

WSR 21-23-015
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed November 5, 2021, 1:45 p.m., effective November 18, 2021]

Effective Date of Rule: November 18, 2021.

Purpose: The department is extending the suspension of the rules listed below to ensure long-term care facilities and providers are not significantly impeded during the hiring process due to an inability to access required tuberculosis (TB) testing as a result of the COVID-19 epidemic. Clinics providing TB testing continue to be short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state. These emergency rules will help increase the number of long-term care workers necessary to provide essential services for some of Washington's most vulnerable residents.

Citation of Rules Affected by this Order: Repealing WAC 388-76-10265, 388-76-10285, 388-78A-2484 and 388-107-0490; and amending WAC 388-76-10290(1), 388-78A-2480(1), 388-78A-2485(1), 388-101D-0650(1), 388-101D-0660(3), and 388-107-0460(1).

Statutory Authority for Adoption: RCW 70.128.040, 71A.12.030; and chapters 18.20 and 70.97 RCW.

Other Authority: Chapters 70.128, 71A.12, and 74.34 RCW.

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

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Due to the uptick in COVID[-19] and the testing requirements, labs are heavily taxed trying to meet demands for COVID[-19] testing which impacts testing for TB. Facilities have limited availability of antigen testing for TB. While vaccinations are being distributed, this alone has not yet significantly improved staffing availability in long-term care facilities. Although the state has implemented a reopening plan, clinics providing TB testing continue to be short of staff and have limited availability throughout the state partially due to higher than normal requests for services related to overdue standard screening tests such as TB. Adult family homes and many assisted living facilities are dependent upon community services to provide TB testing. These clinics are unable to meet the demand for testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state.

Ongoing communication with stakeholders indicates a need to continue these suspended rules as the COVID[-19]

pandemic is still impacting the ability of long-term care facilities to meet these requirements. With the rise in COVID[-19] testing, the ability to get the antigen tests for TB has been very limited in availability as labs are trying to meet testing demands for COVID[-19]. Many assisted living [facilities] do not have the nurses on staff available to perform the TB skin testing in-house currently. The department filed a CR-101 preproposal under WSR 20-16-069.

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 10, 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 10, Repealed 0.

Date Adopted: November 5, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10290 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the adult family home must:

(1) ~~((Ensure that the person has a chest X-ray within seven days;~~

~~(2)))~~ Ensure each resident or employee with a positive test result is evaluated for signs and symptoms of tuberculosis; and

~~((3)))~~ (2) Follow the recommendation of the person's health care provider.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2480 Tuberculosis—Testing—Required. ~~((1) The assisted living facility must develop and implement a system to ensure each staff person is screened for tuberculosis within three days of employment.~~

~~(2)))~~ For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any assisted living facility employee or temporary employee of the assisted living facility, excluding volunteers and contractors.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2485 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the assisted living facility must:

(1) ~~((Ensure that the staff person has a chest X-ray within seven days;~~

~~(2))~~ Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and

~~((3))~~ (2) Follow the recommendation of the resident or staff person's health care provider.

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0650 What must a group training home do to detect and manage tuberculosis? To detect and manage tuberculosis, a group training home must:

(1) ~~((Ensure each employee has a tuberculin test no more than three days after beginning to work with clients unless otherwise exempt under this chapter;~~

(2)) Implement policies and procedures that comply with tuberculosis standards set by the Centers for Disease Control and Prevention and applicable state laws;

~~((3))~~ (2) Comply with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection; and

~~((4))~~ (3) Comply with chapter 296-842 WAC requirements to protect the health and safety of clients who may come into contact with people who have infectious tuberculosis.

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0660 When is a group training home employee not required to complete a tuberculin test? (1) A group training home employee is not required to complete a tuberculin test if the employee:

(a) Has documentation of an FDA-approved tuberculin test with negative results from within the last twelve months;

(b) Has documentation of a positive FDA-approved tuberculin test with documented evidence of:

(i) Adequate therapy for active disease; or
(ii) Completion of treatment for latent tuberculosis infection preventive therapy;

(c) Self-reports a history of positive test results under subsection (2) or (3) of this section.

(2) If a group training home employee self-reports a history of positive test results with chest X-ray results from the last twelve months, the employee must:

(a) Provide a copy of the normal X-ray results to the group training home; and

(b) Be evaluated for signs and symptoms of tuberculosis.

(3) ~~((If a group training home employee self-reports a history of positive test results without chest X-ray results, the employee must:~~

~~(a) Be referred to a medical provider;~~

~~(b) Complete a chest X-ray within seven days; and~~

~~(c) Be cleared by a medical professional before returning to work if the X-ray is abnormal and consistent with tuberculosis.~~

(4)) A group training home volunteer working less than four hours a month is exempt from tuberculin test requirements.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0460 Tuberculosis (TB)—Testing—Required. The enhanced services facility must:

~~((1) Develop and implement a system to ensure staff have TB testing upon employment or starting service; and~~

(2)) Ensure that staff have an annual risk assessment completed using the Washington state department of health approved criteria.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10265 Tuberculosis—Testing—Required.

WAC 388-76-10285 Tuberculosis—Two step skin testing.

WAC 388-78A-2484 Tuberculosis—Two step skin testing.

WAC 388-107-0490 Tuberculosis (TB)—Two-step skin testing.

WSR 21-23-016

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 21-251—Filed November 5, 2021, 5:52 p.m., effective November 6, 2021]

Effective Date of Rule: November 6, 2021.

Purpose: The purpose of this emergency rule is to open salmon seasons in a portion of Kennedy Creek and allow chum retention as part of the salmon daily limit in Marine Area 13.

Citation of Rules Affected by this Order: Amending WAC 220-312-040 and 220-313-060.

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

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

Reasons for this Finding: This emergency rule is necessary to open salmon seasons in a portion [of] Kennedy Creek and to allow retention of chum salmon as part of the salmon daily limit in Catch Record Card Area 13 (Marine Area 13). Chum returns have exceeded preseason projections and are large enough to allow recreational chum retention while still meeting escapement goals. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: November 5, 2021.

