

WSR 20-19-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-177—Filed September 2, 2020, 4:32 p.m., effective September 4, 2020]

Effective Date of Rule: September 4, 2020.

Purpose: The purpose of this rule is to open the recreational salmon fishery in Catch Record Card Area 2, seven days per week and to allow retention of up to two Chinook as part of the salmon daily limit.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07000Z and 220-313-07000A; and amending WAC 220-313-070.

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

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

Reasons for this Finding: As of August 30, 2020, Catch Area 2 was at thirty-five percent of recreational harvest guideline for Chinook of twelve thousand four hundred sixty fish and coho was at fifty-seven percent of recreation harvest quota of nine thousand eight hundred fish. Current catch rates indicate there is sufficient quota available to open the fishery seven days per week and to allow up to two Chinook to be retained as part of the daily limit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 2, 2020.

Kelly Susewind
 Director

NEW SECTION

WAC 220-313-07000A Coastal salmon—Saltwater seasons and daily limits. Effective September 4 through September 30, 2020 the provisions of WAC 220-313-070 regarding recreational salmon seasons for Marine Areas 1, 2 and 4 shall be as described below. All other provisions of

WAC 220-313-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

- (1) **Catch Record Card Area 1:** Closed.
- (2) **Catch Record Card Area 2:**
 - (a) Daily limit 2 salmon.
 - (b) Release wild Coho.
 - (c) Chinook minimum size 22 inches.
- (3) **Catch Record Card Area 4:** Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 4, 2020:

WAC 220-313-07000Z Coastal salmon—Saltwater seasons and daily limits. (20-151)

The following section of the Washington Administrative Code is repealed effective October 1, 2020:

WAC 220-313-07000A Coastal salmon—Saltwater seasons and daily limits. (20-177)

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 20-19-004
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed September 3, 2020, 8:57 a.m., effective September 4, 2020]

Effective Date of Rule: September 4, 2020.

Purpose: The department is extending emergency amendments to WAC 388-466-0120 Refugee cash assistance (RCA).

Based on federal waiver approval from the federal Office of Refugee Resettlement, these amendments will implement extended RCA benefits during this time of economic hardship caused by the COVID-19 (also known as coronavirus) pandemic.

Citation of Rules Affected by this Order: Amending WAC 388-466-0120.

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

Other Authority: 45 C.F.R. § 400.300.

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 filing is necessary to extend existing emergency rules originally filed under WSR 20-10-118, which protects the health, safety, and general welfare of Washington residents by supporting ongoing access to public assistance under the RCA program during this time of economic hardship caused by the COVID-19 (also known as

coronavirus) pandemic. The department filed notice of its intent to adopt the rule as a permanent rule under WSR 20-14-024, and is actively undertaking appropriate procedures to adopt the rule as a permanent rule.

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

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

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

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

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

Date Adopted: September 1, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-03-137, filed 1/23/13, effective 2/23/13)

WAC 388-466-0120 Refugee cash assistance (RCA).

(1) Who can apply for refugee cash assistance (RCA)?

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) How do I know if I qualify for RCA?

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than eight months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) What are the other reasons for not being eligible for RCA?

You may not be able to get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or supplemental security income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

(4) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?

You are eligible for RCA to the same extent as a refugee if you are:

(a) An adult victim, eighteen years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter;

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

(6) Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) What is the effective date of my eligibility for RCA?

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) When does my RCA end?

(a) Your RCA ends on the last day of the eighth month starting with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

(b) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA.

(c) You may receive RCA benefits for more months if the federal office of refugee resettlement extends your eligibility period.

(9) Are there other reasons why RCA may end?

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

(a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States.

(b) If you live together, you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on you and your spouse's combined income and resources (WAC 388-466-0140).

(11) Can I get additional money in an emergency?

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or an administrative hearing (WAC 388-02-0090). Your request must be made within ninety days of the date of the decision or action.

**WSR 20-19-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-180—Filed September 3, 2020, 1:30 p.m., effective September 3, 2020, 1:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to open two recreational halibut days in Marine Area 1 and one recreational halibut day in Marine Area 2, in addition to recreational halibut seasons in Marine Areas 1 through 10 already established by WSR 20-15-135. This will also align sport fishing rules with federal rules adopted by the National Marine Fisheries Service.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000A and 220-314-03000B; and amending WAC 220-314-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Under the Halibut Convention Act, the National Marine Fisheries Service (NMFS) has the authority to promulgate regulations for domestic halibut regulations and the states are required to conform. Therefore, this rule conforms to NMFS's final rule, which is consistent with the actions taken by the Pacific Fishery Management Council and the International Pacific Halibut Commission.

As noted in WSR 20-15-135, if catch is slower than anticipated, additional days could be added to the season. This is the case, catch has been slower than anticipated. As of

August 23, 2020, a little over forty-three percent of catch quota remains available in Marine Areas 2, (or 27,313 of 62,896 pounds of quota); and a little over eighty-five percent of catch quota remains in Marine Area 1, (or 15,305 of 17,950 pounds of quota). The recreational halibut quota is sufficient to provide for these additional days in Marine Areas 1 and 2. Halibut catch will continue to be closely monitored by the Washington department of fish and wildlife staff, the season could close earlier if quotas are achieved.

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 2.

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

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

Date Adopted: September 3, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000B Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-040, and 220-314-010, effective immediately through September 30, 2020, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-040, and 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

(1) Catch Record Card Area 1:

(a) Open August 27, and 30; September 3, 4, 6, 10, 11, 13, 17, 20, 24, and 27, 2020. (Thursdays and Sundays, through September 27, 2020 and Fridays September 4 and 11, 2020.)

(b) Lingcod can be retained when halibut are on board, during the halibut season north of the Washington-Oregon border.

(2) Catch Record Card Area 1 (Nearshore fishery); Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

(a) Open August 31; September 1, 2, 7, 8, 9, 14, 15, 16, 21, 22, 23, 28, 29, and 30 2020. (Mondays through Wednesdays through September 30, 2020.)

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) Catch Record Card Area 2:

Open September 3, 4, 6, 10, 11, 13, 17, 20, 24, and 27, 2020. (Thursdays and Sundays through September 27, 2020 and Friday September 4 and 11, 2020.)

(4) Card Areas 3 and 4:

Open August 27, 28, and 29; September 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, and 26, 2020. (Thursdays and Saturdays through September 26, 2020.)

(5) Catch Record Card Area 5 through 10:

(a) Open August 27, 28, and 29; September 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, and 26, 2020. (Thursdays through Saturdays, through September 26, 2020.)

(b) It is permissible for halibut anglers to retain Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Area 5.

(6) Catch Record Card Areas 11, 12 and 13: Closed.

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 220-314-03000A Halibut—Seasons—Daily and possession limits. (20-165)

The following section of the Washington Administrative Code is repealed effective October 1, 2020:

WAC 220-314-03000B Halibut—Seasons—Daily and possession limits.

**WSR 20-19-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-181—Filed September 3, 2020, 4:13 p.m., effective September 3, 2020, 4:13 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

life commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Allowable harvest of Columbia River salmonids remains available to provide additional fishing opportunity to the previously planned tribal commercial fishery period in areas SMCRA 1F, 1G, 1H. This rule is consistent with actions of the Columbia River Compacts on June 8, June 30, July 8, July 15, July 30, August 13, and September 3, 2020. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

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

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

Date Adopted: September 3, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000F Columbia River salmon seasons. Effective immediately until further notice, the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Season: Immediately through 6:00 PM December 31.

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

(c) Allowable sale: Salmon (any species) and steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

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

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

(a) Season: Immediately through 6:00 PM September 4 6:00 AM Monday September 7 through 6:00 PM Friday September 11

(b) Gear: Set and Drift Gillnets with an 8-inch minimum mesh size

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

(d) Standard sanctuaries applicable to gillnet gear. The standard Spring Creek Hatchery Sanctuary is in place.

3) Open Areas: SMCRA 1E1 (Downstream of Bonneville Dam)

(a) Season: Immediately through 11:59 PM October 31, 2020, only during days and times opened under tribal rules. Enrolled members of the Yakama, Warm Springs, Nez Perce, and Umatilla tribes when lawfully permitted by Treaty regulations under provisions of the agreements with the states of Oregon and Washington. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

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

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

sold or retained for subsistence. Sturgeon may not be retained in the fisheries downstream of Bonneville Dam.

4) Open Areas: Wind River, Drano Lake, and Klickitat River

(a) Season: Wind River open immediately until further notice and Drano Lake and Klickitat River immediately through 6:00 PM December 31 only during those days and hours when the tributaries listed are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and Reel with Hook and Line. Gillnets may only be used in Drano Lake.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000E Columbia River salmon seasons.
(20-161)

WSR 20-19-016

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-179—Filed September 3, 2020, 4:15 p.m., effective September 3, 2020, 4:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial shrimp rules in Puget Sound.

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

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) defines the shrimp management areas and regions open to spot and non-

spot commercial harvest; (2) sets harvest restrictions for the nonspot commercial pot fishery; (3) sets harvest restrictions for the spot commercial pot fishery; (4) sets the harvest and gear limitations for the Puget Sound shrimp trawl fishery; (5) requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers; (6) opens Shrimp Management Areas 1A and 1B for harvest of spot shrimp with a specified catch limit; (7) closes Catch Area 23A-S and 23D and Shrimp Management Area 1C to harvest of spot shrimp because commercial quota has been met in those areas; (8) changes the catch limits and dates for the third spot shrimp accounting period to allow harvest in specific areas between August 26, 2020, and September 8, 2020; and (9) sets area-based sublimits to meter and disperse effort. This additional catch accounting period will provide an opportunity to target some of the remaining available resource before the end of the season on September 15, 2020. Additionally, this adjustment streamlines the Washington department of fish and wildlife staff workflow and optimizes the economic utility of the commercial share of the resource.

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

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

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

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

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

Date Adopted: September 3, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000X Puget Sound shrimp pot and trawl fishery—Season. Effective immediately until further notice, pursuant to RCW 34.05.350, the following provisions of WAC 220-340-520 regarding Puget Sound commercial shrimp pot harvest, non-spot shrimp harvest, spot shrimp harvest, trawl shrimp harvest and sales shall be described below. All other provisions of WAC 220-340-520 not addressed herein, and unless otherwise amended, remain in effect:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 2E, 2W and 3 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Areas) 23A-E, 23A-W, 23A-C, and 23A-S are closed to the harvest of non-spot shrimp until the spot quota is attained in all sub-areas of 23A. Catch

Areas 23A-E, 23A-W, 23A-C, and 23A-S AE are within Shrimp Management Area 3 and comprise Catch Area 23A.

(ii) Effective immediately it is unlawful to harvest spot shrimp from sub-area 23A-E, 23A-W, 23A-S and 23D.

(iii) Shrimp Management Area 1A is closed to harvest of non-spot shrimp until the spot shrimp quota is attained in all Catch Areas of 1A.

(iv) Effective immediately it is unlawful to harvest non-spot shrimp from Region 2E. Region 2E is composed of Catch Areas 24A, 24B, 24C, 24D, and 26AE.

