bundled supplies" - Supplies that are considered to be included in the practice expense RVU of the medical or surgical service of which they are an integral part.

"By report (BR)," see WAC 182-500-0015.

"Call" - A face-to-face encounter between the client and the provider resulting in the provision of services to the client.

"Cast material maximum allowable fee" - A reimbursement amount based on the average cost among suppliers for one roll of cast material.

"Center of excellence (COE)" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"Centers for Medicare and Medicaid Services (CMS)," see WAC 182-500-0020.

"Certified registered nurse anesthetist (CRNA)" - An advanced registered nurse practitioner (ARNP) with formal training in anesthesia who meets all state and national criteria for certification. The American Association of Nurse Anesthetists specifies the national certification and scope of practice.

"Children's health insurance plan (CHIP)," see chapter 182-542 WAC.

"Clinical Laboratory Improvement Amendment (CLIA)" - Regulations from the U.S. Department of Health and Human Services that require all laboratory testing sites to have either a CLIA registration or a CLIA certificate of waiver in order to legally perform testing anywhere in the U.S.

"Conversion factors" - Dollar amounts the agency uses to calculate the maximum allowable fee for physician-related services.

"Covered service" - A service that is within the scope of the eligible client's medical care program, subject to the limitations in this chapter and other published WAC.

"CPT," see "current procedural terminology."

"Critical care services" - Physician services for the care of critically ill or injured clients. A critical illness or injury acutely impairs one or more vital organ systems such

that the client's survival is jeopardized. Critical care is given in a critical care area, such as the coronary care unit, intensive care unit, respiratory care unit, or the emergency care facility.

"Current procedural terminology (CPT)" - A systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Emergency medical condition(s)," see WAC 182-500-0030.

"Emergency services" - Medical services required by and provided to a patient experiencing an emergency medical condition.

"Evaluation and management (E&M) codes" - Procedure codes that categorize physician services by type of service, place of service, and patient status.

"Expedited prior authorization" - The process of obtaining authorization that must be used for selected services, in which providers use a set of numeric codes to indicate to the agency which acceptable indications, conditions, diagnoses, and/or criteria are applicable to a particular request for services.

"Experimental" - A term to describe a health care service that lacks sufficient scientific evidence of safety and effectiveness. A service is not "experimental" if the service:

((+)) (a) Is generally accepted by the medical profession as effective and appropriate; and

((+)) (b) Has been approved by the federal Food and Drug Administration or other requisite government body, if such approval is required.

"Federally approved hemophilia treatment center" - A hemophilia treatment center (HTC) that:

((+)) (a) Receives funding from the U.S. Department of Health and Human Services, Maternal and Child Health Bureau National Hemophilia Program;

((+)) (b) Is qualified to participate in 340B discount purchasing as an HTC;

((+)) (c) Has a U.S. Center for Disease Control (CDC) and prevention surveillance site identification number and is listed in the HTC directory on the CDC web site;

((+)) (d) Is recognized by the Federal Regional Hemophilia Network that includes Washington state; and

((+)) (e) Is a direct care provider offering comprehensive hemophilia care consistent with treatment recommendations set by the Medical and Scientific Advisory Council (MASAC) of the National Hemophilia Foundation in their standards and criteria for the care of persons with congenital bleeding disorders.

"Fee-for-service," see WAC 182-500-0035.

"Flat fee" - The maximum allowable fee established by the agency for a service or item that does not have a relative value unit (RVU) or has an RVU that is not appropriate.

"Geographic practice cost index (GPCI)" - As defined by medicare, means a medicare adjustment factor that includes local geographic area estimates of how hard the provider has to work (work effort), what the practice expenses are, and what malpractice costs are. The GPCI reflects one-fourth the difference between the area average and the national average.

"**Global surgery reimbursement**," see WAC 182-531-1700.

"**HCPCS Level II**" - Health care common procedure coding system, a coding system established by Centers for Medicare and Medicaid Services (CMS) to define services and procedures not included in CPT.

"**Health care financing administration common procedure coding system (HCPCS)**" - The name used for the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) codes made up of CPT and HCPCS level II codes.

"**Health care team**" - A group of health care providers involved in the care of a client.

"**Hospice**" - A medically directed, interdisciplinary program of palliative services which is provided under arrangement with a Title XVIII Washington licensed and certified Washington state hospice for terminally ill clients and the clients' families.

"**ICD**," see "International Classification of Diseases."

"**Informed consent**" - That an individual consents to a procedure after the provider who obtained a properly completed consent form has done all of the following:

((~~1~~)) (a) Disclosed and discussed the client's diagnosis;

((~~and~~

(~~2~~))

(b) Offered the client an opportunity to ask questions about the procedure and to request information in writing;

((~~and~~

(~~3~~))

(c) Given the client a copy of the consent form; ((~~and~~

(~~4~~))

(d) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. Chapter IV 441.257; and

((~~5~~)) (e) Given the client oral information about all of the following:

((~~a~~)) (i) The client's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure; ((~~and~~

(~~b~~))

(ii) Alternatives to the procedure including potential risks, benefits, and consequences; and

((~~e~~)) (iii) The procedure itself, including potential risks, benefits, and consequences.

"**Inpatient hospital admission**" - An admission to a hospital that is limited to medically necessary care based on an evaluation of the client using objective clinical indicators, assessment, monitoring, and therapeutic service required to best manage the client's illness or injury, and that is documented in the client's medical record.

"**International Classification of Diseases (ICD)**" - The systematic listing that transforms verbal descriptions of diseases, injuries, conditions, and procedures into numerical or alphanumerical designations (coding).

"**Investigational**" - A term to describe a health care service that lacks sufficient scientific evidence of safety and effectiveness for a particular condition. A service is not "investigational" if the service:

((~~1~~)) (a) Is generally accepted by the medical professional as effective and appropriate for the condition in question; or

((~~2~~)) (b) Is supported by an overall balance of objective scientific evidence, that examines the potential risks and potential benefits and demonstrates the proposed service to be of greater overall benefit to the client in the particular circumstance than another generally available service.

"**Life support**" - Mechanical systems, such as ventilators or heart-lung respirators, which are used to supplement or take the place of the normal autonomic functions of a living person.

"**Limitation extension**," see WAC 182-501-0169.

"**Long-acting reversible contraceptive (LARC)**" - Subdermal implants and intrauterine devices (IUDs).

"**Maximum allowable fee**" - The maximum dollar amount that the agency will reimburse a provider for specific services, supplies, and equipment.

"**Medically necessary**," see WAC 182-500-0070.

"**Medication assisted treatment (MAT)**" - The use of Federal Drug Administration-approved medications that have published evidence of effectiveness, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.

"**Medicare clinical diagnostic laboratory fee schedule**" - The fee schedule used by medicare to reimburse for clinical diagnostic laboratory procedures in the state of Washington.

"**Medicare physician fee schedule database (MPFSDB)**" - The official CMS publication of the medicare policies and RVUs for the RBRVS reimbursement program.

"**Medicare program fee schedule for physician services (MPFSPS)**" - The official CMS publication of the medicare fees for physician services.

"**Mentally incompetent**" - A client who has been declared mentally incompetent by a federal, state, or local court.

"**Modifier**" - A two-digit alphabetic and/or numeric identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting physician can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"**Outpatient**," see WAC 182-500-0080.

"**Peer-reviewed medical literature**" - A research study, report, or findings regarding a medical treatment that is published in one or more reputable professional journals after being critically reviewed by appropriately credentialed experts for scientific validity, safety, and effectiveness.

"**Physician care plan**" - A written plan of medically necessary treatment that is established by and periodically reviewed and signed by a physician. The plan describes the medically necessary services to be provided by a home health agency, a hospice agency, or a nursing facility.

"**Physician standby**" - Physician attendance without direct face-to-face client contact and which does not involve provision of care or services.

"Physician's current procedural terminology," see "current procedural terminology (CPT)."

"PM&R," see acute physical medicine and rehabilitation.

"Podiatric service" - The diagnosis and medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the foot and ankle.

"Point-of-sale (POS) actual acquisition cost (AAC)" - The agency determined rate paid to pharmacies through the POS system, which is intended to reflect pharmacy providers' actual acquisition cost.

"Pound indicator (#)" - A symbol (#) indicating a CPT procedure code listed in the agency's fee schedules that is not routinely covered.

"Preventive" - Medical practices that include counseling, anticipatory guidance, risk factor reduction interventions, and the ordering of appropriate laboratory and diagnostic procedures intended to help a client avoid or reduce the risk or incidence of illness or injury.

"Prior authorization," see WAC 182-500-0085.

"Professional component" - The part of a procedure or service that relies on the provider's professional skill or training, or the part of that reimbursement that recognizes the provider's cognitive skill.

"Prognosis" - The probable outcome of a client's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the client's probable life span as a result of the illness.

"Prolonged services" - Face-to-face client services furnished by a provider, either in the inpatient or outpatient setting, which involve time beyond what is usual for such services. The time counted toward payment for prolonged E&M services includes only face-to-face contact between the provider and the client, even if the service was not continuous.

"Provider," see WAC 182-500-0085.

"Radioallergosorbent test" or "RAST" - A blood test for specific allergies.

"RBRVS," see resource based relative value scale.

"RBRVS RVU" - A measure of the resources required to perform an individual service or intervention. It is set by medicare based on three components - Physician work, practice cost, and malpractice expense. Practice cost varies depending on the place of service.

"Reimbursement" - Payment to a provider or other agency-approved entity who bills according to the provisions in WAC 182-502-0100.

"Reimbursement steering committee (RSC)" - An interagency work group that establishes and maintains RBRVS physician fee schedules and other payment and purchasing systems utilized by the agency and the department of labor and industries.

"Relative value guide (RVG)" - A system used by the American Society of Anesthesiologists for determining base anesthesia units (BAUs).

"Relative value unit (RVU)" - A unit that is based on the resources required to perform an individual service or intervention.

"Resource based relative value scale (RBRVS)" - A scale that measures the relative value of a medical service or

intervention, based on the amount of physician resources involved.

"RSC RVU" - A unit established by the RSC for a procedure that does not have an established RBRVS RVU or has an RBRVS RVU deemed by the RSC as not appropriate for the service.

"RVU," see relative value unit.

"Stat laboratory charges" - Charges by a laboratory for performing tests immediately. "Stat" is an abbreviation for the Latin word "statim," meaning immediately.

"Sterile tray" - A tray containing instruments and supplies needed for certain surgical procedures normally done in an office setting. For reimbursement purposes, tray components are considered by CMS to be nonroutine and reimbursed separately.

"Technical advisory group (TAG)" - An advisory group with representatives from professional organizations whose members are affected by implementation of RBRVS physician fee schedules and other payment and purchasing systems utilized by the agency and the department of labor and industries.

"Technical component" - The part of a procedure or service that relates to the equipment set-up and technician's time, or the part of the procedure and service reimbursement that recognizes the equipment cost and technician time.

NEW SECTION

WAC 182-531-2040 Enhanced reimbursement—Medication assisted treatment for opioid use disorder. (1) The medicaid agency pays an enhanced reimbursement using the medicare rate when medication assisted treatment (MAT) is part of the visit for selected evaluation and management (E/M) codes and the provider meets the criteria in this section.

(2) The purpose of this enhanced reimbursement is to encourage providers to obtain and use a Drug Addiction Treatment Act of 2000 waiver (DATA 2000 waiver) to increase client access to evidence-based treatment using medications for opioid use disorder.

(3) To receive the enhanced reimbursement for MAT, a provider must:

(a) Bill using the agency's expedited prior authorization process;

(b) Currently use a DATA 2000 waiver to prescribe MAT to clients with opioid use disorder;

(c) Bill for treating a client with a qualifying diagnosis for opioid use disorder; and

(d) Provide opioid-related counseling during the visit.

(4) The agency payment for MAT under this section is limited to one enhanced reimbursement, per client, per day.

(5) The agency does not pay an enhanced reimbursement for services a client receives for opioid use disorder through an opioid treatment program facility licensed by the department of health.

WSR 18-20-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-263—Filed September 25, 2018, 3:33 p.m., effective September 25, 2018, 3:33 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This rule extends tribal fall salmon fisheries, along with continuing commercial sales to Washington wholesale buyers and the public. The URB run-size has not changed since the last compact and room is still available for the current expected harvest. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. This rule is consistent with action of the Columbia River Compact on July 26, August 14, and September 6 and 18, 2018. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some

incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

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

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

Number of Sections Adopted at the Request of a 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: September 25, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

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

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

(a) Season: 6 AM Wednesday September 26 to 6 PM Saturday September 28

(b) Gear: Set and Drift gillnets with an 8-inch minimum mesh restriction

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54

inches fork length in The Dalles and John Day pools may be kept for subsistence purposes

(d) Standard river mouth and dam closed areas applicable to gillnet gear. The Spring Creek Hatchery sanctuary is reduced to 150 feet around the hatchery ladder.

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

(a) Season: Effective immediately until further notice.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon of legal size may be sold if landed during the open area and period for the setline fishery within that pool, otherwise sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes. Fish landed during the open periods are allowed to be sold after the period concludes.

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

(3) Open Areas: Drano Lake and Klickitat River

(a) Season: Effective immediately until further notice and only during days and times open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold. Sturgeon from 38 to 54 inches fork length may be kept for subsistence.

(4) Open Areas: Areas downstream of Bonneville Dam defined in tribal/state MOU's/MOA's.

(a) Season: Effective immediately through 11:59 PM Wednesday, October 31, 2018 and only during days and times opened under tribal rules.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000X Columbia River salmon seasons above Bonneville Dam. (18-251)

WSR 18-20-045

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed September 26, 2018, 9:54 a.m., effective September 26, 2018, 9:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-193 (Rule 193) and 458-20-221 (Rule 221) provide guidance regarding the need for a seller to have a physical presence in Washington in order to establish the required nexus for the state to impose a sales or use tax collection obligation on retail sales into Washington. The United States Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), allowed Washington to impose a sales or use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision and RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, the department will require a remote seller to collect retail sales or use tax on all taxable sales sourced to Washington if it exceeds \$100,000 in gross retail sales or two hundred retail transactions in the state during the current or prior calendar year. The department will begin the standard rule-making process in 2018 to reflect these changes, but until the final rules are adopted, the department wants the public to be aware that the current Rules 193 and 221 may contain outdated or incomplete information regarding who is required to collect sales or use tax on taxable retail sales into Washington.

Citation of Rules Affected by this Order: Amending WAC 458-20-193 and 458-20-221.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060, and 82.32.733.

Other Authority: RCW 34.05.350.

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: Taxpayers rely on Rules 193 and 221 to determine whether they are required to collect sales or use tax on taxable retail sales sourced to Washington. Due to the department's imposition of a sales or use tax collection obligation on remote sellers that exceed \$100,000 in gross retail sales or two hundred retail transactions in the state during the current or prior calendar year starting on October 1, 2018, under the authority of RCW 82.08.0254, 82.12.0255, and 82.32.733, Rules 193 and 221 require substantive updates using the standard rule-making process. Until these rules are amended, the department wants to ensure the public does not use current Rules 193 and 221 to

determine their sales or use tax collection obligations beginning October 1, 2018.

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 2, Repealed 0.

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

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

Date Adopted: September 26, 2018.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-06-078, filed 3/6/18, effective 4/6/18)

WAC 458-20-193 Interstate sales of tangible personal property. (1) **Introduction.** The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington requires a remote seller to collect retail sales or use tax on all taxable sales sourced to Washington if it exceeds one hundred thousand dollars in gross retail sales or two hundred retail transactions in the state during the current or prior calendar year. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements. This rule explains the application of the business and occupation (B&O) and retail sales taxes to interstate sales of tangible personal property.

(a) The following rules may also be helpful:

(i) WAC 458-20-178 Use tax and the use of tangible personal property.

(ii) WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.

(iii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(iv) WAC 458-20-19401 Minimum nexus threshold for apportionable receipts.

(b) This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(c) **Tangible personal property.** For purposes of this rule, the term "tangible personal property" means personal

property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses, but does not include steam, electricity, or electrical energy. It includes prewritten computer software (as such term is defined in RCW 82.04.215) in tangible form. However, this rule does not address electronically delivered prewritten computer software or remote access software.

(2) **Scope of rule.** In general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington. This rule explains the applicable nexus and place of sale requirements with respect to sales of tangible personal property. This rule does not cover sales of intangibles or services and does not address the use tax obligation of a purchaser of goods in Washington. For information on payment responsibilities for use tax see WAC 458-20-178.

(3) **Organization of rule.** This rule is divided into three parts:

(a) Part I - Nexus standards for sales of tangible personal property;

(b) Part II - Sourcing sales of tangible personal property; and

(c) Part III - Drop shipment sales.

Part I - Nexus Standards for Sales of Tangible Personal Property

(101) **Introduction.** A seller is subject to the state's B&O tax and retail sales tax with respect to sales of tangible personal property, if that seller has nexus. Washington applies specific nexus standards and thresholds that are used to determine whether a seller of tangible personal property has nexus. The nexus standards and thresholds described in this rule pertain only to sellers of tangible personal property. The remainder of Part 1 of this rule describes these nexus standards and thresholds and how they apply in the context of Washington's wholesaling and retailing B&O classifications and the retail sales tax.

(102) **Physical presence nexus standard.** A person who sells tangible personal property in a retail sale is deemed to have nexus with Washington if the person has a physical presence in this state, which need only be demonstrably more than the slightest presence. RCW 82.04.067(6). This standard applies to retail sales both in the retail sales tax and retailing B&O tax context.

(a) **Physical presence.** A person is physically present in this state if:

(i) The person has property in this state;

(ii) The person has one or more employees in this state;

(iii) The person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington; or

(iv) The person is a remote seller as defined in RCW 82.08.052 and is unable to rebut the substantial nexus presumption for remote sellers set out in RCW 82.04.067(6)(c)(ii).

(b) **Property.** A person has property in this state if the person owns, leases, or otherwise has a legal or beneficial interest in real or personal property in Washington.

(c) **Employees.** A person has employees in this state if the person is required to report its employees for Washington unemployment insurance tax purposes, or the facts and circumstances otherwise indicate that the person has employees in the state.

(d) **In-state activities.** Even if a person does not have property or employees in Washington, the person is physically present in Washington when the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington. It is immaterial that the activities that establish nexus are not significantly associated with a particular sale into this state.

For purposes of this rule, the term "agent or other representative" includes an employee, independent contractor, commissioned sales representative, or other person acting either at the direction of or on behalf of another.

A person performing the following nonexclusive list of activities, directly or through an agent or other representative, generally is performing activities that are significantly associated with establishing or maintaining a market for a person's products in this state:

- (i) Soliciting sales of goods in Washington;
- (ii) Installing, assembling, or repairing goods in Washington;
- (iii) Constructing, installing, repairing, or maintaining real property or tangible personal property in Washington;
- (iv) Delivering products into Washington other than by mail or common carrier;
- (v) Having an exhibit at a trade show to maintain or establish a market for one's products in the state, except as described in subsection (102)(f) of this rule;
- (vi) An online seller having a brick-and-mortar store in this state accepting returns on its behalf;
- (vii) Performing activities designed to establish or maintain customer relationships including, but not limited to:
 - (A) Meeting with customers in Washington to gather or provide product or marketing information, evaluate customer needs, or generate goodwill; or
 - (B) Being available to provide services associated with the product sold (such as warranty repairs, installation assistance or guidance, and training on the use of the product), if the availability of such services is referenced by the seller in its marketing materials, communications, or other information accessible to customers.

(e) **Remote sellers - Click-through nexus.** Effective September 1, 2015, a remote seller as defined in RCW 82.08.052 is presumed to meet the physical presence nexus standard described in this subsection for purposes of the retail sales tax if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, refers potential customers to the remote seller, whether by link on an internet web site or otherwise, but only if the cumulative gross receipts from sales by the remote seller to customers in this state who are referred to the remote seller through such agreements exceeds ten thousand dollars during the preceding calendar year. For more information related to the presumption and how to rebut the presumption, see RCW 82.08.052 and 82.04.067 (6)(c)(ii).

(f) **Trade convention exception.** For the physical presence nexus standard described in this subsection, the department may not make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per calendar year in Washington state in determining if such person is physically present in this state for the purposes of establishing substantial nexus with this state. This does not apply to persons making retail sales at a trade convention in this state, including persons taking orders for products or services where receipt will occur at a later time in Washington state. RCW 82.32.-531.

Definitions. The following definitions apply only to (f) of this subsection:

(i) "Not marketed to the general public" means that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

(ii) "Physically present in this state" and "substantial nexus with this state" have the same meaning as provided in RCW 82.04.067.

(iii) "Trade convention" means an exhibition for a specific industry or profession, which is not marketed to the general public, for the purposes of:

- (A) Exhibiting, demonstrating, and explaining services, products, or equipment to potential customers; or
- (B) The exchange of information, ideas, and attitudes in regards to that industry or profession.

(103) **Economic nexus thresholds.** RCW 82.04.067 establishes substantial nexus thresholds that apply to persons who sell tangible personal property. For more information on the economic nexus thresholds, see WAC 458-20-19401.

Application to retail sales. Effective July 1, 2017, for B&O tax purposes, a person making retail sales taxable under RCW 82.04.250(1) or 82.04.257(1) is deemed to have substantial nexus with Washington if the person's receipts meet the economic nexus thresholds under RCW 82.04.067 (1)(c)(iii) and (iv). The receipts threshold is met if the person has more than two hundred sixty-seven thousand dollars of receipts (as adjusted by RCW 82.04.067(5)) from this state or at least twenty-five percent of the person's total receipts are in this state. For more information, see WAC 458-20-19401.

(104) **Application of standards and thresholds to wholesale sales.** The physical presence nexus standard described in subsection (102) of this rule, applies to wholesale sales for periods prior to September 1, 2015. Effective September 1, 2015, wholesale sales taxable under RCW 82.04.257(1) and 82.04.270 are subject to the RCW 82.04.-067 (1) through (5) economic nexus thresholds. Wholesaling activities not taxable under RCW 82.04.257(1) and 82.04.270 remain subject to the physical presence nexus standard. For more information, see WAC 458-20-19401.

(105) **Effect of having nexus.**

(a) **Retail sales.** A person that makes retail sales of tangible personal property and meets either the physical presence nexus standard or whose receipts meet the economic nexus thresholds described in RCW 82.04.067 (1)(c)(iii) or (iv) is subject to B&O tax on that person's retail sales received in the state. In addition, a person that makes retail sales of tangible personal property and meets the physical

presence nexus standard, including as described in subsection (102)(e) of this rule, is also responsible for collecting and remitting retail sales tax on that person's sales of tangible personal property sourced to Washington, unless a specific exemption applies.

(b) **Wholesale sales.** A person that makes wholesale sales of tangible personal property and has nexus with Washington (as described in subsection (104) of this rule) is subject to B&O tax on that person's wholesale sales sourced to Washington.

(106) **Trailing nexus.** Effective July 1, 2017, for B&O tax purposes, a person is deemed to have substantial nexus with Washington for the current year if that person meets any of the requirements in RCW 82.04.067 in either the current or immediately preceding calendar year. Thus, a person who stops the business activity that created nexus in Washington continues to have nexus in the calendar year following any calendar year in which the person met any of the requirements in RCW 82.04.067 (also known as "trailing nexus").

Prior to July 1, 2017, RCW 82.04.220 provided that for B&O tax purposes a person who stopped the business activity that created nexus in Washington continued to have nexus for the remainder of that calendar year, plus one additional calendar year.

The department of revenue applies the same trailing nexus period for retail sales tax and other taxes reported on the excise tax return.

(107) **Public Law 86-272.** Public Law 86-272 (15 U.S.C. Sec. 381 et. seq.) applies only to taxes on or measured by net income. Washington's B&O tax is measured by gross receipts. Consequently, Public Law 86-272 does not apply.

Part II - Sourcing Sales of Tangible Personal Property

(201) **Introduction.** RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on "sourcing rules" established under the streamlined sales and use tax agreement. Sourcing rules for the lease or rental of tangible personal property are beyond the scope of this rule, as are the sourcing rules for "direct mail," "advertising and promotional direct mail," or "other direct mail" as such terms are defined in RCW 82.32.730. See RCW 82.32.-730 for further explanation of the sourcing rules for those particular transactions.

(202) Receive and receipt.

(a) **Definition.** "Receive" and "receipt" mean the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property.

(b) Receipt by a shipping company.

(i) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the purchaser.

(ii) A "shipping company" for purposes of this rule means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated (e.g., an entity wholly owned by the seller or purchaser) or unaffiliated (e.g., third-party carrier) with the seller or purchaser. A shipping company is not a division or branch of a seller or purchaser that carries out shipping duties for the

seller or purchaser, respectively. Whether an entity is a "shipping company" for purposes of this rule applies only to sourcing sales of tangible personal property and does not apply to whether a "shipping company" can create nexus for a seller.

(203) **Sourcing sales of tangible personal property - In general.** The following provisions in this subsection apply to sourcing sales of most items of tangible personal property.

(a) **Business location.** When tangible personal property is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

Example 1. Jane is an Idaho resident who purchases tangible personal property at a retailer's physical store location in Washington. Even though Jane takes the property back to Idaho for her use, the sale is sourced to Washington because Jane received the property at the seller's business location in Washington.

Example 2. Department Store has retail stores located in Washington, Oregon, and in several other states. John, a Washington resident, goes to Department Store's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store. Although Department Store has nexus with Washington through its Washington store locations, Department Store is not liable for B&O tax and does not have any responsibility to collect Washington retail sales tax on this transaction because the purchaser, John, took possession of the luggage at the seller's business location outside of Washington.

Example 3. An out-of-state purchaser sends its own trucks to Washington to receive goods at a Washington-based seller and to immediately transport the goods to the purchaser's out-of-state location. The sale occurs in Washington because the purchaser receives the goods in Washington. The sale is subject to B&O and retail sales tax.

Example 4. The same purchaser in Example 3 uses a wholly owned affiliated shipping company (a legal entity separate from the purchaser) to pick up the goods in Washington and deliver them to the purchaser's out-of-state location. Because "receive" and "receipt" do not include possession by the shipping company, the purchaser receives the goods when the goods arrive at the purchaser's out-of-state location and not when the shipping company takes possession of the goods in Washington. The sale is not subject to B&O tax or retail sales tax.

(b) **Place of receipt.** If the sourcing rule explained in (a) of this subsection does not apply, the sale is sourced to the location where receipt by the purchaser or purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, as known to the seller.

(i) The term "purchaser" includes the purchaser's agent or designee.

(ii) The term "purchaser's donee" means a person to whom the purchaser directs shipment of goods in a gratuitous transfer (e.g., a gift recipient).

(iii) Commercial law delivery terms, and the Uniform Commercial Code's provisions defining sale or where risk of loss passes, do not determine where the place of receipt occurs.

(iv) The seller must retain in its records documents used in the ordinary course of the seller's business to show how the

seller knows the location of where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(B) If shipped by a shipping company, a waybill, bill of lading or other contract of carriage indicating where delivery occurs; or

(C) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

- The seller's name and address;
- The purchaser's name and address;
- The place of delivery, if different from the purchaser's address; and
- The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

Example 5. John buys luggage from a Department Store that has nexus with Washington (as in Example 2), but has the store ship the luggage to John in Washington. Department Store has nexus with Washington, and receipt of the luggage by John occurred in Washington. Department Store owes Washington retailing B&O tax and must collect Washington retail sales tax on this sale.

Example 6. Parts Store is located in Washington. It sells machine parts at retail and wholesale. Parts Collector is located in California and buys machine parts from Parts Store. Parts Store ships the parts directly to Parts Collector in California, and Parts Collector takes possession of the machine parts in California. The sale is not subject to B&O or retail sales taxes in this state because Parts Collector did not receive the parts in Washington.

Example 7. An out-of-state seller with nexus in Washington uses a third-party shipping company to ship goods to a customer located in Washington. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes. The sale is subject to B&O and retail sales tax in this state because the purchaser has taken possession of the goods in Washington.

Example 8. A Washington purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller at its out-of-state location, and deliver those goods to the Washington purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer. When the affiliated shipping company takes possession of the goods out-of-state, the Washington purchaser has not received the goods out-of-state. Possession by a shipping company on behalf of a purchaser is not receipt for purposes of this rule, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the buyer. Receipt occurs when the buyer takes possession of the goods

in Washington. The sale is subject to B&O and retail sales tax in this state.

Example 9. An instate seller arranges for shipping its goods to an out-of-state purchaser by first delivering its goods to a Washington-based shipping company at its Washington location for further transport to the out-of-state customer's location. Possession of the goods by the shipping company in Washington is not receipt by the purchaser for Washington tax purposes, and the sale is not subject to B&O and retail sales tax in Washington.

Example 10. An out-of-state manufacturer/seller of a bulk good with nexus in Washington sells the good to a Washington-based purchaser in the business of selling small quantities of the good under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant. The Washington purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The sale is not subject to B&O and retail sales tax in this state because the purchaser received the goods outside of Washington.

Example 11. Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Company ABC directs Company XYZ to ship the goods by a for-hire carrier to a commercial storage warehouse in Washington. The goods will be considered as having been received by Company ABC when the goods are delivered at the commercial storage warehouse. Assuming Company XYZ has nexus, Company XYZ is subject to B&O tax and must collect retail sales tax on the sale.

(c) **Other sourcing rules.** There may be unique situations where the sourcing rules provided in (a) and (b) of this subsection do not apply. In those cases, please refer to the provisions of RCW 82.32.730 (1)(c) through (e).