Amy Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-0600P Puget Sound salmon—Salt-water seasons and daily limits. Effective November 6, until further notice, the following provisions of WAC 220-313-060 regarding salmon seasons in Catch Record Card Area 13 shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 13: Salmon:

- (a) Chinook minimum size 22 inches. Other salmon species no minimum size.
- (b) Daily limit 2.
- (c) Release wild Chinook and wild coho.

NEW SECTION

WAC 220-312-04000W Freshwater exceptions to statewide rules—Puget Sound. Effective November 6 through November 30, 2021, recreational salmon fishing seasons for Kennedy Creek, shall be modified as follows, during dates listed below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Kennedy Creek (Mason County): From the mouth (500 yards east of the northbound Hwy. 101 Bridge) to northbound 101 Bridge: Salmon:

- (a) Daily limit 2.
- (b) Release wild Chinook and wild coho

WSR 21-23-017

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 21-252—Filed November 5, 2021, 6:04 p.m., effective November 7, 2021]

Effective Date of Rule: November 7, 2021.

Purpose: The purpose of this emergency rule is to modify commercial gillnet fishery openings targeting chum salmon in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12C.

Citation of Rules Affected by this Order: Amending WAC 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 rule is necessary to add and modify commercial fishery openings targeting chum salmon in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12C north of a line drawn true east from the southernmost point of Lilliwaup State Park to the opposite shoreline of Hood Canal. Sufficient nontreaty allocation remains (~85,000) and returns to Hood Canal hatchery facilities indicate that broodstock goals will be met and this additional fishery opportunity can be offered without compromising hatchery goals. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: November 5, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000S Puget Sound salmon—Gill-net—Open periods. Effective November 7 through November 12, 2021, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Puget Sound Salmon Management and Catch Reporting Areas 12B and 12C north of a line drawn true east from the southernmost point of Lilliwaup State Park to the opposite shoreline of Hood Canal. shall be as described below. All other provisions of WAC 220-354-120 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date(s)
12B, 12C north of a line drawn true east from the southernmost point of Lilliwaup State Park to the opposite shoreline of Hood Canal	Open	6 am - 6 pm	11/8 and 11/10

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

**WSR 21-23-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-249—Filed November 5, 2021, 6:27 p.m., effective November 8, 2021]

Effective Date of Rule: November 8, 2021.

Purpose: The purpose of this rule is to close the commercial salmon fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2N, 2M, 2T, and 2U on November 8, 2021, and Areas 2N, 2M, and 2U on November 15, 2021.

Citation of Rules Affected by this Order: 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 close the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Area 2N, 2M, 2T, and 2U on November 8 and Areas 2N, 2M, and 2U on November 15, 2021. The catch of Willapa Bay natural origin coho has been higher than preseason predictions. The total catch predicted preseason for Willapa Bay natural origin coho was 2,966. The 2021 preliminary catch for Willapa Bay natural origin coho to-date is 6,350. Based on the reported catch relative to the preseason prediction and the low natural origin coho forecast for 2021, a modification of the commercial fishery is necessary to help ensure the natural origin coho spawning escapement objective is met. All other rules remain in effect.

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: November 5, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000D Willapa Bay salmon fall fishery. Notwithstanding the provisions of WAC 220-354-250, the following rules apply. All other provisions of WAC 220-354-250, not contained herein remain in effect unless otherwise altered by emergency rule:

Areas	Date	Closed periods
2N, 2M, 2T, 2U	November 8, 2021	Closed
2N, 2M, 2U	November 15, 2021	Closed

**WSR 21-23-035
EMERGENCY RULES
GREEN RIVER COLLEGE**

[Filed November 8, 2021, 1:06 p.m., effective November 8, 2021, 1:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of education (DOE) issued updated Title IX rules on May 22, 2020, which took effect August 14, 2020. These updated rules incorporate the Title IX regulations by amending Green River College's student conduct code requirements in chapter 132J-126 WAC. These rule changes are necessary to maintain compliance with DOE requirements. On August 24, 2021, DOE announced that it will no longer enforce the cross-examination requirement in the 2020 regulations. To comply with training and live hearing requirements in the 2020 federal regulations, the college rule changes also add authority to contract with the Washington office of administrative hearings and other contractors to help with these duties.

Citation of Rules Affected by this Order: New 9 rules added to chapter 132J-126 WAC; and repealing WAC 132J-126-240, 132J-126-250, 132J-126-260, and 132J-126-270.

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

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

Reasons for this Finding: Emergency rules adding rules to and repealing rules from chapter 132J-126 WAC, Student conduct rules. Repealing WAC 132J-126-240 through 132J-126-270 are necessary for compliance with DOE updated Title IX rules issued on May 22, 2020, and requiring implementation of updated student conduct code requirements related to Title IX federal requirements. The college intends to proceed with permanent rule making on these subjects in the near future.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 4; 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: November 8, 2021.

George P. Frasier
Vice President
of College Advancement

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132J-126-320 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

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

tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

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

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

(d) Statutory rape. Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

(6) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132J-126-400 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Sec. 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132J-126-010 through 132J-126-300, these supplemental procedures shall take precedence. Green River College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

WAC 132J-126-420 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a college educational program or activity; and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132J-126-090.

(4) If the Title IX coordinator determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Title IX coordinator will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132J-126-430 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the judicial officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the judicial officer determines that there are sufficient grounds to proceed under these supplemental procedures, the judicial officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132J-126-440 Prehearing procedure. (1) Upon filing and serving the written disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132J-126-190. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132J-126-450 Rights of parties. (1) The college's student conduct procedures, chapter 132J-126 WAC and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator or chair of the student conduct committee will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132J-126-460 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132J-126-470 Initial order. (1) In addition to complying with WAC 132J-126-210, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
- (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
- (c) Makes findings of fact supporting the determination of responsibility;
- (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
- (e) Contains a statement of, and rationale for, the student conduct committee determination of responsibility for each allegation;
- (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
- (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and
- (h) Describes the process for appealing the initial order to the college president.

(2) The chair of the student conduct committee will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132J-126-480 Appeals. (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the presi-

dent's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

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

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

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

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132J-126-240 Supplemental procedures for sexual misconduct cases.
- WAC 132J-126-250 Supplemental definitions.
- WAC 132J-126-260 Supplemental complaint process.
- WAC 132J-126-270 Supplemental appeal rights.