(v) Discovery Bay Shrimp District is closed to the harvest of all shrimp species.

(vi) Shrimp Management Areas 2E and 2W are closed to the harvest of spot shrimp.

(vii) Effective 11:59 pm on September 5th, 2020 Shrimp Management Area 1C will close to harvest of spot shrimp.

(b) It is unlawful to harvest non-spot and spot shrimp in the same day.

(c) It is unlawful to harvest shrimp in more than one Shrimp Management Area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly from Wednesday through Tuesday, totaling 7 days in length.

(b) It is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from Shrimp Management Areas 1B, 1C, 2E, and 2W combined.

(c) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Region 2W. Region 2W is comprised of Catch Areas 25B, 25C, 25D, and 26AW.

(d) Harvest of non-spot shrimp is not permitted deeper than 150 feet in Region 2E. Region 2E is comprised of Catch Areas 24A, 24B, 24C, 24D, and 26AE (26A northerly of a line drawn from the southern tip of Possession Point on Whidbey Island 110° true to the shipwreck on the opposite shore).

(3) Shrimp Spot Pot Harvest Restrictions:

(a) The third spot shrimp catch accounting period is from 12:00 am on August 26, 2020 through 11:59 p.m. on September 8, 2020.

(b) It is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 1000 pounds for the third catch accounting period from Shrimp Management Areas 1A, 1B, 1C, and Catch Areas 23A-C, 23B and 25A combined. Catch Areas 23A-C, 23B and 25A are within Shrimp Management Area 3.

(c) It is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 1200 pounds for the third catch accounting period from Shrimp Catch Areas 23A-S, 23D, 23C and 29 combined. Shrimp Catch Areas 23A-S, 23D, 23C and 29 are within Shrimp Management Area 3.

(d) It is unlawful for harvest to exceed 150 lbs. in either Shrimp Management Area 1A, 1B or 1C for the third catch accounting period.

(e) It is unlawful for harvest to exceed 400 lbs. in Shrimp Catch Areas 23A-W and 25A for the third catch accounting period. Shrimp Catch Area 23A-W and 25A is within Shrimp Management Area 3.

(f) It is unlawful for harvest to exceed 250 lbs. in Shrimp Catch Area 23A-C for the third catch accounting period.

(g) For the catch accounting periods defined in 3(a) of this rule each fisher or alternate operator is required to report their intended catch area of harvest prior to the deployment of any spot shrimp gear to either shrimp.report@dfw.wa.gov or by text message to 360-302-6372.

(4) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) The remaining portion of Catch Area 22A within SMA 1B is open immediately, until further notice.

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

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

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 section of the Washington Administrative Code is repealed:

WAC 220-340-52000W Puget Sound shrimp pot and trawl fishery—Season. (20-172)

WSR 20-19-017 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 20-178—Filed September 3, 2020, 5:07 p.m., effective September 5, 2020]

Effective Date of Rule: September 5, 2020.

Purpose: Columbia River sturgeon and salmon fisheries.

Citation of Rules Affected by this Order: 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 rule is needed to allow a limited harvest of white sturgeon in the Columbia River and additional recreational salmon angling opportunity below

Bonneville Dam. The legal size white sturgeon population is large enough to allow for a retention fishery within the lower Columbia River. Room for additional recreational fishery impacts to upriver bright and lower river hatchery fall Chinook as well as coho remain under the preseason fishing plan. This action is consistent with decisions made by the states of Washington and Oregon on September 3, 2020. There is insufficient time to adopt permanent regulations.

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

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

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

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

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

Date Adopted: September 3, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia River. Effective September 5, until further notice, the provisions of WAC 220-312-060 regarding recreational sturgeon seasons in the Columbia River downstream of Bonneville Dam and the Cowlitz River shall be as described below. All other provisions of WAC 220-313-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From Wauna powerlines upstream to Bonneville Dam, including the Cowlitz River:

(a) It is permissible to retain white sturgeon on Saturday, September 12 and Saturday, September 19, 2020.

(i) The daily limit of white sturgeon is one fish.

(ii) Minimum fork length 44 inches. Maximum fork length 50 inches.

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

(2) From a true North and South line through Buoy 10 to the Megler Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (CRC 519) upstream to the Rocky Point/Tongue Point line:

(a) Chinook and coho: Effective September 5 and September 6, 2020: Up to 2 adult salmon may be retained, no more than 1 may be a Chinook. Coho minimum size 16 inches. Release all steelhead and wild coho.

(b) Effective September 7 through September 22, 2020: 2 hatchery coho may be retained. Coho minimum size 16 inches. Release all other salmon and steelhead.

(c) Effective September 23 through October 31, 2020: 2 adult daily limit, no more than 1 may be a Chinook. Coho minimum size 16 inches. Release all steelhead and wild coho. Retention of jack salmon prohibited until October 1.

(d) Effective November 1 through December 31, 2020: 2 adult daily limit, no more than 1 may be a Chinook and no more than 1 may be a steelhead. Coho minimum size 16 inches. Release all wild coho and wild steelhead.

WSR 20-19-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-182—Filed September 8, 2020, 4:29 p.m., effective September 8, 2020, 4:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to amend WSR 20-19-017 to require the release of chum salmon from the Columbia River mouth to the Megler-Astoria Bridge through December 31.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000U and 220-312-06000V; 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 rule is needed to correct chum salmon limits filed under WSR 20-19-017. Chum salmon should be released at all times in the Columbia River, this rule was inadvertently omitted in WSR 20-19-017 and is a rule that was agreed to during the preseason North of Falcon proceedings.

There is insufficient time to adopt permanent regulations.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: September 8, 2020.

Kelly Susewind

NEW SECTION

WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia River. Effective immediately through December 31, 2020, the provisions of WAC 220-312-060 regarding recreational sturgeon seasons in the Columbia River downstream of Bonneville Dam and the Cowlitz River and Columbia River salmon seasons from the mouth (Buoy 10) to the Rocky Point/Tongue Point line, shall be as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From Wauna powerlines upstream to Bonneville Dam, including the Cowlitz River:

(a) It is permissible to retain white sturgeon on Saturday, September 12 and Saturday, September 19, 2020.

(i) The daily limit of white sturgeon is one fish.

(ii) Minimum fork length 44 inches. Maximum fork length 50 inches.

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

(2) From a true North and South line through Buoy 10 to the Megler Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (CRC 519) upstream to the Rocky Point/Tongue Point line:

(a) Effective immediately through September 22, 2020: Daily limit 2. Coho minimum size 16 inches. Release all salmon other than hatchery coho. Release all steelhead.

(b) Effective September 23 through September 30, 2020: Daily limit 2, no more than 1 may be a Chinook. Coho minimum size 16 inches. Chinook minimum size 24". Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(c) Effective October 1 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained, no more than 1 may be a Chinook. Coho minimum size 16 inches. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(d) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, no more than 1 may be a Chinook and no more than 1 may be a steelhead. Coho minimum size 16 inches. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

REPEALER

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

WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia River. (20-178)

The following section of Washington Administrative Code is repealed, effective January 1, 2021:

WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia River.

WSR 20-19-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-174—Filed September 8, 2020, 4:42 p.m., effective September 11, 2020]

Effective Date of Rule: September 11, 2020.

Purpose: The purpose of this rule to open gamefish to no limits or size restrictions in Hatch Lake and McDowell Lake to maximize recreational harvest prior to the lake rehabilitation effort beginning October 12, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000I; and amending WAC 220-312-050.

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

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

Reasons for this Finding: Lake rehabilitation efforts utilizing rotenone to remove undesirable fish species are scheduled to begin on Hatch Lake and McDowell Lake beginning October 12, 2020. To maximize recreational harvest of gamefish and to take advantage of the resource, all daily limits and size restrictions are being removed from these lakes prior to the rehabilitation effort. In addition, the fly fishing only restriction is being removed from McDowell Lake.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 8, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000I Freshwater exceptions to statewide rules—Eastside. Effective September 11 through October 11, 2020 the following provisions of WAC 220-312-050 regarding gamefish seasons for Hatch and McDowell lakes shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or otherwise amended by emergency rule, remain in effect:

(1) Hatch Lake (Stevens County): Gamefish: No daily limit. No size restrictions.

(2) McDowell (Stevens County): Gamefish:

(a) No Daily limit. No size restrictions.

(b) Conventional fishing gear is allowed.

REPEALER

The following section of the Washington Administrative Code is repealed, effective October 12, 2020:

WAC 220-312-05000I Freshwater exceptions to statewide rules—Eastside. (20-174)

WSR 20-19-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-176—Filed September 9, 2020, 11:18 a.m., effective September 9, 2020, 11:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close the coastal commercial crab season and to allow for permitted gear recovery from September 16 through the month of October.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45000T and 220-340-49000D; and amending WAC 220-340-490.

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: In order to protect crab during the typical fall molting period and to meet the stipulations found in state tribal agreements, it is necessary to close the commercial crab fishery. Washington department of fish and wildlife permitted gear recovery is allowed by permanent regulation fifteen days following the close of the commercial season to allow fish and wildlife officers time to enforce rules relative to fishing during the closed season. This rule change allows an earlier start to the permitted gear recovery, beginning on September 16 which gives participants more time to recover lost gear before weather conditions becomes prohibitive to safe gear recovery efforts. The enforcement program is supportive of allowing this earlier gear recovery opportunity.

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: September 9, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-49000D Coastal crab Fishery—Coastal crab gear recovery permit. Effective 8:01 AM September 16, 2020 until 11:59 PM October 31, 2020, the provisions of WAC 220-340-490 regarding gear recovery shall be as described below. All other provisions of WAC 220-340-490 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) A coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean in the coastal waters between the Washington/Oregon border (46°15.00) and the US/Canada border, including the Columbia River, Willapa Bay and Grays Harbor.

(2) No crab may be retained on any vessel engaged in permitted gear recovery activities or while recovered gear is on board the vessel.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 PM September 15, 2020:

WAC 220-340-45000T Commercial crab fishery—Seasons and areas—Coastal. (20-60)

The following section of the Washington Administrative Code is repealed effective November 1, 2020:

WAC 220-340-49000D Coastal crab fishery—Coastal crab gear recovery permit. (20-176)

**WSR 20-19-035
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-183—Filed September 9, 2020, 11:20 a.m., effective September 9, 2020, 11:20 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial shrimp rules in Puget Sound.

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

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes the pot fishery season for spot shrimp; (2) opens spot shrimp for the final clean-up fishery in SMAs 2W, 3, and 6; (3) defines the Shrimp Management Areas and regions open to spot and nonspot commercial harvest; (4) sets harvest restrictions for the nonspot commercial pot fishery; (5) sets harvest restrictions and available quota remaining for the spot commercial pot fishery; (6) sets the harvest and gear limitations for the Puget Sound shrimp trawl fishery; and (7) requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000Y Puget Sound shrimp pot and trawl fishery—Season. Effective immediately until further notice, pursuant to RCW 34.05.350, the following provisions of WAC 220-340-520 regarding Puget Sound commercial shrimp pot harvest, non-spot shrimp harvest, spot shrimp harvest, trawl shrimp harvest and sales shall be described below. All other provisions of WAC 220-340-520 not addressed herein, and unless otherwise amended, remain in effect:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 2W, 3 and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Areas) 23A-E, 23A-W, 23A-

C, and 23A-S are closed to the harvest of non-spot shrimp until the spot quota is attained in all sub-areas of 23A. Catch Areas 23A-E, 23A-W, 23A-C, and 23A-S AE are within Shrimp Management Area 3 and comprise Catch Area 23A.