(204) **Sourcing sales of certain types of property.**

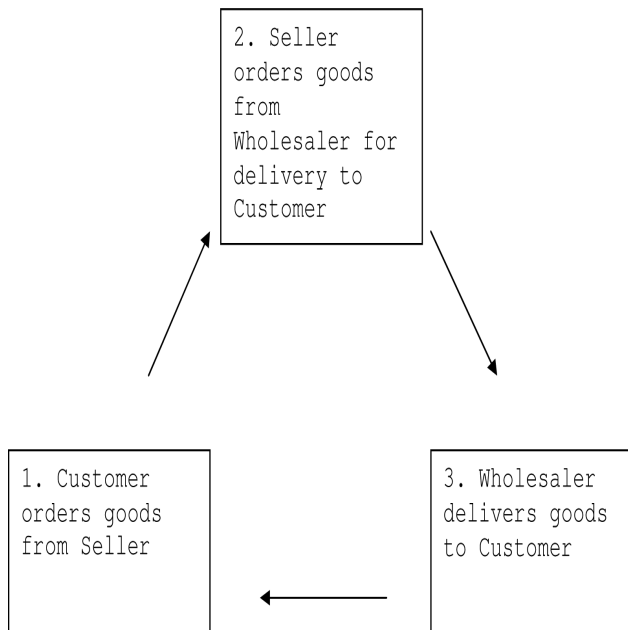
(a) **Sales of commercial aircraft parts.** As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

(b) **Sales of motor vehicles, watercraft, airplanes, manufactured homes, etc.** Sales of the following types of property are sourced to the location at or from which the property is delivered in accordance with RCW 82.32.730 (7)(a) through (c): Watercraft; modular, manufactured, or mobile homes; and motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as "transportation equipment" as defined in RCW 82.32.730. See WAC 458-20-145 (2)(b) for further information regarding the sourcing of these sales.

(c) **Sales of flowers and related goods by florists.** Sales by a "florist" are subject to a special origin sourcing rule. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules, see RCW 82.32.-730 (7)(d) and (9)(e) and WAC 458-20-158.

Part III - Drop Shipments

(301) **Introduction.** A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a wholesaler and instructs that wholesaler to deliver the property directly to the seller's customer. The place of receipt in a drop shipment transaction is where the property is delivered (i.e., the seller's customer's location). Below is a diagram of a basic drop shipment transaction:



The following subsections discuss the taxability of drop shipments in Washington when:

- (a) The seller and wholesaler do not have nexus;
- (b) The seller has nexus and the wholesaler does not;
- (c) The wholesaler has nexus and the seller does not; and
- (d) The seller and wholesaler both have nexus. In each of the following scenarios, the customer receives the property in Washington and the sale is sourced to Washington. Further, in each of the following scenarios, a reseller permit or other approved exemption certificate has been acquired to document any wholesale sales in Washington. For information about reseller permits issued by the department, see WAC 458-20-102.

(302) **Seller and wholesaler do not have nexus.** Where the seller and the wholesaler do not have nexus with Washington, sales of tangible personal property by the seller to the customer and the wholesaler to the seller are not subject to B&O tax. In addition, neither the seller nor the wholesaler is required to collect retail sales tax on the sale.

(303) **Seller has nexus but wholesaler does not.** Where the seller has nexus with Washington but the wholesaler does not have nexus with Washington, the wholesaler's sale of tangible personal property to the seller is not subject to B&O tax and the wholesaler is not required to collect retail sales tax on the sale. The sale by the seller to the customer is subject to wholesaling or retailing B&O tax, as the case may be. The

seller must collect retail sales tax from the customer unless specifically exempt by law.

(304) **Wholesaler has nexus but seller does not.** Where the wholesaler has nexus with Washington but the seller does not have nexus with Washington, wholesaling B&O tax applies to the sale of tangible personal property by the wholesaler to the seller for shipment to the seller's customer. The sale from the seller to its Washington customer is not subject to B&O tax, and the seller is not required to collect retail sales tax on the sale.

Example 12. Seller is located in Ohio and does not have nexus with Washington. Seller receives an order from Customer, located in Washington, for parts that are to be shipped to Customer in Washington for its own use as a consumer. Seller buys the parts from Wholesaler, which has nexus with Washington, and requests that the parts be shipped directly to Customer. Seller is not subject to B&O tax and is not required to collect retail sales tax on its sale to Customer because Seller does not have nexus with Washington. The sale by Wholesaler to Seller is subject to wholesaling B&O tax because Wholesaler has nexus with Washington and Customer receives the parts (i.e., the parts are delivered to Customer) in Washington.

(305) **Seller and wholesaler have nexus with Washington.** Where the seller and wholesaler have nexus with Washington, wholesaling B&O tax applies to the wholesaler's sale of tangible personal property to the seller. The sale from the seller to the customer is subject to wholesaling or retailing B&O tax as the case may be. The seller must collect retail sales tax from the customer unless the sale is specifically exempt by law.

AMENDATORY SECTION (Amending WSR 89-06-016, filed 2/23/89, effective 4/1/89)

WAC 458-20-221 Collection of use tax by retailers and selling agents. The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington requires a remote seller to collect retail sales or use tax on all taxable sales sourced to Washington if it exceeds one hundred thousand dollars in gross retail sales or two hundred retail transactions in the state during the current or prior calendar year. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements.

(1) **Statutory requirements.** RCW 82.12.040(1) provides that every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state must obtain a certificate of registration and must collect use tax from purchasers at the time it makes sales of tangible personal property for use in this state. The legislature has directed the department of revenue to specify, by rule, activities which constitute engaging in business activities within this state. These are activities

which are sufficient under the Constitution of the United States to require the collection of use tax.

(2) **Definitions.**

(a) "Maintains a place of business in this state" includes:

(i) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business; or

(ii) Soliciting sales or taking orders by sales agents or traveling representatives.

(b) "Engages in business activities within this state" includes:

(i) Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, telephone, television, radio or other electronic media, or magazine or newspaper advertisements or other media; or

(ii) Being owned or controlled by the same interests which own or control any seller engaged in business in the same or similar line of business in this state; or

(iii) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect use tax.

(c) "Purposefully or systematically exploiting the market provided by this state" is presumed to take place if the gross proceeds of sales of tangible personal property delivered from outside this state to destinations in this state exceed five hundred thousand dollars during a period of twelve consecutive months.

(3) **Liability of buyers for use tax.** Persons in this state who buy articles of tangible personal property at retail are liable for use tax if they have not paid sales tax. See WAC 458-20-178.

(4) **Obligation of sellers to collect use tax.** Persons who obtain a certificate of registration, maintain a place of business in this state, maintain a stock of goods in this state, or engage in business activities within this state are required to collect use tax from persons in this state to whom they sell tangible personal property at retail and from whom they have not collected sales tax. Use tax collected by sellers shall be deemed to be held in trust until paid to the department. Any seller failing to collect the tax or, if collected, failing to remit the tax is personally liable to the state for the amount of tax. (For exceptions as to sale to certain persons engaged in interstate or foreign commerce see WAC 458-20-175.)

(5) **Local use tax.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b)(i) of this section may elect to collect local use tax at a uniform statewide rate of .005 without the necessity of reporting taxable sales to the local jurisdiction of delivery. Amounts collected under the uniform rate shall be allocated by the department to counties and cities in accordance with ratios reflected by the distribution of local sales and use taxes collected from all other taxpayers. Persons not electing to collect at the uniform statewide rate or not eligible to collect at the uniform state rate

shall collect local use tax in accordance with WAC 458-20-145.

(6) **Reporting frequency.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b) of this section shall not be required to file returns and remit use tax more frequently than quarterly.

(7) **Selling agents.** RCW 82.12.040 of the law provides, among other things, as follows:

(a) "Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter."

(b) However, in those cases where the agent receives compensation by reason of a sale made pursuant to an order given directly to his principal by the buyer, and of which the agent had no knowledge at the time of sale, the said agent will be relieved of all liability for the collection of or payment of the tax. Furthermore, in other cases where payment is made by the buyer direct to the principal and the agent is unable to collect the tax from the buyer, the agent will be relieved from all liability for the collection of the tax from the buyer and for payment of the tax to the department, provided that within ten days after receipt of commission on any such sale, the agent shall forward to the department a written statement showing the following: Name and address of purchaser, date of sale, type of goods sold, and selling price. (Agents may avoid all liability for collection of this tax, provided their principals obtain a certificate of registration.)

(8) **Time and manner of collection.** The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax. It is a misdemeanor for a retailer to refund, remit, or rebate to a purchaser or transferee, either directly or indirectly, by whatever means, all or any part of the use tax.

(9) **Effective date.** This rule shall take effect on April 1, 1989.

WSR 18-20-055

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed September 26, 2018, 4:58 p.m., effective September 26, 2018, 4:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is enacting amendments to WAC 388-845-1615 Who may be qualified providers of

respite care?, on an emergency basis to require homecare agencies to be contracted with area agencies on aging. These amendments align with waiver amendments approved by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: Amending WAC 388-845-1615.

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

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

Reasons for this Finding: Immediate adoption of these amendments ensures that the developmental disabilities administration only contracts with qualified homecare agency providers and thus properly receives federal funds.

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

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

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

Date Adopted: September 20, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1615 Who may be qualified providers of respite care? Providers of respite care may be any of the following individuals or agencies contracted with the developmental disabilities administration (DDA) for respite care:

(1) Individuals who meet the provider qualifications under chapter 388-825 WAC;

(2) ~~((Homecare and))~~ Home health agencies licensed under chapter 246-335 WAC, Part 1;

(3) Homecare agencies licensed under chapter 246-335 WAC, Part 1 and contracted with the area agencies on aging (AAA);

(4) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes, and foster group care homes;

~~((4))~~ (5) Licensed and contracted adult family homes;

~~((5))~~ (6) Licensed and contracted adult residential care facilities;

~~((6))~~ (7) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;

~~((7))~~ (8) Licensed child care centers under chapter 170-295 WAC;

~~((8))~~ (9) Licensed child day care centers under chapter 170-295 WAC;

~~((9))~~ (10) Adult day care providers under chapter 388-71 WAC contracted with DDA;

~~((10))~~ (11) Certified providers under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services;

~~((11))~~ (12) A licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the standards of nursing conduct or practice under chapter 246-700 WAC and contracted with DDA to provide this service; or

~~((12))~~ (13) Other DDA contracted providers such as a community center, senior center, parks and recreation, and summer programs.

WSR 18-20-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-266—Filed September 26, 2018, 5:05 p.m., effective September 27, 2018]

Effective Date of Rule: September 27, 2018.

Purpose: Amend recreational salmon fishing rules for Willapa Bay and its tributaries.

Citation of Rules Affected by this Order: Repealing WAC 220-312-0200F and 220-313-0700K; and amending WAC 220-312-020 and 220-313-070.

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

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

Reasons for this Finding: This emergency is needed to open recreational salmon fisheries in Willapa Bay and the Willapa Bay Control Zone targeting coho and to close salmon seasons for Willapa Bay tributaries scheduled to open October 1. Fall Chinook returning to tributaries of Willapa Bay have been significantly lower than preseason predictions and hatchery returns are lower than needed to make egg take at this time. Historic run-timing and stock composition data suggests minimal fall Chinook encounters are likely to occur in marine area fisheries. 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: September 26, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000G Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective October 1, 2018 until further notice the following rules apply. Unless otherwise amended, all permanent rules remain in effect:

- (1) Salmon angling is closed in the following waters:
- (a) Bear River (Pacific Co.)
 - (b) Naselle River (Pacific Co.)
 - (c) Nemah River, Middle (Pacific Co.)
 - (d) Nemah River, North (Pacific Co.)
 - (e) Nemah River, South (Pacific Co.)
 - (f) Willapa River (Pacific Co.)
 - (g) Willapa River, South Fork (Pacific, Co.)
 - (h) North River (Grays Harbor, Pacific Co.)
 - (i) Smith Creek (Pacific Co.)

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

NEW SECTION

WAC 220-313-07000L Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 220-313-070, effective September 27, 2018 until further notice the following rules apply. Unless otherwise amended, all permanent rules remain in effect: Marine Area 2-1 (Willapa Bay) and the Willapa Bay Control Zone, salmon daily limit is 6, up to 2 adults may be retained. Release Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2018:

WAC 220-312-02000F Freshwater exceptions to statewide rules—Coast.

The following section of the Washington Administrative Code is repealed effective September 27, 2018:

WAC 220-313-07000K Coastal Salmon—Saltwater seasons and daily limits.

WSR 18-20-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-265—Filed September 26, 2018, 5:18 p.m., effective September 27, 2018]

Effective Date of Rule: September 27, 2018.

Purpose: Amend commercial salmon rules for Willapa [Willapa] Bay.

Citation of Rules Affected by this Order: Repealing WAC 220-354-25000A; and amending WAC 220-354-250.

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

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

Reasons for this Finding: This emergency rule is needed to open limited commercial salmon fisheries in Willapa Bay. Fall Chinook returning to tributaries of Willapa Bay have been significantly lower than preseason predictions and hatchery returns are lower than needed to make egg take at this time. Historic run-timing and stock composition data suggests minimal fall Chinook encounters are likely to occur during these selected fisheries.

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: September 26, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000B Willapa Bay salmon fall fishery. Notwithstanding the provisions of WAC 220-354-250, effective September 27, 2018, until further notice:

- (1) It is unlawful to fish for commercial purposes in Willapa Bay Salmon Management and Catch reporting Areas except gillnet gear may be used to fish for coho salmon and chum salmon in:

Area	Time	Date(s)	Maximum Mesh Size
2N	7:00 a.m. through 7:00 p.m.	9/27, 9/28	6.5"
2T	7:00 a.m. through 7:00 p.m.	9/27, 9/28	6.5"

(2) Retention of any species other than coho or chum salmon is prohibited.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 27, 2018:

WAC 220-354-25000A Willapa Bay salmon fall fishery.

WSR 18-20-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-267—Filed September 27, 2018, 10:37 a.m., effective September 27, 2018, 10:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial shrimp rules.

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

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

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

Reasons for this Finding: The 2018 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule: (1) Closes the commercial spot shrimp fishery for the season; (2) implements a nonspot weekly limit per fisher for the remainder of the season in the remaining open areas of eight hundred pounds per week per fisher; (3) defines the final closing date and time for both the nonspot and trawl fisheries; (4) retains the opening of the 1B-21A trawl fishery season; (5) maintains the closure of SMA 3 (25A) to all shrimp trawl fishing; (6) maintains other previous provisions and restrictions for the nonspot trawl and pot fisheries. 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: September 27, 2018.

Joe Stohr
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000Z Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) Non-spot shrimp are closed in all Shrimp Management Areas (SMA) with the following exceptions:

(i) Waters of Shrimp Management Area 2 West (25B, 25C, 25D and 26A West) are open immediately until 6:00 PM, October 15, 2018. The total harvest for this area cannot exceed 4,473 pounds of non-spot shrimp.

(ii) Waters of Shrimp Management Area 3 (23A, 23B, 23C, 23D, 25A and 29) are open immediately until 6:00 PM, October 15, 2018. The total harvest for this area cannot exceed 3,459 pounds of non-spot shrimp.

(b) Spot shrimp are closed in all Shrimp Management Areas (SMA).

(c) Effective immediately, until further notice, it is unlawful for a fisher or the fisher's alternate operator to exceed 800 pounds of non-spot shrimp per weekly management period.

(d) The weekly management period for shrimp is Wednesday to Tuesday until the closure on October 15, 2018.

(e) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp trawl gear:

(a) The shrimp trawl fishery will remain open until 6:00 PM, October 15, 2018 with the follow stipulations:

(i) Shrimp Management Area (SMA) 3 (not including the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open. Sequim Bay includes that portion of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(ii) Marine Fish Shellfish Catch Area 25A within SMA 3 is closed to trawl activity for the season.

(iii) That portion of Catch Area 22A within SMA 1B is open.

(iv) That portion of Catch Area 20B within SMA 1B is open.

(v) That portion of Catch Area 21A within SMA 1B is open.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000Y Puget Sound shrimp pot and beam trawl fishery—Season. (18-250)

WSR 18-20-065**EMERGENCY RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed September 27, 2018, 3:45 p.m., effective October 4, 2018]

Effective Date of Rule: October 4, 2018.

Purpose: This emergency rule is necessary to comply with chapter 304, Laws of 2018, passed by the 2018 legislature (ESHB 2938) concerning campaign finance law enforcement and reporting. The effective date of chapter 304, Laws of 2018, is June 7, 2018.

Citation of Rules Affected by this Order: New WAC 390-16-043, 390-16-325, 390-19-045, 390-37-005, 390-37-042, 390-37-062 and 390-37-071; repealing WAC 390-05-295, 390-17-013 and 390-37-041; and amending WAC 390-05-200, 390-05-205, 390-05-215, 390-05-243, 390-05-275, 390-05-290, 390-05-305, 390-05-400, 390-05-500, 390-05-505, 390-05-515, 390-05-530, 390-12-200, 390-16-011A, 390-16-042, 390-16-063, 390-16-071, 390-16-206, 390-16-230, 390-16-313, 390-17-017, 390-17-030, 390-17-400, 390-17-405, 390-17-410, 390-18-030, 390-18-050, 390-18-060, 390-19-010, 390-19-020, 390-19-050, 390-37-001, 390-37-010, 390-37-020, 390-37-030, 390-37-040, 390-37-050, 390-37-060, 390-37-061, 390-37-063, 390-37-070, 390-37-075, 390-37-090, 390-37-100, 390-37-103, 390-37-105, 390-37-130, 390-37-134, 390-37-136, 390-37-140, 390-37-142, 390-37-143, 390-37-144, 390-37-150, and 390-37-182.

Statutory Authority for Adoption: RCW 42.17A.110(1) and chapter 304, Laws of 2018.

Other Authority: The agency is actively undertaking the appropriate procedures to adopt the rule as a permanent rule as required by RCW 34.05.350(2).

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

Reasons for this Finding: Chapter 304, Laws of 2018.

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 7, Amended 55, Repealed 3.

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 7, Amended 55, Repealed 3.

Date Adopted: August 23, 2018.

B. G. Sandahl
Deputy Director

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-05-200 Definition—Candidates for public office—Time of filing. The following circumstances shall give rise to presumption that an individual is a "candidate" as that term is defined in RCW 42.17A.005(~~(7)~~):

(1) The existence of a political committee promoting the election of such individual for public office with the knowledge and consent of that individual; or

(2) A public declaration of candidacy by an individual even if the candidacy is conditioned on a future occurrence; or

(3) Meeting the requirements set forth in WAC 390-16-230 (1) or (2).

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-05-205 Definition of term "consumable." For the purpose of RCW 42.17A.005 (~~((13)(a)(iv))~~) the term "consumable" includes the amount paid for food, beverages, preparation, catering or entertainment cost furnished at the event.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-05-215 Receipt of a campaign contribution. "Receipt" of a campaign contribution, as that term is used in chapter 42.17A RCW, shall be deemed to occur (~~(at the earliest of the following)~~) as follows:

(1) For online or credit card contributions, the contribution is considered received at the time the transfer is made from the merchant account to a candidate or political committee account, except that a contribution made to a candidate who is a state official or legislator outside the restriction period established in RCW 42.17A.560, but transferred to the candidate's account within the restricted period, is considered received outside of the restriction period.

(2) For all other contributions, receipt shall be deemed to occur at the earliest date of the following:

(a) The date that the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson or similarly situated campaign official obtains possession of the contribution(~~(5)~~); or

(~~((2))~~) (b) The date that the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson or similarly situated campaign official is informed of the contribution, or becomes aware that the campaign, or in the case of an earmarked contribution, the intermediary or conduit, has possession of the contribution(~~(5)~~); or

(~~((3))~~) (c) The date that the contribution becomes available for use by the candidate or committee.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-05-243 Ministerial functions by persons holding administrative offices. For the purposes of RCW 42.17A.005 and 42.17A.205:

(1) "Ministerial functions" mean the activities and duties of an administrative office that satisfy RCW 42.17A.005 (~~((13) and (33))~~) and require:

- (a) Data entry for a candidate or political committee;
- (b) Filing reports that have been reviewed and approved for filing by the candidate or political committee officer;
- (c) Maintaining campaign finance and other similar records including making them available for inspection upon direction by the candidate or political committee officer;
- (d) Writing and depositing checks at the direction of the candidate or political committee officer;
- (e) Communications related to ministerial functions (to respond to questions about data entry, to discuss or review a candidate or committee's bank account balance, to schedule times to receive contribution checks at events, to review reports with the candidate or committee prior to filing, and similar communications) but do not involve attending strategy or campaign planning meetings or portions of meetings with candidates or political committee officers or their agents; or
- (f) Other similar campaign finance activities and duties.

(2) "Administrative office" means a person performing campaign finance related clerical support or recordkeeping activities on behalf of candidates and political committees, when, for the purposes of RCW 42.17A.005 (~~((13) and (33))~~), those activities:

- (a) Are directed by the candidate or political committee officer and require performance of activities by the administrative office in a prescribed manner;
- (b) Are approved by the candidate or political committee officer for whom the services are performed;
- (c) Do not involve the exercise of personal judgment or discretion, including authorizing expenditures;
- (d) Do not involve the disclosure, except as required by law, of any information regarding a candidate or committee's plans, projects, activities or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available, or otherwise engage in activity that is a contribution; and
- (e) Do not involve the performance of functions other than ministerial functions.

(3) A person performing only ministerial functions on behalf of two or more candidates or political committees is not:

- (a) Considered an agent so long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee; or
- (b) An officer pursuant to WAC 390-05-245. However, that person's name, address and title must be reported on the C-1 or C-1pc registration form.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-05-275 Definition—Party organization. "Party organization," as that term is used in chapter 42.17A RCW and Title 390 WAC, means a bona fide political party as defined in RCW 42.17A.005 and applied in WAC (~~(390-05-196))~~ 390-05-210.

AMENDATORY SECTION (Amending WSR 13-12-017, filed 5/24/13, effective 6/24/13)

WAC 390-05-290 Political advertising definitions. (1) "Mass communication" means a communication, digital or otherwise, intended to reach a large audience through any of the following methods:

- (a) Advertising displays, newspaper advertising, billboards, signs;
- (b) Brochures, articles, tabloids, fliers, periodicals;
- (c) Radio or television presentations;
- (d) Sample ballots (see WAC 390-17-030);
- (e) Online or other electronic transmission methods;
- (f) One hundred or more letters, emails, text messages or similar communications that are identical or substantially similar in nature, directed to specific recipients, and sent within a thirty-day period; and
- (g) Other mass means of disseminating political advertising, unless excluded by chapter 42.17A RCW or commission rule.

(2) "Online" means disseminating through a network of interconnected computers or devices, such as the internet or similar systems enabling electronic dissemination or exchange of communications. Examples include, but are not limited to, internet web sites, web-based social media (such as Facebook, Twitter, and other electronic publishing platforms), emails, and text messages.

(3) "Political advertising" is defined under RCW 42.17A.005 to include a mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(4) Political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the space or time is not normally required.

AMENDATORY SECTION (Amending WSR 92-05-080, filed 2/18/92, effective 3/20/92)

WAC 390-05-305 Petition for disclosure—Form. (1) A petition for disclosure shall be legible, on 8-1/2 x 11" paper and shall include the following information:

- (a) The name of the jurisdiction;
- (b) A request that public disclosure be required;
- (c) The names and addresses of all known candidates and ballot proposition committees in the jurisdiction who will be required to report;
- (d) The legibly printed name and address and the legal signature of at least fifteen percent of the number of regis-

tered voters in the jurisdiction as of the date of the most recent general election in the jurisdiction.

(2) The petition shall be verified and certified by the auditor or elections officer of the county or counties in which the jurisdiction is located. The signatures shall be verified by comparing the signatures on the petition to the signatures on the voter registration roll. The auditor shall place his seal on each verified page of the petition in order to certify it to the commission.

(3) A suggested form for petition is:

"We, the undersigned citizens and registered voters of (name of jurisdiction), request that the Public Disclosure Commission order disclosure in (name of jurisdiction)."

(4) A suggested form for the petition of a jurisdiction by ordinance, resolution or other official action is:

"We, the (governing board) of (name of jurisdiction) request that the Public Disclosure Commission order disclosure in (name of jurisdiction). This request is made pursuant to RCW ((42.17.405)) 42.17.135 and WAC 390-05-305((4))."

AMENDATORY SECTION (Amending WSR 16-04-080, filed 1/29/16, effective 2/29/16)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	2016 Revision
.005	Definition of "Independent Expenditure"	\$950	((\$1,000)) *
.445(3)	Reimbursement of candidate for loan to own campaign	\$5,500	\$6,000
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$19,000 \$950	\$20,000 \$1,000
.405(2)	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts Candidates for city council office Candidates for mayoral office Candidates for school board office Candidates for hospital district	\$950 \$950 \$1,900 \$1,900 \$950 \$950 \$950 \$950	\$1,000 \$1,000 \$2,000 \$2,000 \$1,000 \$1,000 \$1,000 \$1,000
.405(3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$950 \$1,900	\$1,000 \$2,000
.405(4)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	.95 per voter .50 per voter .50 per voter	\$1.00 per registered voter .50 per registered voter .50 per registered voter

Code Section	Subject Matter	Amount Enacted or Last Revised	2016 Revision
.405(5)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall		
	State parties and caucuses	.95 per voter	\$1.00 per registered voter
	County and leg. district parties	.50 per voter	.50 per registered voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	.50 per voter	.50 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$950	\$1,000
	To political party	\$5,000	\$5,500
.410(1)	Candidates for judicial office	\$1,900	\$2,000
.475	Contribution must be made by written instrument	\$95	\$100

* Chapter 304, Laws of 2018, amended the definition of independent expenditure, changing the dollar-threshold element of that definition to one-half the contribution limit from an individual per election.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-05-500 Debate or forum. "Debate or forum" means qualifying events under RCW 42.17A.005 ~~((19)(b)(ii))~~ where candidates are invited based upon predefined objective criteria, including where only one candidate in an uncontested race participates.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-05-505 Electioneering communication exclusions. (1) "Electioneering communication" does not include communications listed in RCW 42.17A.005 ~~((19)(b)(iii))~~.

(2) "Electioneering communication" also does not include:

(a) Letters to the editor or comparable communications to news media described in RCW 42.17A.005 ~~((19)(b)(iii))~~;

(b) Communications conveyed through web sites, emails, telephone calls, or in-person leaflet/pamphlet drops at street addresses; or

(c) Communications conveyed in a manner not specified in RCW 42.17A.005 ~~((19))~~.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-05-515 Member. In determining whether a communication is to a "member" as that term is used in RCW 42.17A.005 and 42.17A.255, and for the purposes of RCW 42.17A.405, 42.17A.410 and 42.17A.420:

(1) The commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization's permanence, structure and whether it has formal organizing documents, membership criteria and services it provides its members.

(2) With respect to the status of members of an organization, the commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than influencing the outcome of an election, taking into account such factors as whether the members affirmatively accept membership and the rights and obligations conferred on members by the organization including whether members have the right to vote for:

- (a) Election of directors or officers; or
- (b) Changes to the articles or bylaws; or
- (c) The disposition of all or substantially all of the assets of the organization or on a merger or dissolution.

A required payment of a predetermined amount of membership dues is also a factor; however, an organization will not be considered a membership organization if it is primarily a commercial entity or for-profit entity selling products to customers even though it may refer to its customers as "members."

(3) If a membership organization and its members satisfy the criteria regarding "membership associations" and "members" established by the Federal Election Commission (FEC) in 11 C.F.R. Sec. 100.134 (e)-(g), the commission will consider the organization and its members as qualifying for the exemption in RCW 42.17A.005 ~~((13)(b)(v) and (19)(b)(vii))~~ unless the communication was not sent primarily to members. However, these FEC criteria are not the only indi-

cators of legitimate membership organizations or valid members, a determination that will be made by the commission on a case-by-case basis as necessary.

(4) In determining whether an internal political communication is "primarily" limited to the members of an organization or political committee, the commission will consider whether any distribution to nonmembers is incidental and isolated.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-05-530 Funding sources for electioneering communications. (1) "Source of funds" means a person who contributes anything of value for the communication, including a loan, gift, advance, payment, pledge, or personal or professional services for less than full consideration.

(2) Goods, services, property or rights other than money or its equivalent are deemed to have a monetary value equivalent to their fair market value.

(3) "Source of funds" does not include those things of value specified in RCW 42.17A.005 ~~((13)(a)(i))~~.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-05-295 Definition—Promise or promise to pay.

AMENDATORY SECTION (Amending WSR 16-05-008, filed 2/4/16, effective 3/6/16)

WAC 390-12-200 Public disclosure commission—Role of the executive director. The executive director acts as the commission's chief administrative officer and is accountable to the commission for agency administration. In addition, the executive director will:

(1) Act as the appointing authority for agency staff, including the authority to hire, set salaries, promote, assign work, evaluate, take corrective action and, where appropriate, terminate staff.

(2) Exercise such other management oversight, decision-making and administrative action to provide timely and meaningful public access to accurate information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with and equitable enforcement of Washington's disclosure and campaign finance laws.

(3) Determine when appropriate and authorize enforcement alternatives set out in chapter 390-37 WAC to resolve complaints filed with the commission.

(4) Act as liaison between the commission and other public agencies.