WSR 21-23-039

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 21-250—Filed November 8, 2021, 4:10 p.m., effective November 8, 2021, 4:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for Puget Sound commercial crab:

WAC 220-340-42000T:

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

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

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

WAC 220-340-45500C:

(1) Defines subareas east and west of master of science in financial services (MSFS) catch area 23C to align with agreed to boundaries within the Region 3 2021-2022 crab management plan.

(2) Opens Puget Sound commercial crab harvest in Crab Management Regions 2 West, 3-1, 3-2 and 3-3 effective immediately. Describes hard closure dates by crab management region. Maintains closure of Crab Management Region 2 East, which closed October 17, 2021, at 11:59 p.m. and Crab Management Region 1 which closed on November 3, 2021, at 7:30 p.m.

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

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

(5) Closes areas to state commercial that have been agreed to in regional management plans.

(6) Repeals areas where recreational and tribal harvest has been allowed that state commercial harvest has been historically limited.

(7) Repeals areas where recreational and tribal harvest has been allowed that state commercial harvest has been historically closed.

WAC 220-340-47000A:

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

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

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

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

WAC 220-352-34000L:

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

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

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

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

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000S, 220-340-45500B and 220-352-34000K; and amending WAC 220-340-420, 220-340-455, 220-340-470, and 220-352-340.

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

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

Reasons for this Finding: There is sufficient allocation available in 2-West, 3-1, 3-2, and 3-3 to accommodate continued commercial harvest. These provisions are in conformity with agreed regional management plans with applicable tribes or in accordance with procedures proscribed in the shellfish implementation plan when no annual regional management plan agreement has been reached. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. Further adjustment of season structure may be made pending updated harvest data. Changes to filing WSR 21-22-101 will make this emergency rule more enforceable. 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 4, 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: November 8, 2021.

Kelly Susewind
Director

NEW SECTION

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

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

Catch Reporting Areas 25B, 25D, and 26A West. Crab Management Region 3-1 includes MFSF Catch Reporting Areas 23A and 23B. Crab Management Region 3-2 includes MFSF Catch Reporting Areas 25A, 25E, and 23D. Crab Management Region 3-3 includes MFSF Catch Reporting Areas 23C East, and Crab Management Region 3-4 consists of 23C West and 29.

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

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

- (a) date of harvest,
- (b) an estimate of pounds of crab contained,
- (c) either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from.

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

- (a) date of harvest,
- (b) an estimate of pounds of crab contained,
- (c) either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from, and
- (d) Commercial fish and shellfish transportation ticket number.

NEW SECTION

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

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

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

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

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

- (a) Region 2 West:
Crab Management Region 2-W; effective immediately through February 15, 2022.
- (b) Region 3:
(i) Crab Management Region 3-1; effective immediately until further notice.

(ii) Crab Management Region 3-2; effective immediately until further notice.

(iii) Crab Management Region 3-3; effective immediately until further notice.

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

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

(4) Effective immediately, until further notice, the following areas are closed to commercial crab fishing: Crab Management Regions 1, 2E, and 3-4.

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

(a) Region 3-2:

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

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

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

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

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

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

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

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.

NEW SECTION

WAC 220-340-47000A Commercial crab fishery—Gear limits—Puget Sound and marine fish shellfish management and catch reporting areas. Notwithstanding the provisions of WAC 220-340-470:

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

(a) Region 2 West:

Commercial harvest is limited to 20 pots per license in those waters of Marine Fish-Shellfish Management and

Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin until 11:59 p.m. December 31, 2021.

(b) Region 3-2:

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

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

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

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

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

NEW SECTION

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

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

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

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

- (a) harvester name,
- (b) WDFW issued vessel ID,
- (c) Puget Sound commercial license number,

(d) date of harvest,

(e) an estimate of pounds of harvest retained by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area, and

(f) a commercial fish and shellfish transportation ticket number.

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

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

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

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

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.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-340-42000S Commercial crab fishery—Unlawful acts. (21-246)
- WAC 220-340-45500B Commercial crab fishery—Seasons and areas—Puget Sound. (21-246)
- WAC 220-352-34000K Puget Sound crab—Additional reporting requirements. (21-246)

WSR 21-23-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-253—Filed November 10, 2021, 9:17 a.m., effective November 11, 2021]

Effective Date of Rule: November 11, 2021.

Purpose: The purpose of this emergency rule is to increase the adult coho portion of the salmon daily limit for recreational anglers on the Kalama, Lewis, and Washougal rivers.

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

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

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

Reasons for this Finding: Coho salmon returns to the Kalama, Lewis, and Washougal rivers are trending above preseason forecast and are sufficient to allow increased harvest opportunity for anglers by increasing the adult coho portion of the salmon daily limit. Coho returns to all three rivers are in their early stages of their timing and returns have been strong with collection goals nearly complete for Washougal, almost 70 percent complete for Kalama and on track to be met for the Lewis River. With increased harvest limits, these rivers are still expected to meet preseason reintroduction and broodstock collection goals for the hatchery programs.

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: November 10, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000F Freshwater exceptions to statewide rules—Southwest. Effective November 11 through December 31, 2021, the provisions of WAC 220-312-030 regarding salmon seasons for Kalama River, Lewis

River, and Washougal River, shall be modified during the dates and in areas as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) **Kalama River (Cowlitz Co.); from the mouth to 1,000 feet below the fishway at Kalama Falls Hatchery:** Salmon: Effective November 11 through December 31, 2021:

Daily limit 6, of which up to 3 may be adult Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(2) **Lewis River (Clark/Cowlitz Co.):**

(a) **From the mouth to Colvin Creek:** Salmon: Effective November 11 through December 31, 2021:

Daily limit 6, of which up to 2 may be adult Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(b) **From Colvin Creek to the overhead powerlines below Merwin Dam:** Salmon: Effective December 16 through December 31, 2021:

Daily limit 6, of which up to 2 may be adult Chinook. Release all salmon other than hatchery Chinook and hatchery coho.

(3) **Washougal River (Clark Co.); from the mouth to the Bridge at Salmon Falls:** Salmon: Effective December 16 through December 31, 2021:

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

WSR 21-23-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-254—Filed November 10, 2021, 9:28 a.m., effective November 22, 2021]

Effective Date of Rule: November 22, 2021.