(ii) Effective immediately it is unlawful to harvest spot shrimp from sub-areas 23A-W, 23A-C, 25A, and 28A-D. Catch Areas 23A-W, 23A-C and 25A are within Shrimp Management Area 3. Catch Area 28A-D is within Shrimp Management Area 6.

(iii) Discovery Bay Shrimp District is closed to the harvest of all shrimp species.

(b) It is unlawful to harvest non-spot and spot shrimp in the same day.

(c) It is unlawful to harvest shrimp in more than one Shrimp Management Area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly from Wednesday through Tuesday, totaling 7 days in length.

(b) It is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from Shrimp Management Areas 2W combined.

(c) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Region 2W. Region 2W is comprised of Catch Areas 25B, 25C, 25D, and 26AW.

(3) Shrimp Spot Pot Harvest Restrictions:

(a) All waters of Shrimp Management Area 2W are open to the harvest of all shrimp species. There are 750 pounds of spot shrimp quota remaining in Shrimp Management Area 2W.

(b) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 23A East in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 1005 pounds of quota remaining in Catch Area 23A East.

(c) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 23A South and 23D in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 935 pounds of quota remaining in Catch Area 23A South/23D.

(d) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 23C in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 1200 pounds of quota remaining in Catch Area 23C.

(e) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 29 in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 500 pounds of quota remaining in Catch Area 29.

(f) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 26D are open to harvest of spot shrimp. There are 500 pounds of quota remaining in Catch Area 26D. Catch Areas 26D is within Shrimp Management Area 6.

(g) For the catch accounting periods defined in 3(a) of this rule each fisher or alternate operator is required to report their intended catch area of harvest prior to the deployment of any spot shrimp gear to either shrimp.report@dfw.wa.gov or by text message to 360-302-6372.

(4) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) The remaining portion of Catch Area 22A within SMA 1B is open immediately, until further notice.

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

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 section of the Washington Administrative Code is repealed:

WAC 220-340-52000X Puget Sound shrimp pot and trawl fishery—Season. (20-179)

WSR 20-19-037

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-184—Filed September 9, 2020, 3:20 p.m., effective September 9, 2020, 3:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close the Puget Sound commercial sea cucumber fishery in sea cucumber Management District 2-1 (Areas 23A, 23C, 23D, and 29).

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000V; and amending WAC 220-340-730.

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 close the Puget Sound commercial sea cucumber fishery in sea cucumber Management District 2-1 (23A, 23C, 23D, 29). This harvest quota has been reached, and this closure is necessary to prevent over harvest. Harvestable surpluses of sea cucumbers remain in districts specified to remain open.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000W Commercial sea cucumber fishery. Effective immediately and until further notice, or until this rule expires on November 26, 2020 pursuant to RCW 34.05.350, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest and sales shall be described below. All other provisions of WAC 220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following catch record areas of Sea Cucumber District 1, Monday through Sunday of each week: 20A, 20B, 21A, 21B, 22A, 22B.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license.

REPEALER

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

WAC 220-340-73000V Commercial sea cucumber fishery.
(20-175)

WSR 20-19-038

EMERGENCY RULES

THE EVERGREEN STATE COLLEGE

[Filed September 9, 2020, 4:50 p.m., effective September 9, 2020, 4:50 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Purpose: Update our student rules to be in compliance with new Title IX federal regulations from the Department of Education. The new rules went into effect on August 14, 2020.

Citation of Rules Affected by this Order: New 9; and amending 10.

Statutory Authority for Adoption: RCW 28B.40.120 (12).

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

Reasons for this Finding: Federal Title IX regulations required this be implemented by August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 10, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 9, 2020.

Daniel Ralph
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-170 Prohibited conduct. The code of student rights and responsibilities recognizes two types of prohibited conduct: Conduct related to community, and conduct related to persons. The subsections below outline the basic structures of community that the code seeks to uphold, and the basic rights and expectations of students that the code seeks to support. Conduct prohibited under Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, and associated procedures are set out in WAC 174-123-355 to 174-123-440 (supplemental Title IX student conduct procedures).

(1) Conduct related to community.

The Evergreen State College community is a vibrant and engaged collective of individuals who have committed to the mission of the college. The college's mission statement reads as follows: "As an innovative public liberal arts college, Evergreen emphasizes collaborative, interdisciplinary learning across significant differences. Our academic community engages students in defining and thinking critically about their learning. Evergreen supports and benefits from local and global commitments to social justice, diversity, environmental stewardship and service in the public interest." Students are encouraged to continue to grow individually while contributing to and shaping the Evergreen community as each person brings new ideas, new perspectives, and renewed focus that is invaluable at a liberal arts college.

Students in the college community are expected to practice academic integrity: To author their own ideas and critique and evaluate others' ideas in their own voices. The

greater learning community of the college can thrive only if each person works with a genuine commitment to make their own authentic intellectual discoveries. To that end it is a community expectation that students and recognized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

(a) **Academic dishonesty** which includes, but is not limited to, the following:

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

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

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

(iv) Using assistance or materials that are expressly forbidden to complete an academic product or assignment;

(v) The unauthorized collaboration with any other person during the completion of independent academic work;

(vi) Knowingly falsifying or assisting in falsifying in whole, or in part, the contents of one's academic work;

(vii) Permitting any other person to substitute oneself to complete academic work; or

(viii) Engaging in any academic behavior specifically prohibited by a faculty member in the course covenant, syllabus, or individual or class discussion.

(b) **Damaging, defacing, destroying, or tampering** with college property or other personal or public property. This includes, but is not limited to, graffiti and vandalism.

(c) **Disorderly conduct** which includes any individual or group behavior which is abusive, obscene, violent, excessively noisy, or which unreasonably disturbs institutional functions, operations, classrooms, other groups or individuals. These behaviors include, but are not limited to, those which obstruct or interfere with institutional activities, programs, events, or facilities, such as:

(i) Any unauthorized occupancy of facilities owned or controlled by the college, or blockage of access to or from such facilities, or the occupation of college property after being given notice to depart;

(ii) Interference with the ability of any authorized person to gain access to any activity, program, event, or facility sponsored or controlled by the college;

(iii) Any obstruction or delay of a public safety officer, police officer, firefighter, EMT, or any official of the college;

(iv) The use of force or violence (actual or threatened) to deny, impede, obstruct, impair, or interfere with the freedom of movement of any person, or the performance of duties of any college employee;

(v) Participation in a disruptive or coercive demonstration. A demonstration is considered disruptive or coercive if it substantially impedes college operations, interferes with the rights of others, or takes place on premises or at times where students are not authorized to be;

(vi) Obstruction of the free flow of pedestrian or vehicular traffic on college property or at college sponsored/supervised functions; or

(vii) Public urination or defecation.

(d) **Disruptive behavior in the classroom** may be defined as, but not limited to, behavior that unreasonably obstructs or disrupts the learning environment (e.g., outbursts which disrupt the flow of instruction or prevent concentration on the subject taught, failure to cooperate in maintaining the learning community as defined in the course syllabus or covenant, and the continued use, after being given notice to stop, of any electronic or other noise or light emitting device which disturbs others, unless use of such technologies are an authorized accommodation for a documented disability for that program).

The faculty member has responsibility for maintaining a productive classroom and can order the temporary removal or exclusion from the classroom of any student engaged in disruptive behavior or behavior that violates the general rules and regulations of the college for each class session during which the behavior occurs. Extended or permanent exclusion from the classroom, beyond the session in which the conduct occurred, or further conduct action can be effected only through appropriate procedures of the college. The faculty member may also report incidents of classroom misconduct to the student conduct office.

(e) **Forgery, alteration, or the misuse** of college documents, records or identification cards.

(f) **Failure to comply** with the direction of or failure to identify yourself to a college official or other public official acting in the performance of their duties.

(g) **Unauthorized entry** into or onto, or the unauthorized remaining in, or upon, any college premises; or the unauthorized possession, duplication, or use of a college key or other access device.

(h) **Sounding of a false alarm** which includes, but is not limited to, initiating or causing to be initiated any false report, warning or threat, such as that of fire, explosion or emergency that intentionally causes a false emergency response; and the improper use or disabling of safety equipment and signs.

(2) Conduct related to persons.

Students of The Evergreen State College are to practice good citizenship in the campus community and beyond. Our collective efforts include implementation of the education, experiential learning, and skills gained through engagement with the faculty, staff, and students of the college. Engagement can be through civil discussions, a free exchange of ideas, participation in events and programs, or through other interactions where the desire to create spaces for learning are present. Students are encouraged to pursue new opportunities to engage and expand their intellectual curiosities and develop an understanding of the global society in which we live.

Students in the college community participate with fellow community members (faculty, staff, students, and members of the community beyond The Evergreen State College) in dialogue, educational activities, social events, and more with a focus on civil engagement and being one's best self. To that end it is a community expectation that students or recog-

nized organizations will not engage in the following prohibited conduct, which constitute violations of this code:

(a) **Alcohol, drug, and tobacco violations.**

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

(ii) **Cannabis.** The use, possession, delivery, or sale of cannabis or the psychoactive compounds found in cannabis, regardless of form, or being observably under the influence of cannabis or the psychoactive compounds found in cannabis. Cannabis use and possession is illegal under federal law and the college is required to prohibit the possession, use and distribution of illicit drugs, including cannabis, as a condition of receiving federal funding.

(iii) **Drugs.** The use, possession, delivery, sale, manufacture, or being observably under the influence of any mood altering drug, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(iv) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products is prohibited except as allowed by college policy in designated smoking areas. Related products include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(b) **Assault.** Unwanted touching, physical harm or abuse, or threats of physical harm or abuse which threaten the health or safety of another person.

(c) **Cyber misconduct.** The term "cyber misconduct" includes, but is not limited to, behavior involving the use of a computer, computer network, the internet, or use of electronic communications including, but not limited to, electronic mail, instant messaging, list serves, electronic bulletin boards/discussion boards, ad forums and social media sites or platforms, to disrupt college function, adversely affect the pursuit of the college's objectives, or to stalk, harm or harass, or engage in other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person, or which is sufficiently severe, persistent, or pervasive that it interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(d) **Failure to be truthful to the college or a college official.** This includes, but is not limited to, knowingly making false charges against another member of the college community; and providing false or misleading information in an application for admission or to gain employment.

(e) **Failure to follow fire safety regulations.** Failure to evacuate during a fire alarm; the improper use or damaging of fire prevention or safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations, or emergency exits; or the unauthorized setting of fires.

(f) **Harm.** Behavior directed at an individual that based on a reasonable person's standard is sufficiently severe, pervasive, or persistent such that it diminishes or interferes with the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college or an employee to engage in their work duties. This includes,

but is not limited to, intimidation, verbal abuse, threat(s), bullying, or other conduct which threatens or is reasonably perceived as threatening the physical or mental safety of another person. Bullying is repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates another person.