(5) Research, develop, and draft policy positions, administrative rules, interpretations and advisory options for presentation to the commission.

(6) Enter into contracts and agreements on behalf of the commission.

(7) The executive director may delegate authority to subordinates, consistent with agency delegation of authority pro-

cedures as adopted by the commission, to act for ~~((him or her))~~ the executive director as needed and appropriate.

(8) The executive director may perform other duties as authorized by chapter 42.17A RCW, Title 390 WAC or as prescribed or delegated by the commission.

Chapter 390-16 WAC

~~((FORMS FOR))~~ CAMPAIGN ~~((FINANCING))~~ FINANCE REPORTING~~((CONTRIBUTIONS))~~

AMENDATORY SECTION (Amending WSR 12-01-047, filed 12/14/11, effective 1/14/12)

WAC 390-16-011A Sponsor of a political committee.

(1) This rule applies to political committees that are not authorized committees. This rule does not apply to political committees that filed final C-4 reports as of December 31, 2011.

(2) "Sponsor" of a political committee is defined under RCW 42.17A.005 ~~((42)(b))~~.

(3) A sponsored political committee that registers on or after January 1, 2012, shall include on its C-1pc the name of at least one sponsor in the committee's name.

(4) A political committee registered before January 1, 2012, shall amend its registration by January 31, 2012. A sponsored political committee shall include on its amended C-1pc the name of at least one sponsor in the committee's name.

(5) To determine if a political committee received eighty percent or more of its contributions from a person or from the person's members, officers, employees, or shareholders under RCW 42.17A.005 ~~((42)(b)(i))~~:

(a) A political committee not organized to support or oppose a particular candidate or ballot proposition shall consider all contributions received January 1, 2011, through the date of filing the amended C-1pc.

(b) A political committee organized to support or oppose a particular candidate or ballot proposition shall consider all contributions received from the time the committee was organized or filed its initial C-1pc, whichever is earlier.

(6) A sponsored political committee must amend its C-1pc sixty days before an election in which it participates if the committee's name on its most recently filed C-1pc does not include at least one current sponsor. To determine if the committee received eighty percent or more of its contributions from a person or from the person's members, officers, employees, or shareholders under RCW 42.17A.005 ~~((42)(b)(i))~~ at the time of the amendment:

(a) A political committee not organized to support or oppose a particular candidate or ballot proposition will consider all contributions received in the previous twelve months through the date of filing the amended C-1pc.

(b) A committee organized to support or oppose a particular candidate or ballot proposition will consider all contributions received from the time the committee was organized or filed its initial C-1pc, whichever is earlier.

AMENDATORY SECTION (Amending WSR 89-20-068, filed 10/4/89, effective 11/4/89)

WAC 390-16-042 Debts and obligations—Contingent liabilities—Reporting. (1) Pursuant to RCW 42.17A.-240 and 42.17A.005, "promise," "promise to pay," "debt" and "obligations" mean:

(a) Any oral or written order or agreement placed for goods, services, or anything else of value;

(b) Any offer to purchase advertising space, broadcast time, or other written, broadcast or digital advertising-related product or service;

(c) Any contractual contingent liability; or

(d) Provided that the amount of the debt or obligation in (a), (b) or (c) of this subsection owed to a vendor is more than seven hundred fifty dollars, and the vendor has not been paid in full for the goods received, invoices submitted, or services performed within the time periods specified in (d)(i) and (ii) of this subsection:

(i) For reports due within thirty days of an election, debts or obligations of more than seven hundred fifty dollars must be reported if the debt or obligation has been outstanding for more than five business days as of the last day of the reporting period;

(ii) For reports due during any other reporting period, debts or obligations of more than seven hundred fifty dollars must be reported if the debt or obligation has been outstanding for more than ten business days as of the last day of the reporting period.

(2) A contractual contingent liability (e.g., an additional fee to be paid to a political consultant or other person whose services are used by a candidate who wins the election) is reportable as a debt or obligation ((on Form C-4, Schedule B-)) from the time the contract is entered into until the liability is voided, paid or otherwise satisfied.

(3) Regularly recurring expenditures, of the same type and same or similar amount that have been reported at least once, need not be reported as debt unless they are past due as of the last day of the reporting period. Examples of recurring obligations that can be reported as recurring expenditures rather than debt include rent, utilities, insurance, cellular phone costs, and payments to campaign staff.

(4) Any obligations already reported to pay for goods and services made by a third party on behalf of a candidate or political committee after the original payment or debt to that party has been reported also need not be reported as debt.

NEW SECTION

WAC 390-16-043 Candidates and political committees—Public inspection of books of account. (1) RCW 42.17A.005 defines "books of account" for candidates and political committees as "a ledger or similar listing of contributions, expenditures, and debts, such as a campaign or committee is required to file regularly with the commission, current as of the most recent business day."

(2) RCW 42.17A.225 and 42.17A.235 require that candidates and political committees participating in an election as defined in RCW 42.17A.005, must make their books of account available for public inspection. The public inspection

of books of account is not intended to be an exhaustive audit of all contributions received and expenditures made.

(3) Any individual who requests to publicly inspect the books of account of a candidate or political committee, must make the request during the period beginning ten calendar days before a primary, general, or special election, by contacting the filer's email address listed on the C-1 report for a candidate, or the C-1pc report for a political committee.

(4) The inspection of the books of account may occur on weekdays, unless the treasurer for the candidate or committee agrees otherwise, beginning on the eighth day before the election, excluding legal holidays, for at least two consecutive hours between 9:00 a.m. and 5:00 p.m. at a location that is agreed upon by the treasurer and the individual requesting the inspection. The inspection must be allowed within forty-eight hours of the date and time the request was made at the agreed-upon location, provided that if the request is not made by 3:00 p.m. on the third day preceding an election, the candidate or political committee need only make best efforts to accommodate the request.

(5) The treasurer for the candidate or committee may make the books of account available electronically, in lieu of scheduling an in-person inspection, or if a location cannot be agreed upon by both parties. If the campaign's only copy of its books of account is maintained electronically with security protections, the person requesting the inspection must be given sufficient instruction to allow the inspection to proceed. Videotaping, photographing or photocopying of the records is not required to be permitted but may be agreed to by both parties during or in advance of the inspection.

(6) The books of account, ledger and other supporting documentation must be maintained by the treasurer and kept current within one business day. The books of account of a candidate or political committee include the following: A ledger, spreadsheet, or similar listing of contributions, expenditures, loans, debts and obligations to substantiate the information disclosed on the PDC campaign finance reports. If a ledger is not sufficiently kept, the books of account must include the underlying source documents such as receipts, invoices, copies of contribution checks, copies of canceled checks for expenditures, notes or other documentation concerning expenditures, orders placed, and loans. In the absence of those types of source documents, the campaign or committee must make the check register available.

(7) The candidate or political committee is not required to make copies of its books of account for the requestor or provide the name and address of contributors who gave twenty-five dollars or less in the aggregate in total contributions.

(8) At the time of making the appointment the person requesting to inspect the books of account must provide the name(s) and contact information for all individuals who will be in attendance for the inspection. The requestor(s) must show photo identification prior to the inspection beginning, and the candidate or political committee may deny the inspection from occurring if photo identification is not provided.

AMENDATORY SECTION (Amending WSR 14-12-012, filed 5/22/14, effective 6/22/14)

WAC 390-16-063 Additional information regarding independent expenditures and C-6 report filing. (1) RCW 42.17A.255 requires a person not otherwise subject to the disclosure requirements of Chapter 42.17A RCW to disclose an independent expenditure of one hundred dollars or more that supports or opposes a candidate or ballot measure. RCW 42.17A.260 requires the disclosure of political advertising with a fair market value of one thousand dollars or more that is presented to the public within twenty-one days of an election, that supports or opposes a candidate or ballot measure, and that qualifies as an independent expenditure.

(a) **Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.** Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of \$3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot measure's pro rata share is \$2,400 (75%) and the candidate's pro rata share is \$800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs \$1,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW 42.17A.260 because the sum of the pro rata share for the two candidates who seek the same office is \$1,000.

(b) **Disclosing independent expenditures that support or oppose multiple candidates or ballot measures.** When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be disclosed. Include the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

(c) **Other applications of prorating and attributing independent expenditures.** Use the prorating and attribution steps explained in (a)(i) and (ii) of this section to determine when an independent expenditure as defined in RCW 42.17A.005~~((26))~~ must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320~~((2))~~ and WAC 390-18-010.

(2) A political committee reporting pursuant to RCW 42.17A.225, 42.17A.235 and 42.17A.240 is exempt from

providing on a C-6 form itemized information concerning its sources of funds giving in excess of two hundred fifty dollars for an electioneering communication, unless the committee received funds that were requested or designated for the communication.

(3) An out-of-state political committee shall report pursuant to RCW 42.17A.305 if it sponsors an electioneering communication defined in RCW 42.17A.005.

(4) The sponsor of an electioneering communication shall report pursuant to RCW 42.17A.305 and commission rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17A.005 or 42.17A.255. Persons in compliance with this subsection are deemed in compliance with RCW 42.17A.255 or 42.17A.260.

(5) Any person making an expenditure that is reportable under RCW 42.17A.640, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17A.005 shall file pursuant to RCW 42.17A.305 and commission rules regarding electioneering communications.

AMENDATORY SECTION (Amending WSR 17-22-071, filed 10/27/17, effective 11/27/17)

WAC 390-16-071 Annual report of major contributors and persons making independent expenditures. (1) Any person, other than an individual (a) who made contributions to state office candidates and statewide ballot proposition committees totaling more than the aggregate amount during the preceding calendar year for contributions referenced in WAC 390-05-400, ~~((code section 180(1)),~~) or (b) who made independent expenditures regarding state office candidates and statewide ballot propositions totaling more than the aggregate amount during the preceding calendar year for independent expenditures referenced in WAC 390-05-400, ~~((code section 180(1)),~~) shall file with the commission an annual report required pursuant to RCW 42.17A.630. This report shall not be required of a lobbyist employer filing an annual L-3 report pursuant to RCW 42.17A.630 or of a candidate's authorized committee or a political committee provided the information has been properly reported pursuant to RCW 42.17A.235 and 42.17A.240.

(2) The report is entitled "Special Political Expenditures" and is designated "C-7." Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Olympia, Washington. Any attachments shall be on 8-1/2" x 11" white paper.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-206 Ratings and endorsements. (1) Any person making a measurable expenditure of funds to communicate a rating, evaluation, endorsement or recommendation for or against a candidate or ballot proposition shall report such expenditure including all costs of preparation and distribution in accordance with chapter 42.17A RCW. However, rating, endorsement or recommendation expenditures governed by the following provisions are not reportable: The news media exemptions provided in RCW 42.17A.005

~~((13)(b)(iv) and (19)(b)(iii),))~~ and WAC 390-16-313 ~~((2)(b))~~, and the political advertising exemption in WAC 390-05-290.

(2) A candidate or sponsor of a ballot proposition who, or a political committee which, is the subject of the rating, evaluation, endorsement or recommendation shall not be required to report such expenditure as a contribution unless the candidate, sponsor, committee or an agent thereof advises, counsels or otherwise encourages the person to make the expenditure.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-230 Surplus campaign funds—Use in future. (1) If at any time in the future or after the last day of the election cycle for candidates as defined in RCW 42.17A.005~~((7))~~ any contribution is received or an expenditure is made from surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or political committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at his or her last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or political committee shall file (a) a final report for the previous campaign as provided in RCW 42.17A.235 and 42.17A.240 and (b) a statement of organization and initial report for the new campaign as provided by RCW 42.17A.205, 42.17A.235 and 42.17A.240. The surplus funds may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." All augmentations to and all expenditures made from the retained surplus funds after the last day of the election cycle shall be reported in detail as to source, recipient, purpose, amount and date of each transaction.

(2) For candidates as defined in RCW 42.17A.005~~((7))~~, if at any time after the last day of the election cycle, any contribution is received or expenditure is made from such surplus funds for any purpose which would qualify the recipient or person who made the expenditure as a candidate or authorized committee, it will be presumed the recipient or person who made the expenditure of such funds has initiated a new candidacy or committee. Surplus funds may only be expended for a new candidacy if the candidate is seeking the same office sought at his or her last election. Within fourteen days of the day such contribution is received or expenditure is made, such candidate or authorized committee shall file (a) a final report for the previous campaign as provided in RCW 42.17A.235 and 42.17A.240 and (b) a statement of organization and initial report for the new campaign as provided by RCW 42.17A.205, 42.17A.235 and 42.17A.240. The surplus funds as of the last day of the election cycle may be carried forward to the new campaign, reported as one sum and listed as a contribution identified as "funds from previous campaign." "Funds from previous campaign" carried forward by a candidate to his or her new campaign are not subject to contribution limits set forth in RCW 42.17A.405.

(3) A political committee formed to support or oppose a particular ballot proposition or particular candidates which retains surplus funds to use in support or opposition of other candidates or of other ballot propositions has become a continuing political committee and must thereafter register and report in accordance with chapter 42.17A RCW.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-313 Independent expenditure—Definition and application. (1) "Independent expenditure," as that term is used in chapter 42.17A RCW, except RCW 42.17A.255, means an "expenditure" as defined in RCW 42.17A.005 that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for public office, except federal elective office or precinct committee officer, by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office~~((or (iv)))~~;

(b) It is made in support of any or in opposition to a candidate for office by a person with whom the candidate has not collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for any political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

~~((b))~~ (c) The expenditure pays in whole or in part for any political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name;

~~((e))~~ (d) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value equal to or greater than ~~((the amount specified for independent expenditures in WAC 390-05-400))~~ one-half the contribution limit from an individual per election. A series of expenditures, each of which is under ~~((the applicable amount in WAC 390-05-400))~~ one-half the contribution limit from an individual per election, constitutes one independent expenditure if their cumulative value is equal to or greater than ~~((the amount specified in WAC 390-05-400))~~ one-half the contribution limit from an individual per election; and

~~((d))~~ (e) The expenditure is not a contribution as defined in RCW 42.17A.005 and clarified by WAC 390-05-210.

(2) Exempt activities. The following activities are not considered independent expenditures for purposes of RCW 42.17A.255, 42.17A.630, or 42.17A.320:

(a) Ordinary home hospitality;

(b) A news item, feature, commentary, or editorial, or communications with journalists or editorial staff designed to elicit the same, in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news

medium, and that is not controlled by a candidate or a political committee;

(c) Participation in the creation of a publicly funded voters pamphlet statement in written or video form;

(d) An internal political communication primarily limited to (i) the members of or contributors to a political party organization or political committee, (ii) the officers, management staff or stockholders of a corporation or similar enterprise, or (iii) the members of a labor organization or other membership organization;

~~((e))~~ (e) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or the property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made shall be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the person providing the facility; or

~~((e))~~ (f) The rendering of personal services of the sort commonly performed by volunteer campaign workers or incidental expenses personally incurred by volunteer campaign workers not in excess of two hundred fifty dollars personally paid by the worker.

NEW SECTION

WAC 390-16-325 Dissolution of committees. (1) Dissolution is the process by which a committee officially ceases doing business, pursuant to RCW 42.17A.225 and 42.17A.235. Dissolution does not relieve the candidate, elected official, or officers from any obligations to address violations that occurred before the committee was dissolved.

(2) To initiate dissolution, the committee must file a notice of intent to dissolve.

(3) The official form for filing a notice of intent to dissolve a committee is designated "D-1." The D-1 must be filed using the electronic filing system provided by the commission, available on the commission's web site at www.pdc.wa.gov. The executive director may waive the electronic filing requirement and allow for the use of another written format on the basis of hardship. The commission is required to post each committee's notice of intent to dissolve on the commission web site upon receipt.

(4) On the D-1 form, the candidate or authorized committee officer must attest to the following:

(a) The committee has concluded its activities in all respects and has ceased to function and intends to dissolve;

(b) The committee has no outstanding debts or obligations, will not make any expenditure other than those related to the dissolution process, and will not engage in any political activity or any other activity that generates additional reporting requirements;

(c) The committee has filed a final report;

(d) No complaint or court action under chapter 42.17A RCW is pending against the committee and it has not been informed by the commission of any possible violations or technical corrections which remain unresolved;

(e) The committee has no outstanding penalties under chapter 42.17A RCW as assessed by the commission or a court;

(f) The committee accepts an ongoing obligation to maintain compliance with these conditions and an affirmative duty to notify the commission of any noncompliance;

(g) The committee understands that the committee's bank account may not be closed before the political committee has dissolved; and

(h) The treasurer is obligated to preserve books of account, bills, receipts, and all other financial records for five years, or as otherwise required by chapter 42.17A RCW.

(5) If, sixty days after a committee has filed its notice of intent to dissolve (D-1), the committee is in compliance with the above requirements and has not notified the commission in writing that it revokes its intent to dissolve, the committee shall be deemed to be dissolved.

(6) The executive director will promptly acknowledge by electronic writing the committee's dissolution. The acknowledgment of dissolution will be posted on the commission's web site when sent to the committee.

(7) If the committee has not met the requirements for dissolution, the executive director will promptly notify the committee by electronic writing that it is not eligible to dissolve, and explain the reasons for its ineligibility. The committee may initiate the process again once it has come into compliance with the requirements.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-17-017 Facilities—Definition. "Facilities," as that term is used in RCW 42.17A.005~~((7))~~, means that which facilitates or makes some campaign activity possible, including but not limited to: Use of stationary, postage, machines and equipment, use of employees of an entity during working hours, vehicles, office space, room or building, publications of an entity or client list of an entity.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-17-030 Sample ballots and slate cards. (1) **Intent.** The commission finds that, under certain conditions, expenditures for slate cards and other candidate listings fall within the scope of RCW 42.17A.405(15) and are, therefore, exempt from contribution limits and eligible for payment with a bona fide political party's exempt funds. Slate cards and other candidate listings remain reportable under chapter 42.17A RCW and subject to the political advertising provisions of the law.

The purpose of this exemption from the contribution limits is to allow political parties and other sponsors to tell the general public which candidates they support. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements by undertaking any degree of significant campaigning on behalf of candidates.

(2) For purposes of RCW 42.17A.005~~((19))~~ and 42.17A.405~~((15))~~, "**sample ballots**" means slate cards, or other candidate listings, whether written or oral, that satisfy the qualifying criteria specified in subsection (10) of this section.

(3) Sample ballots constitute political advertising for a slate or list of candidates and must be properly identified and

otherwise in compliance with the provisions of RCW 42.17A.320 through 42.17A.340.

(4)(a) **A bona fide political party** may use contributions it receives pursuant to RCW 42.17A.405(15) to produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not required to attribute a portion of the expenditure to each of the candidates listed on the sample ballot, but the names of the candidates must be reported along with the other information required by chapter 42.17A RCW and chapter 390-17 WAC.

(5) **Any person**, as defined by RCW 42.17A.005, who makes an expenditure for sample ballots has made an expenditure that does not count against that person's contribution limit to the candidates listed.

(6) **An in-state political committee**, when disclosing expenditures for sample ballots as part of its C-4 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but the names of the candidates and their respective party affiliations must be reported along with other information required by chapter 42.17A RCW and chapter 390-17 WAC.

(7) **An out-of-state committee**, when disclosing expenditures for sample ballots on a C-5 report, is not required to allocate a portion of the expenditure to the candidates listed on the sample ballot, but must report that an expenditure for sample ballots was made, the name and address of the person to whom the expenditure was made, the full amount of the expenditure, and the name, office sought and party affiliation of each candidate listed on the sample ballot. The report is due no later than the 10th day of the month following the month in which the expenditure was made.

(8) If a **lobbyist or lobbyist employer** makes expenditures for sample ballots, those expenditures are required to be reported in detail on the lobbyist's monthly L-2 report. Itemization of these expenditures must include the names and respective party affiliations of the candidates listed on the sample ballot, but no portion of the expenditure need be allocated to individual candidates listed on the sample ballot.

(9) **The candidates listed on a sample ballot** are not required to report any portion of the expenditure as an in-kind contribution to their campaigns.

(10) **Qualifying criteria for sample ballots, slate cards and other candidate listings.** In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW 42.17A.405(15), a sample ballot must satisfy **all** of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state and be distributed in a geographical area where voters are eligible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, Web sites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);
- The office or position currently held;
- The office sought;
- Party affiliation; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues as well as statements about the sponsor's philosophy, goals or accomplishments. The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.

(d) The sample ballot is a stand-alone political advertisement. It must not be a portion of a more comprehensive message or combined in the same mailing or packet with any other information, including get-out-the-vote material, candidate brochures, or statements about the sponsor's philosophy, goals or accomplishments. On Web sites, electronic bulletin boards or electronic billboards, the sample ballot must be a separate document.

AMENDATORY SECTION (Amending WSR 16-04-081, filed 1/29/16, effective 2/29/16)

WAC 390-17-400 Time limit to solicit or accept contributions. The purpose of this rule is to clarify and implement RCW 42.17A.560.

(1) **"Campaign debt,"** as used in RCW 42.17A.560 and this rule, means any debt incurred by a candidate seeking election to a nonfederal public office, including campaigns for state, county, city, town, school district, special district or other state political subdivision elective office.

(2) **"Known candidates"** means individuals who are, or who become, candidates for state or local office during a legislative session freeze period.

(3) **"Legislative session freeze period"** means the period of time in RCW 42.17A.560 within which contributions shall not be solicited or accepted by a state official or a person employed by or acting on behalf of a state official.

(a) The freeze period begins at 12:01 a.m. on the thirtieth day before the start of the regular legislative session and ends at 11:59 p.m. on the day of adjournment of the regular legislative session.

(b) If a special session is held immediately following the end of the regular legislative session, the freeze period ends at 11:59 p.m. on the day the special session adjourns.

(c) If a special session is held other than within thirty days before a regular legislative session, the freeze period begins at 12:01 a.m. on the first day of the special session and ends at 11:59 p.m. on the final day of the special session.

(4) A successful candidate for state office who does not already hold a state office is not required to comply with RCW 42.17A.560 until sworn into office.

(5) A state official must comply with RCW 42.17A.560 until he or she no longer holds state office.

(6) **Activities allowed during a freeze period.** During a legislative session freeze period, the activities in which state officials may engage include, but are not limited to:

(a) Soliciting or accepting contributions to assist his or her own campaign for federal office;

(b) Accepting gifts or other items permitted under chapter 42.52 RCW, so long as the gift or other item is not

- A contribution to an incumbent state official or known candidate,
- A contribution to a public office fund,
- Used to pay a nonreimbursed public office related expense, or
- Used to retire a campaign debt;

(c) Attending and speaking at a fund-raising event held by or on behalf of a bona fide political party, so long as the contributions raised are not earmarked or otherwise designated for any incumbent state official or known candidate;

(d) Attending a fund-raiser held by a candidate who is not subject to RCW 42.17A.560, provided the state official does not solicit or accept any contributions in connection with the fund-raiser.

(i) The state official's planned attendance may be included in publicity for the fund-raiser.

(ii) The state official may receive complimentary admission from the candidate so long as the official attends to show support for the candidate and the attendance does not assist the official's own campaign.

(e) Transferring their own personal funds, as defined in WAC 390-17-305, or their own surplus funds, as defined in RCW 42.17A.005, to their own campaign account, so long as the funds are properly reported;

(f) Soliciting or accepting contributions on behalf of a nonprofit charity; or

(g) Soliciting or accepting contributions on behalf of any political committee, including a caucus political committee, a bona fide political party or a ballot measure committee, so long as the political committee does not spend the contributions for the benefit of incumbent state officials or known candidates.

(7) **Activities not allowed during a freeze period.** During a legislative session freeze period, a state official, or a person employed by or acting on behalf of a state official, may not solicit or accept contributions that:

(a) Go to an incumbent state official or known candidate;

(b) Go to a public office fund;

(c) Are used to pay a nonreimbursed public office related expense;

(d) Are used to retire a campaign debt;

(e) Go to a caucus political committee if the committee spends the contributions for the benefit of incumbent state officials or known candidates; or

(f) Go to a bona fide political party or a political committee if the political party or committee spends the contributions for the benefit of incumbent state officials or known candidates.

(8) **"Person employed by or acting on behalf of a state official"** includes a caucus political committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.

(a) During a legislative session freeze period, a person employed by or acting on behalf of a state official may not solicit or accept contributions for any of the purposes specified in subsection (7) of this section.

(b) During a legislative session freeze period, a caucus political committee may solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or with their own surplus funds, as defined in RCW 42.17A.005.

(c) During a legislative session freeze period, a caucus political committee may not solicit or accept contributions for any of the purposes specified in subsection (7) of this rule.

(9) **Bona fide political parties.** During a legislative session freeze period, a bona fide political party may not solicit or accept contributions that are

- Used for a public office fund,
- Used for a state official's nonreimbursed public office related expenses,
- Used for retiring a state official's campaign debt, or
- Earmarked contributions to specific incumbent state officials or known candidates.

However, a bona fide political party may solicit or accept contributions for its own fund-raising purposes.

(10) **Segregating session freeze funds.** During a legislative session freeze period, if a state official, a caucus political committee, or another person employed by or acting on behalf of a state official solicits or accepts contributions to

- A caucus political committee,
- A bona fide political party, or
- Any political committee that supports or opposes state or local office candidates, the contributions are presumed to violate RCW 42.17A.560, unless the contributions are
- Deposited into a separate bank account and
- Not spent for the benefit of incumbent state officials or known candidates.

However, nothing in this subsection authorizes a state official, a caucus political committee or any person employed by or acting on behalf of a state official to take any of the actions prohibited by subsection (7) or (8)(c) of this section.

(11) **Session freeze solicitations.** If a person is solicited for a contribution during the legislative session freeze period

- By a state official, a caucus political committee, or another person employed by or acting on behalf of a state official, and

- The contribution is to a caucus political committee, a bona fide political party, or a political committee that supports or opposes candidates for state or local office, and
- The person makes a contribution during or after the freeze period in response to this solicitation, the contribution is subject to RCW 42.17A.560 and subsection (12) of this section.

(12) **Spending contributions to benefit incumbents or known candidates.** For purposes of complying with subsections (6)(g), (7)(e) and (f), and (10) of this section, contributions are considered spent for the benefit of incumbent state officials or known candidates if the contributions are used at any time for one or more of the following purposes.

(a) Contributions to incumbent state officials or known candidates.

(b) Independent expenditures supporting incumbent state officials or known candidates, or opposing their opponents, whether or not the opponents are themselves known candidates during a legislative session freeze period.

(c) Payments to staff, consultants or advisors for performing activities that directly assist or promote the election of incumbent state officials or known candidates.

(d) Polls or surveys that relate to incumbent state officials, known candidates or their districts, or to general voter attitudes or preferences, unless

- A poll or survey is produced, conducted, tabulated and analyzed according to the terms of a written confidentiality agreement and, if the agreement is breached, all reasonable steps are taken to enforce it, and
- The results of a poll or survey are not provided by the spender, or with the spender's permission or prior knowledge, to incumbent state officials, known candidates or their agents.

However, candidate recruitment poll or survey results may be provided to an individual who later becomes a known candidate without the expenditure being considered as benefiting a known candidate so long as the poll or survey does not constitute a contribution to the individual or does not otherwise support or promote his or her election to state or local office. For purposes of this subsection, a "candidate recruitment poll or survey" is a poll or survey that is conducted for the sole purpose of recruiting candidates to run for public office and only determines

- The respondent's party preference,
- The level of support the incumbent currently has and how strong that support is, but not why he or she has that support,
- Whether respondents recognize the names of individuals who may decide to seek that elective office,

- Whether respondents currently hold a favorable opinion about these individuals, their abilities or fitness for elective office, but not why such opinions are held,
- Whether respondents would likely vote for one or more of these individuals were they to seek office, but not why respondents would vote in the manner they indicated or whether they could be persuaded to change their vote, and
- The validity of the poll or survey results.

(e) Any other expenditure that directly benefits or promotes the election to state or local office of incumbent state officials or known candidates.

(13) For online or credit card contributions, the contribution is considered received at the time the transfer is made from the merchant account to a candidate or political committee account, except that a contribution made to a candidate who is a state official or legislator outside the restriction period established in RCW 42.17A.560, but transferred to the candidate's account within the restricted period, is considered received outside of the restriction period.

(a) Any such contributions should be reported as received on the date the transfer is made from the merchant account to a candidate or political committee account.

(b) The PDC may request that the state official or legislator document that the contribution was received by the merchant account outside the restriction period.

AMENDATORY SECTION (Amending WSR 13-12-017, filed 5/24/13, effective 6/24/13)

WAC 390-17-405 Volunteer services. (1) In accordance with RCW 42.17A.005 (~~((13)(b)(vi))~~), an individual may perform services or labor for a candidate or political committee without incurring a contribution, so long as the individual is not compensated by any person for the services or labor rendered and the services are of the kind commonly performed by volunteer campaign workers. These commonly performed services include:

- Office staffing;
- Doorbelling or leaflet drops;
- Mail handling (folding, stuffing, sorting and postal preparation, processing emails to and from the campaign);
- Political or fund-raising event staffing;
- Telephone bank activity (conducting voter identification, surveys or polling, and get-out-the-vote campaigns);
- Construction and placement of yard signs, hand-held signs or in-door signs;
- Acting as a driver for candidate or candidate or committee staff;
- Scheduling of campaign appointments and events;
- Transporting voters to polling places on election day;
- Except as provided in subsection (2) of this section, preparing campaign disclosure reports required by chapter 42.17A RCW and otherwise helping to ensure compliance with state election or public disclosure laws;
- Campaign consulting and management services, polling and survey design, public relations and advertising (including online advertising), or fund-raising performed by

any individual, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service;

(l) Creating, designing, posting to and maintaining a candidate or political committee's official campaign web site or online forum, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service; and

(m) All similar activities as determined by the commission.