Purpose: The purpose of this emergency rule is to open recreational crabbing in Marine Area 10.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000C; and amending WAC 220-330-040.

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 maintain the recreational crab harvest in the marine areas which opened on October 1. Additionally, it will open recreational harvest in Marine Area 10 beginning on November 22, 2021. Final summer harvest estimates from catch record card submissions indicate there are 22,300 pounds remaining of the Marine Area 10, 2021 season quota of 55,000 pounds. Opening recreational crab harvest in Marine Area 10 on

November 22, will contribute to achieving 50/50 harvest goal with the treaty tribes.

The fishery will remain closed in Marine Area 11, Marine Area 12 south of a line projected true east from Ayock Point, and Marine Area 13 for the remainder of 2021.

There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: November 10, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000D Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective November 22 through December 31, 2021, Puget Sound recreational crab seasons are as listed below. All other provisions of WAC 220-330-040 not addressed herein remain in effect unless otherwise amended by emergency rule:

It is permissible to crab for personal use in the following Marine Areas: 4 East of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10 and 12 north of a line projected true east from Ayock Point.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 22, 2021:

WAC 220-330-04000C Crab—Areas and seasons—Personal use. (21-213)

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

WAC 220-330-04000D Crab—Areas and seasons—Personal use.

WSR 21-23-049 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 21-255—Filed November 10, 2021, 9:46 a.m., effective November 16, 2021]

Effective Date of Rule: November 16, 2021.

Purpose: The purpose of this emergency rule is to open recreational razor clam seasons from November 16 through 24, 2021.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000C and 220-330-010.

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

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

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

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

Number of Sections Adopted at the Request of a 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: November 10, 2021.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. November 16, through 11:59 p.m. November 24, 2021, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	November 16 through 24	From 12:01 p.m. to 11:59 p.m.
Area 2	Closed	Closed
Area 3	November 16 through 24	From 12:01 p.m. to 11:59 p.m.
Area 4	November 16, 18, 20, 22, and 24	From 12:01 p.m. to 11:59 p.m.
Area 5	November 17, 19, 21, and 23	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

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 220-330-01000R Shellfish—Daily limits, size restrictions, and unlawful acts. Notwithstanding the provisions of WAC 220-330-010 regarding Razor clam daily limits, effective 12:01 p.m. November 16, through 11:59 p.m. November 24, 2021, the daily limit is 20 razor clams for personal use in any one day from Razor Clam Area 1, Razor Clam Area 3, Razor Clam Area 4 and Razor Clam Area 5. All other provisions of WAC 220-330-010 not addressed herein remain in effect unless otherwise amended by emergency rule.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. November 25, 2021:

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

WAC 220-330-01000R Shellfish—Daily limits, size restrictions, and unlawful acts.

**WSR 21-23-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-256—Filed November 10, 2021, 7:11 p.m., effective November 10, 2021, 7:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to extend the salmon season and also expand the fishing area at the Ringold Springs Hatchery access area.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000E; 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: This emergency rule is needed to extend salmon seasons at the Ringold Springs Hatchery access area. Ringold Springs Hatchery began rearing and releasing coho in 2019 with the first release of 250,000 juvenile fish to the Columbia River at Ringold in 2020. Adult coho returns to the hatchery have increased and are sufficient to provide additional fishing opportunity for salmon fishing in this area of the Columbia River.

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: November 10, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia Effective Immediately through November 30, 2021, provisions of WAC 220-312-060 regarding Columbia River salmon seasons from the Columbia River powerline crossing 1/2 mile downstream of the Ringold Springs access area upstream to the old Hanford townsite powerline crossing are modified as described below. All other provisions of WAC 220-312-060 not addressed

herein, or unless otherwise amended by emergency rule remain in effect:

Permits both bank and boat fishing from the Columbia River powerline crossing 1/2 mile downstream of the Ringold Springs access area upstream to the old Hanford town-site powerline crossing: Salmon

Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and coho. Night closure in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-312-06000E Freshwater exceptions to statewide rules—Columbia River (21-244)

**WSR 21-23-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-257—Filed November 12, 2021, 3:38 p.m., effective November 15, 2021]

Effective Date of Rule: November 15, 2021.

Purpose: The purpose of this emergency rule is to open commercial beach seine fisheries in Puget Sound Salmon Management and Catch Reporting Area 12C Hoodspport Hatchery Zone.

Citation of Rules Affected by this Order: Amending WAC 220-354-210.

NEW SECTION

WAC 220-354-21000G Puget Sound salmon—Beach seine—Open periods. Effective November 14 through November 20, 2021, the following provisions of WAC 220-354-210 regarding commercial Beach Seine open periods for Puget Sound Salmon Management and Catch Reporting Area 12C Hoodspport Hatchery Zone shall be as described below. All other provisions of WAC 220-354-210 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date(s)
12C Hoodspport Hatchery Zone	Open	7 am - 7 pm	11/15 and 11/17

**WSR 21-23-075
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES**

[Filed November 15, 2021, 3:16 p.m., effective November 15, 2021, 3:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend WAC 110-15-0280 to align with the department of children, youth, and families' (DCYF) chapter 110-03 WAC, Administrative hearings.

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

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

Reasons for this Finding: This rule is necessary to add commercial beach seine fishery openings targeting chum salmon in Puget Sound Salmon Management and Catch Reporting 12C Hoodspport Hatchery Zone. Sufficient non-treaty allocation remains (about 85,000 fish) and returns to Hood Canal hatchery facilities indicate that broodstock goals will be met. This additional fishery offers commercial salmon harvest opportunity without compromising hatchery goals. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: November 12, 2021.

Kelly Susewind
Director

Citation of Rules Affected by this Order: Amending WAC 110-15-0280.

Statutory Authority for Adoption: RCW 43.216.905, 43.216.906.

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: DCYF has conflicting rules regarding an administrative appeal process that impacts the general welfare. The emergency amendment will harmonize the conflicting rules. Observing the permanent rule making time requirements for notice and comment would be contrary to the public interest. DCYF has begun permanent rule making to amend WAC 110-15-0280.

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 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 0, Repealed 0.