(g) **Harassment.** Conduct against a person on the basis of protected status that is sufficiently severe, pervasive, or persistent as to interfere with or diminishes the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(h) **Hazing.** Conduct that includes any activity or method of initiation into a recognized organization or student social, living, learning, or athletic group that causes, or is likely to cause, bodily danger or physical or mental harm to any member of the college community.

(i) **Knowingly assisting another person to violate the code** or failing to report to a college official conduct that constitutes significant damage to property or a serious danger to the health or physical safety of an individual.

(j) **Lewd conduct.** Behavior which is sexualized or obscene that is not otherwise protected under the law including, but not limited to, exposing genitalia, and engaging in sexual intercourse or sexual activity in public.

(k) **Obstructive behavior in conduct conferences or hearings.** Any conduct at any stage of a process or investigation that is threatening or disorderly, including:

(i) Failure to abide by the directives of a student conduct official or college official(s) in the performance of their duties;

(ii) Knowing falsification, distortion, or misrepresentation of information before a student conduct official or hearing panel;

(iii) Deliberate disruption or interference with the orderly conduct of a conduct conference or hearing proceeding;

(iv) Making false statements to any student conduct officials or hearing panel;

(v) Attempting to influence the impartiality of a member of a hearing panel or a student conduct official prior to, or during the course of, a proceeding; or

(vi) Harassment or intimidation of any participant in the college conduct process.

(l) **Recording.** The recording of any private conversation, by any device, without the voluntary permission of all persons engaged in the conversation except as permitted by state law, chapter 9.73 RCW. For purposes of this section, the term "permission" will be considered obtained only when one party has announced to all other parties engaged in the communication or conversation that such communication or conversation will be recorded or transmitted; and the announcement itself is recorded as part of the conversation or communication.

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

(n) **Theft** (attempted or actual) of property, services, or identity. This includes, but is not limited to, using, taking, attempting to take, possessing, or aiding another to take college property or services, or property belonging to any person, without express permission. Identity theft is the use of another person's name and personal information including, but not limited to, private identifying information, without their permission in order to gain a financial advantage or obtain credit or other benefits in the other person's name.

(o) **Viewing**, distributing, photographing, or filming another person without that person's knowledge and voluntary permission, while the person being photographed, viewed, or filmed is in a place where they would have a reasonable expectation of privacy. The term "permission" will be considered obtained if there are signed waivers, written permission, or verbal agreement recorded with specificity to the content.

(p) **Violation of any college policy** including, but not limited to, residential and dining services policies, appropriate use of information technology resources policies, and WAC 174-136-043 regarding weapons.

(q) **Violation of federal, state, or local law** including being charged by law enforcement, or convicted of a felony or misdemeanor, under circumstances where it is reasonable to conclude that the presence of the person on college premises would constitute a danger to the physical or mental safety of a member(s) of the college community.

(r) **Stalking** is a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

(s) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual exploitation, sexual violence, relationship violence, domestic violence, and stalking. Sexual harassment as prohibited by Title IX is defined in the supplemental Title IX student conduct procedures. See WAC 174-123-355.

(3) Sexual misconduct and consent.

In order to understand the definitions of prohibited conduct in this section, and to adjudicate complaints of sexual misconduct, it is necessary to provide a further definition of consent. This section provides information about consent related to sexual misconduct.

~~((Consent is permission expressed by words or actions that is clear, knowing, and voluntary, regarding willingness to engage in sexual activity. Consent is active, not passive. Each party has the responsibility to make certain that the other has consented before engaging in the activity. Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity. Previous relationship or prior consent does not imply consent to future sexual acts; this includes "blanket" consent (i.e., permission in advance for any/all actions at a later time or place). Consent can be withdrawn once given, as long as that withdrawal is communicated. There is no requirement for a party to resist~~

~~the sexual advance or request, and resistance is a clear demonstration of noneconsent.~~

~~A person cannot consent if they are incapacitated. Incapacitation is a state where someone cannot make reasoned decisions because they lack the capacity to give consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the complainant is physically or mentally incapacitated has engaged in nonconsensual conduct. The question of what a person should have known is objectively based on what a reasonable person in the place of the participant(s), sober and exercising good judgment, would have known about the condition of the complainant.~~

~~Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual activity. When someone makes clear to another person that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point is coercive.~~

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

~~This code is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity. Conduct is determined a violation as per the reasonable person standard.)) Consent means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.~~

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

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

~~Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point~~

of sexual contact or intercourse, continued pressure beyond that point is coercive.

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

(i) Deny or limit (~~(based on sex,)~~) the ability of a person to participate in or benefit from the services, activities, or privileges provided by the college (~~(or an employee to engage in their work duties, that creates)~~); or

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

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

(b) **Sexual exploitation.** The term "sexual exploitation" means conduct that takes nonconsensual or abusive sexual advantage of another for their own or another's benefit. Sexual exploitation includes, but is not limited to, nonconsensual recording of sexual activity or the nonconsensual distribution of a consensual or nonconsensual recording or image; going beyond the boundaries of consent; forcing another person to engage in sexual activity for payment; or knowingly exposing someone to or transmitting a sexually transmitted infection.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. The term "sexual violence" means an act or acts of a sexual nature against a person without their consent. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, relationship violence, and stalking are all types of sexual violence.

(i) **Nonconsensual sexual intercourse** is any 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 another body part or object, or oral copulation by mouth to genital contact. Nonconsensual sexual intercourse also includes forcing a person to engage in vaginal or anal penetration by a penis, object, tongue or finger, or oral copulation by mouth to genital contact.

(ii) **Nonconsensual sexual contact** is any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual contact includes intentional contact with the lips, breasts, buttock, groin, or genitals, or clothing covering any of those areas, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts, or any other intentional bodily contact in a sexual manner.

(d) **Domestic violence.** The term "domestic violence" means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury, or assault committed against a current or former spouse or intimate partner, current or former cohabitant, a person with whom the person shares a child in common, or a person with whom one resides.

(e) **Relationship violence.** The term "relationship violence," also known as dating violence, means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be presumed based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(f) **Stalking.** The term "stalking" means a course of conduct directed at a specific person or group that would cause a reasonable person to feel fear for their physical or mental safety, or the physical or mental safety of another. A course of conduct includes two or more acts including, but not limited to, those in which a person directly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-200 Interim measures. (1) **Interim restrictions.** The student conduct official or designee may institute interim restrictions prior to, or at any stage during, a student conduct proceeding when the physical or mental safety of any member of the college community is deemed at risk. The interim restriction may include a no contact order and/or loss of privileges.

(a) A student issued an interim restriction that includes loss of privileges will receive written notice of the interim restriction, the reason for instituting an interim restriction, and advised of the date, time, and place for a hearing regarding the interim restriction before the student conduct official, or their designee. The hearing will take place no later than five business days from the effective date of the interim restriction.

(b) The interim restriction has immediate effect and will remain in place during any procedural review process, until an agreement of accountability exists, a student conduct official issues a determination of responsibility, an appeal panel issues a final determination, or the student conduct official notifies the respondent in writing that the interim restriction has been modified or is no longer in effect.

(2) **Interim suspension.** This is a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while ~~((a))~~ an investigation or student conduct proceeding is pending. The senior college official or their designee may impose an interim suspension, which has immediate effect, if there is probable cause to believe that the respondent has violated any provision of the code and presents a substantial or ongoing danger to the physical or mental safety of any member of the college community; or poses an ongoing threat of substantial disruption of, or interference with, teaching, learning, or the operations of the college.

(a) Any student assigned an interim suspension will be provided oral or written notice of the interim suspension. If oral notice is given, a written notification will be served on the respondent within two business days of the oral notice.

(b) The written notice will be entitled "Notice of Interim Suspension" and will include:

(i) The reasons for imposing the interim suspension, including a description of the conduct giving rise to the interim suspension and reference to the provisions of the code allegedly violated;

(ii) The date, time, and location when the respondent must appear before the senior college official or their designee for a hearing on the interim suspension; and

(iii) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been barred from the campus, a notice will be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent will be considered trespassing if the respondent enters the college campus other than as approved by the senior college official or their designee.

(c) The senior college official or their designee will conduct a hearing on the interim suspension within five business days after imposition of the interim suspension.

(d) During the interim suspension hearing, the issue before the senior college official or their designee is whether there are reasonable grounds to believe that the interim suspension should be continued pending the conclusion of student conduct proceedings and/or whether the interim suspension should be less restrictive in scope.

(e) The student will be afforded an opportunity to explain why interim suspension should not be continued while conduct proceedings are pending or why the interim suspension should be less restrictive in scope.

(f) If the student fails to appear at the designated hearing time, the senior college official or their designee may order that the interim suspension remain in place pending the conclusion of the investigation and conduct or Title IX proceedings.

(g) As soon as practicable following the hearing, the senior college official or their designee will issue a written decision which will include a brief explanation for any decision continuing and/or modifying the interim suspension.

(h) To the extent permissible under applicable law, the senior college official or their designee will provide a copy of the decision to all persons or offices who may be bound or protected by it.

(i) In cases involving allegations of assault, non-Title IX sexual misconduct, or Title IX sexual harassment, the complainant will be notified that an interim suspension has been imposed on the same day that the interim suspension notice is served on the student. The college will also provide the complainant with same day notice of any subsequent changes to the interim suspension order.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-220 Informal resolution and agreement of accountability. The student conduct official will attempt to resolve a complaint informally using an agreement of accountability. If a complaint is not resolved using an agreement of accountability, the student conduct official will resolve the complaint by issuing a determination of responsibility and required resolution and sanction(s) as described in WAC 174-123-230.

(1) The student conduct official may work with any respondent who acknowledges responsibility for engaging in prohibited conduct to identify the resolution and sanction(s). If an agreement is reached, the resolution and sanction(s) will be contained in a written agreement of accountability signed by both the respondent and the student conduct official.

(2) A respondent who enters into an agreement of accountability will comply with the resolution and sanction(s) set forth in the agreement and will have no further right of appeal under the code. A respondent's failure to comply with an agreement of accountability may be the basis for a separate violation of misconduct under the code. A separate violation will be addressed using a conduct hold and/or initiating a conduct conference as described in WAC 172-123-210. The conduct hold will remain in effect until such time that the student satisfactorily completes all of the requirements of the agreement of accountability. If a complaint alleges non-Title IX sexual misconduct or assault, the informal resolution and agreement of accountability will not be used and a notice of determination of responsibility and required resolution and sanctions process (WAC 174-123-230) is used.

(3) A restorative practice process may be a component of an agreement of accountability in cases where the student has taken responsibility for their actions and a violation of the code. An agreement may be entered into as part of an agreement of accountability that the student is choosing to voluntarily participate in a restorative practice process. A restorative practice is intended to provide resolution and restoration for those negatively impacted by the code violation, as well as, give the respondent an opportunity to make the situation as right as possible.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-230 Notice of determination of responsibility and required resolution and sanctions. (1) If a complaint is not resolved by entering into an agreement of accountability, the student conduct official will issue a determination of responsibility based on a preponderance of the evidence standard. Preponderance of the evidence standard means it is more likely than not that the information and evidence shows that an alleged policy violation did or did not occur.