(2) An attorney or accountant may donate his or her professional services to a candidate, a candidate's authorized committee, a political party or a caucus political committee, without making a contribution in accordance with RCW 42.17A.005 ~~((13)(b)(viii))~~, if the attorney or accountant is:

(a) Employed and his or her employer is paying for the services rendered;

(b) Self-employed; or

(c) Performing services for which no compensation is paid by any person. However, neither RCW 42.17A.005 ~~((13)(b)(viii))~~ nor this section authorizes the services of an attorney or an accountant to be provided to a political committee without a contribution ensuing, unless the political committee is a candidate's authorized committee, political party or caucus political committee and the conditions of RCW 42.17A.005 ~~((13)(b)(viii))~~ and (a), (b) or (c) of this subsection are satisfied, or unless the political committee pays the fair market value of the services rendered.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-17-410 Electioneering communications may constitute contributions and be subject to limit. (1) Electioneering communications are contributions when they satisfy the definition of contribution in RCW 42.17A.005 ~~((13))~~ or 42.17A.310.

(2) Contributions are subject to all applicable provisions of chapter 42.17A RCW and Title 390 WAC, including RCW 42.17A.405, 42.17A.410 and 42.17A.420.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-17-013 Committee—Definition.

AMENDATORY SECTION (Amending WSR 13-12-017, filed 5/24/13, effective 6/24/13)

WAC 390-18-030 Advertising—Exemptions from identification and alternatives for online advertising. (1) RCW 42.17A.320 requires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW 42.17A.320 (1) and (2) are impractical. In addition, other political advertising is exempt from providing certain disclosures.

(2) The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized

this ad" sponsor identification, the "top five contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17A.320 (1) and (2) because such identification is impractical: Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers - size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, Frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files, newspaper ads of one column inch or less (excluding online ads), noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket protectors, pot holders, reader boards where message is affixed in moveable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers - size 2-3/4" x 1" or smaller, sunglasses, sun visors, swizzle sticks, state or local voters pamphlets published pursuant to law, tickets to fund-raisers, water towers, whistles, yard signs - size 4' x 8' or smaller, yo-yos, and all other similar items.

(3) Online political advertising must provide the same disclosures that apply to non-online advertising to the extent practical. As an alternative, small online advertising may provide the required disclosures by using an automatic display with the advertising that takes the reader directly to the required disclosures.

(a) These automatic displays must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible. Online advertising that includes only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appears with or in the advertising that automatically takes the reader directly to the required disclosures upon being clicked once, or other similar mechanisms that disclose the information required in RCW 42.17A.320.

(4) Political advertising created and distributed by an individual using his or her own modest resources is not required to provide the disclosures in RCW 42.17A.320, when all of the following criteria are satisfied:

(a) The individual spends in the aggregate less than one hundred dollars to produce and distribute the advertising or less than fifty dollars to produce and distribute online political advertising;

(b) The individual acts independently and not as an agent of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(c) The advertising is not a contribution under RCW 42.17A.005 ~~((13)(a)(ii) or (iii))~~ or WAC 390-05-210;

(d) The individual does not receive donations, contributions, or payments from others for the advertising, and is not compensated for producing or distributing the advertising; and

(e) The advertising is either:

- A letter, flier, handbill, text or email from the individual that does not appear in a newspaper or other similar mass publication (except for letters to the editor and similar communications addressed in WAC 390-05-490(~~((4))~~)); or
- Disseminated on the individual's social media site, personal web site, or an individual's similar online forum where information is produced and disseminated only by the individual.

(5) Political advertising that is internal political communications to members is not required to separately include the disclosures in RCW 42.17A.320 where the sponsor's name is otherwise apparent on the face of the communication.

AMENDATORY SECTION (Amending WSR 15-12-058, filed 5/28/15, effective 6/28/15)

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) RCW 42.17A.005(11) defines "commercial advertiser" as any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise. This includes communications such as paid internet or digital advertisements, brochures, flyers and any other means of mass communications used for the purpose of appealing, directly or indirectly for votes or for financial or other support in any election campaign.

(2) RCW 42.17A.005 (8)(b) defines "books of account," in the case of a commercial advertiser, as details of political advertising or electioneering communications provided by the advertiser, including the names and addresses of persons from whom it accepted political advertising or electioneering communications, the exact nature and extent of the services rendered and the total cost and the manner of payment for the services.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, as defined by RCW 42.17A.005(39), or electioneering communications, as defined by RCW 42.17A.005(22), must maintain documents and current books of account. Such information must be available for public inspection:

- (a) In person during normal business hours;
- (b) Provided electronically promptly upon request; or
- (c) Available online on the advertiser's web site.

(4) Any person, without reference to or permission from the public disclosure commission, is entitled to inspect a commercial advertiser's political advertising or electioneering communications documents and books of account.

~~((2) No commercial advertiser shall be required to make available for public inspection))~~ (5) Information regarding political advertising or electioneering communications (~~(prior to))~~ must be made available as of the time when the advertisement or communication has initially received public distribution or broadcast. Such records must be maintained for a period of no less than three years after the date of the applicable election.

~~((3) The documents))~~ (6) The information and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345(1) are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified;

(b) The name and address of the (~~(person))~~ person(s) who sponsored the advertising or electioneering communication;

(c) The total cost of the advertising or electioneering communication, how much of that amount has been paid, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

~~((4))~~ (7) In addition to subsection (~~((3))~~) (6) of this section and pursuant to RCW 42.17A.345 (1)(b), the documents and books of account open for public inspection must include the advertisement of communication itself, and a description of the major work components or tasks, as specified in (a) through (~~((f))~~) (g) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Air time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

(g) For digital communication platforms: An approximate description of the geographic locations and audiences targeted, and total number of impressions generated by the advertisement of communication.

(8) At the request of the PDC, each commercial advertiser required to comply with this section shall deliver to the PDC copies of the information described in subsection (7) of this section.

AMENDATORY SECTION (Amending WSR 12-01-047, filed 12/14/11, effective 1/14/12)

WAC 390-18-060 Electioneering communication reporting threshold and sponsors. (1) A "sponsor of an electioneering communication" is defined in RCW 42.17A.-005(~~((43))~~).

(2) For the purposes of RCW 42.17A.005 ~~((19)(e))~~, an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:

(a) Identifies the same candidate in one or more communications satisfying RCW 42.17A.005 ~~((19)(a) and (b))~~ or commission rules;

(b) Is made by the same sponsor of one or more of the communications;

(c) When it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market or aggregate value of \$1,000 or more; and

(d) Is not a communication exempted from reporting under RCW 42.17A.005 ~~((20))~~ or commission rule.

(3) When the electioneering communication or communications - Including radio or television transmissions, mailings, billboards, newspapers and/or periodicals - Reach the \$1,000 threshold, the sponsor shall electronically report to the commission as required by RCW 42.17A.305 within twenty-four hours of, or on the first working day after, the date the electioneering communication is first broadcast, transmitted, erected, distributed, or otherwise published.

(4) Once the \$1,000 threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW 42.17A.305 and this rule.

(5) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the \$1,000 threshold is met. A failure to report by one joint sponsor is not attributable to all joint sponsors of a specific communication or communications if the remaining sponsors have reported properly.

(6) Consistent with WAC 390-16-060 and the requirements of PDC Form C-6, a prorated portion of independent expenditure and electioneering communications expenditures shall be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration shall be based on a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.

AMENDATORY SECTION (Amending WSR 01-22-052, filed 10/31/01, effective 1/1/02)

WAC 390-19-010 Intent of electronic filing. (1) The public disclosure commission (PDC) was created and empowered by initiative of the people to provide timely and meaningful public access to information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to insure compliance with contribution limits and other campaign finance restrictions.

(2) Full and prompt access to the political finance data filed by persons subject to the law is best realized through wide-spread use of electronic filing alternatives. The Washington state legislature has mandated that certain filers submit their PDC reports electronically. The ~~((commission))~~

PDC makes available to all candidates, public officials, lobbyists, lobbyist employers, and political committees that are required to file reports under this chapter electronic filing alternatives for submitting reports, and encourages all persons required to report under the disclosure law to utilize the electronic filing alternatives provided by the PDC.

AMENDATORY SECTION (Amending WSR 16-04-027, filed 1/25/16, effective 2/25/16)

WAC 390-19-020 Electronic filing—Mandatory filing. (1) RCW 42.17A.245 mandates that persons ~~((satisfy-ing))~~ meeting the qualifying criteria in that section file all contribution and expenditure reports by electronic means.

(2) Persons filing by electronic means shall register with the PDC and receive a filer identification number and password. Filers must have a current C-1 Candidate Registration Statement or a C-1pc Committee Registration Statement on file with the PDC prior to receiving a filer identification number.

(3) A filer subject to RCW 42.17A.245 shall file all PDC C-3 and C-4 reports and all appropriate schedules electronically in compliance with subsection (5) of this section.

(4) Any filer required to file electronically, but who files on paper, is in violation of RCW 42.17A.245 and may be subject to enforcement action unless the filer is a candidate who has sought and been granted an exception from electronic filing under WAC 390-19-050.

(5) A filer subject to electronic filing shall file reports using one of the following:

(a) The ORCA software (Online Reporting of Campaign Activity) provided free-of-charge by the PDC; or

(b) Any other electronic filing application provided or approved by the PDC.

NEW SECTION

WAC 390-19-045 Electronic filing system—Inoperable. (1) For the purpose of chapter 42.17A RCW, "electronic filing system" means the specific PDC-provided application or functionality necessary to file a specific report and does not include software provided by third parties;

(2) For the purpose of chapter 42.17A RCW, "inoperable" means the electronic filing system used by the filer is unable to prepare or receive the required report except as provided in subsection (3) of this section;

(3) The electronic filing system is not considered inoperable during regular maintenance periods lasting less than thirty minutes between the hours of 11:00 p.m. and 5:00 a.m. Pacific time or unscheduled events lasting less than fifteen minutes in any twenty-four-hour period;

(4) The PDC will provide notification for all periods of inoperability on its web site and will provide an option for individuals to also be notified by electronic notification upon request.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-19-050 Electronic filing—Exceptions. (1) The ~~((commission))~~ PDC may make exceptions on a case-by-

case basis for candidates whose authorized committees lack the technological ability to file reports electronically.

(2) A candidate seeking an exception under RCW 42.17A.245 shall file with the PDC a written statement of reasons why the authorized committee lacks the ability to file reports electronically.

Chapter 390-37 WAC

ENFORCEMENT (~~(HEARING (ADJUDICATIVE PROCEEDING))~~) RULES

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

WAC 390-37-001 Enforcement cases—Jurisdiction. The commission and its staff enforces chapter 42.17A RCW concerning campaign financing, lobbyist reporting, reporting of public officials' financial affairs, reporting by public treasurers, political advertising, campaign contribution limitations and the other provisions in chapter 42.17A RCW. The commission does not enforce the Public Records Act under chapter 42.56 RCW. RCW 42.56.550 provides for direct review by the superior courts for persons seeking to enforce chapter 42.56 RCW.

NEW SECTION

WAC 390-37-005 Complaint review and categorization. (1) Commission staff, upon receiving or initiating a complaint, will promptly conduct an initial review and preliminarily assign matters to certain categories.

(2) Upon initial review, a matter may be preliminarily categorized as:

(a) Unfounded or frivolous, pursuant to WAC 390-37-060 (1)(a);

(b) A remedial violation, pursuant to RCW 42.17A.005 (45);

(c) Appropriate for resolution as a technical correction, pursuant to RCW 42.17A.005(51);

(d) A minor violation, appropriate for alternative resolution alternatives, pursuant to WAC 390-37-061(2);

(e) Appropriate for investigation, as to whether or not there has been a material actual violation, appropriate for resolution pursuant to RCW 42.17A.005(2);

(f) Needing further review before preliminary categorization;

(g) Appropriate for referral to the attorney general, pursuant to WAC 390-37-042; or

(h) Other status as authorized and appropriate under chapter 42.17A RCW or Title 390 WAC.

(3) Each enforcement matter will be posted by PDC staff on the PDC's public case-tracking database, which will then be updated whenever the case status changes, until the matter is closed.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-010 Enforcement procedures—General. This chapter provides the procedures for the commis-

sion's enforcement of compliance with chapter 42.17A RCW, including categorization of enforcement matters, complaint processes, alternative resolutions, investigations, and adjudicative proceedings (enforcement hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW 42.17A.755, and the adjudicative proceedings provisions of chapter 34.05 RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedures, are supplemented by the model rules of procedure in chapter 10-08 WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency at any time, pursuant to RCW 42.17A.105(5) and 42.17A.755.

In addition, the procedures for ~~((requesting))~~ a person required to file a report under this chapter to request a hearing on a petition to modify or suspend reporting requirements are provided in RCW 42.17A.120 and chapters 390-24 and 390-28 WAC.

The policy of the commission is to facilitate the resolution of compliance matters in a fair and expeditious manner. The commission encourages the parties to consider corrections, alternative resolution ((or)), partial resolution, statements of understanding, settlement and stipulation procedures as set forth in WAC 390-37-040, 390-37-060, 390-37-062, 390-37-075, ((or)) 390-37-090, ((when)) 390-37-142 whenever appropriate. Informal settlements are encouraged by RCW 34.05.060.

AMENDATORY SECTION (Amending WSR 15-12-079, filed 5/29/15, effective 6/29/15)

WAC 390-37-020 Enforcement procedures—~~((Alleging a violation))~~ Who may allege a violation with the commission. Alleged violations of chapter 42.17A RCW may be brought to the attention of the commission staff by:

(1) A member of the public;

(2) The commission staff;

(3) A commission member, who shall ~~((then be disqualified))~~ thereafter, in their discretion, determine whether disqualification from participating in the ~~((decision))~~ adjudication of an enforcement matter that may arise from a complaint regarding the alleged violation(s) is appropriate;

(4) Referral from the office of the attorney general or any other law enforcement agency; or

(5) A state agency, local agency or member of a state or local agency.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-030 Enforcement procedures—~~((Citizen complaints filed with the commission))~~ Standing and notice for complainants. (1) When a ~~((citizen))~~ member of the public files a complaint ((has been filed with the agency)) with the PDC pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing to participate or intervene in ~~((the))~~ any investigation or consideration of the complaint by the commission or its staff. However, the staff shall give notice to the complainant of any open commission hearings on the matter and the complainant

may be called as a witness in any enforcement hearing or investigative proceeding. The presiding officer has the discretion to allow comment by a person other than the respondent during the consideration of a complaint by the commission. Any person who wishes to comment should notify staff at least three business days before the proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth calendar day before the date of any enforcement hearing or proceeding, but complainants are encouraged to provide as much information as possible at the time of filing a complaint to help ensure the complaint review and investigation processes are as thorough as possible.

~~((3) A person not satisfied with the dismissal of a complaint by the commission or its executive director may pursue an appropriate remedy under RCW 42.17A.765(4).))~~

AMENDATORY SECTION (Amending WSR 15-12-079, filed 5/29/15, effective 6/29/15)

WAC 390-37-040 Enforcement procedures—Procedures for filing complaints with the commission. (1) A complaint filed with the ~~((commission))~~ PDC must be ~~((in))~~ by electronic writing. Complainants ~~((are encouraged to))~~ must use the ~~((complaint form))~~ form(s) provided by the commission on its web site. The executive director may waive this requirement and allow for the use of another written format on the basis of hardship.

(2) A complaint must include:

(a) A statement of the nature of the alleged violation or violations referencing the violation under chapter 42.17A RCW and/or Title 390 WAC (if known), date, time and place of each occurrence and name of person or persons believed to be responsible, and a description of the impact of the alleged violation on the public;

(b) All available documentation and other evidence which the complainant is able to supply that supports the allegations made in the complaint. Information about where documents or evidence can be obtained and any relevant contact information should be included for any items that cannot be supplied with the complaint;

(c) The names and telephone numbers, email addresses, and U.S. mail address, if known, of any witnesses or other persons who have knowledge of facts ~~((that support))~~ related to the complaint;

(d) The complainant's name, email address which will be the PDC's official method of communication, U.S. mail address, and telephone number; ~~((and))~~

(e) The signature of the complainant certifying under penalty of perjury under the laws of the state of Washington that the information provided with the complaint is true and correct to the best of ~~((his or her))~~ their knowledge and belief; and

(f) Other pertinent information, as required by the commission or its staff.

(3) The person or entity against whom a complaint is filed is known as the respondent.

NEW SECTION

WAC 390-37-042 Enforcement procedures—Process and criteria for referring enforcement matters to the attorney general. (1) When a complaint is filed or initiated by the commission, the commission may refer the matter to the attorney general in accordance with RCW 42.17A.755 (1) and (4). The determination to refer a matter to the attorney general will be made by either:

(a) A majority vote of the commission at a regular or special commission meeting; or

(b) By the executive director with the documented concurrence of either the chair or vice chair of the commission.

Any referral to the attorney general will be made in writing and may be made by electronic transmission.

(2) Enforcement matters potentially appropriate for referral may be brought to the executive director's attention by members of the commission, by staff of the commission, by another party or by the attorney general.

(3) Where the attorney general has requested referral of a matter and addressed the relevant criteria under RCW 42.17A.755, the executive director shall respond to the request within two business days. Both the request and the response shall be in writing and may be by electronic transmission.

(4) The executive director shall report at each regular commission meeting all referrals made by the executive director to the attorney general and all requests for referral by the attorney general since the prior commission meeting.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint. (1) Within ten days of receipt by the ~~((commission))~~ PDC of a complaint which on its face appears to have merit, the commission staff shall notify the respondent that a complaint has been filed, along with an explanation of possible next steps, including the categorization process under WAC 390-37-005. Sending the complaint to the respondent's email address of record as provided to the PDC shall constitute sufficient notice.

(2) The notice shall set forth the nature of the complaint and ~~((its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated.))~~ the statutory and/or rule provision(s) alleged to have been violated.

(3) Respondents who wish to respond must file their response electronically within fourteen days of being notified by commission staff, addressing the alleged noncompliance in the complaint. The response may address the respondent's view of which category(ies) appropriately address(es) the alleged noncompliance pursuant to WAC 390-37-005 (remedial, technical corrections, etc.).

(4) If an alternative response to the alleged violation has been issued as provided by this chapter, the notice shall also describe that response, including any conditions the respondent is required to meet.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-060 Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of adjudicative proceeding. (1) Upon receipt of a complaint, the ~~((executive director))~~ PDC staff will conduct an initial review ~~((of the complaint to determine what action will be taken. An initial review is a preliminary investigation to determine whether the allegations are limited to minor or technical violations of chapter 42.17A or if there is sufficient ground indicating that a material violation of chapter 42.17A RCW may have occurred so as to warrant a formal investigation))~~ of the complaint pursuant to WAC 390-37-005.

(a) If the executive director determines that any complaint is obviously unfounded or frivolous, or outside of the PDC's jurisdiction, the executive director will inform the complainant and respondent why no further ~~((investigation))~~ action is warranted.

(b) The executive director may resolve a matter as a remedial violation or technical correction pursuant to RCW 42.17A.755.

(c) The executive director may resolve any complaint that alleges minor ~~((or technical))~~ violations of chapter 42.17A by issuing a formal written warning. If the resolution is conditioned upon the respondent reaching or maintaining compliance, specific expectations and any deadlines should be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.

~~((e))~~ (d) The executive director may use the complaint publication process set out in WAC 390-32-030 to resolve any complaint that alleges minor or technical violations of chapter 42.17A RCW.

~~((d))~~ (e) The executive director ~~((shall))~~ may initiate ~~((a formal))~~ an investigation whenever an initial review of a complaint indicates that a material violation ~~((of chapter 42.17A RCW))~~ may have occurred.

(2) If the executive director determines ~~((a formal))~~ an investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

~~((The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever a formal investigation reveals facts that the executive director has reason to believe are a material violation of chapter 42.17A RCW and do not constitute substantial compliance.~~

~~((4))~~ (4) If the executive director determines an investigation is warranted, an initial hearing (case status review) shall be held pursuant to WAC 390-37-071 within ninety days.

(4) Following the initial hearing (case status review), and further investigation if needed, the executive director may initiate an adjudicative proceeding whenever the facts support that an actual violation has occurred and the matter is not appropriate for a dismissal or an alternative resolution.

(5) The respondent and complainant shall be notified of the date of the adjudicative proceeding or a report on an enforcement matter resulting from a complaint no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434, the staff investigative report, and any charges to be adjudicated. The notice, whenever possible, will be delivered electronically.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-061 Enforcement procedures—Alternative responses to noncompliance—Goals and objectives—Factors to be considered. (1) In considering appropriate responses to ~~((noncompliance with chapter 42.17A RCW or Title 390 WAC,))~~ actual violations the commission staff considers whether ~~((a formal))~~ an investigation or adjudicative proceeding constitutes an efficient and effective use of public funds; or whether an alternative response better meets the commission's mission and public expectations by allowing the expedited resolution of minor ~~((and technical alleged))~~ violations, and the focusing of staff and commission resources on ~~((major alleged))~~ more significant violations of chapter 42.17A RCW and Title 390 WAC.

(2) A minor violation is an actual violation that occurs;

~~((however))~~ (a) When required information is not timely disclosed,

~~((A technical violation occurs when)); or~~

~~((but incomplete information is disclosed))~~ (b) When incomplete information is disclosed, but a good faith effort to comply with disclosure is made, ~~((but incomplete information is disclosed))~~ and the public is not deprived of critical information.

~~((2))~~ (3) In authorizing an alternative response to alleged noncompliance, the executive director may consider the nature of the alleged violation and any relevant circumstances including, but not limited to, the factors described in subsection ~~((3))~~ (4) of this section: Provided, that, if after weighing the relevant circumstances and factors, the executive director determines that there is evidence that so warrants, the allegations shall be addressed through ~~((a formal))~~ an investigation as provided by WAC 390-37-060.

~~((3))~~ (4) The factors the executive director may consider in permitting an alternative response to noncompliance, ~~((a formal))~~ an investigation, or an adjudicative proceeding include, but are not limited to:

An alternative response to noncompliance may be appropriate if ...	((A formal)) An investigation and possible adjudicative hearing may be appropriate if ...
It appears that noncompliance resulted from a good-faith error, omission, or misunderstanding.	It appears that the noncompliance may have resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior.
The respondent is a first-time filer.	The respondent has experience in complying with the applicable requirements.

An alternative response to noncompliance may be appropriate if ...	((A formal)) An investigation and possible adjudicative hearing may be appropriate if ...
The respondent's compliance history indicates the noncompliance was isolated or limited in nature, and not indicative of systematic or ongoing problems.	The noncompliance is part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization.
The impact of the noncompliance on the public was minimal.	The noncompliance deprived the public of timely or accurate information during a time-sensitive period in a campaign, legislative session, etc., or otherwise had a significant or material impact on the public.
The respondent's organization or campaign was relatively unsophisticated or small.	The respondent or the respondent's organization or campaign demonstrated a relatively high level of sophistication, or was well financed and staffed.
The total expenditures by the respondent in the campaign or statement period were relatively modest.	The campaign or statement period involved significant expenditures by the respondent.
The amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent.	The late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period.
There is no evidence that any person, including an entity or organization, benefited politically or economically from the noncompliance.	It appears the respondent or anyone else benefited politically or economically from the noncompliance.
Personal emergency or illness of the respondent or member of his or her immediate family contributed to the noncompliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
Other emergencies such as fire, flood, or utility failure prevented compliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
Commission staff or equipment error, including technical problems at the agency prevented or delayed electronic filing.	Commission staff or equipment error did not appear to contribute to the noncompliance.
The noncompliance resulted from the respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions, a lack of clarity in the rule or statute, or uncertainty concerning the valid application of the commission's rules.	It appears the respondent understood the application of staff's guidance or instructions, and did not dispute the valid application of the commission's rules.
The respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).	The respondent appeared negligent or unwilling to address the noncompliance.
The respondent made a good-faith effort to comply, including by consulting with commission staff following a complaint and cooperating during any preliminary investigation, or demonstrated a wish to acknowledge and take responsibility for the alleged violation.	The respondent failed to provide a timely or adequate response to the complaint, or was otherwise uncooperative.
The alleged violation was or is being addressed under an analogous local ordinance, regulation, or policy.	The commission has primary jurisdiction over the alleged violation.
The alleged violation presents a new question or issue for the commission's interpretation.	The alleged violation does not present a case of first impression.
Other factors relevant to a particular case	

NEW SECTION

WAC 390-37-062 Enforcement procedures—Alternative responses—Cases resolvable by stipulation prior to investigation—Penalty schedule. (1) The purpose of WAC 390-37-062 is to set forth a schedule of violations and penalties that may be agreed to by a respondent pursuant to a stipulation prior to an investigation, as authorized by RCW 42.17A.755. That schedule appears in subsection (7) of this section.

(2) A violation not set forth in the schedule may be resolved pursuant to a stipulation, provided that the proposed penalty amount is within the dollar ranges listed in the schedule.

(3) "Occasion" as used in the schedule means an "actual violation," as defined in RCW 42.17A.005, found by the commission.

(4) Only actual violations within the last five years will be considered for determining whether the violation under consideration shall be deemed a second or third occasion.

(5) Any proposed stipulation shall be in writing, must include a brief recitation of the facts, violations, and penalty, and be signed by each party to the stipulation or their representative and provided by 4:00 p.m. three business days preceding the commission meeting. The executive director shall sign for commission staff.

(6) The commission has the option of accepting, modifying or rejecting the proposed stipulation. If the commission accepts the stipulation, or modifies the stipulation with the agreement of the parties, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation, the commission staff may consider whether:

- (a) An investigation should be initiated; or
- (b) The matter may appropriately be resolved in another manner.

(7) In determining whether to accept the stipulation, the commission may consider the nature of the violation(s), and any aggravating and/or mitigating factors as provided in WAC 390-37-182.

Violations:			
Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report); (2) Candidate Registration (C-1 report); (3) Lobbyist Monthly Expense Report (L-2 report); (4) Lobbyist Employer Annual Report (L-3 report); and (5) Local Treasurer's Annual Report (T-1 report).			
	1st Occasion	2nd Occasion	3rd Occasion
Filed missing report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Report is filed late and is incomplete or inaccurate.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Respondent failed to file or timely file accurate and complete campaign disclosure reports:			
Cash Receipts Monetary Contributions Report (C-3 report)			
Filed missing C-3 report or amended C-3 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to timely deposit monetary contributions within five business days of receipt.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to include employer and occupation information for contributors of more than \$100.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Campaign Summary Receipts and Expenditures Report (C-4 report)			
Filed missing C-4 report or amended C-4 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255 (5)(b).	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to report a contractual contingent liability.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly dispose of surplus funds.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250

Violations:			
Independent Expenditure Report (C-6 report)			
Filed missing C-6 report or amended C-6 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Report is incomplete or inaccurate.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Out-of-State Political Committee Report (C-5 report)			
Filed missing C-5 report or amended C-5 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Last Minute Contribution Report (LMC report)			
Filed missing LMC report or amended LMC report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Exceeding contribution limits			
Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Other Alleged Violations			
Exceeding mini reporting threshold			
Filed C-3 and C-4 reports for full reporting after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failure to file electronically			
Filed C-3 and C-4 reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition			
Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.	\$0 - \$750	\$750 - \$1,500	\$1,500 - \$2,250
Failure to file Lobbyist Registration Report (L-1 report)			
Filed missing L-1 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - 1,000
Failure to file Agency Lobbying Report (L-5 report)			
Filed missing L-5 report or amended L-5 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Grassroots Lobbying Report (L-6 report)			
Filed missing L-6 report or amended L-6 report after being notified about the complaint, and provided written explanation with mitigating circumstances.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000

Violations:			
Sponsor identification requirements for political advertising			
Political advertising failed to include any sponsor identification, or included improper or misleading sponsor identification.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Party preference requirement for political advertising			
Political advertising failed to include a candidate's party preference.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Use of current picture requirement in political advertising			
Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.	\$0 - \$300	\$300 - \$600	\$600 - \$1,000
Political advertising or electioneering communication—Libel or defamation per se			
Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Commercial advertisers—Public inspection of documents			
Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain documents or books of account as required by WAC 390-18-050.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Candidates and political committees—Public inspection of books of accounts			
Candidates or political committees who fail to accommodate requests for public inspection as required by WAC 390-16-043.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400
Limitations on employers or labor organizations			
Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.	\$0 - \$600	\$600 - \$1,200	\$1,200 - \$2,400

(8) In a matter where the commission staff have initiated an investigation or resolved the matter as a technical correction, as authorized in RCW 42.17A.755, the schedule set forth in subsection (7) of this section is not applicable.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-37-063 Enforcement procedures—Demand for information—Subpoenas. (1) During the course of ~~((an))~~ a PDC audit or ~~((an))~~ investigation, the executive director may issue a subpoena directed to any person

who probably possesses information which is relevant and material to the audit or the investigation. The subpoena shall:

(a) Specifically describe the information which is sought~~((, and))~~;

(b) Set forth a reasonable time and place for the production of the information~~((;))~~; and

(c) Notify the person that if the information is not produced, the executive director will apply to the superior court for an appropriate order or other remedy.