Date Adopted: November 15, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0280 Right to request an administrative hearing. ~~((1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits.~~

~~(2) Child care providers may request hearings under chapter 388-02 WAC only for WCCC overpayments. A provider's burden of proof is a preponderance of the evidence.~~

~~(3) To request a hearing, a consumer or provider:~~

~~(a) Contacts the DSHS office which sent them the notice; or~~

~~(b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and~~

~~(c) Makes the request for a hearing within:~~

~~(i) Ninety days of the date a decision is received for consumers; or~~

~~(ii) Twenty-eight days of the date a decision is received for providers.~~

~~(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in WAC 388-02-0217. Initial orders may be appealed to a DSHS review judge under chapter 388-02 WAC.~~

~~(5) To request a hearing under the seasonal child care program, see WAC 170-290-3860 and 170-290-3865.)~~ **(1) Consumers: Consumers who disagree with DCYF's decisions affecting their WCCC benefits have administrative hearing rights under chapter 110-03 WAC.**

(a) Consumers' requests for hearing:

(i) May be made by contacting DCYF in-person, by telephone, or by serving DCYF with written requests that are

also filed with the office of administrative hearings (OAH) as described in WAC 110-03-0060 and 110-03-0080.

(ii) Must include the information and documents described in WAC 110-03-0050(2), if requests are made in writing.

(iii) Must be made within 90 days of the date the consumers received the decisions being appealed.

(b) After completing the administrative hearings, OAH issues initial orders pursuant to WAC 110-03-0460 and 110-03-0480. Consumers who disagree with initial orders may request reviews as provided in WAC 110-03-0510 through 110-03-0550.

(c) When consumers request reviews of the initial orders, review judges issue final orders after considering the requests for review, initial orders, and hearing records. Consumers who disagree with final orders may request reconsiderations as provided in WAC 110-03-0570 through 110-03-0580 or seek judicial reviews as described in WAC 110-03-0590.

(2) **Providers: Child care providers who disagree with WCCC overpayment decisions may request administrative hearings pursuant to RCW 43.20B.675.**

(a) To request administrative hearings, child care providers must:

(i) Make their hearing requests in writing and include the information and documents described in RCW 43.20B.675

(3) including, but not limited to, copies of the overpayment notices and statements explaining why they believe the overpayment notices are incorrect; and

(ii) Serve the hearing requests on the Department of Social and Health Services, Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501, using certified mail return receipt requested or other manner that provides proof of receipt within 28 days of the date they received the overpayment notices being appealed.

(b) After completing the administrative hearings, OAH will issue final orders. Child care providers who disagree with final orders may request reconsideration. Providers may also seek judicial review of final orders.

WSR 21-23-087

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 16, 2021, 2:01 p.m., effective November 16, 2021, 2:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The developmental disabilities administration (DDA) is clarifying from whom it accepts a written statement indicating a person's autism prevents the person from completing a full-scale intellectual quotient (FSIQ) test.

Citation of Rules Affected by this Order: Amending WAC 388-823-0510.

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

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 expands list of professionals qualified to provide a written statement that a person's autism prevents them from completing FSIQ testing. This change prevents disruption in service for DDA clients whose statement from a professional does not meet currently enacted requirements. A more comprehensive list of qualified professionals assists applicants for DDA services. This change reduces the potential impact to hospitals, law enforcement agencies, and behavioral health institutes by preserving the person's current living situation in the community. DDA eligibility and access to DDA services support both the client and the care system by providing predictable, stable services. Enacting this emergency rule prevents potential harm brought by disruption to services, or inability to access services.

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 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: November 16, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-13-164, filed 6/23/21, effective 8/1/21)

WAC 388-823-0510 What constitutes substantial limitation due to autism? (1) To establish substantial limitation due to autistic disorder diagnosed under the DSM-IV-TR, you must have an adaptive skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

(2) To establish substantial limitation due to autism spectrum disorder diagnosed under the DSM-5 you must:

(a) Have an adaptive-skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to WAC 388-823-0740 and WAC 388-823-0750; and

(b) Have either:

(i) A full-scale intellectual quotient (FSIQ) score more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to WAC 388-823-0720 and WAC 388-823-0730; or

(ii) A ~~(written)~~ signed statement from a ~~(professional)~~ qualified ~~(to administer intellectual tests stating)~~ professional that your autism prevents you from completing ~~(the)~~ FSIQ testing. "Qualified professional" means:

(A) Board-certified neurologist;

(B) Board-certified psychiatrist;

(C) Licensed psychologist;

(D) Licensed physician associated with an autism center, developmental center, or center of excellence; or

(E) Board-certified developmental and behavioral pediatrician.

WSR 21-23-098

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed November 17, 2021, 7:39 a.m., effective November 17, 2021, 7:39 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-710, 246-945-712, 246-945-714, 246-945-716, 246-945-718, 246-945-720, 246-945-722, 246-945-724, 246-945-726, and 246-945-728, medication assistance. The pharmacy quality assurance commission (commission) and department of health (department) are filing jointly to reinstate medication assistance rules as permitted under chapter 69.41 RCW. This adopted emergency rule will extend WSR 21-15-108 filed on July 20, 2021. This rule establishes criteria for medication assistance in community-based and in-home care settings in accordance with chapter 69.41 RCW. The definition for medication assistance provided in RCW 69.41.010(15) states: "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department

These emergency rules provide further definitions for terms used within this definition such as "enabler" and establish those "other means of medication assistance as defined by rule adopted by the department." These rules help impacted individuals retain their independence and live in the least restrictive setting, such as their own home, longer by providing means and guidance for medication assistance. Also, with the direction provided in RCW 69.41.010(15), the rules are being filed under the joint authority of the commission and the department.

Citation of Rules Affected by this Order: New WAC 246-945-710, 246-945-712, 246-945-714, 246-945-716, 246-945-718, 246-945-720, 246-945-722, 246-945-724, 246-945-726, and 246-945-728.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.010(15), 69.41.075.

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 commission's new chapter, chapter 246-945 WAC, became effective in July 2020. The old rules, including the former rules on medication assistance (chapter 246-888 WAC), were repealed in March 2021. The commission's repeal of chapter 246-888 WAC has resulted in unintended disruptions for medication assistance in the community-based and in-home care settings permitted under chapter 69.41 RCW. Emergency rule making is necessary to immediately restore medication assistance regulations to preserve patient safety and welfare while the commission and the department work on permanent rule making.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 10, 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 10, Amended 0, Repealed 0.