(2) The student conduct official may take any of the following actions:

(a) Determine the respondent is not responsible for violating the code and end the conduct proceedings.

(b) Determine the available information is inconclusive at this time. The student conduct official may revisit the determination if additional relevant information becomes available.

(c) Determine the respondent is responsible for violating the code and issue required resolution(s) and sanction(s) as described in WAC 174-123-240.

(3) The determination of responsibility will identify the specific conduct that has violated the code. The required resolution and sanction(s) will state the tasks or actions, and associated deadlines, the respondent must execute to address violations of the code.

(4) The student conduct official's determination of responsibility and required resolution and sanction(s) will be final unless the respondent files a timely appeal to the senior college official. If a complaint alleges assault, non-Title IX sexual misconduct, or (~~assault~~) Title IX sexual harassment, the complainant is to be informed of the final determination and any required resolution and sanction imposed against the respondent and may file a timely appeal to the senior college official.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-260 Filing of appeal. (1) A respondent may appeal a student conduct official's determination of responsibility and required resolution and sanction(s) by filing a written notice of appeal to the senior college official within ten calendar days of service of the student conduct official's determination. Failure to file a notice of appeal within the time period constitutes the waiver of the right to appeal and the student conduct official's determination of responsibility and required resolution and sanction(s) will be final.

(2) The student filing the notice of appeal must include a brief statement explaining why they are seeking review of the determination of responsibility and/or required resolution and sanction(s).

(3) Except in cases of (~~an~~) interim measures, including interim suspension and/or interim restriction(s), the required resolutions and sanction(s) will be on hold pending the outcome of an appeal. Interim measures will remain in place pending the outcome of the appeal.

(4) The parties to an appeal will be the appellant and the student conduct official.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the determination of responsibility and required resolution by a preponderance of the evidence.

(6) The appellant has a right to a prompt and fair hearing as provided for in these procedures.

(7) Student conduct appeal to determinations in which the required resolution and sanction(s) include the following will be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten days or less;
- (b) College housing suspension or eviction;
- (c) Deferred action;
- (d) Probation; and

(e) Any conditions or terms imposed in conjunction with one of the foregoing resolution and sanctions.

(8) Student conduct appeal to determinations in which the required resolution and sanction(s) include the following will be reviewed by the student conduct appeal panel:

- (a) Suspensions in excess of ten days;
- (b) College expulsions; and
- (c) Complaints referred to the panel by the student conduct review officer or senior college official, or designee.

(9) Except as provided elsewhere in this code, warnings and findings of no responsibility are final and are not subject to appeal.

(10) In cases involving allegations of assault or non-Title IX sexual misconduct (~~(or assault)~~), the complainant has the right to appeal the following outcomes using the same procedures as set forth above for the respondent:

- (a) The determination of responsibility; or
- (b) Any required resolutions and sanction(s) imposed including a disciplinary warning.

(11) If the respondent appeals a decision imposing discipline for (~~a~~) an assault or non-Title IX sexual misconduct violation, the college will notify the complainant of the appeal and provide the complainant an opportunity to participate in the appeal.

(12) Except as otherwise specified in the code, a complainant who appeals a determination of responsibility and required resolution and sanction(s) within ten calendar days of notice of the determination, or who participates as a party to a respondent's appeal of a determination of responsibility and required resolution and sanction(s) will be afforded the same procedural rights as are afforded the respondent.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-270 Brief adjudicative appeal proceedings—Initial hearing. Brief adjudicative proceedings will be conducted by a conduct review officer. Conduct review officers shall be designated by the senior college official. The conduct review officer will not participate in any case in which they are or have been involved; or in which there is direct or personal interest, prejudice, or bias.

(1) The parties to a brief adjudicative proceeding are the respondent, the student conduct official, and the complainant in cases involving assault or non-Title IX sexual misconduct (~~(or assault)~~). Before taking action, the conduct review officer will conduct an informal hearing and provide each party:

- (a) An opportunity to be informed of the college's view of the matter; and
- (b) An opportunity to explain the student's view of the matter.

(2) The conduct review officer will schedule an informal hearing and serve written notice of the hearing to the parties at least seven calendar days in advance of the hearing. The notice of informal hearing will include the following:

- (a) The date, time, location, and nature of the hearing;
- (b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;
- (c) A date on which the parties may review documents held by the student conduct official; and

(d) A date by which the parties must provide a list of witnesses and copies of any documents to other parties and to the conduct review officer.

(3) The conduct review officer will serve an initial decision upon the parties within ten calendar days of the completion of the informal hearing. The initial decision will contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten business days of service of the initial decision, the initial decision will be deemed the final decision.

(4) If the conduct review officer determines that the respondent's conduct may warrant imposition of a college or college housing suspension of more than ten days or college expulsion or college housing eviction, the matter will be referred to the student conduct appeal panel for a new hearing.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-280 Brief adjudicative appeal proceedings—Administrative review of initial decision. (1) An initial decision may be appealed to the senior college official or designee, provided a party files a written request including the grounds for appeal for review with the conduct review officer within ten calendar days of service of the initial decision. The grounds for appeal are limited to new information not available at the time of the initial process, procedural error that impacted the outcome of the process, and/or bias of the student conduct official, or the conduct review officer.

(2) The senior college official or designee will not participate in any case in which they are or have been involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias.

(3) During the appeal, the senior college official or designee will give each party an opportunity to file written responses explaining their view of the matter and will make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct appeal panel for a hearing.

(4) The decision on appeal must be in writing and must include a brief statement of the reason for the decision and must be served on the parties within twenty calendar days of the request for appeal. The decision will contain a notice whether appeal to Thurston County superior court is available.

(5) If the senior college official or designee determines that the respondent's conduct may warrant imposition of a college (~~or college housing~~) suspension of more than ten days or college expulsion (~~or college housing eviction~~), the matter will be referred to the student conduct appeal panel for a hearing.

(6) In cases involving allegations of assault or non-Title IX sexual misconduct (~~or assault~~), the senior college official or designee, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of assault or non-Title IX sexual misconduct or

(~~assault~~) were found to have merit and describing any resolution and sanctions and/or conditions imposed upon the respondent, including suspension or expulsion of the respondent. The decision will contain a notice whether appeal to Thurston County superior court is available.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-290 Appeal panel proceedings—Hearing procedures. (1) If not addressed in the code, the proceedings of the student conduct appeal panel will be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The senior college official, or designee, will schedule a hearing before the student conduct appeal panel and serve written notice of the hearing to the parties at least ten calendar days in advance of the hearing. The notice period may be shortened by the senior college official, or designee, with the parties' permission; and the senior college official may reschedule a hearing to a later time for good cause.

(3) The notice of hearing will include the following:

(a) The date, time, location, and nature of the hearing;

(b) A date by which the parties must identify advisors as well as requests for reasonable accommodations, if any;

(c) A date by which the parties must provide a list of witnesses and copies of any documents to be provided to the appeal panel. The date for providing documents must be at least five business days prior to the hearing date. Documents and witness names submitted after the deadline stated in the hearing notice will be admitted at the discretion of the appeal panel. Documents and witness names submitted after the deadline may be excluded from the hearing absent a showing of good cause;

(d) A date on which the parties to the appeal may review documents and witness lists submitted to the panel, which must be no less than three business days prior to the hearing.

(4) The panel chair is authorized to make determinations regarding requests for postponement, release of information, or other procedural requests, provided that good cause for the request is shown. Requests for reasonable accommodations based on disability will be determined by the college's disability compliance officer.

(5) The panel chair may provide to the panel members in advance of the hearing copies of:

(a) The student conduct official's determination of responsibility and required resolution and sanction(s);

(b) The decision of the conduct review officer, if any;

(c) The review on appeal of the senior college official, if any; and

(d) The notice of appeal by the respondent or complainant.

If doing so, the chair should remind the members that these documents are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the panel chair may provide copies of these admissible exhibits to the panel members before the hearing.

(7) Only those materials and information presented at the hearing will be considered. The chair may exclude or limit ineffectual, irrelevant, or unduly repetitious information.

(8) The student conduct official or designee, upon request, will provide reasonable assistance to the parties in obtaining relevant and admissible evidence that is within the college's control.

(9) Communications between panel members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper communication, as further provided in RCW 34.05.455, is prohibited.

(10) Each party may be accompanied at the hearing by an advisor of the party's choice. A respondent, or complainant in a case involving allegations of non-Title IX sexual misconduct or assault may elect to be represented by an attorney at their own cost, and will be deemed to have waived that right unless, at least five business days before the hearing, written notice of the attorney's identity and participation is filed with the panel chair with a copy to the student conduct official. The panel will ordinarily be advised by an assistant attorney general. ~~((If the respondent or the complainant is represented by an attorney,))~~ The student conduct official may ~~((also))~~ be represented by an assistant attorney general.

(11) The complainant and the respondent are neither encouraged nor required to be assisted by an advisor of their choosing at their own expense. Both the respondent and the complainant will be provided the option to have a trained procedural advisor provided by the college to assist them prior to and during the hearing in order to understand their rights in the appeal process. A college procedural advisor may not represent an individual in the appeal proceeding. Proceedings will not be automatically delayed due to the scheduling conflicts of any advisor.

(12) Each party is expected to present all information during the proceedings.

(13) In cases where the complaint alleges non-Title IX sexual misconduct or assault, the complainant may present information during the proceedings.

(14) Upon the failure of any party to attend or participate in a hearing, the student conduct appeal panel may either:

(a) Proceed with the hearing and issue a determination; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(15) The hearing is a closed proceeding which includes only members of the panel; the advisor to the panel, if any; the student conduct official and their advisor, if any; the complainant and the respondent and their advisor(s), if any; and persons requested to provide information at the hearing. Admission of any other person to the hearing is at the discretion of the panel chair.

(16) All procedural questions and other decisions are subject to the final decision of the panel chair unless otherwise provided for in these rules. The chair will ensure that the proceeding is held in an orderly manner such that the rights of all parties to a full, fair, and impartial proceeding that adheres to the code is achieved.

(17) There will be a single verbatim sound recording of the hearing, and the record will be on file with the senior college official and is the property of the college in accordance with RCW 34.05.449.

(18) All testimony will be given under oath or affirmation. Evidence will be admitted or excluded at the discretion of the panel chair.

(19) In cases involving allegations of non-Title IX sexual misconduct or assault, neither party will directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the other party. All cross examination questions will be directed to the panel chair, who has the discretion to pose the questions on the party's behalf.

AMENDATORY SECTION (Amending WSR 18-17-102, filed 8/15/18, effective 9/15/18)

WAC 174-123-310 Appeal panel proceedings—Determination. (1) At the conclusion of the hearing, the student conduct appeal panel will permit the parties to make closing statements in whatever form it wishes to receive them. The panel also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Only members of the student conduct appeal panel and the advisor to the panel, if any, will be present for deliberations. Deliberations are not recorded.