The subpoena may be personally delivered or sent by certified mail, return receipt requested.

(2) The commission or presiding officer may issue a subpoena under RCW 42.17A.110(6) and WAC 390-37-120 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, ~~((memorandums))~~ memoranda or other ~~((documents which))~~ evidence that the commission deems relevant and material.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director after an investigation has been commenced. The executive director, ~~((with the concurrence of the chair or the chair's designee commissioner,))~~ at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does ~~((not show))~~ provide reason to believe that a ~~((material))~~ violation ~~((of the sections of chapter 42.17A RCW that are enforced by the commission))~~ has occurred, shows that the respondent is in substantial compliance with the relevant statutes or rules, or shows that formal enforcement action is not warranted. The executive director shall report at each regular commission meeting all complaints dismissed.

NEW SECTION

WAC 390-37-071 Enforcement procedures—Initial hearing—Case status review prior to ninety days. (1) After initiating an investigation pursuant to WAC 390-37-060, the commission executive director will conduct case status review, referred to as an initial hearing, in RCW 42.17A.755(3). The case status review is not an adjudicative proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW. Its purpose is to ensure the investigation is being conducted expeditiously and to provide an opportunity to discuss possible alternative resolutions.

(2) The case status review will be conducted within ninety days of the complaint being filed in the matter, and may be held by telephone conference or in-person at a time and place specified by commission staff. Notice of the case status review will be delivered electronically whenever possible.

(3) Participation in the case status review by the respondent is not mandatory. The failure to participate in the hearing will not prejudice any rights of the respondent with respect to the investigation or potential adjudication of the matter.

(4) The case status review shall have a set time limit as determined by the executive director.

(5) At the case status review, the executive director shall have the authority to:

(a) Provide the respondent with a brief opportunity to explain the respondent's view of the matter, including why further investigation may not be warranted;

(b) Identify any available options to resolve the matter;

(c) When appropriate, encourage the parties to enter into a stipulated agreement as authorized by RCW 42.17A.755(2) and WAC 390-37-062; and

(d) Consider such other matters as may aid in the investigation, disposition or resolution of the matter.

(6) Following the case status review, the executive director shall direct commission staff to update the PDC's public case-tracking database pursuant to WAC 390-37-005.

(7) The executive director shall report to the commission, no later than the next regular commission meeting, case status reviews held. The executive director's report shall include an overview of matters addressed and any review outcomes.

(8) Nothing in this rule shall limit the authority of the commission or its staff to resolve a complaint or refer a matter to the attorney general at any time.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-075 Enforcement procedures—Deferred enforcement~~((—Process))~~ after an investigation has been commenced. (1) As provided by WAC 390-37-060, the chair or the chair's designee commissioner may authorize deferred enforcement:

(a) Following a ~~((formal investigation,))~~ case status review provided for in WAC 390-37-071, referred to as initial hearing in RCW 42.17A.755(3), in lieu of a formal investigation;

(b) Following an investigation, in lieu of a notice of administrative charges for an adjudicative proceeding; or

~~((b))~~ (c) After a notice of administrative charges, prior to an adjudicative proceeding.

(2) The executive director will recommend to the chair or the chair's designee commissioner the conditions of a deferred enforcement. The conditions shall be clearly defined and agreed to by the respondent, along with the consequences for failure to meet the conditions of the deferral. Negotiations regarding deferred enforcement shall be informal and without prejudice to rights of a participant in the negotiations.

(3) With concurrence of the chair or the chair's designee commissioner, the executive director or designee (commission staff) shall memorialize the pertinent facts and the conditions of the deferral ~~((in))~~ by electronic writing to the respondent, together with the consequences for failure to meet the conditions of the deferral. The agreement shall be signed by ~~((staff))~~ the executive director and the respondent. Staff shall notify the respondent that any administrative charges issued in the matter are stayed pending satisfaction of the deferral conditions.

(4) Once the deferral conditions are met, the complaint shall be dismissed with no further investigation or action as provided by WAC 390-37-070.

(5) If the deferral conditions are not met, the complaint shall proceed in accordance with WAC 390-37-060.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-090 Enforcement procedures—Cases resolvable by stipulation after an investigation and prior to an enforcement hearing (adjudicative proceeding)~~((—or by other alternative dispute mechanisms))~~. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for infor-

mal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate (~~(his or her)~~) their request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) (~~(When)~~) The executive director and respondent may also agree to (~~(terms of any)~~) a stipulation of facts, violations, and/or penalty(~~(s)~~). The commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing, must include a brief recitation of the facts, violations and penalty, and be signed by each party to the stipulation or (~~(his or her)~~) their representative. The executive director shall sign for commission staff. Any stipulation to facts, violations, or penalty shall be provided by 4:00 p.m. three business days preceding the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the (~~(opposing party)~~) parties, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or (~~(the opposing)~~) either party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) (~~(Following a)~~) As part of commission review of any proposed stipulation of facts (~~(or)~~) violations and law or other alternative resolution ruled on at a hearing, if the commission determines certain additional sanctions or other steps are required by the respondent (~~(as a result of the alternative dispute resolution including stipulations)~~) and states on the record that (~~(#)~~) the commission intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-100 Enforcement procedures—Conduct of hearings (adjudicative proceedings). (1) An enforcement hearing (adjudicative proceeding) shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW). Chapter 390-37 WAC further governs these proceedings, as supplemented by chapter 10-08 WAC. To the extent chapters 390-37 and 10-08 WAC differ, chapter 390-37 WAC controls.

(2) An adjudicative proceeding shall be heard by the commission, except for brief adjudicative proceedings which are conducted by the chair or the chair's designee.

(3) The commission or the presiding officer shall have the authority to:

(a) Determine the order of presentation of evidence;
 (b) Administer oaths and affirmations;
 (c) Rule on procedural matters, objections, and motions;
 (d) Rule on offers of proof and receive relevant evidence;

(e) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(f) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(g) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(h) Take official notice of facts pursuant to RCW 34.05.452(5);

(i) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(j) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(k) Issue an order of default pursuant to RCW 34.05.440;
 (l) Take any other action necessary and authorized by any applicable statute or rule;

(m) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(n) The commission chair or the chair's designee may conduct the procedural aspects of the adjudicative proceeding under (a) through (m) of this subsection, unless a majority of members present vote to seek a full commission decision on any particular matter.

(4) The commission may decide dispositive motions, and any other matters referred to it by the presiding officer at a prehearing conference.

(5) After an adjudicative proceeding by the commission, the commission may (~~(find that)~~):

(a) Find that the respondent did not violate (~~(the act)~~) chapter 42.17A RCW, as alleged, and dismiss the case; or

(b) Find that the respondent violated chapter 42.17A RCW, as alleged, and determine the sanction, if any, to be imposed; or

(c) Find that the respondent is in apparent violation of chapter 42.17A RCW, (~~(its own)~~) and that the commission's statutory remedies are inadequate, and enter (~~(its)~~) an order referring the matter to the attorney general or another appropriate law enforcement agency as provided in RCW 42.17A.105 and 42.17A.755.

(6) Upon the conclusion of an adjudicative proceeding or after submission of memos, briefs or proposed findings when requested by the presiding officer, the commission:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case and enter an order within thirty days, unless extended by the presiding officer due to the complexity of the case; and

(b) Shall serve the (~~(respondent)~~) parties by electronic communication a copy of the findings of fact, conclusions of law and decision and order.

(7) The executive director is authorized to sign orders on behalf of the commission at the discretion of the commission.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-103 Enforcement procedures—Commission options following receipt of a staff report on alleged violations. Upon receipt of a staff report concerning alleged violations (~~(of those sections of chapter 42.17A RCW that the commission enforces)~~), the commission may:

- (1) Direct the executive director to (~~(issue)~~) pursue an alternative (~~(response)~~) resolution as provided in WAC 390-37-060;
- (2) Defer enforcement as provided in WAC 390-37-075;
- (3) Issue an order; or
- (4) Refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW 42.17A.105(5) and (~~(42.17A.750)~~) 42.17A.755.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-105 Enforcement hearings (adjudicative proceedings)—Prehearing conference(~~—Rule~~). (1) In any prehearing conference prior to an enforcement hearing (adjudicative proceeding), the (~~(chair or the chair's designee upon his/her)~~) presiding officer upon their own motion or upon request by one of the parties or their qualified representative, may direct the parties to appear at a specified time and place for a conference to consider:

- (a) Identifying and simplifying issues;
- (b) The necessity of any amendments to the (~~(pleadings)~~) case documents;
- (c) The possibility of obtaining stipulations, admissions of facts and of documents;
- (d) Limiting the number and consolidation of the examination of witnesses; (~~(and)~~)
- (e) Submitting proposed orders;
- (f) Deadlines for briefs, exhibit and witness lists and objections thereto, proposed orders, and other procedural (~~(and such other)~~) matters as may aid in the conduct of the proceeding.

(2) Prehearing conferences may be presided over by the chair or (~~(his/her)~~) designee commissioner as presiding officer.

(3) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(4) In a prehearing conference, the presiding officer may hear prehearing motions regarding preliminary matters such as motions *in limine*, discovery motions, and other similar matters. The presiding officer shall not consider dispositive motions in a prehearing conference and such motions will automatically be scheduled for consideration before the commission.

(5) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference and the date on which objections to the order are to be filed and served. If no objection to the order is timely filed with the presiding officer, the order

shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(6) When the chair or (~~(his/her)~~) designee commissioner presides over a prehearing conference, (~~(he or she)~~) the presiding officer is acting as a quasi-judicial body which relates to a quasi-judicial matter between named parties. Therefore, a prehearing conference is not subject to chapter 42.30 RCW, Open Public Meetings Act.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-130 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories—Right to take. Unless otherwise provided, any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for use as evidence in the hearing. The deposition of a commissioner, the executive director, or (~~(assistant director)~~) other staff, may only be taken upon application to the commission, for good cause shown, and only in those circumstances where the statements or depositions of other staff members would not reveal the information, evidence, or details needed by the party for the case. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas.

AMENDATORY SECTION (Amending WSR 03-18-003, filed 8/20/03, effective 9/20/03)

WAC 390-37-134 Enforcement hearings (adjudicative proceedings)—Depositions and interrogatories (~~(in enforcement hearings (adjudicative proceedings))~~)—Protection of parties and deponents. After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the commission or the presiding officer in a prehearing conference may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the commission may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. At any time during the taking of the deposition, on motion of any party or the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the commission or the presiding officer in a prehearing conference may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the agency. Upon demand of the objecting party or deponent, the taking of the deposition

shall be suspended for the time necessary to make a motion for an order.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-136 Enforcement hearings (adjudicative proceedings)—Production of documents and use at hearing and other hearing procedures ((~~adjudicative proceedings~~)). (1) Unless a prehearing order states otherwise, the provisions of this rule apply to evidence and written argument (legal briefs) filed and served in hearings (adjudicative proceedings). Parties or the executive director may request a prehearing conference if provisions of this rule need to be adjusted or if the provisions are not adhered to by the parties.

(2) The parties are encouraged to exchange copies of proposed exhibits, exhibit lists and witness lists prior to the deadline specified in subsection (3)(a) of this section. The parties are encouraged to exchange documents by email whenever possible. The parties are encouraged to confer and determine whether there are any objections to the evidence and whether any agreements or stipulations can be reached regarding proposed exhibits, witnesses, and legal and factual issues.

(3)(a) Unless the commission determines otherwise, when evidence is to be offered at the adjudicative proceeding or when briefs are to be submitted at the adjudicative proceeding, the party offering the evidence or brief shall file with the commission and serve on all parties a copy of proposed exhibits, exhibit lists, witness lists, and briefs with the commission via an email to the executive director or his or her designee by the date and time designated by the executive director or designee, which is typically by 1:00 p.m. Pacific Time at least eight days prior to the hearing. The email shall provide the name of the party submitting the documents, the total number of pages, the software used to prepare the document, and the name, address, telephone number and email address of the person sending the email message.

(b) In the event electronic submission is not readily available to a *pro se* respondent or the evidence is not suited to email transmission, other means of providing these materials to the commission may be approved by the chair or the executive director, or their designees if requested in advance of the date and time in (a) of this subsection.

(c) ~~((On the day the parties provide these materials electronically to the commission, they shall also mail or otherwise deliver a paper (or hard copy) set of the materials to the commission.~~

~~(d))~~ The parties shall confirm in advance with the executive director that any documents provided electronically are able to be accessed by software available at the agency. If they are not accessible, the executive director shall direct how the documents are to be submitted.

~~((e))~~ (d) The documents are considered filed when received during actual business hours at the commission office. If received after actual business hours, they will be deemed filed the next business day.

(4) Respondent's exhibits shall be numbered R-1, R-2, etc. Commission staff exhibits shall be numbered S-1, S-2,

etc. Jointly submitted exhibits shall be numbered J-1, J-2, etc. If an exhibit is not jointly submitted but there is no objection to it by the responding party, the party offering the exhibit shall designate agreed-to exhibits on the party's exhibit list.

(5) Briefs shall contain the name of the respondent in the caption and the cause number. Briefs shall be no more than twenty-five pages, double-spaced, excluding attachments or exhibits.

(6) The parties shall inform the executive director of any special equipment necessary for the adjudicative proceeding at the time documents are filed with the commission.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-140 Brief enforcement hearings (brief adjudicative proceedings)—Authority. (1) The commission may provide a brief adjudicative proceeding for violations ~~((of the sections of chapter 42.17A RCW that it enforces))~~ in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than \$1,000 will be assessed for the violations. Typical matters to be heard in a brief adjudicative proceeding include, but are not limited to, the following:

- (a) Failure to file or late filing of required reports;
- (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying;
- (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal; and
- (d) Infractions of political advertising law regarding sponsor identification or political party identification.

(2) The commission may utilize a penalty schedule for brief adjudicative proceedings.

(3) Brief adjudicative proceedings are set forth in RCW 34.05.482 through 34.05.494.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-142 Brief enforcement hearing (brief adjudicative proceeding)—Procedure. (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the commission designated by the chair.

(2) When a violation, as described in WAC 390-37-140, is alleged, before taking action, the executive director shall send the ~~((alleged violator))~~ respondent notice, which shall include:

- (a) Alleged violation;
- (b) The maximum amount of the penalty that can be imposed at the hearing, relevant penalty schedules, and the amount of any proposed fine; and
- (c) Person's right to respond either ~~((#))~~ by electronic writing or in person to explain his/her view of the matter.

(3) As provided in RCW 34.05.050, a respondent who has been notified of a brief adjudicative proceeding may waive the hearing by providing the following prior to the hearing:

- (a) A signed statement of understanding;
- (b) Any missing required reports; and
- (c) A penalty payment specified by the executive director in accordance with the penalty authority of WAC 390-37-

140 and the brief enforcement hearing penalty schedules of this chapter.

(4) As used in this section, the term "statement of understanding" means a written statement signed by the respondent that:

(a) Acknowledges a violation of chapter 42.17A RCW and any relevant rules; and

(b) Expresses the respondent's understanding that the commission will not hold any adjudicative proceeding concerning the violation.

(5) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than one thousand dollars, the presiding officer shall immediately adjourn the hearing and direct the

matter be scheduled for an adjudicative proceeding by the full commission.

(6) ~~((At the time any unfavorable action is taken))~~ Within thirty days after the hearing, the ~~((presiding officer))~~ commission shall serve upon each party a written statement describing the violation, the reasons for the decision, ~~((and))~~ the penalty imposed ~~((- Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision))~~, and information about any internal administrative review or reconsideration available. The executive director is authorized to sign the decision on behalf of the presiding officer.

(7) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

AMENDATORY SECTION (Amending WSR 18-10-088, filed 5/1/18, effective 6/1/18)

WAC 390-37-143 Brief enforcement hearings (brief adjudicative proceeding)—Penalty schedule. The presiding officer may assess a penalty up to one thousand dollars upon finding a violation of chapter 42.17A RCW or Title 390 WAC.

(1) Base penalty amounts:

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file an accurate and complete statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Candidate's failure to timely file an accurate and complete registration statement (C-1)/statement of financial affairs (F-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150 per report	\$150 - \$300 per report	\$300 - \$600 per report up to \$1,000
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150 per report	\$300 per report	\$600 per report up to \$1,000
Failed to file report by date of enforcement hearing.	\$250 per report	\$500 per report	consideration by full commission
Failure to timely file an accurate and complete lobbyist monthly expense report (L-2):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000
Failure to timely file an accurate and complete lobbyist employer report (L-3):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000

Violation	1st Occasion	2nd Occasion	3rd Occasion
Failure to timely file accurate and complete disclosure reports:			
Political committee registration (C-1pc).	\$150	\$300	\$600
Statement of contributions deposit (C-3).	\$150	\$300	\$600
Summary of total contributions and expenditures (C-4).	\$150	\$300	\$600
Independent expenditures and electioneering communications (C-6).	\$150	\$300	\$600
Last minute contribution report (LMC).	\$150	\$300	\$600
Out-of-state committee report (C-5).	\$150	\$300	\$600
Annual report of major contributors (C-7).	\$150	\$300	\$600
Failure to timely file accurate and complete reports disclosing lobbying activities:			
Lobbyist registration (L-1).	\$150	\$300	\$600
Public agency lobbying report (L-5).	\$150	\$300	\$600
Grass roots lobbying report (L-6).	\$150	\$300	\$600
Failure to file electronically.	\$350	\$650	\$1,000
Exceeding contribution limits.	\$150	\$300	\$600
Exceeding mini reporting threshold.	\$150	\$300	\$600
Failure to comply with political advertising sponsor identification requirements.	\$150	\$300	\$600
Failure to include required candidate's party preference in political advertising.	\$150	\$300	\$600
Failure to comply with other political advertising requirements, RCW 42.17A.330 through 42.17A.345.	\$150	\$300	\$600
Use of public facilities to assist a campaign for election or promote a ballot measure.	\$150	\$300	\$600
Treasurer's failure to timely file an accurate and complete annual treasurer's report (T-1):			
Filed report after hearing notice, but before enforcement hearing. Provided written explanation or appeared at hearing to explain mitigating circumstances. Did not enter into statement of understanding.	\$0 - \$150	\$150 - \$300	\$300 - \$600
Filed report after hearing notice, but before enforcement hearing. Did not enter into statement of understanding.	\$150	\$300	\$600
Failed to file report by date of enforcement hearing.	\$250	\$500	\$1,000

"Occasion" means established violation. Only violations in the last five years will be considered for the purpose of determining second and third occasions.

(2) In determining the appropriate penalty, the presiding officer may consider the nature of the violation and aggravating and mitigating factors, including:

- (a) Whether the respondent is a first-time filer;
- (b) The respondent's compliance history for the last five years, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;
- (c) The respondent's unpaid penalties from a previous enforcement action;
- (d) The impact on the public, including whether the non-compliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

mation during a time-sensitive period, or otherwise had a significant or material impact on the public;

- (e) The amount of financial activity by the respondent during the statement period or election cycle;
- (f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;
- (g) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention;
- (h) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;
- (i) Personal emergency or illness of the respondent or member of his or her immediate family;

(j) Other emergencies such as fire, flood, or utility failure preventing filing;

(k) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization;

(l) Commission staff, third-party vendor, or equipment error, including technical problems at the agency preventing or delaying electronic filing.

(3) The presiding officer has authority to suspend all or a portion of an assessed penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of the entry of the order in that case.

(4) If, on the third occasion, a respondent has outstanding penalties or judgments, the matter will be directed to the full commission for consideration.

(5) The presiding officer may direct a matter to the full commission if the officer believes one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission. Cases will automatically be scheduled before the full commission for an enforcement action when the respondent:

(a) Was found in violation during a previous reporting period;

(b) The violation remains in effect following any appeals; and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-144 Brief enforcement hearing (brief adjudicative proceedings) — (~~Administrative review procedures~~) Process for full commission review. (1) The commission shall conduct a review of the initial order upon the written or oral request of a party if the commission receives the request within twenty-one days after the service of the initial order. "Service" is defined as the date the order was deposited in the U.S. mail per RCW 34.05.010(19), electronically distributed or personally served. The party seeking review shall state the reason for the review, and identify what alleged errors are contained in the initial order.

(2) If the parties have not requested review, the commission may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be (~~in~~) by electronic writing stating the findings made, and the reasons for the decision, and notice that reconsideration and judicial review are available. The order on review shall be entered within twenty days after the date of the initial order or of the request for review, whichever is later.

(4) If the commission is not scheduled to meet within twenty days after the date of the initial order or request for review and therefore cannot dispose of the request within that time period, the request is:

(a) Deemed denied under RCW 34.05.491(5) and the initial order becomes final;

(b) Considered a request for reconsideration under WAC 390-37-150; and

(c) Scheduled for consideration and disposition at the next commission meeting at which it is practicable to do so.

AMENDATORY SECTION (Amending WSR 17-03-004, filed 1/4/17, effective 2/4/17)

WAC 390-37-150 Commission reconsideration and judicial review of decisions. (1) For purposes of this rule, "decision" means any findings, conclusions, order, or other action by the commission which is reviewable by a court.

(2) A decision may be reconsidered only upon (a) the written request of a party thereby or (b) the motion or written request of a commissioner who voted on the prevailing side when that decision was made.

(3) Such a request for reconsideration shall be filed electronically at the office of the public disclosure commission, or motion made, within ten days of service of the decision of which reconsideration is sought. Copies of the request or motion shall be served electronically on all parties of record at the time the request for reconsideration or motion is filed.

(4) A request or motion for reconsideration shall specify the grounds therefor. Grounds for reconsideration shall be limited to:

(a) A request for review was deemed denied in accordance with WAC 390-37-144(4);

(b) New facts or legal authorities that could not have been brought to the commission's attention with reasonable diligence. If errors of fact are alleged, the requester must identify the specific evidence in the prior proceeding on which the requester is relying. If errors of law are alleged, the requester must identify the specific citation; or

(c) Significant typographical or ministerial errors in the order.

(5) Upon being served with a decision, the respondent may treat that decision as final for the purpose of petitioning for judicial review. The commission may not reconsider any decision after being served with a petition for judicial review.

(6) When a request for reconsideration is served, or motion made, enforcement of the decision of which reconsideration is sought shall be stayed and the decision shall not be final until the commission has acted on the reconsideration.

(7) The commission is deemed to have denied request for reconsideration or motion if, within twenty days from the date the request or motion is filed, the commission does not either (a) dispose of the request or motion, or (b) serve the parties with written notice specifying the date it will act upon the request or motion.

(8) The commission shall act on the reconsideration request or motion, at the next meeting at which it practicably may do so, by:

(a) Deciding whether to reconsider its decision; and

(b) If it decides to do so, either:

(i) Affirming its decision; or

(ii) Withdrawing or modifying the final order; or

(iii) Setting the matter for further hearing.

Provided, that before a decision may be amended other than by lowering a penalty, the respondent shall be given notice and an opportunity to be heard if, and in the same manner as, required for the original decision.

AMENDATORY SECTION (Amending WSR 16-01-015, filed 12/4/15, effective 1/4/16)

WAC 390-37-182 Penalty factors. (1) In assessing a penalty, the commission considers the purposes of chapter 42.17A RCW, including the public's right to know of the financing of political campaigns, lobbying and the financial affairs of elected officials and candidates as declared in the policy of RCW 42.17A.001; and, promoting compliance with

the law. The commission also considers and applies RCW 42.17A.755 and may consider any of the additional factors described in subsection (3) of this section.

(2) Under RCW 42.17A.755, the commission:

(a) May waive a penalty for a first-time actual violation;

(b) Shall assess a penalty for a second actual violation (~~(of the same rule)~~) by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) Shall assess successively increased penalties for succeeding actual violations (~~(of the same rule.)~~) pursuant to the following schedule:

<u>Violations:</u>			
<u>Respondent failed to file or timely file an accurate or complete: (1) Statement of Financial Affairs (F-1 report); (2) Candidate Registration (C-1 report); (3) Lobbyist Monthly Expense Report (L-2 report); (4) Lobbyist Employer Annual Report (L-3 report); and (5) Local Treasurer's Annual Report (T-1 report).</u>			
	<u>1st Occasion</u>	<u>2nd Occasion</u>	<u>3rd Occasion</u>
<u>Filed missing report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Report is filed late and is incomplete or inaccurate.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,000 - \$3,000</u>
<u>Respondent failed to file or timely file accurate and complete campaign disclosure reports:</u>			
<u>Cash Receipts Monetary Contributions Report (C-3 report)</u>			
<u>Filed missing C-3 report or amended C-3 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to timely deposit monetary contributions within five business days of receipt.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to include employer and occupation information for contributors of more than \$100.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Campaign Summary Receipts and Expenditures Report (C-4 report)</u>			
<u>Filed missing C-4 report or amended C-4 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly report the "purpose" of an expenditure under RCW 42.17A.240(6) or 42.17A.255 (5)(b).</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly report expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to report a contractual contingent liability.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly dispose of surplus funds.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Failed to properly make campaign books of account available for public inspection as required immediately preceding the date of an election.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Independent Expenditure Report (C-6 report)</u>			
<u>Filed missing C-6 report or amended C-6 report after being notified about the complaint, and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Report is filed late and is incomplete or inaccurate.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>

Violations:			
<u>Out-of-State Political Committee Report (C-5 report)</u>			
<u>Filed missing C-5 report or amended C-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Last Minute Contribution Report (LMC report)</u>			
<u>Filed missing LMC report or amended LMC report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Exceeding contribution limits</u>			
<u>Refunded contributions after being notified of the complaint, over limit contributions were not significant, and respondent provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,500</u>	<u>\$1,500 - \$2,500</u>	<u>\$2,500 - \$10,000</u>
<u>Other Alleged Violations</u>			
<u>Exceeding mini reporting threshold</u>			
<u>Filed C-3 and C-4 reports for full reporting after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Failure to file electronically</u>			
<u>Filed C-3 and C-4 reports electronically after being notified about the complaint, and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Use of public facilities for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition</u>			
<u>Use of public facilities was incidental and isolated, and evidence was not submitted indicating that the use may have affected the outcome of the election.</u>	<u>\$0 - \$1,000</u>	<u>\$1,000 - \$2,000</u>	<u>\$2,500 - \$10,000</u>
<u>Failure to file Lobbyist Registration Report (L-1 report)</u>			
<u>Filed missing L-1 report after being notified about the complaint, and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Failure to file Agency Lobbying Report (L-5 report)</u>			
<u>Filed missing L-5 report or amended L-5 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Grassroots Lobbying Report (L-6 report)</u>			
<u>Filed missing L-6 report or amended L-6 report after being notified about the complaint and provided written explanation with mitigating circumstances.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Sponsor identification requirements for political advertising</u>			
<u>Political advertising failed to include any sponsor identification or included improper or misleading sponsor identification.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Party preference requirement for political advertising</u>			
<u>Political advertising failed to include a candidate's party preference.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>

Violations:			
<u>Use of current picture requirement in political advertising</u>			
<u>Political advertising fails to include at least one picture of the candidate used in the advertising that was taken within the last five years, that is no smaller than any other picture of the same candidate used in the same advertisement.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,000</u>	<u>\$1,000 - \$1,500</u>
<u>Political advertising or electioneering communication—Libel or defamation per se</u>			
<u>Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.</u>	<u>\$0 - \$500</u>	<u>\$500 - \$1,500</u>	<u>\$1,500 - \$2,500</u>
<u>Political advertising or an electioneering communication that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>
<u>Commercial advertisers—Public inspection of documents</u>			
<u>Commercial advertisers who after accepting or providing political advertising or electioneering communications during an election campaign fail to maintain documents or books of account as required by WAC 390-18-050.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>
<u>Candidates and political committees—Public inspection of books of accounts</u>			
<u>Candidates or political committees who fail to accommodate requests for public inspection as required by WAC 390-16-043.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>
<u>Limitations on employers or labor organizations</u>			
<u>Failed to maintain open for public inspection, during normal business hours, documents and books of accounts showing a copy of each employee's request for funds to be withheld for transfer to a political committee.</u>	<u>\$0 - \$600</u>	<u>\$600 - \$1,200</u>	<u>\$1,200 - \$2,400</u>

(3) In addition to the requirements of RCW 42.17A.755, the commission may consider the nature of the violation and any relevant circumstances, including the following factors:

(a) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(b) The impact on the public, including whether the non-compliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(c) Sophistication of respondent or the financing, staffing, or size of the respondent's campaign or organization;

(d) Amount of financial activity by the respondent during the statement period or election cycle;

(e) Whether the noncompliance resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(g) Whether the respondent or any person, including an entity or organization, benefited politically or economically from the noncompliance;

(h) Personal emergency or illness of the respondent or member of his or her immediate family;

(i) Other emergencies such as fire, flood, or utility failure preventing filing;

(j) Commission staff or equipment error, including technical problems at the agency preventing or delaying electronic filing;

(k) The respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions;

(l) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or overlimit contributions);

(m) Whether the respondent is a first-time filer;

(n) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;

(o) Penalties imposed in factually similar cases; and

(p) Other factors relevant to a particular case.

(4) The commission(~~(, and the presiding officer in brief adjudicative proceedings,))~~ may consider the factors in subsections (1) through (3) of this section in determining whether to suspend a portion or all of a penalty upon identified conditions, and whether to accept, reject, or modify a stipulated penalty amount recommended by the parties.