Date Adopted: September 2, 2021.

Teri Ferreira, RPh, Chair
Pharmacy Quality Assurance
and Kristin Peterson, JD
Deputy Secretary
Policy and Planning

PART 5 - MEDICATION ASSISTANCE

NEW SECTION

WAC 246-945-710 Scope and applicability. (1) This section through WAC 246-945-728 only apply to medication assistance provided in community-based care settings and in-home care settings.

(2) The following definitions apply to this section through WAC 246-945-728 unless the context requires otherwise:

(a) "Medication" means legend drugs and controlled substances; and

(b) "Practitioner" has the same meaning as in RCW 69.41.010(17).

NEW SECTION

WAC 246-945-712 Self-administration with assistance, independent self-administration, and medication administration. (1) Self-administration with assistance means assistance with legend drugs and controlled sub-

stances rendered by a nonpractitioner to an individual residing in a community-based care setting or an in-home care setting. It includes reminding or coaching the individual to take their medication, handing the medication container to the individual, opening the medication container, using an enabler, or placing the medication in the hand of the individual/resident. The individual/resident must be able to put the medication into their mouth or apply or instill the medication. The individual/resident does not necessarily need to state the name of the medication, intended effects, side effects, or other details, but must be aware that they are receiving medication. Assistance may be provided by a nonpractitioner with prefilled insulin syringes. Assistance is limited to handing the prefilled insulin syringe to an individual/resident. Assistance with the administration of any other intravenous or injectable medication is specifically excluded. The individual/resident retains the right to refuse medication. Self-administration with assistance shall occur immediately prior to the ingestion or application of a medication.

(2) Independent self-administration occurs when an individual/resident is independently able to directly apply a legend drug or controlled substance by ingestion, inhalation, injection or other means. In licensed assisted living facilities, self-administration may include situations in which an individual cannot physically self-administer medications but can accurately direct others. These regulations do not limit the rights of people with functional disabilities to self-direct care according to chapter 74.39 RCW.

(3) If an individual/resident is not able to physically ingest or apply a medication independently or with assistance, then the medication must be administered to the individual/resident by a person legally authorized to do so (e.g., physician, nurse, pharmacist). All laws and regulations applicable to medication administration apply. If an individual/resident cannot safely self-administer medication or self-administer with assistance or cannot indicate an awareness that they are taking a medication, then the medication must be administered to the individual/resident by a person legally authorized to do so.

NEW SECTION

WAC 246-945-714 Self-administration with assistance in a community-based care setting or an in-home setting. (1) An individual/resident, or their representative, in a community-based care setting or an in-home setting may request self-administration with assistance.

(2) No additional separate assessment or documentation of the needs of the individual/resident are required in order to initiate self-administration with assistance. It is recommended that providers document their decision-making process in the health record of the individual or resident health record.

(3) A nonpractitioner may help in the preparation of legend drugs and controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate.

NEW SECTION

WAC 246-945-716 Enabler. (1) Enablers are physical devices used to facilitate an individual's/resident's self-administration of a medication. Physical devices include, but are not limited to, a medicine cup, glass, cup, spoon, bowl, prefilled syringes, syringes used to measure liquids, specially adapted table surface, straw, piece of cloth, or fabric.

(2) An individual's hand may also be an enabler. The practice of "hand-over-hand" administration is not allowed. Medication administration with assistance includes steadying or guiding an individual's hand while he or she applies or instills medications such as ointments, eye, ear, and nasal preparations.

NEW SECTION

WAC 246-945-718 Alteration of medication for self-administration with assistance. Alteration of a medication for self-administration with assistance includes, but is not limited to, crushing tablets, cutting tablets in half, opening capsules, mixing powdered medications with foods or liquids, or mixing tablets or capsules with foods or liquids. Individuals/residents must be aware that the medication is being altered or added to their food.

NEW SECTION

WAC 246-945-720 Medication alteration. A practitioner practicing within their scope of practice must determine that it is safe to alter a legend drug or controlled substance. If the medication is altered, and a practitioner has determined that such medication alteration is necessary and appropriate, the determination shall be communicated orally or by written direction. Documentation of the appropriateness of the alteration must be on the prescription container, or in the individual's/resident's record.

NEW SECTION

WAC 246-945-722 Types of assistance provided by nonpractitioner. A nonpractitioner can transfer a medication from one container to another for the purpose of an individual dose. Examples include: Pouring a liquid medication from the medication container to a calibrated spoon or medication cup.

NEW SECTION

WAC 246-945-724 Oxygen order/prescription requirements. Under state law, oxygen is not a medication and is not covered under this rule. While oxygen is not considered a medication under state law, oxygen does require an order/prescription from a practitioner.

NEW SECTION

WAC 246-945-726 Self-administration with assistance of medication through a gastrostomy or "g-tube." If a prescription is written as an oral medication via "g-tube," and if a practitioner has determined that the medication can be altered, if necessary, for use via "g-tube," the rules as out-

lined for self-administration with assistance would also apply.

NEW SECTION

WAC 246-945-728 Other medication assistance requirements. A practitioner, nonpractitioner, and an individual/resident or their representative should be familiar with the rules specifically regulating the residential setting. The department of social and health services has adopted rules relating to medication services in assisted living facilities and adult family homes.

WSR 21-23-107**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed November 17, 2021, 9:02 a.m., effective November 23, 2021]

Effective Date of Rule: November 23, 2021.

Purpose: The department is extending the amendment of the rule listed below to assure certified community residential services and supports (CCRSS) providers are not significantly impeded from providing services and support to clients during the COVID-19 pandemic. Governor Inslee's Proclamation 20-18 and subsequent extensions identified that the pandemic has resulted in disruptions of long-term care systems, including the ability to safely conduct inspections. The governor's proclamations included the suspension of licensing inspections for all long-term care settings with the exception of CCRSS settings. Current rule states the department may conduct an on-site certification evaluation for each service provider at any time, but at least once every two years. The amendment lengthens the amount of time to complete certification evaluations that are currently suspended for consistency and safety across all programs regulated by the department. The amendment will allow the department additional time to complete certification evaluations when it is safe and practical to do so. The department filed a CR-101 under WSR 20-24-092 and is continuing the process of permanent rule making. In addition, under the rule development phase of rule making, the department is in discussions with stakeholders about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary. In the meantime, the department is extending the emergency rule under RCW 34.05.350.