(3) Within fifteen calendar days following the conclusion of the hearing, or the panel's receipt of closing arguments, whichever is later, the panel will issue a decision in accordance with RCW 34.05.461 and WAC 10-08-210 or written notice specifying the date by which it will issue a decision. The decision will include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses will be so identified.

(4) The panel's decision will also include a determination on appropriate resolution and sanction(s), if any. The panel may affirm, reverse, or modify the required resolution and sanction(s) issued by the student conduct official and/or issue additional sanction(s) or condition(s) as authorized herein.

(5) The panel's decision will also include a statement of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

(6) The panel chair will serve copies of the decision on the parties through the senior college official's office. It is the responsibility of the student to forward any notice or communication to their advisor. If a student signs a release of information, the chair of the panel will provide the decision to legal counsel representing a student.

(7) In cases involving allegations of assault, non-Title IX sexual misconduct, or ~~((assault))~~ Title IX sexual harassment, the chair of the student conduct appeal panel, on the same date as the decision is served to the respondent, will serve a written notice to the complainant informing the complainant of the panel's decision and describing any sanction(s) and/or condition(s) issued to the respondent, including suspension or expulsion of the respondent. The complainant may request

reconsideration of the panel's decision subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of the available procedures and time frames for seeking reconsideration. The decision will also include a notice whether appeal to Thurston County superior court is available.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES AND PROHIBITED CONDUCT

NEW SECTION

WAC 174-123-355 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Evergreen's standard disciplinary procedures, WAC 174-123-110 through 174-123-340, these supplemental procedures shall take precedence.

NEW SECTION

WAC 174-123-360 Title IX definitions. For purposes of the supplemental Title IX student conduct procedure, the following terms used have the definitions contained in the Title IX policy and procedure and the terms below are defined as follows:

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

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

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

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point of sexual contact or intercourse, continued pressure beyond that point is coercive.

(2) **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(3) **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(4) **Formal complaint** means a writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the college conduct an investigation.

(5) **Education program or activity** includes locations, events, or circumstances over which Evergreen exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by the college.

(6) **Determination of responsibility** means a decision of the hearing panel regarding whether the respondent is responsible for the alleged violation(s) of this Title IX policy. If the respondent is found responsible for the alleged violations, the determination of responsibility will include discipline and sanctions, as appropriate.

(7) **Interim suspension** means a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 174-123-200(2).

NEW SECTION

WAC 174-123-370 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, Evergreen 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.** An Evergreen employee conditioning the provision of an aid, benefit, or service of Evergreen 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 Evergreen's educational programs or activities, or Evergreen 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 eighteen.

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

(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 174-123-380 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during an Evergreen 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 procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Evergreen 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 Evergreen.

(3) Proceedings under this procedure must be dismissed if the Title IX coordinator determines that one or all of the

requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Evergreen's code of student rights and responsibilities, WAC 174-123-170.

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

NEW SECTION

WAC 174-123-390 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct official 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 student conduct official determines that there are sufficient grounds to proceed under these procedures, the student conduct official will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the hearing panel. The hearing panel chair will serve 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 and the other party(ies) on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) Evergreen will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so; and

(iv) A party may select to have an individual as emotional support with them during Title IX processes. This individual is separate from an advisor, and will serve the purpose of providing care and emotional support for the party, but will not participate during the processes.

(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 174-123-400 Prehearing procedure. (1) Upon receiving the disciplinary notice, the hearing panel chair will send a hearing notice to all parties, in compliance with WAC 174-123-290(3). In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose an advisor to be at the hearing with them. The advisor will be conducting the cross-examination of parties and witnesses. The full names and contact

information for all advisors selected by the parties to appear at the hearing must be submitted to the hearing panel chair at least five days before the hearing.

(3) 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 hearing panel chair, with copies to all parties and the student conduct official.

(4) Parties may also select an individual to serve as emotional support during the hearing. This individual will not have a formal role in the hearing, and will serve the purpose of providing care and emotional support for the party.

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

NEW SECTION

WAC 174-123-410 Rights of parties. (1) The Evergreen State College's code of student rights and responsibilities, this chapter, and this supplemental procedure shall apply equally to all parties.

(2) The college has 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 advisors. The parties are entitled to advisors of their own choosing and the advisor may be an attorney. If a party does not choose a process advisor, then the Title IX coordinator will appoint a process advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 174-123-420 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

(5) No negative inference: The hearing panel may not make an inference regarding responsibility solely on a wit-

ness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The hearing panel 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.

(7) Recording of live hearing: The live hearing will be audio-recorded, and copies may be provided to the parties, upon written request.

NEW SECTION

WAC 174-123-430 Initial order. (1) In addition to complying with WAC 174-123-310, the hearing panel 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 for each charge;

(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 hearing panel's 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, the complainant is entitled to remedies designed to restore or preserve the complainant's equal access to Evergreen's educational programs or activities; and

(h) Describes the process for appealing the initial order.

(2) The hearing panel chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 174-123-440 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The parties may by filing a written notice of appeal with the hearing panel chair within ten calendar days of service of the student conduct official's, or hearing panel's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the decision shall be deemed final.

Either party may appeal based on the following criteria: Procedural irregularity that affected the outcome of the deter-

mination; new evidence discovered that was not reasonably available at the time of the determination; a conflict of interest from a Title IX administrator; or severity of sanctioning is not consistent with the violation.

(2) The president or their designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

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

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
174-123-350	174-123-450

WSR 20-19-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-185—Filed September 10, 2020, 8:00 a.m., effective September 10, 2020, 8:00 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to open a limited Chinook retention season in the Columbia River, from the mouth to the Highway 395 Bridge at Pasco.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000V and 220-312-06000W; 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 rule is needed to open a limited Chinook salmon retention season in the lower Columbia River, from the mouth to the Highway 395 Bridge at Pasco, beginning September 11 through 13, 2020. Additional recreational fishery impacts to upriver bright and lower river hatchery fall Chinook are available, as are coho under the preseason fishing plan. This action is consistent with decisions made by the states of Washington and Oregon during compact actions of September 3 and 9, 2020.

There is insufficient time to adopt permanent regulations.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: September 10, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River. Effective immediately through December 31, 2020, the provisions of WAC 220-312-060 regarding recreational sturgeon seasons in the Columbia River downstream of Bonneville Dam and the Cowlitz River and Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to the Rocky Point/Tongue Point line, shall be as described below. Salmon and steelhead seasons for the Columbia River from the Rocky Point/Tongue Point Line from September 11 through September 13 will also be described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From Wauna powerlines upstream to Bonneville Dam, including the Cowlitz River: Sturgeon:

(a) It is permissible to retain white sturgeon on Saturday, September 12 and Saturday, September 19, 2020.

(i) The daily limit of white sturgeon is one fish.

(ii) Minimum fork length 44 inches. Maximum fork length 50 inches.

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

(2) From a true North and South line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), and including Youngs Bay: Salmon and Steelhead

(a) Effective immediately through September 10, 2020: Daily limit 2. Coho minimum size 16 inches. Release all salmon other than hatchery coho. Release all steelhead.

(b) Effective September 11 through September 13: Daily limit 2, no more than 1 may be a Chinook. Coho minimum size 16 inches. Chinook minimum size 24". Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(c) Effective September 14 through September 22, 2020: Daily limit 2. Coho minimum size 16 inches. Release all salmon other than hatchery coho. Release all steelhead.

(d) Effective September 23 through September 30, 2020: Daily limit 2, no more than 1 may be a Chinook. Coho minimum size 16 inches. Chinook minimum size 24". Release all

salmon other than Chinook and hatchery coho. Release all steelhead.

(e) Effective October 1 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained, no more than 1 may be a Chinook. Coho minimum size 16 inches. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(f) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, no more than 1 may be a Chinook and no more than 1 may be a steelhead. Coho minimum size 16 inches. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(3) From the Rocky Point/Tongue Point line to the Hood River Bridge: salmon and steelhead:

Effective September 11 through September 13: Daily limit 1. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(4) From the Hood River Bridge to the Hwy. 395 Bridge at Pasco: salmon and steelhead:

Effective September 11 through September 13: Daily limit 1. Release all salmon other than Chinook and coho. Release all steelhead.

REPEALER

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

WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia River. (20-182)

The following section of Washington Administrative Code is repealed, effective January 1, 2020:

WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River. (20-185)

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 20-19-040
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed September 10, 2020, 8:31 a.m., effective September 12, 2020]

Effective Date of Rule: September 12, 2020.

Purpose: The department is extending the amendment of the rule listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow nursing facilities to provide clinical records to residents and resident representatives in ten working days instead of two working days. Current state rules specify clinical records be accessible to residents and their representatives for review

within twenty-four hours and copies must be provided within two working days. The amendment lengthens the time nursing homes have to provide the resident access to, or copies of the requested clinical record from two to ten days. The amendment does not permit the nursing facility to deny the resident access to records.

The department filed a CR-101 Preproposal statement of inquiry on September 3, 2020, as WSR 20-19-009 to begin the permanent rule-making process.

Citation of Rules Affected by this Order: Amending WAC 388-97-0300.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

Reasons for this Finding: The 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. Current nursing home rules ensure residents have the right to access and review their clinical record. Currently, access to the record must be provided within twenty-four hours and if the resident or resident representative requests a copy of the record, it must be provided within two working days. The amendment would lengthen the time nursing homes have to provide the resident access to, or copies of the requested clinical record. The amendment does not permit the nursing facility to deny the resident access to records. This amendment provides flexibility for nursing homes to prioritize direct care over nondirect care tasks while maintaining the resident's right to access their records.

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

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

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

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

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

Date Adopted: September 4, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-12-040, filed 5/29/14, effective 6/29/14)

WAC 388-97-0300 Notice of rights and services. (1)

The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right to:

~~(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and~~

~~(b) After receipt of his or her records for inspection,)) to purchase at a cost not to exceed twenty-five cents a page, photocopies of the records or any portions of them upon request and ((two)) ten working days advance notice to the nursing home. For the purposes of this chapter, "**working days**" means Monday through Friday, except for legal holidays.~~

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, services or activities specified in section (4)(a)(i) and (ii), or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his or her representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, pre-paid charges or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

- (a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and
- (b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

WSR 20-19-048

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed September 10, 2020, 11:36 a.m., effective September 10, 2020, 11:36 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-358 WAC, Temporary worker housing, the department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule. DOH and L&I filed the initial emergency rules on May 13, 2020, and WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I will file a second rule to protect occupants from COVID-19 hazards in licensed temporary worker housing. The emergency rule will continue to require operators to: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters, prohibit the use of the top of bunk beds; (5) ensure frequent cleaning and disinfecting of surfaces; and (6) identify and isolate occupants with suspect and confirmed positive cases.