(5) (~~The presiding officer in brief adjudicative proceedings may consider whether any of the factors in subsections (1) through (3) of this section are factors that warrant directing a case to the full commission.~~) Notwithstanding the schedule in subsection (2)(c) of this section, the commission may assess a penalty of up to ten thousand dollars per violation pursuant to RCW 42.17A.755(3), based on the aggravating factors set forth in subsections (1) through (3) of this section.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-37-041 Citizen action notice procedures—Allegations submitted to the attorney general's office and/or prosecuting attorneys.

WSR 18-20-067

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-271—Filed September 27, 2018, 5:04 p.m., effective September 28, 2018]

Effective Date of Rule: September 28, 2018.

Purpose: Amend Willapa Bay commercial fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-354-25000B; and amending WAC 220-354-250.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.045 [77.12.045], and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to open limited commercial salmon fisheries in Willapa Bay. Fall Chinook returning to tributaries of Willapa Bay have been significantly lower than preseason predictions. Historic run-timing and stock composition data suggests minimal fall Chinook encounters are likely to occur during these selected fisheries. 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: September 27, 2018.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000C Willapa Bay salmon fall fishery. Notwithstanding the provisions of WAC 220-354-250, effective September 28, 2018, until further notice:

(1) It is unlawful to fish for commercial purposes in Willapa Bay Salmon Management and Catch reporting Areas except gillnet gear may be used to fish for coho salmon and chum salmon in:

Area	Time	Date(s)	Maximum Mesh Size
2M, 2N,	7:00 a.m. through	9/28, 10/1, 10/2,	6.5"
2T,	7:00 p.m.	10/3, 10/4, 10/5	
2U	7:00 a.m. through	9/28, 10/1, 10/2,	4.25"
	7:00 p.m.	10/3, 10/4, 10/5	

(2) Retention of any species other than coho or chum salmon is prohibited.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 28, 2018:

WAC 220-354-25000B Willapa Bay salmon fall fishery.
(18-265)

WSR 18-20-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-269—Filed September 28, 2018, 9:12 a.m., effective October 1, 2018]

Effective Date of Rule: October 1, 2018.

Purpose: Amend recreational fishing rules for the Columbia River.

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

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

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

Reasons for this Finding: The Columbia River steelhead run-size has been reduced to ninety-two thousand eight hundred A/B Index steelhead from the preseason forecast of one hundred eighty-two thousand four hundred fish. This emergency rule is needed to lower the steelhead daily limit to one fish in the lower Hanford Reach area and require the release of all steelhead except Ringold Springs-origin hatchery steelhead. Reduction of the daily limit to one Ringold Springs-origin hatchery steelhead (those marked by both an adipose and right ventral fin clip), will help us meet hatchery broodstock collection goals and still allow anglers steelhead opportunity. There 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: September 27, 2018.

James B. Scott, Jr.
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000A Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(a) Mouth of the Columbia River from Buoy 10 to the HWY 395 Bridge at Pasco: Salmon and steelhead, immediately until further notice: Closed.

(b) HWY 395 Bridge at Pasco to the Old Hanford townsite powerline towers:

(i) Salmon, immediately through October 31, 2018:

(A) Daily limit 6, up to 1 may be an adult.

(B) Release coho.

(ii) Steelhead, October 1 until further notice:

(A) Daily limit 1 hatchery steelhead.

(B) Release all steelhead other than those marked by both a clipped adipose fin and clipped right ventral fin with healed over scars.

(c) The Old Hanford townsite powerline towers to Priest Rapids Dam:

(i) Salmon, immediately through October 15, 2018:

(A) Daily limit 6, up to 1 may be an adult.

(B) Release coho.

(ii) Steelhead, immediately until further notice: Release all steelhead.

(d) Rock Island Dam to Rocky Reach Dam:

(i) Salmon, immediately through October 15, 2018:

(A) Daily limit 6, no more than 3 sockeye may be retained.

(B) Release adult Chinook and coho.

(e) Rocky Reach Dam to Wells Dam:

(i) Salmon, immediately through October 15, 2018:

(A) Daily limit 6, no more than 2 adult Chinook and 3 sockeye may be retained.

(B) Release wild adult Chinook and coho.

(f) Hwy. 173 Bridge at Brewster to Chief Joseph Dam:

(i) Salmon, immediately through October 15, 2018:

(A) Daily limit 6, no more than 2 adult Chinook and 3 Sockeye may be retained.

(B) Release wild adult Chinook and coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2018:

WAC 220-312-06000Z Freshwater exceptions to statewide rules—Columbia River. (18-245)

WSR 18-20-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-262—Filed September 28, 2018, 9:35 a.m., effective September 28, 2018, 9:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Skagit River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000V; and amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is needed to close a portion of the Skagit River to all fishing to avoid gear conflicts with treaty fisheries on those scheduled dates. 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: September 26, 2018.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000V Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040:

Skagit River, from the mouth to a line projected across the thread of the river 200' upstream of the mouth of the Baker River: Closed to all fishing the dates of October 2, 3, 9, and 10, 2018.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 11, 2018:

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

**WSR 18-20-070
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-268—Filed September 28, 2018, 9:36 a.m., effective September 29, 2018]

Effective Date of Rule: September 29, 2018.

Purpose: Amends recreational salmon fishing rules for Snohomish, Snoqualmie, Skykomish, and Wallace rivers.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is needed to close salmon fishing in portions of the Snohomish, Snoqualmie, Skykomish and Wallace rivers and requires the release of all salmon other than hatchery coho in the sections that remain open to salmon. Inseason run-size updates indicate that the Snohomish wild coho run is lower than the pre-season forecast. These measures are needed to protect future runs of coho by increasing chances wild spawner escapement goals are met. 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: September 26, 2018.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000W Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective September 29, 2018 until further notice:

(1) **Snohomish River (Snohomish Co.):** from mouth to confluence of the Skykomish and Snoqualmie Rivers: Closed to salmon fishing.

(2) **Snoqualmie River (King/Snohomish Co.):** from mouth to Snoqualmie Falls: Closed to salmon fishing.

(3) **Skykomish River (Snohomish Co.):**

(a) From mouth to the mouth of the Wallace River: Release all salmon other than hatchery coho.

(b) From the mouth of the Wallace River to the confluence of North and South Forks: Closed to salmon fishing.

(4) **Wallace River (Snohomish Co.):** from mouth to 200' upstream of the hatchery water intake: Release all salmon other than hatchery coho.

WSR 18-20-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-264—Filed September 28, 2018, 9:36 a.m., effective September 29, 2018]

Effective Date of Rule: September 29, 2018.

Purpose: Amend recreational salmon rules for Drano Lake.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000C; 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 emergency rule is need to reduce the adult portion of the salmon daily limit for Drano Lake. The estimated passage of Pool Upriver Bright Chinook above Bonneville Dam was recently reduced from preseason forecasts and a reduced daily limit is needed to ensure that additional fish are available for broodstock collection at Little White Salmon National Fish Hatchery. There is insufficient time to draft 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: September 26, 2018.

Kelly Susewind
 Director

NEW SECTION

WAC 220-312-03000F Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective September 29, 2018 until further notice:

(1) **Drano Lake (Skamania County):**

- (a) Salmon daily limit is 6, up to 1 adult may be retained.
- (b) Release all steelhead.
- (c) Closed to fishing at night for salmon and steelhead.

(2) **White Salmon River (Klickitat/Skamania counties):** from mouth (BNSF Railroad bridge) to county road bridge downstream of the former location of the powerhouse:

(a) Release all steelhead.

(b) Closed to fishing at night for salmon and steelhead.

(3) **Wind River (Skamania County):** from mouth to 400 feet below Shipherd Falls fish ladder:

(a) Release all steelhead.

(b) Closed to fishing at night for salmon and steelhead.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 29, 2018:

WAC 220-312-03000C Freshwater exceptions to statewide rules—Southwest. (18-226)

WSR 18-20-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-270—Filed September 28, 2018, 12:33 p.m., effective October 1, 2018]

Effective Date of Rule: October 1, 2018.

Purpose: Amend recreational salmon fishing rules in Willapa Bay tributaries.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000G; and amending WAC 220-312-020.

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

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

Reasons for this Finding: Fall Chinook returns to tributaries of Willapa Bay have been significantly lower than preseason predictions. Active broodstocking efforts conducted by hatchery staff and volunteers as well as the naturally occurring recruitment have resulted in the likely attainment of hatchery production goals for fall Chinook in the Willapa and Nemah River systems based on recent assessments. The proportion of females in the broodstock have been higher than anticipated. Returns of fall Chinook needed for hatchery production in the Naselle River system are still short of the production goal. Retention of Chinook is prohibited in all fisheries prosecuted in the Willapa Bay watershed as a conservation measure in order to focus harvest opportunity on coho. This emergency rule is necessary to open most Willapa Bay tributaries for recreational coho 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 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: September 28, 2018.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000H Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective October 1, 2018 until further notice the following rules apply. Unless otherwise amended, all permanent rules remain in effect:

(1) **Bear River (Pacific Co.):** From mouth (Hwy. 101 Bridge) to Lime Quarry Rd: Salmon daily limit is 6, no more than 2 adults may be retained, up to 1 adult may be a wild coho. Release Chinook.

(2) **Fork Creek (Pacific Co.):** From Forks Creek hatchery rack to 500' upstream to the fishing boundary sign: Salmon daily limit is 6, up to 2 adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

(3) **Naselle River (Pacific Co.):** Closed to Salmon fishing.

(4) **Nemah River, Middle (Pacific Co.):** From mouth to the DNR bridge on Middle Nemah A-Line Rd.: Salmon daily limit is 6, up to 2 adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

(5) **Nemah River, North (Pacific Co.):**

(a) From Hwy. 101 Bridge to the temporary weir (approximately 210' upstream of the Nemah Hatchery Bridge: Salmon daily limit is 6, up to 2 adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

(b) From Nemah Hatchery barrier dam to N700 Rd. (46°28.58N, 123°48.54W): Salmon daily limit is 6, up to 2 adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

(6) **Nemah River, South (Pacific Co.):** Salmon daily limit is 6, up to 2 adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

(7) **North River (Grays Harbor/Pacific Co.):** from the Hwy. 105 Bridge to Fall River: Salmon daily limit is 6, up to 2 adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

(8) **Smith Creek (Pacific Co.):** from mouth to Hwy. 101 Bridge: Salmon daily limit is 6, up to 2 adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

(8) **Willapa River (Pacific Co.):** From mouth to Hwy. 6 Bridge (near town of Lebam): Salmon daily limit is 6, up to 2

adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

(9) **Willapa River, South Fork (Pacific Co.):**

(a) From mouth to 400' downstream of falls/fish ladder in Sec. 6 T13N R8W: Salmon daily limit is 6, up to 2 adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

(b) From falls/fish ladder in Sec. 6 T13 R8W to Pehl Rd. Bridge: Salmon daily limit is 6, up to 2 adults may be retained, and no more than 1 adult may be a wild coho. Release Chinook.

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 section of the Washington Administrative Code is repealed effective October 1, 2018:

WAC 220-312-02000G Freshwater exceptions to statewide rules—Coast.

WSR 18-20-075

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-273—Filed September 28, 2018, 12:46 p.m., effective September 28, 2018, 12:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This change will include Game Management Units (GMU) 568, 572, 574, and 578 in WAC 220-413-200 that makes it unlawful to transport the hooves of harvested elk beyond the site where the animal was killed.

Citation of Rules Affected by this Order: Amending WAC 220-413-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.240, and 77.32.470.

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: Because treponeme associated hoof disease (TAHD) was confirmed in GMU 578, the department seeks to reduce the spread of TAHD by adding GMUs 568, 578 and neighboring GMUs 572 and 574 to WAC 220-413-200. While a CR-103P has been filed, there is still a gap in time of approximately thirty-one days for the permanent rule to take effect. Consequently, the department needs to adopt an emergency rule to cover this gap in order to allow the Washington department of fish and wildlife police officers an effective rule to enforce.

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: September 28, 2018.

Kelly Susewind
Director

NEW SECTION

WAC 220-413-20000B Reducing the spread of hoof disease—Unlawful transport of elk hooves. Notwithstanding the provisions of WAC 220-413-200, effective immediately, until further notice, the change shall read as follows under section (1):

(1) It is unlawful to transport the hooves of harvested elk beyond the site where the animal was killed in Game Management Units 407, 418, 437, 454, 501 through 564, 568, 572, 574, 578, 633, 636 and 642 through 699, except when specifically authorized by the department or when acting as an agent of the department in the limited capacity of cooperating with research or management actions regarding hoof disease as directed by the department.

**WSR 18-20-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-274—Filed September 28, 2018, 2:54 p.m., effective October 1, 2018]

Effective Date of Rule: October 1, 2018.

Purpose: To repeal WAC 220-500-03000A, 220-500-04000A, and 220-500-11000A.

Citation of Rules Affected by this Order: Repealing WAC 220-500-03000A, 220-500-04000A, and 220-500-11000A.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, 77.15.230.

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

Reasons for this Finding: The recent change in weather with forecasting precipitation, lower temperatures and higher humidity levels, have abated high fire hazard conditions for the foreseeable future.

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 3.

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

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

Date Adopted: September 28, 2018.

Kelly Susewind
Director

REPEALER

The following sections of the Washington Administrative Code is repealed effective October 1, 2018:

WAC 220-500-03000A Operating chainsaws, welding, or operating an acetylene or other torch with open flame.

WAC 220-500-04000A Operating a motor vehicle off developed roadways.

WAC 220-500-11000A Fires, campfires and smoking.

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

**WSR 18-20-088
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed October 1, 2018, 11:46 a.m., effective October 1, 2018]

Effective Date of Rule: October 1, 2018.

Purpose: The department is amending WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits? and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?, to implement annual adjustments to standards for the Washington basic food program.

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

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: 7 C.F.R. § 273.9 (a)(3), USDA, Food and Nutrition Service, SNAP—Fiscal Year 2018 Cost-of-Living Adjustments (July 27, 2018), and USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 23, 2018).

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

Reasons for this Finding: The department is required to use federally prescribed income eligibility standards, which are revised effective October 1 of each year, as stated in 7 C.F.R. § 273.9.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 4, 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 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 4, Repealed 0.

Date Adopted: September 19, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-02-043, filed 12/26/17, effective 1/26/18)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

(1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

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

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

Eligible AU members	Standard deduction
((+)) 3 or less	(((\$160)) \$164
((2))	(((\$160))
((3))	(((\$160))
4	(((\$170)) \$174

Eligible AU members	Standard deduction
5	(((\$199)) \$204
6 or more	(((\$228)) \$234

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 18-02-043, filed 12/26/17, effective 1/26/18)

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

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

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

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

(i) AU intends to return to the home;

(ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of five hundred ~~((thirty-five)) fifty-two~~ dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~thirty-five~~) fifty-two dollars.

AMENDATORY SECTION (Amending WSR 18-02-043, filed 12/26/17, effective 1/26/18)

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

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

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

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

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

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

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this sec-

tion, you get a limited utility allowance (LUA) of three hundred (~~twenty-eight~~) thirty-six dollars.

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

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

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

AMENDATORY SECTION (Amending WSR 18-02-043, filed 12/26/17, effective 1/26/18)

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

EFFECTIVE (~~10/1/2017~~) 10/1/2018

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	(\$1,307) <u>\$1,316</u>	(\$1,005) <u>\$1,012</u>	\$192	(\$1,659) <u>\$1,670</u>
2	(1,760) <u>1,784</u>	(1,354) <u>1,352</u>	(352) <u>353</u>	(2,233) <u>2,264</u>
3	(2,213) <u>2,252</u>	(1,702) <u>1,732</u>	(504) <u>505</u>	(2,808) <u>2,858</u>
4	(2,665) <u>2,720</u>	(2,050) <u>2,092</u>	(640) <u>642</u>	(3,383) <u>3,452</u>
5	(3,118) <u>3,188</u>	(2,399) <u>2,452</u>	(760) <u>762</u>	(3,958) <u>4,046</u>
6	(3,571) <u>3,656</u>	(2,747) <u>2,812</u>	(913) <u>914</u>	(4,532) <u>4,640</u>
7	(4,024) <u>4,124</u>	(3,095) <u>3,172</u>	(1,009) <u>1,011</u>	(5,107) <u>5,234</u>
8	(4,477) <u>4,592</u>	(3,444) <u>3,532</u>	(1,153) <u>1,155</u>	(5,682) <u>5,828</u>
9	(4,930) <u>5,060</u>	(3,793) <u>3,892</u>	(1,297) <u>1,299</u>	(6,257) <u>6,422</u>

EFFECTIVE ((10/1/2017)) 10/1/2018

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
10	((5,383)) <u>5,528</u>	((4,142)) <u>4,252</u>	((1,441)) <u>1,443</u>	((6,832)) <u>7,016</u>
Each Additional Member	((+453)) <u>+468</u>	((+349)) <u>+360</u>	+144	((+575)) <u>+594</u>

(2) Exceptions:

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

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

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

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

Prevention Act. These changes go into effect October 1, 2018. These changes are needed in order for the department to continue receiving Title IV-E funding.

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 7, Amended 0, Repealed 0.

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

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

Date Adopted: October 1, 2018.

WSR 18-20-091

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed October 1, 2018, 3:31 p.m., effective October 1, 2018]

Effective Date of Rule: October 1, 2018.

Purpose: These rules will establish chapter 110-05 WAC, One hundred twenty-day provisional hires, for the department of children, youth, and families (DCYF). This chapter includes the requirements for one hundred twenty-day provisional hires which allows an employee in a group care facility to have unsupervised access to children in the care and custody of DCYF on a provisional basis pending the results of their Federal Bureau of Investigation [background check].

Citation of Rules Affected by this Order: New chapter 110-05 WAC.

Statutory Authority for Adoption: Chapter 43.216 RCW, RCW 74.15.030, Public Law 115-123.

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

Reasons for this Finding: These rules were previously filed on [as] an emergency on June 27, 2018, WSR 18-14-035. At this time, they are being revised and being filed as an emergency in order to meet the requirements and deadline date recently enacted in Public Law 115-123, Family First

Brenda Villarreal
Rules Coordinator

Title 110 WAC

**CHILDREN, YOUTH, AND FAMILIES,
DEPARTMENT OF**

Chapter 110-05 WAC

**ONE HUNDRED TWENTY-DAY
PROVISIONAL HIRES**

NEW SECTION

WAC 110-05-0010 What is the purpose of this chapter? WAC 388-06-0500 through 388-06-0540 defines when the one hundred twenty-day provisional hire is allowed by the department of children, youth, and families (DCYF).

NEW SECTION

WAC 110-05-0020 What is the purpose of the one hundred twenty-day provisional hire? The one hundred twenty-day provisional hire allows an employee to have unsupervised access to children, juveniles, and vulnerable adults on a provisional basis pending the results of their Federal Bureau of Investigation (FBI) background check.

NEW SECTION

WAC 110-05-0030 What definitions apply to one hundred twenty-day provisional hires? "Agency" means any private agency providing services to children, juveniles, and vulnerable adults.

"Employee" means an employee of an agency defined in RCW 74.15.020 that receives children for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children for foster care or placement of children for adoption; or an employee of a department contractor when that contractor provides for the care, supervision, case management, or treatment, of children who are receiving child protective services or child welfare services as defined in RCW 74.15.020.

"Entity" means, but is not limited to, a licensed facility, corporation, partnership, sole proprietorship, or a contracted or certified service provider.

"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).

"Hire" means engagement by an entity to perform specific agreed duties as a paid employee or a contract employee.

"Individual" means an employee or a contract employee.

"Qualified" means an individual can be hired into a position that includes unsupervised access to children, juveniles, and vulnerable adults because the results of their background check are not disqualifying.

"Unsupervised access" means that:

(a) An individual will or may have the opportunity to be alone with a child, juvenile, or a vulnerable adult; and

(b) Neither a qualified employee or contract employee of the agency nor a relative or guardian of the child, juvenile, or vulnerable adult is present.

NEW SECTION

WAC 110-05-0040 Who is responsible for approving the one hundred twenty-day provisional hire? The entity is responsible for approving individuals for the one hundred twenty-day provisional hire.

NEW SECTION

WAC 110-05-0050 When are individuals eligible for the one hundred twenty-day provisional hire? Individuals who have lived three consecutive years in Washington state before submitting their application, cleared the state background check process, and submitted fingerprints are eligible for the one hundred twenty-day provisional hire. The fingerprint process must be completed as required by the applicable DCYF program.

NEW SECTION

WAC 110-05-0060 When does the one hundred twenty-day provisional hire begin? The one hundred twenty-day provisional hire may begin when notified by

DCYF when the conditions in WAC 388-06-0525 have been met.

NEW SECTION

WAC 110-05-0070 Are there instances when the one hundred twenty-day provisional hire is not available? The one hundred twenty-day provisional hire is not available to an entity requesting:

- (1) An initial license;
- (2) An initial contract;
- (3) Approval as a family child day care home provider, child placing agency employee, foster parent, or adoptive parent (see 42 U.S.C. Sec. 671 (a)(20)).

WSR 18-20-092**EMERGENCY RULES****DEPARTMENT OF****CHILDREN, YOUTH, AND FAMILIES**

[Filed October 1, 2018, 3:37 p.m., effective October 1, 2018, 3:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Changes are being made to the following WAC to align with the Family First Prevention Act. This change in legislation requires all employees working in a department of children, youth, and families (DCYF) licensed group care facility to complete fingerprint based background checks and out-of-state child abuse and neglect history checks of every state the individual has lived in the preceding five years before the background check application. These changes go into effect October 1, 2018.

Chapter 110-04 WAC, Background checks: WAC 110-04-0010 What is the purpose of this chapter?, 110-04-0020 What definitions apply to WAC 110-04-0030 through 110-04-0180 of this chapter?, 110-04-0030 Why are background checks done?, 110-04-0040 Who must have background checks?, 110-04-0060 Does the background check process apply to new and renewal licenses, certification, contracts, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children?, 110-04-0070 What happens if I don't comply with the background check requirement?, 110-04-0080 What does the background check cover?, 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?, 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?, 110-04-0120 If I have a conviction, may I ever have unsupervised access to children?, 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?, 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or if I have been pardoned for a crime?, and 110-04-0150 How will I know the status of the background check?

Chapter 110-145 WAC: WAC 110-145-1325 What is required to apply for a group care facility license?

Citation of Rules Affected by this Order: Amending WAC 110-04-0010, 110-04-0020, 110-04-0030, 110-04-0040, 110-04-0060, 110-04-0070, 110-04-0080, 110-04-0100, 110-04-0110, 110-04-0120, 110-04-0130, 110-04-0140, 110-04-0150, and 110-145-1325.

Statutory Authority for Adoption: Chapter 110-04 WAC is RCW 43.43.832; for WAC 110-145-1325 is RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832, P.L. 115-123.

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

Reasons for this Finding: These rules are being filed as an emergency in order to meet the requirements and deadline date recently enacted in the Family First Prevention Act. These changes go into effect October 1, 2018. These changes are needed for the department to continue receiving Title IV-E funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 14, 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 0, Amended 0, Repealed 0.

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

Date Adopted: October 1, 2018.

Brenda Villarreal
Rules Administrator

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

WAC 110-04-0010 What is the purpose of this chapter? This chapter establishes rules for background checks conducted by ~~((children's administration (CA) at))~~ the department of ~~((social and health services (DSHS)))~~ children, youth, and families (DCYF) for child welfare purposes and does not apply to background checks required for child care or early learning purposes as they are addressed in chapter 110-06 WAC. The department does background checks on individuals who are licensed, certified, contracted, employed in a group care facility, or authorized to care for or have unsupervised access to children. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

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

WAC 110-04-0020 What definitions apply to WAC ~~((388-06A-0100 through 388-06A-0260)) 110-04-0030 through 110-04-0180~~ of this chapter? The following definitions apply to WAC ~~((388-06A-0100 through 388-06A-0260)) 110-04-0030 through 110-04-0180~~ of this chapter:

"Authorized" or "authorization" means not disqualified by the department to work in a group care facility or have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

~~(("CA" means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child placing agencies, child protective services, child welfare services, and other services to children and their families.))~~

"Certification" means:

~~((+))~~ (a) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

~~((2))~~ (b) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

"Children" means a person who is one of the following:

~~((+))~~ (a) Under eighteen years old;

~~((2))~~ Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;

~~((3))~~ (b) Up to twenty-one years of age and participating in the extended foster care program;

~~((4))~~ (c) Up to twenty-one years of age and under the custody of the Washington state juvenile rehabilitation administration.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Department" or ~~((DSHS))~~ **"DCYF"** means the department of ~~((social and health services (DSHS)))~~ children, youth, and families responsible for providing child welfare programs and services to children and their families and licensing foster homes, group care facilities and programs, and child placing agencies.

"I" and "you" refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment,

a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"~~(DLR)~~ **Licensing division**" or "**LD**" means the licensing division ~~((of licensed resources within children's administration. DLR))~~ within DCYF. LD licenses and monitors foster homes, child placing agencies and licensed group care facilities.

~~("I" and "you" refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.)~~

"**Licensors**" means either:

~~((1) A DLR)~~ (a) An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies ~~((established under this chapter))~~ that provide foster family homes or group care facilities under chapters 110-145, 110-147, and 110-148 WAC; or

~~((2))~~ (b) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"**Unsupervised**" means will not or may not be in the presence of:

~~((1))~~ (a) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

~~((2))~~ (b) Another individual who has been previously approved by ~~((children's administration))~~ DCYF.

"**We**" refers to the department, including licensors and ~~((social workers))~~ caseworkers.

"**WSP**" refers to the Washington state patrol.

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

WAC 110-04-0030 Why are background checks done? ~~((The children's administration))~~ DCYF does background checks to help safeguard the health, safety, and well-being of children in out of home care. By doing background checks, the department reduces the risk of harm to children from individuals ~~((that))~~ who have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability and competence before you are issued a license, contract, certificate, ~~((or authorized))~~ authorization to be employed at a group care facility, or authorization to have unsupervised access to children.

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

WAC 110-04-0040 Who must have background checks? (1) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department also requires back-

ground checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities that provide care. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care. The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home.

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

WAC 110-04-0060 Does the background check process apply to new and renewal licenses, certification, contracts, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children? For ~~((children's administration))~~ DCYF, these regulations apply to all applications for new and renewal licenses, contracts, certifications, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children that are processed by ~~((the children's administration))~~ DCYF after the effective date of this chapter.

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

WAC 110-04-0070 What happens if I ~~((don't))~~ do not comply with the background check requirement? The department will deny, suspend or revoke your license, contract, or certification, or disqualify you to care for children if you or someone on the premises of your home or facility having unsupervised access, or an employee at a group care facility does not comply with the department's requirement for a background check.

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

WAC 110-04-0080 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information pro-

vided by you. The background check may include, but is not limited to, the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for ~~((children's administration))~~ DCYF also includes:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) ~~((through))~~ and (2) of this section, background checks conducted by ~~((children's administration))~~ DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home and for all staff working in a group care facility, including those not directly working with children:

(a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(4) Except as required in ~~((WAC 388-06A-0150 (4)(b), children's administration))~~ subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

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

WAC 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children? (1) There are convictions for certain crimes that will permanently prohibit you from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children. Those felony convictions are as follows:

- (a) Child abuse and/or neglect;
- (b) Spousal abuse;
- (c) A crime against a child (including child pornography);
- (d) A crime involving violence (including rape, sexual assault, or homicide but not including other physical assault or battery); or
- (e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from

having unsupervised access to children in any home or facility.

(2) If you are convicted of one of the crimes listed in WAC ~~((388-06A-0170))~~ 110-04-0100 (1)(a) through (e), you will not be able to:

- (a) Receive a license to provide care to children;
- (b) Be approved for adoption of a child;
- (c) Be a contractor;
- (d) Be employed by a licensed agency or contractor, if you will have unsupervised access to children;
- (e) Be authorized to be employed at a group care facility even if you do not work directly with children;
- ~~((f))~~ (f) Volunteer or participate as an intern in a home or facility that offers care to children; or
- ~~((g))~~ (g) Provide any type of care to children, if the care is funded by the state.

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

WAC 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children? The department must disqualify you from licensing, contracting, certification, authorization for employment at a group care facility, or ~~((from having))~~ authorization for unsupervised access to children if it has been less than five years from a conviction for the following crimes:

(1) Any felony physical assault or battery offense not included in WAC ~~((388-06A-0170))~~ 110-04-0100;

(2) Any felony violation of the following drug-related crimes:

(a) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW);

(b) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);

(c) The Precursor Drug Act (substances used in making controlled substances, see chapter 69.43 RCW);

(d) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or

(e) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.

(3) Any federal or out-of-state conviction for an offense that under the laws of Washington state would disqualify you for no less than five years from being authorized to be employed at a group care facility or having unsupervised access to children.

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

WAC 110-04-0120 If I have a conviction, may I ever be authorized to be employed at a group care facility or have unsupervised access to children? (1) In two situations, ~~((DSHS))~~ DCYF may find a person with convictions able to be authorized to be employed at a group care facility or have unsupervised access to children:

(a) If the conviction for any crime listed in WAC ((388-06A-0180)) 110-04-0110 occurred more than five years ago; or

(b) If the conviction was for a crime other than those listed in WAC ((388-06A-0170 or 388-06A-0180)) 110-04-0100 or 110-04-0110.