Citation of Rules Affected by this Order: Amending WAC 388-101-3130.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.080.

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

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as CCRSS settings. Current CCRSS rules ensure the department may conduct on-site certification evaluations of each CCRSS service provider at any time, but at least every two years. Due to the suspension of certification evaluations, as proclaimed for all other long-term care settings related to the COVID-19 pandemic, the amendment allows additional time to complete the certification evaluations when the pandemic subsides.

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

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

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

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

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

Date Adopted: November 17, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3130 Certification evaluation. (1) The department may conduct an on-site certification evaluation of each service provider at any time (~~but at least once every two years~~).

(2) During certification evaluations the service provider's administrator or designee must:

(a) Cooperate with department representatives during the on-site visit;

(b) Provide all contractor records, client records, and other relevant information requested by the department representatives;

(c) Ensure the service provider's administrator or designee is available during any visit to respond to questions or issues identified by department representatives; and

(d) Ensure the service provider's administrator or designee is present at the exit conference.

WSR 21-23-112

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 17, 2021, 11:58 a.m., effective November 21, 2021]

Effective Date of Rule: November 21, 2021.

Purpose: The department is extending emergency adoption of WAC 388-439-0005 What is the pandemic EBT program?, 388-439-0010 Eligibility of pandemic EBT benefits for the 2020-2021 school year, 388-439-0015 General information about pandemic EBT benefits, 388-439-0020, Eligibility for pandemic EBT benefits for children under age six, and 388-439-0025 Eligibility for pandemic EBT benefits during the 2021 summer period.

Emergency adoption of these rules support implementation of the pandemic EBT (P-EBT) program for eligible children who do not have access to regular free or reduced-price school meals or child care meals due to limited onsite learning or attendance in any school year in which there is a federal public health emergency designation (as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act, as amended by Section 1108 of H.R. 1319, American Rescue Plan Act of 2021).

Citation of Rules Affected by this Order: New WAC 388-439-0005, 388-439-0010, 388-439-0015, 388-439-0020, and 388-439-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Other Authority: H.R. 6201, 8337, 133, 1319.

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

Reasons for this Finding: Emergency adoption of these rules is necessary to support implementation of the P-EBT program which protects the health, safety, and general welfare of Washington residents by supporting access to public assistance.

The department is showing forward progress with this filing by undertaking appropriate procedures to adopt the rule as a permanent rule and filed a CR-101 Preproposal under WSR 21-23-108.

Number of Sections Adopted in Order to Comply with Federal Statute: New 5, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, 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 5, Amended 0, Repealed 0.

Date Adopted: November 17, 2021.

Katherine I. Vasquez
Rules Coordinator

Chapter 388-439 WAC

PANDEMIC EBT (P-EBT) PROGRAM

NEW SECTION

WAC 388-439-0005 What is the pandemic EBT program? (1) The pandemic electronic benefits transfer (P-EBT) program is a federally funded nutrition program administered by the department of social and health services (department) and provides food benefits to eligible children who do not have access to meals at a covered childcare center or free or reduced-price school meals due to school closures or lack of in-person instruction caused by the COVID-19 public health emergency.

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child based on the school's reported meal service to the majority of students enrolled in the school for the majority of the month;

(b) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(i) Receiving a benefit from a federal-means tested assistance program, including the supplemental nutrition assistance program (SNAP), temporary assistance for needy families (TANF), food distribution program on Indian reservations (FDPIR), some medicaid programs; or

(ii) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program (ECEAP);

(c) "Eligible student" means a child or student, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program (NSLP) and school breakfast program (SBP) during the school year, who is:

(i) Enrolled in a school or registered in a program in Washington state that normally participates in the NSLP;

(ii) Attending a school that has been closed or has reduced attendance or hours for five or more consecutive days during the school year due to the COVID-19 public health emergency designation; and

(iii) Determined by the school to be eligible for free or reduced-priced school meals or attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program. Students are identified as eligible for

free or reduced-price school meals using direct certification or free or reduced-price school meals application;

(d) "Free or reduced-price school meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act;

(e) "Full in-person learning" means meal service is available five days per week to the majority of students enrolled in the school for the majority of the month;

(f) "Majority" means more than fifty percent;

(g) "Meal service" means the typical meals (SBP and NSLP) served when school is in session and consumed onsite as part of the school day. Meal service includes both breakfast and lunch. Schools define the meal service provided to the majority of students enrolled in the school for the majority of the month as follows:

(i) "Full remote learning" means no meal service to students on school campus;

(ii) "Hybrid-learning" means partial in-person learning and meal service on school campus. Due to various hybrid-learning models across the state, the following levels have been defined as:

(A) "Level 1" is one-day meal service per week to students on school campus;

(B) "Level 2" is two-days meal service per week to students on school campus;

(C) "Level 3" is three-days meal service per week to students on school campus; or

(D) "Level 4" is four-days meal service per week to school on school campus;

(h) "Operating days" are days a school regularly operates, excluding weekends, breaks, and holidays;

(i) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible students or children under age six;

(j) "Public health emergency" means a federal declaration of a public health emergency due to the COVID-19 pandemic as issued by the secretary of health and human services;

(k) "School" means any public or nonprofit private schools, charter schools, and tribal compact schools within the state of Washington;

(l) "School closure" means that the school was closed for in-person or remote learning for the majority of the month, with no meal service available to students enrolled in the school;

(m) "Summer period" means the months between the end of the school year and the start of the next school year during which there was a public health emergency.

NEW SECTION

WAC 388-439-0010 Eligibility of pandemic EBT benefits for the 2020-2021 school year. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefit for the 2020-2021 school year, a student must be:

(a) An eligible student as defined under WAC 388-439-0005(2)(b) between September 1, 2020, to June 30, 2021; and

(b) Enrolled in a school that had a school closure, full remote learning, or hybrid-learning meal service during the public health emergency as reported by the school.