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

In addition to the requirements of the initial emergency rule, this second emergency rule will also: (a) Clarify minimum expectations for ensuring adequate ventilation to include, mechanical ventilation systems must be turned on or windows must be open whenever the sleeping quarters are occupied, and mechanical ventilation systems must be maintained according to the manufacturer's specifications; (b) add isolation requirements, including monitoring of occupants in isolation by health care professionals consistent with requirements for agricultural workspaces under the Governor's August 19, 2020, Proclamation 20.57.1 and verification that outside isolation facilities meet the isolation requirements before transporting workers to the facility; (c) add a requirement to report L&I division of occupational safety and health within twenty-four hours whenever symptomatic or COVID-19 positive workers are placed in isolation; (d) clarify that barriers near cooking equipment must be fire retardant; (e) clarify the requirements for use of shared facilities and common areas for multiple group shelters; (f) clarify existing requirements for the labeling of chemicals; and (g) require any changes made to the revised temporary worker housing management plan be submitted to DOH.

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

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

Statutory Authority for Adoption: RCW 70.114A.065.

Other Authority: RCW 43.70.335.

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

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy, and the amendments transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." Under Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of DOH, L&I, and the Centers for Disease Control and Prevention (CDC). The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the emergency rule, the governor has also issued Proclamation 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place,

the requirements covered by the rule were included in the governor's order.

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

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

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

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

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

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

Date Adopted: September 10, 2020.

Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-358-002 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure. (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from 2019 novel coronavirus (COVID-19) hazards:

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

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

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to

secure medical treatment - all in a language commonly understood by the occupants.

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

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

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

(ii) Sleeping quarters. The operator must ensure:

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

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

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

(II) Do not impede required egress;

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

(IV) Are cleaned at least daily.

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

(D) Steps are taken to improve ventilation wherever possible.

(I) Mechanical ventilation systems must be turned on or windows must be open whenever the sleeping quarters are occupied.

(II) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows can be closed when conditions outside of the building could pose a hazard to occupants, such as during dust storms or when pesticides are being applied to fields near the building.

(E) If the TWH facility or building has a mechanical ventilation system, it is maintained according to the manufacturer's specifications. TWH operators should work with building maintenance staff or HVAC contractors to determine if their existing mechanical ventilation system can be modified to increase ventilation or the percentage of outside air that circulates into the system.

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

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

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

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

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

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

(B) Take steps to improve ventilation wherever possible.

(I) Mechanical ventilation systems must be turned on or windows must be open whenever the sleeping quarters are occupied.

(II) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows can be closed when conditions outside of the building could pose a hazard to occupants, such as during dust storms or when pesticides are being applied to fields near the building.

(C) If the TWH facility or building has a mechanical ventilation system, maintain it according to the manufacturer's specifications. TWH operators should work with building maintenance staff or HVAC contractors to determine if their existing mechanical ventilation system can be modified to increase ventilation or the percentage of outside air that circulates into the system.

(D) Maintain egress requirements.

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

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

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

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

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

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

(D) Schedules are shared and conspicuously posted.

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

(v) The operator must encourage each group shelter to designate one or two occupants to run errands if items cannot be provided by the operator. These designated occupants can

be the main contact for procuring groceries or other items for the group shelter in order to limit public contact and potential disease transmission.

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

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

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

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

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

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

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

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

(2) Isolation.

(a) The operator must develop and implement a plan to identify and isolate sick occupants, including:

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

(ii) Upon identification of suspect COVID-19 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect COVID-19 cases with sleeping, eating, and bathroom accommodations that are separate from

others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

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

(v) The operator must report COVID-19-symptomatic or positive TWH occupants in isolation to the department of labor and industries' division of occupational safety and health (DOSH) within twenty-four hours after placement. This notification can be made by telephone to the department of labor and industries toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for COVID-19-symptomatic or positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits occupants twice per day, at the employer's expense. At a minimum, the health care professional must assess symptoms, vital signs, and oxygen saturation via pulse oximetry, and perform a respiratory exam. For the purposes of this subsection, a licensed health care professional means:

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

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

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

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

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

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

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) and authorized to monitor COVID-19 symptomatic or positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

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

(iii) Ensure that occupants in isolation have access to advanced life support emergency medical services within twenty minutes, and an emergency room with ventilator capability within one hour.

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

(v) Permit access to other medical professionals who offer health care services in addition to those licensed health care professional required under (b)(i)(A) through (G) of this subsection.

(vi) The operator must provide food and water and monitor for safety occupants in isolation.

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

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

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

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

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

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

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

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

WSR 20-19-049

EMERGENCY RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed September 10, 2020, 11:47 a.m., effective September 10, 2020, 11:47 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 296-307 WAC, Temporary worker housing, the department of labor and industries (L&I) in conjunction with the department of health (DOH) are adopting revisions to the initial emergency rule to support the continued response to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I filed the initial emergency rules on May 13, 2020, and WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I are filing a second rule to protect occupants from COVID-19 hazards in licensed temporary worker housing. The emergency rule will continue to require operators to: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters, prohibit the use of the top of bunk beds; (5) ensure frequent cleaning and disinfect-

ing of surfaces; and (6) identify and isolate occupants with suspect and confirmed positive cases.

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

In addition to the requirements of the initial emergency rule, this second emergency rule will also:

- Clarify minimum expectations for ensuring adequate ventilation to include: Mechanical ventilation systems must be turned on or windows must be open whenever the sleeping quarters are occupied, and mechanical ventilation systems must be maintained according to the manufacturer's specifications.
- Add isolation requirements, including monitoring of occupants in isolation by health care professionals consistent with requirements for agricultural workplaces under the Governor's August 19, 2020, Proclamation 20-57.1 and verification that outside isolation facilities meet the isolation requirements before transporting workers to the facility.
- Add a requirement to report to division of occupational safety and health within twenty-four hours whenever symptomatic or COVID-19 positive workers are placed in isolation.
- Clarify that barriers near cooking equipment must be fire retardant.
- Clarify the requirements for use of shared facilities and common areas for multiple group shelters.
- Clarify existing requirements for the labeling of chemicals.
- Requires any changes made to the revised temporary worker housing management plan be submitted to DOH.

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

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

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

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

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy, and the amendments transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." Under the initial Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of DOH, L&I, and the United States Centers for Disease Control and Prevention. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the emergency rule, the governor has also issued Proclamation 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place, the requirements covered by the rule were included in the governor's order.

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

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

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

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

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

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

Date Adopted: September 10, 2020.

Joel Sacks
Director

NEW SECTION

WAC 296-307-16102 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure. (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from 2019 novel coronavirus (COVID-19) hazards:

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

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

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information.

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

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

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

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

(ii) Sleeping quarters. The operator must ensure:

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

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

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

(II) Do not impede required egress;

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

(IV) Are cleaned at least daily.

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

(D) Steps are taken to improve ventilation wherever possible.

(I) Mechanical ventilation systems must be turned on or windows must be open whenever the sleeping quarters are occupied.

(II) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows can be closed when conditions outside of the building could pose a hazard to occupants, such as during dust storms or when pesticides are being applied to fields near the building.

(E) If the TWH facility/building has a mechanical ventilation system, maintain it according to the manufacturer's specifications.

Note: TWH operators should work with building maintenance staff or HVAC contractors to determine if their existing mechanical ventilation system can be modified to increase ventilation or the percentage of outside air that circulates into the system.

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

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

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

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

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

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

(B) Take steps to improve ventilation wherever possible.

(I) Mechanical ventilation systems must be turned on or windows must be open whenever the sleeping quarters are occupied.

(II) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows can be closed when conditions outside of the building could pose a hazard to occupants, such as during dust storms or when pesticides are being applied to fields near the building.

(C) If the TWH facility or building has a mechanical ventilation system, maintain it according to the manufacturer's specifications.

Note: TWH operators should work with building maintenance staff or HVAC contractors to determine if their existing mechanical ventilation system can be modified to increase ventilation or the percentage of outside air that circulates into the system.

(D) Maintain egress requirements.

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

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

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

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

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

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

(D) Schedules are shared and conspicuously posted.

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

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

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

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

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

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

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

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

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

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

(2) Isolation.

(a) The operator must develop and implement a plan to identify and isolate sick occupants, including:

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

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

(ii) Upon identification of suspect COVID-19 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect COVID-19 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

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

(v) The operator must report COVID-19-symptomatic or positive TWH occupants in isolation to the division of occupational safety and health (DOSH) within twenty-four hours after placement.

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

(b) The operator must ensure appropriate isolation facilities for COVID-19-symptomatic or positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits employees twice per day, at the employer's expense. At a minimum, the health care professional must assess symptoms, vital signs, and oxygen saturation via pulse oximetry, and perform a respiratory exam. For purposes of this subsection, a licensed health care professional means:

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

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

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

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

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

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

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) if authorized to monitor COVID-19 symptomatic or positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

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

(iii) Ensure that occupants in isolation have access to advanced life support emergency medical services within twenty minutes, and an emergency room with ventilator capability within one hour.

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

(v) Permit access to other medical professionals who offer health care services in addition to those licensed health care professionals required under (b)(i)(A) through (G) of this subsection.

(vi) The operator must provide food and water and monitor for safety occupants in isolation.

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

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

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

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

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

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

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

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

WSR 20-19-052
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed September 10, 2020, 2:27 p.m., effective September 10, 2020, 2:27 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 74.13.031 and 74.15.030.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. WAC 110-145-1305 was adopted on May 12, 2020, to allow for the expedient delivery of life saving services to a highly vulnerable population in Washington state—homeless youth who have recently been diagnosed with, infected by, or who came into contact with COVID-19. Circumstances changed under Proclamations 20-25 through 20-25.6 "Safe Start—Stay Health [Healthy]" County-by-County Phased Reopening, but conditions prompting the State of Emergency declaration still exist and justify the need for WAC 110-145-1305 to remain in effect.

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

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

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

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

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

Date Adopted: September 10, 2020.

Brenda Villarreal
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

"Chapter" means chapter 110-145 WAC.

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

(a) Under eighteen years old;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"DOH" means the department of health.

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

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

"FBI" means the Federal Bureau of Investigation.

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

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

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

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

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

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

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

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

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

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

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

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

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy)

thy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

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

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

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

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

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

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

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

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

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

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

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

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

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood,

sleep, or behavior. These include antipsychotic, antidepressant, and anti-anxiety medications.

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

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

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

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

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

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

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

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

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

WSR 20-19-054

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-189—Filed September 10, 2020, 3:03 p.m., effective September 11, 2020]

Effective Date of Rule: September 11, 2020.

Purpose: The purpose of this rule is to close commercial salmon fishing in Willapa Bay on the days of September 11 and 14, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-354-25000E; and amended 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 2T on September 11 and Areas 2N, 2M, 2U and 2T on September 14, 2020. The impacts of natural origin fall Chinook and coho have been higher than preseason predictions. Based on preseason predictions and uncertainty around run sizes of Chinook and coho in-season, a modification of the commercial fishery is necessary to help ensure that conservation objectives for Chi-

nook and coho are met. For statistical week thirty-seven (September 6 through 12, 2020), the total impacts predicted preseason for natural origin Chinook was twenty-five fish and the natural origin coho catch predicted preseason was one hundred fourteen. The estimated impacts for natural origin Chinook and natural origin coho in-season for statistical week thirty-seven is one hundred and one hundred eighty, respectively. This is a four hundred percent increase for Chinook and a one hundred fifty-eight increase for coho compared to preseason predictions.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 10, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000E Willapa Bay salmon fall fishery. Effective September 11 through September 17, 2020, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except during the times and dates in the Willapa Bay Catch Reporting Areas listed below, using only tangle net gear with mesh size listed below. All other provisions of WAC 220-354-250 not addressed herein remain in effect unless otherwise amended by emergency rule:

Fishing periods:

Area	Time	Date(s)	Maximum Mesh Size
2N, 2M, 2T, 2U	6:00 a.m. through 6:00 p.m.	9/17	4.25"

REPEALER

The following section of Washington Administrative Code is repealed effective September 18, 2020:

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

**WSR 20-19-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-187—Filed September 10, 2020, 4:13 p.m., effective September 10, 2020, 4:13 p.m.]