(2) In both of these situations, ((~~DSHS~~)) DCYF must review your background to determine your character, suitability, and competence to have unsupervised access to children. In this review, ((~~DSHS~~)) DCYF must consider the following factors:

(a) The amount of time that has passed since you were convicted;

(b) The seriousness of the crime that led to the conviction;

(c) The number and types of other convictions in your background;

(d) Your age at the time of conviction;

(e) Documentation indicating you have successfully completed all court-ordered programs and restitution;

(f) Your behavior since the conviction; and

(g) The vulnerability of those that would be under your care.

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

WAC 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check? (1) The department will not license, contract, certify, authorize employment at a group care facility, or authorize ((~~a person to have~~)) unsupervised access to children to a person who ((~~have~~)) has a criminal charge pending for a disqualifying crime:

(a) Described in the Adoption and Safe Families Act of 1997((~~or a criminal charge pending for a disqualifying crime~~)); or

(b) That relates directly to child safety, permanence, or well-being.

(2) You may reapply for a license, contract, certification, or approval to have unsupervised access to children by providing proof to the department that the charge against you has been dropped or that you were acquitted.

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

WAC 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime? If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, authorization for employment at a group care facility, or authorization for unsupervised access to children.

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

WAC 110-04-0150 How will I know the status of the background check? (1) If you have been approved by the background check:

(a) The department will notify you((~~s~~)) and your prospective employer((~~or you~~)) or supervisor((~~s~~)) if you have requested a contract, authorization to be employed at a group care facility, or approval for unsupervised access to children.

(b) The department will not directly notify you, and will instead continue the process for approving your application if you have requested a license or certification to care for children.

(2) If you have been disqualified by the background check:

(a) The department will notify you in writing and include any laws and rules that require disqualification;

(b) The department will also notify the care provider, the prospective employer, or the licensor; and

(c) You will not receive a license, contract, certification, or be authorized to be employed at a group care facility or have unsupervised access to children.

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

WAC 110-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a completed application which is available from the DCYF licensing division ((~~of licensed resources, children's administration~~)).

(2) You must submit a completed background authorization form for your executive director, agency staff including those not directly working with children, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter ((388-06A)) 110-04 WAC.

(3) You must ensure ((~~that an~~)) all paid agency employees ((~~who may have unsupervised access to~~)) and any other paid adults working at your facility, including those not directly working with children complete a FBI fingerprint check and a child abuse and neglect history check of every state the individual has lived in the preceding five years before the background check application.

(4) You must ensure that agency volunteers or interns that have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check.

(5) You must ensure that ((~~no~~)) all employees, volunteers, or subcontractors ((~~has unsupervised access to children~~)) meet the requirements in chapters 110-04 and 110-05 WAC. An individual is not authorized to work in the facility until you are notified by ((children's administration)) the licensing division that a background check was completed that qualifies the individual to have unsupervised access. If you have both a license issued by ((~~DLR~~)) DCYF licensing division and a contract with the department you must adhere to the most stringent background check requirement.

WSR 18-20-093
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed October 1, 2018, 3:50 p.m., effective October 1, 2018, 3:50 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of children, youth, and families (DCYF) adopts these rules to establish, implement, and enforce requirements to protect the health and safety of children who are cared for by license-exempt family, friends, and neighbors (FFN) participating in working connections child care. Adoption of these rules complies with a requirement imposed by the federal child care development fund governed by 42 U.S.C. 9858 et seq.

Citation of Rules Affected by this Order: New WAC 110-06-0046 Requirements for license-exempt in-home/relative providers, 110-16-0001 Purpose and authority, 110-16-0005 Definitions, 110-16-0010 Provider approval, 110-16-0015 Provider responsibilities, 110-16-0025 Health and safety training, 110-16-0030 Health and safety activities, 110-16-0035 Health and safety practices and 110-16-0040 Compliance; repealing WAC 110-06-0060 Additional information the department may consider, 110-15-0135 In-home/relative providers—Information provided to DSHS, 110-15-0138 In-home/relative providers—Responsibilities, 110-15-0139 In-home/relative providers—Electronic attendance records—Records retention, 110-15-0140 In-home/relative providers—Ineligibility, 110-15-0143 In-home/relative providers—Background checks—Required persons, 110-15-0145 In-home/relative providers—Reasons and notification, 110-15-0150 In-home/relative providers—Included information and sources, 110-15-0155 In-home/relative providers—Background checks—Subsequent steps, 110-15-0160 In-home/relative providers—Background checks—Disqualified providers, 110-15-0165 In-home/relative providers—Background checks—Other disqualifying information and 110-15-0167 In-home/relative providers—Background checks—Disqualified person living with the provider; and amending WAC 110-15-0034 Provider's responsibilities, 110-15-0125 Approved child care providers, 110-15-0250 Eligible provider capacity and payment, 110-06-0010 Purpose and scope, 110-06-0020 Definitions, 110-06-0040 Background clearance requirements, 110-06-0041 Requirements for early learning service providers, 110-06-0044 Background check fees, 110-06-0045 Background checks for minor individuals under sixteen years of age, 110-06-0070 Disqualification. Background information that will disqualify a subject individual, and 110-06-0090 Administrative hearing to contest disqualification.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065; chapter 43.216 RCW.

Other Authority: 42 U.S.C. 9858 et seq.

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

Reasons for this Finding: Continued receipt of federal funds for working connections child care is conditioned on DCYF, by October 1, 2018, establishing preservice and training requirements for FFN care providers, health and safety

activities and practices during care, and the consequences of noncompliance.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 8, Amended 11, Repealed 12; 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 0, Repealed 0.

Date Adopted: October 1, 2018.

Brenda Villarreal
Rules Coordinator

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

WAC 110-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of (~~early learning (DEL or department))~~ of children, youth, and families (DCYF).

(2) The department conducts background checks on subject individuals who are authorized to:

(a) Care for or have unsupervised access to children receiving early learning services; or

(b) Care for children in the child's or provider's home. These providers, also known as family, friends, and neighbors (FFN) or in-home/relative care providers are exempt from licensing and receive working connections child care (WCCC) subsidies.

(3) The department conducts background checks to reduce the risk of harm to children from subject individuals who have been convicted of certain crimes or who pose a risk to children.

(4) The department's rules and state law require the evaluation of background information to determine the character, suitability, or competence of persons who will care for or have unsupervised access to children receiving early learning services or other agency authorized services.

(5) If any provision of this chapter conflicts with any provision in any chapter containing a substantive rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children receiving early learning services, the provisions in this chapter shall govern.

(6) These rules implement chapters (~~(43.215)~~) 43.216 and 43.43 RCW, including (~~(DEL)~~), but not limited to, DCYF responsibilities in RCW ((43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, and 43.43.832)) 43.216.260, 43.216.270 through 43.216.273, and 43.43.830 through 43.43.832.

(7) ~~((Effective date: These rules are initially effective July 3, 2006, and apply prospectively. Effective July 1, 2012;))~~ These rules are amended to allow for increased and continued portability of background check clearances for subject individuals who are authorized to care for or may have unsupervised access to children receiving early learning services.

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

WAC 110-06-0020 Definitions. The following definitions apply to this chapter:

"**Agency**" has the same meaning as "agency" in RCW ~~((43.215.010(2)))~~ 43.216.010.

"**Appellant**" means only those with the right of appeal under this chapter.

"**Applicant**" means an individual who is seeking DCYF background check authorization as part of:

(a) An application for a child care agency license or DCYF certification or who seeks DCYF authorization to care for or have unsupervised access to children receiving early learning services; or

(b) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services, with respect to an individual who is a currently licensed or certified child care provider.

"**Authorized**" or "**authorization**" means approval by ~~((DEL))~~ DCYF to care for or have unsupervised access to children receiving early learning services or to work in or reside on the premises of a child care agency or certified facility.

"**Certification**" or "**certified by** ~~((DEL))~~ DCYF" means an agency that is legally exempt from licensing that has been certified by ~~((DEL))~~ DCYF as meeting minimum licensing requirements.

"**Conviction information**" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject individual.

~~((DEL))~~ "**DCYF**" or "**department**" means the department of ~~((early learning-~~

Director's list" means a list of crimes, the commission of which disqualifies a subject individual from being authorized by DEL to care for or have unsupervised access to children receiving early learning services, WAC 170-06-0120) children, youth, and families.

"**Disqualified**" means ~~((DEL))~~ DCYF has determined that a person's background information prevents that person ~~((from being licensed or certified by DEL or))~~ from being authorized by ~~((DEL))~~ DCYF to care for or have unsupervised access to children receiving early learning services.

"**Early learning service(s)**" for purposes of this chapter means the early childhood education and assistance program ~~((and)),~~ head start, licensed child care, and license-exempt child care services.

"**In-home/relative provider**" or "**family, friends, and neighbors provider**" or "**FFN provider**" means an individual who is exempt from child care licensing standards, meets

the requirements of chapter 110-16 WAC, and is approved for working connections child care (WCCC) payments under WAC 110-15-0125.

"**Licensee**" means the individual, person, organization, or legal entity named on the child care license issued by DCYF and responsible for operating the child care facility or agency.

"**Negative action**" means a court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability and competence to care for or have unsupervised access to children receiving early learning services. 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 agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

"**Nonconviction information**" means arrest, pending charges, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the subject individual.

"**Nonexpiring license**" or "**nonexpiring full license**" means a ~~((full))~~ license that is issued to a licensee following the initial licensing period, as provided in ~~((WAC 170-151-087, 170-295-0095, or 170-296A-1450))~~ chapter 110-300 WAC, as appropriate.

"**Secretary's list**" means a list of crimes, the commission of which disqualifies a subject individual from being authorized by DCYF to care for or have unsupervised access to children receiving early learning services, WAC 110-06-0120.

"**Subject individual**":

(a) Means an individual who:

(i) Is seeking a background check authorization or upon whom the department may conduct a background check authorization;

(ii) Is sixteen years of age or older;

(iii) Is an in-home/relative provider or is employed ~~((by)),~~ contracted with, or ~~((volunteering))~~ volunteers to provide early learning services; and

(iv) Will care for or have unsupervised access to children receiving early learning services; and

(b) Includes, but is not limited to, the following:

(i) Personnel, including employees and staff;

(ii) Contractors, including contracted providers;

(iii) Temporary workers;

(iv) Assistants;

(v) Volunteers;

(vi) Interns;

(vii) Each person who is sixteen years of age or older residing on, or moving into, the premises where early learning services are provided;

(viii) All other individuals who are sixteen years of age or older who will care for or have unsupervised access to children receiving early learning services;

(ix) All owners, operators, lessees, or directors of the agency or facility, or their designees;

(x) Applicants ~~(- As used in this definition, "applicant" means an individual who is seeking a DEL background check authorization as part of:~~

~~(A) An application for a child care agency license or DEL certification or who seeks DEL authorization to care for or have unsupervised access to children receiving early learning services; or~~

~~(B) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DEL's authorization to care for or have unsupervised access to children receiving early learning services, with respect to an individual who is a currently licensed or certified child care provider; and);~~

(xi) Licensees ~~(- As used in this definition, "licensee" means the individual, person, organization, or legal entity named on the child care license issued by DEL and responsible for operating the child care facility or agency); or~~

(xii) In-home/relative providers and their household members who are sixteen years of age or older.

"Unsupervised access" means:

(a) A subject individual will or may have the opportunity to be alone with a child receiving early learning services at any time and for any length of time; and

(b) Access to a child receiving early learning services that is not within constant visual or auditory range of the ~~((licensee, an employee)) individual authorized by ((DEL, nor a relative or guardian of the child receiving early learning services)) DCYF.~~

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

WAC 110-06-0040 Background clearance requirements. This section applies to all subject individuals other than in-home/relative providers.

(1) ~~((Effective July 1, 2012, all new))~~ Subject individuals associated with early learning services applying for a first-time background check must complete the background check application process through ~~((DEL)) DCYF~~ to include:

(a) ~~((Completion of))~~ Submitting a completed background check application;

(b) Completing the required fingerprint process; and

~~((b) Payment of)~~ (c) Paying all required fees as provided in WAC ~~((170-06-0044)) 110-06-0044.~~

(2) All ~~((other))~~ subject individuals who have been previously qualified by the department to have unsupervised access to children in care ~~((, prior to July 1, 2012, must submit a new background check application no later than July 1, 2013. The subject person))~~ and are renewing their applications must:

(a) Submit the new background check application through ~~((DEL)) DCYF;~~

(b) Submit payment of all required fees as provided in WAC ~~((170-06-0044;)) 110-06-0044; and~~

(c) ~~((Complete the required fingerprint process if the subject individual has lived in Washington state for fewer than three consecutive years prior to July 1, 2013;~~

~~((d))~~ Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed.

(3) Each subject individual completing the ~~((DEL)) DCYF~~ background check process must disclose:

(a) Whether he or she has been convicted of any crime;

(b) Whether he or she has any pending criminal charges; and

(c) Whether ~~((there is))~~ he or she has been subject to any negative action ~~((s, to which he or she has been subject)), as defined by WAC ((170-06-0020)) 110-06-0020.~~

(4) A subject individual must not have unsupervised access to children in care unless he or she has obtained ~~((DEL)) DCYF~~ authorization under this chapter.

(5) A subject individual who has been disqualified by ~~((DEL)) DCYF~~ must not be present on the premises when early learning services are provided to children.

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

WAC 110-06-0041 Requirements for early learning service providers. (1) ~~((An agency, licensee, certified facility or))~~ This section applies to all providers other than in-home/relative providers.

(2) Early learning services providers must require a subject individual to complete the ~~((DEL)) DCYF~~ background check application process:

(a) ~~((Within seven days of))~~ Prior to the date of hire;

(b) By the date a subject individual age sixteen or older moves onto the premises; or

(c) By the date a subject individual who lives on the premises turns sixteen years old.

~~((2))~~ The early learning services provider must keep on-site a copy of each subject individual's background check clearance authorization.

(3) The early learning services provider must update the provider portal in the DEL system to verify the subject individuals associated with their program.

(4) The early learning services provider must verify annually that each subject individual who is required to have a background check has either obtained a department clearance or has applied for a department background check through the DEL system. The verification must be submitted with the licensee's annual license fee and declarations.)

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

WAC 110-06-0044 Background check fees. This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals associated with early learning services must pay for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the ~~((WSP, FBI))~~ Washington state patrol, Federal Bureau of Investigation, and the ~~((DEL)) DCYF~~ fingerprint contractor; and

(b) The ~~((DEL))~~ DCYF administrative fee of:

(i) ~~((The cost of administration of the portable background check clearance based upon electronic submission has been determined to be))~~ Twelve dollars ~~((for any background check application received in the period after June 30, 2012, therefore the fee))~~ for an electronic submission ~~((is twelve dollars for the described period)); or~~

(ii) ~~((The cost of administration of the portable background check clearance based upon a manual paper submission has been determined to be))~~ Twenty-four dollars ~~((for any background check received after June 30, 2012, therefore the fee for a manual paper-based submission is twenty-four dollars for the described period))~~ for a paper submission.

(2) DCYF administrative fee payments may be:

(a) By debit or credit card;

(b) In the form of a personal check, cashier's check, or money order, which shall be sent by mail; or

~~((b))~~ (c) By electronic funds transfer ~~((when available))~~. As used in this section, "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(3) The department will not issue a background check clearance authorization to a subject individual:

(a) Who fails to pay the required fees in subsection (1) of this section; or

(b) Whose ~~((check, money order, or electronic funds transfer))~~ payment is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or non-payment.

An additional processing fee of twenty-five dollars will be charged by the department for any check, money order, or electronic funds transfer that is reported as not having sufficient funds.

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

WAC 110-06-0045 ((Noncriminal)) Background checks for minor individuals under sixteen years of age.

(1) When applicable within ~~((Title 170))~~ chapter 110-300 WAC, an agency, licensee, or certified facility must have subject individuals complete the required ~~((DEL noncriminal))~~ DCYF minor individual background check application process for subject individuals:

(a) Fourteen to sixteen years of age, ~~((within seven days after the subject individual starts to work in the))~~ prior to the date of hire by a licensed or certified child care.

(b) Thirteen to sixteen years of age residing in a licensed or certified family home child care.

(c) Thirteen to sixteen years of age, within seven days after moving into the licensed family home child care.

(2) A subject individual identified in subsection (1)(a), (b) or (c) of this section must not have unsupervised access to children in child care.

(3) ~~((The licensee must verify annually that each subject individual who is required to have a noncriminal background check has either obtained a department clearance or has~~

~~applied for a department noncriminal background check. The verification must be submitted with the licensee's annual license fee and declarations.~~

~~(4))~~ When conducting a ~~((noncriminal))~~ minor individual background check, the department:

(a) Requires the minor's parent or guardian to sign the noncriminal background check application;

(b) Does not review convictions or pending charges for immediate disqualification for crimes under WAC ~~((170-06-0050(1)))~~ 110-06-0050(1), unless the conviction was the result of prosecution of the juvenile as an adult; and

(c) Does not immediately disqualify an individual for a conviction under WAC ~~((170-06-0070))~~ 110-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult.

NEW SECTION

WAC 110-06-0046 Requirements for license-exempt in-home/relative providers. (1) The background check process must be completed for:

(a) All license-exempt in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(2) Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(3) The background check process for license-exempt in-home/relative providers requires:

(a) Submitting a completed background check application; and

(b) Completing the required fingerprint process.

(4) Each subject individual completing the DCYF background check process must disclose:

(a) Whether he or she has been convicted of any crime;

(b) Whether he or she has any pending criminal charges; and

(c) Whether he or she has been subject to any negative actions, as defined by WAC 110-06-0020.

(5) A subject individual must not have unsupervised access to children in care unless he or she has obtained DCYF background check clearance authorization under this chapter.

(6) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

(7) DCYF pays for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee.

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

WAC 110-06-0070 Disqualification.

Background information that will disqualify a subject individual.

(1) A subject individual who has a background containing any of the permanent convictions on the ~~((director's))~~ secretary's list, WAC ~~((170-06-0120(1)))~~ 110-06-0120(1), will be permanently disqualified from ~~((providing licensed child care,))~~ caring for children or having unsupervised access to children receiving early learning services.

(2) A subject individual who has a background containing any of the nonpermanent convictions on the ~~((director's))~~ secretary's list, WAC ~~((170-06-0120(2)))~~ 110-06-0120(2), will be disqualified from providing licensed child care, caring for children or having unsupervised access to children receiving early learning services for five years after the conviction date.

(3) A subject individual will be disqualified when ~~((their))~~ his or her background contains a negative action, as defined in WAC ~~((170-06-0020))~~ 110-06-0020 that relates to:

(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and ~~((388-15))~~ 110-30 WAC.

(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.

~~((Background information that may disqualify a subject individual.))~~

(4) A subject individual who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.

(5) Background information that may disqualify a subject individual. A subject individual may be disqualified for other negative action(s), as defined in WAC ~~((170-06-0020))~~ 110-06-0020 which reasonably relate to his or her character, suitability, or competence to care for or have unsupervised access to children receiving early learning services.

~~((5))~~ (6) A subject individual may be disqualified from caring for or having unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.

~~((6) A subject individual who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.))~~

(7) The department may also disqualify a subject individual if that person has other nonconviction background information that renders him or her unsuitable to care for or have unsupervised access to children receiving early learning services. Among the factors the department may consider are:

(a) The subject individual attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.

(b) The subject individual used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises

when children were present or presented a risk of harm to any child receiving early learning services.

(c) The subject individual attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, a subject individual attempted, committed, permitted, or assisted in an illegal act if he or she knew or reasonably should have known that the illegal act occurred or would occur.

(d) Subject to federal and state law, the subject individual lacks sufficient physical or mental health to meet the needs of children receiving early learning services.

(e) The subject individual had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied.

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

WAC 110-06-0090 Administrative hearing to contest disqualification. (1) A subject individual may request an administrative hearing to contest the department's disqualification decision under WAC ~~((170-06-0070))~~ 110-06-0070.

(2) The ~~((licensee or prospective employer))~~ early learning services provider cannot contest the department's decision on behalf of any other person, including a prospective employee.

(3) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings, pursuant to chapter 34.05 RCW, and chapter ~~((170-03))~~ 110-03 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 110-06-0060 Additional information the department may consider.

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

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

(1) ~~((Comply with:~~

~~(a) All of the DEL child care licensing or certification requirements as provided in chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified; or~~

~~(b) All of the requirements in WAC 170-290-0130 through 170-290-0167, 170-290-0250, and 170-290-0268, for child care providers who provide in-home/relative care;~~

~~(2) Report pending charges or convictions to DSHS as provided in:~~

~~(a) Chapter 170-295, 170-296A, or 170-297 WAC, for child care providers who are licensed or certified; or~~

~~(b) WAC 170-290-0138 (2) and (3), for child care providers who provide in-home/relative care;~~

~~(3) Keep))~~ Licensed or certified child care providers who accept child care subsidies must comply with all child care

licensing or certification requirements contained in this chapter, chapter 43.216 RCW and chapters 110-06, 110-300, 110-300A, 110-300B, and 110-305 WAC.

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

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

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

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

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

(5) All child care providers must complete and maintain accurate daily attendance records ((for children in their care, and allow access to DEL to inspect attendance records during all hours in which authorized child care is provided as follows:

(a) Current attendance records (including records from the previous twelve months) must be available immediately for review upon request by DEL.

(b) Attendance records older than twelve months to five years must be provided to DSHS or DEL within two weeks of the date of a written request from either department. Beginning July 1, 2017, or upon ratification of the 2017-19 collective bargaining agreement with SEIU 925, whichever occurs later, the records must be provided)). If requested by DCYF or DSHS, the provider must provide to the requesting agency the following records:

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

((~~e~~) Failure to make available attendance records as provided in this subsection may:

(i) Result in the immediate suspension of the provider's subsidy payments; and

(ii) Establish a provider overpayment as provided in WAC 170 290 0268;

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

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

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

(b) Receipts from one to five years old must be provided ((~~to DSHS or DEL~~)) within ((~~two weeks~~)) twenty-eight days of the date of a written request from either department((;

(5) ~~Allow consumers access to their child at all times while the child is in care;~~

(6)).

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

(7) ~~Follow~~)).

(8) All child care providers must follow the billing procedures((;

(a) ~~As described in the most current version of "Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers";~~ or

(b) ~~As described in the most current version of "Child Care Subsidies: A Guide for Family, Friends and Neighbors Child Care Providers";~~ or

(c) ~~As described in the most current version of "Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers."~~

(8) ~~Not~~) required by DCYF.

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

(a) Claim a payment in any month a child has not attended at least one day within the authorization period in that month((;

(9) ~~Invoice the state no later than one calendar year after the actual date of service;~~

(10) ~~For both~~); however, in the event a ten-day notice terminating a provider's authorization extends into the following month, the provider may claim a payment for any remaining days of the ten calendar day notice in that following month;

(b) Submit an invoice for payment later than one calendar year after the actual date of service; or

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

(10) Licensed and certified providers ((~~and in-home/relative providers~~)) must not charge ((~~subsidized families the difference between the provider's customary rate and the maximum allowed state rate; and~~

(11) ~~For licensed and certified providers, not charge subsidized families for:~~

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

(b) Absent days on days in which the child is scheduled to attend and authorized for care;

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

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

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

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

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

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

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

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

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

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

WAC 110-15-0125 ((Eligible)) Approved child care providers. ~~((To receive payment under the WCCC program, a consumer's child care provider must be:))~~ (1) ~~((A))~~ In-home/relative providers. ~~((Providers other than those specified in subsection (2) of this section must meet the requirements in WAC 170-290-0130; or))~~ To be approved to receive benefits under the WCCC program, an in-home/relative provider must comply with the applicable requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

~~(2) ((A licensed, certified, or DEL contracted provider.~~

~~(a)) Licensed providers ((must:~~

~~(i) Be currently licensed as required by chapter 43.215 RCW and as described by chapters 170-295, 170-296A, or 170-297 WAC; or~~

~~(ii) Meet the provider's);~~

~~(a) To be approved to receive payment under the WCCC program, a licensed provider must comply with the requirements of this chapter, chapter 43.216 RCW, and chapters 110-06, 110-300, 110-300A, 110-300B, and 110-305 WAC.~~

~~(b) A provider who cares for a child who is a Washington resident in a state that borders Washington must:~~

~~(i) Be licensed to provide care in the bordering state;~~

~~(ii) Comply with the bordering state's licensing regulations ((for providers who care for children in states bordering Washington. DSHS pays));~~

~~(iii) Comply with the electronic attendance requirements contained in WAC 110-15-0126.~~

~~(c) The lesser of the following will be paid to a qualified, licensed child care ((facilities in bordering states)) provider in a state that borders Washington:~~

~~((A)) (i) The provider's private pay rate for that child; or~~

~~((B) The DSHS)) (ii) The DCYF maximum ((child care)) WCCC subsidy daily rate for the ((DSHS)) DCYF region where the child resides.~~

~~((B)) (d) A licensed provider in a state that borders Washington that receives WCCC subsidy payment to care for a child who is a Washington resident is not required or eligible to participate in the early achievers program or to receive quality improvement awards, tiered reimbursements, or other~~

~~awards and incentives associated with the early achievers program.~~

~~(3) Certified providers ((are exempt from licensing but certified by DEL, such as)). To be approved to receive payment under the WCCC program, a certified provider must comply with the certification requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06, 110-300, 110-300A, 110-300B, and 110-305 WAC. Certified providers include:~~

~~((i)) (a) Tribal child care facilities that meet the requirements of tribal law;~~

~~((ii)) (b) Child care facilities on a military installation; ((and~~

~~(iii))~~

~~(c) Child care facilities operated on public school property by a school district((-~~

~~(e) New child care providers, as defined in WAC 170-290-0003, who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who received); and~~

~~(d) Seasonal day camps that contract with DCYF to provide subsidized child care.~~

~~(4) Early achievers program requirements for licensed and certified child care providers that receive their first WCCC payment on or after July 1, 2016:~~

~~(a) A licensed or certified child care provider that first receives a WCCC subsidy payment on or after July 1, 2016, for providing nonschool age child care ((on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016;)) must complete the following activities to be eligible to receive additional WCCC payments:~~

~~(i) Enroll in the early achievers program within thirty days of receiving the ((initial state)) first WCCC subsidy payment. A licensed or certified provider ((who)) that fails to meet this requirement will lose ((eligibility)) DCYF approval to receive ((state)) WCCC subsidy payments for providing nonschool age child care((-~~

~~(A) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(B) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.~~

~~(ii) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care;~~

~~(iii));~~

~~(ii) Complete level 2 activities in the early achievers program within twelve months of enrollment. A licensed or certified provider ((who)) that fails to meet this requirement will lose ((eligibility)) DCYF approval to receive ((state)) DCYF subsidy payments for providing nonschool age child care;~~

~~((iv)) (iii) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. ((If an eligible)) A licensed or certified provider that fails to ((rate at a~~

~~level 3 or higher)) meet this requirement~~ within thirty months of enrollment in the early achievers program, ~~((the provider))~~ must complete remedial activities with ~~((the department))~~ DCYF and rate at a level 3 or higher within six months of beginning remedial activities. A licensed or certified provider ~~((who fails to receive a rating within thirty months of enrollment or))~~ that fails to rate at a level 3 or higher within six months of beginning remedial activities will lose ((eligibility)) DCYF approval to receive ((state)) WCCC subsidy payments for providing nonschool age child care; and

~~((v) Maintain an up-to-date rating by renewing))~~ (iv) Renew their facility rating every three years and ((maintaining)) maintain a rating level 3 or higher. If a licensed or certified provider fails to renew their facility rating or maintain a rating level 3 or higher, ((they)) the licensed or certified provider will lose ((eligibility)) DCYF approval to receive ((state)) WCCC subsidy payments for providing nonschool age child care.

~~((d) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC, who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must))~~ (b) Licensed and certified providers must comply with the provisions for participation as outlined in the early achievers operating guidelines. Failure to comply with these guidelines may result in a licensed or certified provider's loss of DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(5) Early achievers program requirements for licensed and certified child care providers that received a WCCC payment on or between July 1, 2015, and June 30, 2016:

(a) A licensed or certified child care provider that received a WCCC subsidy payment on or between July 1, 2015, and June 30, 2016, for providing nonschool age child care, must complete the following activities to be eligible to receive additional WCCC subsidy payments:

(i) Enroll in the early achievers program by August 1, 2016. A licensed or certified provider ((who)) that fails to meet this requirement will lose ((eligibility)) DCYF approval to receive ((state)) WCCC subsidy payments for providing nonschool age child care;

~~((A) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~((B) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.))~~

(ii) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who ((fails)) failed to meet this requirement will lose ((eligibility)) DCYF approval to receive ((state)) WCCC subsidy payments for nonschool age child care; and

(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019((;

~~((iv) If an existing))~~ (iv) If an existing) A licensed or certified provider that fails to ((rate at a level 3 or higher)) meet this requirement by December 31, 2019, ((in the early achievers program, the

~~provider))~~ must complete remedial activities with ~~((the department))~~ DCYF and rate at a level 3 or higher by June 30, 2020. A licensed or certified provider ((who)) that fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose ((eligibility)) DCYF approval to receive ((state)) WCCC subsidy payments for providing nonschool age child care((; and

~~((v) Maintain an up-to-date rating by renewing)).~~

(b) Licensed and certified providers must renew their facility rating every three years and ((maintaining)) maintain a rating level 3 or higher. If a licensed or certified provider fails to renew their facility rating or maintain a rating level 3 or higher, ((they)) licensed or certified providers will lose ((eligibility)) DCYF approval to receive ((state)) WCCC subsidy payments for providing nonschool age child care.