(2) An eligible student's P-EBT benefit level is calculated for the 2020-2021 school year by:

(a) Using the full daily meal reimbursement rate of six dollars and eighty-two cents for breakfast, lunch, and snack;

(b) Multiplied by the statewide average operating days of eighteen days per month;

(c) Multiplied using the percentage of benefit reimbursement based on the school's reported meal service under WAC 388-439-0005, reducing in twenty percent intervals as the student attends more days in-person with meal service; and

(d) Rounding the total benefit amount up to the nearest dollar.

Meal service reported	Dollar amount for the month
Full remote learning or school closure—Full benefit	\$123
Hybrid learning—Level 1—80% benefit	\$99
Hybrid learning—Level 2—60% benefit	\$74
Hybrid learning—Level 3—40% benefit	\$50
Hybrid learning—Level 4—20% benefit	\$25

(3) An eligible student is not eligible for P-EBT benefits if the school reports full in-person learning for the majority of students enrolled in the school for the majority of the month.

(4) P-EBT benefits are issued for a retroactive period of time to allow schools to report the applicable meal service during the applicable eligibility period.

(a) An initial one-time P-EBT allotment is issued for the months of September 2020 to January 2021;

(b) A subsequent one-time P-EBT allotment may be issued in April 2021, using the school's reported meal service for the preceding two months of February and March 2021;

(c) A subsequent one-time P-EBT allotment may be issued in June 2021, using the school's reported meal service for April, May, and June 2021; and

(d) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) An eligible student's benefits will be placed on a P-EBT card under WAC 388-439-0015.

(6) Issuance of P-EBT benefits beyond September 30, 2021, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval.

NEW SECTION

WAC 388-439-0015 General information about pandemic EBT benefits. (1) Pandemic electronic benefit transfer (P-EBT) benefits will be deposited into an account accessible with a debit card called a P-EBT card. A P-EBT card

will be issued to each eligible student or child under age six. Each P-EBT card will be:

(a) Linked to an EBT account for each eligible student or child under age six for P-EBT benefits; and

(b) Mailed to either:

(i) The address on file with the school for the eligible student; or

(ii) The address on file with the department for the basic food case for the child under age six.

(2) To use a P-EBT account:

(a) The P-EBT card can be used by the eligible student or child under age six or responsible household member, such as a parent or caregiver, on behalf of the eligible student or child under age six, to access the benefits in their EBT account;

(b) A personal identification number (PIN) has to be created that must be used with the P-EBT card to purchase food items;

(c) P-EBT benefits must be accessed from the P-EBT card of an eligible student or child under age six. P-EBT benefits cannot be transferred to a bank account or issued as a check;

(d) P-EBT benefits that are not used within two hundred seventy-four days from the last purchase or deposit activity on the eligible child's account will be removed; and

(e) P-EBT benefits cannot be replaced once redeemed or removed. Families are responsible for keeping the P-EBT card and PIN of an eligible student or child under age six in a safe and secure place.

(3) The purpose of P-EBT benefits is to help low-income families or individuals have a more nutritious diet by providing food benefits to eligible children due to the COVID-19 public health emergency.

(a) P-EBT benefits are used to buy food items for an eligible child (or youth) from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. department of agriculture food and nutrition service (FNS).

(b) Use P-EBT benefits the same as other food benefits under WAC 388-412-0046 (2)(c).

(c) It is not legal to use P-EBT benefits as described under WAC 388-412-0046 (2)(d).

(d) If people intentionally misuse P-EBT benefits, they may be:

(i) Subject to fines; or

(ii) Subject to legal action, including criminal prosecution. Department of social and health services (DSHS) will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking in P-EBT benefits.

NEW SECTION

WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between October 1, 2020, to June 30, 2021;

(b) Under the age of six; and

(c) Residing in a county with at least one school in that county that had a school closure, full remote learning, or hybrid-learning meal service during the public health emergency as reported by the school.

(2) Children who do not qualify for federally funded P-EBT benefits because they are on state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between October 1, 2020, to June 30, 2021.

(b) State-funded P-EBT benefits is contingent on the availability of state funds.

(3) We calculate a county standard benefit level for each month of P-EBT eligibility by:

(a) Using the full daily meal reimbursement rate of six dollars and eighty-two cents for breakfast, lunch, and snack;

(b) Multiplied by the statewide average operating days of eighteen days per month;

(c) Multiplied using a percentage of benefit reimbursement based on the school's reported meal service under WAC 388-439-0005 using the lowest available on-site meal service for at least one school in each county of the child's residence, as follows:

(i) One hundred percent if the lowest meal service is full remote learning or school closure;

(ii) Seventy percent if the lowest school meals service reported is hybrid learning - Level 1 or hybrid learning - Level 2; or

(iii) Thirty percent if the lowest school meal service reported is hybrid learning - Level 3 or hybrid learning - Level 4; and

(d) Rounding the total benefit amount up to the nearest dollar.

County lowest on-site school meal service	Dollar amount for the month
Full remote learning or school closure—Full benefit	\$123
Hybrid learning—Level 1—or Hybrid learning—Level 2—70% benefit	\$86
Hybrid learning—Level 3—or Hybrid learning—Level 4—70% benefit	\$37

(e) P-EBT benefits are issued for each month that:

(i) The household receives a SNAP or FAP benefit more than zero dollars; and

(ii) There is limited on-site meal service for at least one school in the county.

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as follows:

(a) An initial one-time P-EBT allotment is issued for the months of October 2020 to March 2021;

(b) A subsequent one-time P-EBT allotment is issued for the months of April to June 2021; and

(c) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(6) A child under age six who received P-EBT as an eligible student under WAC 388-439-0005 (2)(d) and WAC 388-439-0010, but who would receive more benefits as a child under age six under this section will be supplemented by federal or state funded P-EBT benefits. The child's total benefit amount is not to exceed the maximum P-EBT benefit of \$123 per month.

(7) Issuance of P-EBT benefits beyond September 30, 2021, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

NEW SECTION

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2021 summer period. (1) During the summer period of July and August 2021, schools and covered childcare centers will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after 2020-2021 school year, prior to August 31, 2021, a child must be:

(a) An eligible student as defined under WAC 388-439-0005(c) in June 2021; or

(b) A child under age six, as defined under WAC 388-439-0020(1), between June 1, 2021, to August 31, 2021.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$375 for the 2021 summer period.

(4) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(5) Issuance of summer period benefits beyond September 30, 2021, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.