~~((e))~~ (6) If a licensed or certified child care provider ((serving)) receiving WCCC subsidy payment for providing nonschool age ((children, as defined in WAC 170-290-0003; and receiving state subsidy payments for nonschool age child care)) has successfully completed all level 2 activities and is waiting to be rated, the licensed or certified provider may continue to receive ((a state)) WCCC subsidy payments pending the successful completion of the level 3 rating activity.

~~((f))~~ (f) DEL-contracted seasonal day camps have a contract with DEL to provide subsidized child care.

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

WAC 110-15-0250 Eligible provider capacity and payment. (1) DSHS may pay:

(a) Licensed and certified providers for authorized care up to the provider's licensed capacity as determined under WAC ~~((170-297-5625, 170-295-0080, or 170-296A-5700))~~ 110-300B-5700, 110-300A-0080, or 110-305-5625, as appropriate; and

(b) In-home/relative providers for authorized care up to a maximum of six eligible children ~~((as provided in WAC 170-290-0138.~~

~~((2) Licensed providers may not bill the state for more than the number of children they have in their licensed capacity and who are authorized to receive child care subsidies.~~

~~((3) A violation)).~~

(2) A provider authorized to receive subsidy payment must submit an invoice only for children who have been authorized by DSHS to receive subsidy benefits. In addition, a provider must not submit an invoice for a number of children that exceeds the provider's licensed capacity.

(3) Failure to comply with the requirements of subsection (2) of this section may:

(a) Result in the immediate suspension of the provider's subsidy payments; and

(b) ~~((Establish))~~ Result in the establishment of a provider overpayment as provided in WAC ((170-290-0268)) 110-15-0268.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 110-15-0135 In-home/relative providers—Information provided to DSHS.
- WAC 110-15-0138 In-home/relative providers—Responsibilities.
- WAC 110-15-0139 In-home/relative providers—Electronic attendance records—Records retention.
- WAC 110-15-0140 In-home/relative providers—Ineligibility.
- WAC 110-15-0143 In-home/relative providers—Background checks—Required persons.
- WAC 110-15-0145 In-home/relative providers—Background checks—Reasons and notification.
- WAC 110-15-0150 In-home/relative providers—Background checks—Included information and sources.
- WAC 110-15-0155 In-home/relative providers—Background checks—Subsequent steps.
- WAC 110-15-0160 In-home/relative providers—Background checks—Disqualified providers.
- WAC 110-15-0165 In-home/relative providers—Background checks—Other disqualifying information.
- WAC 110-15-0167 In-home/relative providers—Background checks—Disqualified person living with the provider.

Chapter 110-16 WAC**LICENSE-EXEMPT CARE—FAMILY, FRIENDS, AND NEIGHBORS (FFN) IN-HOME/RELATIVE CHILD CARE PROVIDERS****PART I****INTRODUCTION**NEW SECTION

WAC 110-16-0001 Purpose and authority. (1) The purpose of this chapter is to establish rules for the administration of child care subsidy funds through the working connections child care (WCCC) program for family, friends, and neighbors (FFN) in-home/relative child care providers. The department of children, youth, and families (DCYF) is the lead agency for the federal Child Care Development Fund (CCDF) program, governed by 42 U.S.C. 9858 et. seq., (CCDF authorization and implementation statutes) and 45 C.F.R. Part 98 (CCDF regulations). This chapter addresses CCDF health and safety requirements and WCCC program

requirements for family, friends, and neighbors (FFN) in-home/relative child care providers.

(2) In addition to the requirements contained in this chapter, FFN providers must comply with applicable provisions of chapter 43.216 RCW (department of children, youth, and families), chapter 110-06 WAC (background check rules), and chapter 110-15 WAC (WCCC) subsidy program rules.

(3) The requirements contained in this chapter are consistent with and support the department's commitment to promoting the health, safety, and well-being of children, expanding access to quality early learning opportunities to improve outcomes in young children and promoting school readiness.

(4) The department recognizes that a child's parents and family are the child's first and most important teachers and decision makers. The department is committed to working alongside parents to promote the overall well-being of their children, providing technical assistance and resource referral at the request of parents or providers, and using a variety of methods to communicate with parents and providers about program changes and relevant resources and information.

NEW SECTION

WAC 110-16-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **"Benefit"** means a regular payment made by a government agency on behalf of a person eligible to receive it.

(2) **"Child"** or **"children,"** except when otherwise specified, means a child or children eligible for WCCC benefits under chapter 110-15 WAC.

(3) **"Days"** means calendar days unless otherwise specified.

(4) **"Department"** or **"DCYF"** means the department of children, youth, and families.

(5) **"In-home/relative provider"** or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing requirements and is approved for WCCC payments under WAC 110-15-0125. Reference in this chapter to the term "provider" means an in-home/relative or FFN provider, except when otherwise specified.

(6) **"In loco parentis"** means the adult caring for a child eligible for WCCC in the absence of the biological adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and who is responsible for exercising day-to-day care and control of the child.

(7) **"Infant"** is a child birth through eleven months of age.

(8) **"Lockdown"** means to remain inside the home when police or an official emergency response agency notifies a provider that it is unsafe to leave or be outdoors during an emergency situation.

(9) **"Parent"** means, for the purposes of this chapter, the "in loco parentis" or the biological, adoptive, or step-parent, court-ordered guardian, or custodian eligible for WCCC benefits under this chapter.

(10) "**Subsidy payment begin date**" means the first day the provider is authorized to start billing for care provided to eligible children.

(11) "**Supervise**" or "**supervision**" means a provider must be able to see or hear the children they are responsible for at all times. Providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. Providers must reassess and adjust their supervision each time child care activities change.

(12) "**Swimming pool**" means a pool that has a water depth greater than two feet.

(13) "**Technical assistance**" means the provision of customized supports to develop or strengthen processes, knowledge application, or implementation of services by providers.

(14) "**Toddler**" means a child twelve months through twenty-nine months of age.

(15) "**Wading pool**" means a pool that has a water depth of less than two feet. A portable wading pool is one that is formed of molded plastic or inflatable parts and can be removed after use.

(16) "**Water activities**" refers to the activities in which children in care swim or play in a body of water that poses a risk of drowning for children.

(17) "**WCCC**" means the working connections child care program, a child care subsidy program available to eligible families to help pay for child care.

PART II

PROVIDER APPROVAL AND RESPONSIBILITIES

NEW SECTION

WAC 110-16-0010 Provider approval. (1) To be approved as a family, friend, and neighbor (FFN) in-home/relative provider for the WCCC program, the individual must:

- (a) Be eighteen years of age or older;
- (b) Complete the approval process that will include, but not be limited to, providing:
 - (i) Legal name, current street address, telephone number, and email address;
 - (ii) Documents required to establish that the individual meets legal employment eligibility requirements that may include, but are not limited to:
 - (A) A legible copy of the individual's valid Social Security card; and
 - (B) A legible copy of the individual's valid government issued photo identification, such as a current driver's license, Washington state identification, or passport.
 - (c) Meet all applicable WCCC subsidy and background check requirements of chapters 110-15 and 110-06 WAC.

(2) An individual will not be approved to receive WCCC subsidy payment as a provider for an eligible child in his or her care if the individual is:

(a) The child's biological or adoptive parent, step-parent, or the parent's live-in partner;

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

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

(d) An individual with a revoked child care license; or

(e) Receiving temporary assistance for needy families (TANF) benefits on behalf of the eligible child.

(3) Providers are not eligible to receive WCCC benefits for their own children for the same hours for which they receive payment for child care they provide for other WCCC-eligible children.

NEW SECTION

WAC 110-16-0015 Provider responsibilities. (1) The provider must:

(a) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including health, safety, physical, nutritional, emotional, cognitive, and social needs;

(b) Report any legal name, address, or telephone number changes to DCYF within ten days;

(c) Comply with the requirements contained in this chapter and the applicable requirements in chapters 110-06 and 110-15 WAC;

(d) Allow parents access to their own children at all times while in care; and

(e) Have access to a telephone with 911 emergency calling services and capability for both incoming and outgoing calls during all times children are in care.

(2) The provider must not submit an invoice for more than six children for the same hours of care.

(3) Care must be provided in the following locations:

(a) Providers related to the child by marriage, blood relationship, or court decree and who are grandparents, great-grandparents, siblings (if living in a separate residence), aunts, or uncles, must choose to be approved to provide care in either the provider's home or the child's home, with the exception that providers residing with a person disqualified under chapter 110-06 WAC must provide care in the child's home.

(b) Providers related to the child by marriage, blood, or court decree, but not listed in (a) of this subsection, must choose to be approved to provide care in either the provider's home or the child's home, with the exception that providers residing with a person disqualified under chapter 110-06 WAC must provide care in the child's home.

(c) Providers not related to the child, such as friends or neighbors must provide care in the child's home.

(4) Providers must comply with health and safety activities as follows:

(a) Providers related to the child as described in subsection (3)(b) of this section, must participate in a technical assistance phone call with the department within ninety days of the subsidy payment begin date and annually thereafter;

(b) Providers not related to the child, as described in subsection (3)(c) of this section:

(i) Must complete the department-approved training required in WAC 110-16-0025; and

(ii) Must have an annual technical assistance visit in the child's home.

PART III

HEALTH AND SAFETY REQUIREMENTS

NEW SECTION

WAC 110-16-0025 Health and safety training. (1) A provider not related to the child, as described in WAC 110-16-0015 (3)(c) must complete the following training within ninety calendar days of the subsidy payment begin date:

(a) Infant, child, and adult first aid and cardiopulmonary resuscitation (CPR):

(i) This training must be taken in person and the provider must demonstrate learned skills to the instructor.

(ii) The instructor must be certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification program.

(b) Prevention of sudden infant death syndrome and safe sleep practices when caring for infants; and

(c) Department-approved health and safety training which includes the following topic areas:

(i) Prevention and control of infectious diseases;

(ii) Administration of medication;

(iii) Prevention of, and response to, emergencies due to food and allergic reactions;

(iv) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(v) Prevention of shaken baby syndrome, abuse head trauma, and child maltreatment;

(vi) Emergency preparedness and response planning for natural disaster and human-caused events;

(vii) Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(viii) Appropriate precautions in transporting children;

(ix) Recognition and reporting of child abuse and neglect, including the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030; and

(x) Other topic areas as determined by the department.

(2) A provider not related to the child, as described in WAC 110-16-0015 (3)(c) can meet the health and safety training in subsection (1)(c) of this section if the department verifies that the provider has completed any of the following either prior to or within ninety calendar days of the subsidy payment begin date:

(a) Child care basics, a department-approved thirty-hour health and safety training.

(b) Washington state early childhood education initial certificate (twelve credits) that includes early childhood education and development 105 health, safety, and nutrition.

(3) A provider not related to the child, as described in WAC 110-16-0015 (3)(c), who, on October 1, 2018, has an existing WCCC subsidy authorization with an end date on or

before December 30, 2018, does not need to complete the training required under subsections (1) or (2) of this section. If the provider is reauthorized for payment beginning January 1, 2019, or later, the provider must complete the training required under subsections (1) and (2) of this section unless exempt from training under subsection (2)(b) of this section.

(4) A provider not related to the child, as described in WAC 110-16-0015 (3)(c), must annually renew portions of the training required in subsection (1)(c) of this section, as determined by state or federal requirements.

NEW SECTION

WAC 110-16-0030 Health and safety activities. (1) Providers not related to the child as described in WAC 110-16-0015 (3)(c), must comply with the following health and safety activity requirements:

(a) Complete the Parent and FFN Provider Health and Safety Agreement; and

(b) Participate in an annual, scheduled visit in the child's home. If necessary, as determined by the department, follow-up visits may occur on a more frequent basis.

(2) The Parent and FFN Provider Health and Safety Agreement must:

(a) Be signed by the provider and parent(s) and verify that the parent(s) and provider discussed and reviewed all of the topics and subject matter items contained in the agreement. The subject matter items include, but are not limited to, emergency contacts, fire and emergency prevention, knowledge and treatment of children's illnesses and allergies, developmental and special needs, medication administration, safe transportation, child immunizations, and safe evacuation; and

(b) Be received by the department within forty-five days of completion of the training requirements in WAC 110-16-0025 (2)(a) or verification of the training exemption in WAC 110-16-0025 (2)(b).

(3) The purpose of the annual, scheduled visit in the child's home is to:

(a) Provide technical assistance to the provider regarding the health and safety requirements described in this chapter;

(b) Observe the provider's interactions with the child, and discuss health and safety practices;

(c) Provide written information and local resources about child development to include the major domains of cognitive, social, emotional, physical development, and approaches to learning; and

(d) Provide regional contact information for FFN child care services and resources.

(4) If the department is not able to successfully complete a scheduled visit with the provider in the child's home after three attempts, the provider will be deemed not in compliance with the requirements of this chapter.

(5) At the annual, scheduled visit, the provider must show:

(a) Proof of identity;

(b) Proof of current certification for first aid and cardiopulmonary resuscitation (CPR) in the form of a card, certificate, or instructor letter;

(c) Proof of vaccination against or acquired immunity for vaccine-preventable diseases for all children in care, if the provider's children are on-site at any time with the eligible children. Proof can include:

(i) A current and complete department of health certificate of immunization status (CIS) or certificate of exemption (COE) or other department of health approved form; or

(ii) A current immunization record from the Washington state immunization information system (WA IIS).

(d) Written permission from the parent to:

(i) Allow children to use a swimming pool;

(ii) Administer medication for treatment of illnesses and allergies of the children in care;

(iii) Provide for and accommodate developmental and special needs; and

(iv) Provide transportation for care, activities, and school when applicable.

(e) The written home evacuation plan required in WAC 110-16-0035 (4)(c).

NEW SECTION

WAC 110-16-0035 Health and safety practices. (1)

Providers not related to the child, as described in WAC 110-16-0015 (3)(c), must comply with the following health and safety activity practices according to the required health and safety training:

(a) Prevention and control of infectious diseases;

(b) Prevention of sudden infant death syndrome and safe sleep practices, including sudden infant death syndrome/sudden unexpected infant death syndrome risk reduction; and

(c) Recognition and reporting of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(2) **Medication administration.** Providers not related to the child, as described in WAC 110-16-0015 (3)(c), must comply with the following medication administration requirements:

(a) A child's parent, or an appointed designee, must provide training to the provider for special medical procedures that the provider may have to administer to the child. This training must be documented and signed by the provider and parent;

(b) The provider must not give medication to any child without written and signed consent from that child's parent or health care provider. The medication must be given according to the directions on the medication label using appropriately cleaned and sanitized medication measuring devices;

(c) The provider must not give or allow others to give any medication to a child for the purpose of sedating the child unless the medication has been prescribed for a specific child for that particular purpose by a health care professional; and

(d) Medication must be stored and maintained as directed on the packaging or prescription label, including applicable refrigeration requirements.

(3) **Indoor building and physical premises safety.** Providers not related to the child, as described in WAC 110-16-0015 (3)(c), must comply with the following indoor building and physical premises safety requirements:

(a) The provider must visually scan indoor areas to identify potential child safety hazards and discuss removal or reduction of identified hazards with the parent. If it is not possible for the provider to immediately correct or make a hazard completely inaccessible to a child, the provider must supervise the child to avoid injury from such identified hazard. Child safety hazards include, but are not limited to:

(i) Tobacco and cannabis products and containers holding tobacco and cannabis products or ashes;

(ii) Firearms, guns, weapons, and ammunition;

(iii) Any equipment, material, or objects that may pose a risk of choking, aspiration, or ingestion. For purposes of this section, equipment, material, or objects with a diameter or overall dimension of one and three-quarter inch or less are considered items that may pose a risk of choking, aspiration, or ingestion;

(iv) Straps, strings, cords, wires, or similar items capable of forming a loop around a child's neck that are not being used for a supervised activity;

(v) Poisons, chemicals, toxins, dangerous substances or any product labeled "Keep out of reach of children," including, but not limited to, fuel, lighter fluid, solvents, fertilizer, ice melt product, pool chemicals, pesticides, or insecticides, cleansers and detergents, air freshener or aerosols, sanitizing products, and disinfectants;

(vi) Personal grooming, cosmetics, and hygiene products including, but not limited to, nail polish remover, lotions, creams, toothpaste, powder, shampoo, conditioners, hair gels or hair sprays, bubble bath, or bath additives;

(vii) Alcohol, including closed and open containers;

(viii) Plastic bags and other suffocation hazards;

(ix) Equipment, materials, or products that may be hot enough to injure a child;

(x) Freezers, refrigerators, washers, dryers, compost bins, and other entrapment dangers;

(xi) Uneven walkways, damaged flooring or carpeting, or other tripping hazards;

(xii) Large objects capable of tipping or falling over, such as televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units;

(xiii) Indoor temperatures less than sixty-eight degrees Fahrenheit or greater than eighty-two degrees Fahrenheit;

(xiv) Water accessible to children that may be hotter than one hundred twenty degrees Fahrenheit (the provider should always feel hot water before using on or for a child);

(xv) Windows and stairs accessible to children; and

(xvi) Electrical outlets, power strips, exposed wires, and electrical/extension cords.

(b) During care hours, providers must not themselves, and must not allow others who may be in the presence of the children to:

(i) Possess or use illegal drugs;

(ii) Consume or use alcohol or cannabis products in any form;

(iii) Be under the influence of alcohol, cannabis products in any form, illegal drugs, or misused prescription drugs; and

(iv) Smoke or vape in the home, vehicle, or in close proximity to a child.

(4) **Outdoor building and physical premises safety.** The provider must visually scan outdoor play areas to iden-

tify potential child safety hazards and discuss removal or reduction of identified hazards with the parent. If it is not possible for the provider to immediately correct or make a hazard completely inaccessible to a child, the provider must supervise the child to avoid injury. Outdoor hazards include, but are not limited to:

(a) Outdoor play area or equipment that is not clean, not in good condition, or not maintained or safe for a child of a certain age to use;

(b) Bouncing equipment including, but not limited to, trampolines, rebounders and inflatable equipment. This requirement does not apply to bounce balls designed to be used by individual children;

(c) Toxic plants or plants with poisonous leaves such as foxglove, morning glory, tomato, potato, rhubarb, or poison ivy;

(d) Extreme weather conditions such as:

(i) Heat in excess of one hundred degrees Fahrenheit;

(ii) Cold below twenty degrees Fahrenheit;

(iii) Lightning storm, tornado, hurricane or flooding; and

(iv) Air quality warnings by public health or other authorities.

(e) Bodies of water such as:

(i) Swimming pools when not being used, portable wading pools, hot tubs, spas, and jet tubs;

(ii) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools, or similar bodies of water; and

(iii) Uncovered wells, septic tanks, below grade storage tanks, farm manure ponds, or other similar hazards.

(f) Streets, alleyways, parking lots or garages.

(5) **Emergency preparedness and response planning.** Providers not related to the child, as described in WAC 110-16-0015 (3)(c), must comply with the following emergency preparedness and response planning requirements:

(a) The provider must visually scan indoor and outdoor areas to identify potential fire or burn hazards and discuss the removal or reduction of identified hazards with the parent. If it is not possible for the provider to immediately correct or make identified hazards completely inaccessible to a child, the provider must supervise the child to avoid injury from such identified hazards. Fire or burn hazards include, but are not limited to:

(i) Appliances and any heating device that has a hot surface when in use or still hot after use;

(ii) Open flame devices, candles, matches, and lighters. Open flame devices, candles, matches, and lighters must not be used during care hours; and

(iii) The lack of, or nonworking smoke detectors, fire extinguishers, or other fire prevention equipment.

(b) If there is a fire in the home during care hours, the provider's first responsibility is to evacuate the children in care to a safe gathering spot outside the home and then call 911;

(c) The provider and parent must have an agreed upon written home evacuation plan in the event of fire or an emergency or other disaster. The plan must be updated as needed and include, at a minimum:

(i) A floor plan that shows emergency exit pathways, doors, and windows;

(ii) A description for how the provider will evacuate all of the children, especially those who cannot walk;

(iii) A description for how the provider will account for all of the children in the home;

(iv) A designated, safe gathering spot or alternative short-term location for the children and provider pending arrival of the fire department, emergency response, or the parent;

(v) A description of what to take, such as a first aid kit, medications, water, and food; and

(vi) A description for how parents will be contacted after the emergency is over and arrange for pick-up of children, if needed.

(d) To be properly prepared for a home evacuation or lockdown, the provider must be able to easily access emergency items including, but not limited to:

(i) A first aid kit;

(ii) A working flashlight available for use as an emergency light source and extra batteries if the flashlight is powered by batteries;

(iii) A working telephone; and

(iv) Food, water, and a three-day supply of medication required by individual children.

(e) The provider must practice emergency and home evacuation drills with the children as follows:

(i) Earthquake and home evacuation drills once every six calendar months; and

(ii) A lockdown drill annually.

(6) **Child transportation.** Providers not related to the child, as described in WAC 110-16-0015 (3)(c), must comply with the following child transportation requirements: When transporting children, the provider must:

(a) Comply with RCW 46.61.687 and other applicable laws that pertain to child restraints and car seats appropriate for the size and age of each child in care;

(b) Drive only with a valid driver's license;

(c) Have in effect a current motor vehicle insurance policy that provides coverage for the driver, the vehicle, and all other occupants;

(d) Ensure that children are accounted for when entering and exiting a vehicle for transport to and from any destination; and

(e) Never leave the children by themselves.

(7) **Supervision of children.** Providers not related to the child, as described in WAC 110-16-0015 (3)(c), must comply with the following supervision requirements:

(a) The provider must supervise children during care hours. Supervising children requires the provider to engage in specific actions including, but not limited to:

(i) Scanning the environment, looking and listening for both verbal and nonverbal cues to anticipate problems and planning accordingly;

(ii) Positioning oneself to supervise areas accessible to children; and

(iii) Considering the following when deciding whether increased supervision is needed:

(A) Ages of children;

(B) Individual differences and abilities of children;

(C) Layout of the home and play areas; and

(D) Risks associated with the activities children are engaged in.

(b) The provider must provide increased supervision when the children:

- (i) Interact with pets or animals;
- (ii) Engage in water or sand play;
- (iii) Play in an area in close proximity to a body of water;
- (iv) Use a route to access an outdoor play area when the area is not next to the home;
- (v) Engage in activities in the kitchen;
- (vi) Ride on public transportation;
- (vii) Engage in outdoor play; and
- (viii) Participate in field trips.

(c) The provider must ensure no infant or child is left unattended during:

- (i) Diapering;
- (ii) Bottle feeding; or
- (iii) Tummy time.

(d) The provider must not allow any person other than a child's parent or authorized individual to have unsupervised access to a child during care hours. For the purpose of this section, individuals authorized to have unsupervised access include:

(i) A government representative including emergency responders who have specific and verifiable authority for access; and

(ii) A person, such as a family member, family friend, or the child's therapist or health care provider, authorized in writing or over the telephone by a child's parent.

PART IV

COMPLIANCE

NEW SECTION

WAC 110-16-0040 Compliance. (1) If the department determines a provider has failed to comply with a requirement described in this chapter, the department may do one or more of the following:

(a) Offer and provide technical assistance for the purpose of correcting noncompliance issues that arise from WAC 110-16-0015, 110-16-0025, 110-16-0030, or 110-16-0035;

(b) Require an in-home compliance agreement (ICA) for the purpose of correcting noncompliance issues;

(c) Take steps to initiate termination of the provider's participation in the WCCC subsidy programs; and

(d) Take steps to initiate a determination of child care subsidy payment discrepancies pursuant to WAC 110-15-0266 that may have resulted from noncompliance issues.

(2) An in-home compliance agreement (ICA) must contain the following:

(a) A description of the noncompliance issues and the regulations or statutes violated;

(b) A statement from the provider describing the provider's proposed plan to comply with the regulations or statutes;

(c) The date by which the noncompliance issues must be corrected;

(d) A statement of other corrective action that may be required if compliance does not occur by the specified date;

(e) The signatures of the provider and the department representative agreeing to the terms of the ICA; and

(f) A statement from the department indicating whether the corrective action requirements were satisfactorily met.

(3) The length of time the department may allow for the provider to make the corrections necessary to be in compliance will be determined by the department with consideration given to:

(a) The seriousness of the noncompliance; and

(b) The threat to the health, safety, and well-being of the children in care.

WSR 18-20-094

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed October 1, 2018, 4:15 p.m., effective October 1, 2018, 4:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Implement the federal requirement of second-tier eligibility (the flexibility at reapplication for working connections child care benefits to accommodate modest increase in family income eligibility that reasonably allows the family to continue accessing child care services without unnecessary disruption when the family is otherwise ineligible because the family income exceeds the state threshold of eighty-five percent of the state median income.

Citation of Rules Affected by this Order: Amending WAC 110-15-0109 Reapplication.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065; chapter 43.216 RCW.

Other Authority: 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98.

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

Reasons for this Finding: Continued receipt of federal funds for working connections child care is conditioned on the department of children, youth, and families, by October 1, 2018, establishing preservice and training requirements for the family, friends, and neighbors care providers, health and safety activities and practices during care, and the consequences of noncompliance.

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

Number of Sections Adopted at the Request of a 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: October 1, 2018.

Brenda Villarreal
Rules Coordinator

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

WAC 110-15-0109 Reapplication. (1) ~~((If a consumer wants to receive))~~ To request WCCC benefits be continued uninterrupted ~~((child care benefits for another))~~ beyond the consumer's current eligibility period, the consumer must reapply for WCCC benefits with DSHS on or before the end of the current eligibility period. ~~((To determine if a consumer is eligible, DSHS:))~~

(2) Determination of the consumer's eligibility to receive uninterrupted WCCC benefits beyond the consumer's current eligibility period will be made pursuant to the eligibility rules contained in this chapter.

(a) ~~((Requests reapplication information))~~ A consumer who reappplies on or before the end date of the ~~((consumer's))~~ current WCCC eligibility period may receive continued uninterrupted benefits through second tier eligibility if the ~~((: and~~

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

~~(3) Effective October 1, 2016, if a))~~ consumer's household has countable income greater than two hundred percent ~~((of the federal poverty guidelines (FPG)))~~ but less than two hundred twenty percent of the federal poverty guidelines ((FPG, the consumer may be eligible for a three-month eligibility period call Income Phase-Out. In determining eligibility for the Income Phase-Out period, the following rules apply:)) (FPG).

~~((a) All countable income must be))~~ (i) If the countable income is equal to or greater than ((two hundred percent of the FPG and less than)) two hundred twenty percent ((of the FPG. If the countable income is equal to or greater than two hundred twenty percent of the)) FPG, ((DSHS denies)) the reapplication((:)) will be denied.

((DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;

(e) There is no break between the twelve month eligibility period and the Income Phase-Out period;

(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;

(e) DSHS certifies the consumer for a three-month eligibility period;

(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household

income falls below two hundred percent of the FPG during or at the end of the three-month Income Phase-Out period; and

~~(g) The consumer will not be eligible for a second, back-to-back Income Phase-Out period if the countable income of the consumer's household remains equal to or greater than two hundred percent of the FPG and less than two hundred twenty percent of the FPG at the end of the first three-month Income Phase-Out period.~~

~~(4) If DSHS determines that a consumer is eligible for WCCC benefits based on reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.)~~

(ii) The copayment for a second tier eligible consumer will be determined at two hundred percent of the FPG of countable household income.

~~((5) When))~~ (3) If a consumer submits a reapplication after the last day of the current eligibility period and meets all WCCC eligibility requirements, the consumer's benefits will begin:

(a) On the date ~~((that))~~ the consumer's reapplication is entered into DSHS's automated system or the date the consumer's reapplication is date-stamped as received ~~((in DSHS's community service office or entered into the))~~ by DSHS, ~~((automated system;))~~ whichever date is earlier;

(b) When the consumer is working or participating in an approved activity; and

(c) The consumer's child is ~~((being cared for by an eligible WCCC))~~ receiving care from an approved provider.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

**WSR 18-20-114
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-277—Filed October 2, 2018, 4:29 p.m., effective October 2, 2018, 4:29 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008)

(Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: This rule extends tribal fall salmon fisheries, along with continuing commercial sales to Washington wholesale buyers and the public. The URB run-size has been upgraded since the last compact, and room is available for the current expected harvest. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. This rule is consistent with actions of Columbia River Compacts on July 26, and October 2, 2018. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

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

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

Number of Sections Adopted at the Request of a 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: October 2, 2018.

Kelly Susewind
Director

NEW SECTION

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

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

(a) Season: 6 AM Wednesday October 3 to 6 PM Saturday October 6

(b) Gear: Set and Drift gillnets with an 8-inch minimum mesh restriction

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

(d) Standard river mouth and dam closed areas applicable to gillnet gear. The Spring Creek Hatchery sanctuary is reduced to 150 feet around the hatchery ladder.

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

(a) Season: Effective immediately until further notice.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon of legal size may be sold if landed during the open area and period for the setline fishery within that pool, otherwise sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes. Fish landed during the open periods are allowed to be sold after the period concludes.

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

(3) Open Areas: Drano Lake and Klickitat River

(a) Season: Effective immediately until further notice and only during days and times open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold. Sturgeon from 38 to 54 inches fork length may be kept for subsistence.

(4) Open Areas: Areas downstream of Bonneville Dam defined in tribal/state MOU's/MOA's.

(a) Season: Effective immediately through 11:59 PM Wednesday, October 31, 2018 and only during days and times opened under tribal rules.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000Y Columbia River salmon seasons
above Bonneville Dam. (18-263)