Effective Date of Rule: Immediately upon filing.

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

This rule modifies 2020 tribal summer commercial fisheries above and below Bonneville Dam and is consistent with actions of the Columbia River Compact of June 8, June 30, July 8, July 15, July 30, August 13, September 3, and September 10, 2020.

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

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

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

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

Reasons for this Finding: Allowable harvest of Columbia River salmonids remains available to provide additional fishing opportunity to the previously planned tribal commercial fishery period in areas SMCRA 1F, 1G, 1H. This rule is consistent with actions of the Columbia River Compacts on June 8, June 30, July 8, July 15, July 30, August 13, September 3, and September 10, 2020. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon Management Agreement*.

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

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

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

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

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

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

Date Adopted: September 10, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000G Columbia River salmon seasons Effective immediately until further notice, the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Season: Immediately through 6:00 PM December 31.

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

(c) Allowable sale: Salmon (any species) and steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

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

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

(a) Season: Immediately through 6:00 PM Friday September 11

6:00 AM September 14 through 6:00 PM September 18

(b) Gear: Set and Drift Gillnets with an 8-inch minimum mesh size

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

(d) Standard sanctuaries applicable to gillnet gear. The standard Spring Creek Hatchery Sanctuary is in place.

3) Open Areas: SMCRA 1E1 (Downstream of Bonneville Dam)

(a) Season: Immediately through 11:59 PM October 31, 2020, only during days and times opened under tribal rules. Enrolled members of the Yakama, Warm Springs, Nez Perce, and Umatilla tribes when lawfully permitted by Treaty regulations under provisions of the agreements with the states of Oregon and Washington. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in the fisheries downstream of Bonneville Dam.

4) Open Areas: Wind River, Drano Lake, and Klickitat River

(a) Season: Wind River open immediately until further notice and Drano Lake and Klickitat River immediately through 6:00 PM December 31 only during those days and hours when the tributaries listed are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and Reel with Hook and Line. Gillnets may only be used in Drano Lake.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000F Columbia River salmon seasons.
(20-181)

WSR 20-19-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-188—Filed September 10, 2020, 4:17 p.m., effective September 10, 2020, 4:17 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule provides additional commercial salmon and sturgeon harvest opportunity in the late fall 2020 season. The fall Chinook run appears to be coming in at or above forecast, allowing the second phase of the fall harvest plan to begin implementation, which includes managing fisheries to a fifteen percent harvest rate on URB Chinook, and there is room under sturgeon management guidelines. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact actions of July 30 and September 10, 2020.

There is insufficient time to promulgate permanent rules.

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

ing 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: September 10, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000S Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Mainstem:

Open Dates	Open Days	Open Time	Open Duration
September 15	Tuesday (night)	8:00 pm - 6:00 am	10 hrs
September 21	Monday (night)	8:00 pm - 6:00 am	10 hrs

(a) **Area:** SMCRA 1D and 1E. The deadline at the lower end of SMRCA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy Rivers.

(b) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. Multiple net rule **NOT** in effect, which means nets not authorized for this fishery may not be onboard. Lighted buoys required.

(c) **Allowable Sales:** Chinook, Coho, and Pink salmon, shad, and white sturgeon. A maximum of **four** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to mainstem fisheries only.

(2) Tongue Point/South Channel Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 30	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) Area:

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not

exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon.

(3) Blind Slough/Knappa Slough Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 30	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 10:00 am	18 hrs

(a) **Area:** The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge. The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 6, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

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

(c) **Permanent transportation rules in effect.** In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate

ate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon.

(4) Deep River Select Area:

Open Dates	Open Days	Open Time	Open Duration
September 28 - October 29	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 2 - December 3	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

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

(b) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically authorized for use may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted_buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Permanent transportation rules in effect.** In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon.

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315)). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

(6) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

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

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 section of the Washington Administrative Code is repealed effective immediately:

WAC 220-358-03000R Columbia River seasons below Bonneville Dam. (20-167)

WSR 20-19-059
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed September 11, 2020, 10:25 a.m., effective September 11, 2020, 10:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is adopting WAC 388-437-0020 Availability of pandemic EBT benefits, to describe the eligibility of children under age five, place a deadline on receipt of all pandemic EBT (P-EBT) applications, and place a deadline on the receipt of P-EBT benefits.

H.R. 6201 (116th Congress) Families First Coronavirus Response Act signed into law on March 18, 2020, allows for households with school age children participating in free or reduced-price lunch program to receive benefits after the school closes for five consecutive days due to the COVID-19 public health emergency declaration. P-EBT payments to eligible families end September 30, 2020, with the exception of case-by-case review and approval by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS). The department will not accept applications for P-EBT past September 11, 2020, to allow benefit authorization to all eligible applicants by the end date of September 30, 2020. This WAC also authorizes P-EBT benefits to children under age five, as of October 1, 2019, as long as they attend early learning classes in schools that closed the same dates as K-12 districts due to the Governor's Proclamation 20-09.

Citation of Rules Affected by this Order: New WAC 388-437-0020.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: H.R. 6201.

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

Reasons for this Finding: The USDA approved Washington's state plan to provide emergency supplemental nutrition assistance program benefits to households with children who would otherwise receive free or reduced-price school meals if not for school closures due to the COVID-19 virus. In the time since the existing emergency P-EBT program rule was adopted under WSR 20-14-030, the USDA has approved an amendment to the original plan allowing children under five years old, as of October 1, 2019, to receive P-EBT if eligible to receive free and reduced-price lunches. The USDA FNS has also since provided an end date for benefits to be authorized and has advised states to set a deadline for P-EBT applications that allots sufficient time to process applications and make the disbursements by that date.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, 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 0, Amended 0, Repealed 0.

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

Date Adopted: September 11, 2020.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-437-0020 Availability of pandemic EBT benefits. (1) Pandemic EBT benefits are available to households that include:

(a) School age children whose schools closed due to the COVID-19 pandemic as described in WAC 388-437-0010 filed under WSR 20-14-030; and

(b) Children regardless of age who:

(i) Would normally receive free or reduced price meals under the Richard B. Russell National School Lunch Act if not for school closures due to the COVID-19 pandemic.

(ii) Attend a school of early learning that followed school district closure dates of March 16, 2020 through June 19, 2020.

(2) Pandemic EBT benefits as described in subsection (1) of this section and in WAC 388-437-0010 filed under WSR 20-14-030 must be received no later than September

30, 2020, except when reviewed and approved on a case-by-case basis by the US department of agriculture's food and nutrition service. Applications for pandemic EBT will not be accepted after September 11, 2020.

WSR 20-19-060

EMERGENCY RULES

EASTERN WASHINGTON UNIVERSITY

[Filed September 11, 2020, 11:01 a.m., effective September 11, 2020, 11:01 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The modifications to chapter 172-121 WAC are needed to address changes in practice, procedures due to new United States federal regulations regarding Title IX.

Citation of Rules Affected by this Order: Amending WAC 172-121-010, 172-121-020, 172-121-030, 172-121-070, 172-121-075, 172-121-080, 172-121-100, 172-121-105, 172-121-110, 172-121-121, 172-121-122, 172-121-130, 172-121-140, 172-121-200, and 172-121-210.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Reasons for this Finding: The United States Department of Education approved new rules related to Title IX that requires Eastern Washington University to make changes to our student conduct code.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 15, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 26, 2020.

Joseph Fuxa
Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Brief hearing" refers to a brief conduct review hearing before a conduct review officer (~~((or the student disciplinary council))~~) for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, do not involve a Title IX complaint, and that do not involve felony-level ((sexual misconduct) crimes.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, the university may (~~(choose to fill the role of the complainant throughout the student conduct proceedings))~~ initiate the student conduct process on its own behalf.

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a brief hearing or the presiding officer for a full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a (~~(brief)~~) full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the dean of student's office, sending them via United States mail, properly addressed, postage prepaid, to (~~((301 Pence Union Building))~~) 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Full hearing" refers to a full conduct reviewing hearing before (~~((a conduct review officer (CRO)))~~) the council for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion, involve a Title IX complaint, or that could constitute felony-level ((sexual misconduct) crimes.

"Hearing authority" refers to the (~~((university official or student disciplinary council who holds))~~) decision-maker in a conduct review hearing.

"Interpersonal violence" encompasses domestic violence, dating violence, and stalking.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university email account, by leaving a message on his or her personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant (~~(and the)),~~ respondent, and/or the university.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, housing contract, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment(~~(; domestic violence, dating violence, stalking, and acts of non-consensual sexual activity for the purposes of WAC 172-121-030 through 172-121-140 and for trainings provided on campus. However, in the violations section in WAC 172-121-200 the violations are defined separately and the term sexual misconduct has the more limited definition of noneconsensual sexual activity))~~) or sexual assault, as defined in WAC 172-121-200.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person currently enrolled at the university;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Title IX complaint" means a complaint from a current student, applicant, or employee of sexual harassment, sexual assault, domestic violence, dating violence, or stalking for the conduct that occurred on university premises, during a university program or activity within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be

addressed under this code if it does not meet the definition of a Title IX complaint.

"Title IX coordinator" refers to the Title IX coordinator or designee.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or designee.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

AMENDATORY SECTION (Amending WSR 19-01-047, filed 12/13/18, effective 1/13/19)

WAC 172-121-030 Rights of students. Any student or student organization charged with any violation of the student conduct code and the complainant in the case of an allegation of sexual misconduct or interpersonal violence, have the following rights where applicable:

- (1) The right to a fair and impartial conduct review process;
- (2) The right to prior written notice to attend a ~~((preliminary))~~ prehearing conference or hearing;
- (3) The right to remain silent during any conduct review hearing;
- (4) The right to know who filed the complaint against them as described in WAC 172-121-110;
- (5) The right to speak on their own behalf in all proceedings;
- (6) The right to hear all information and view all material presented against him or her;
- (7) The right to call witnesses as described in WAC ~~((172-121-121 or))~~ 172-121-122;
- (8) The right to ask or submit questions to be asked of witnesses for a full hearing, in a method determined by the conduct review officer, as described in WAC 172-121-122;
- (9) The right to consult an advisor as described in WAC 172-121-105(3);
- (10) The right to be presumed not responsible;
- (11) Complainants have the right to opt out of participating in the student conduct process;
- (12) The right to appeal as provided in WAC 172-121-130; and
- ~~((14))~~ (13) The right to be subjected to university disciplinary action only one time for the same conduct.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-070 Conduct review officials. (1) The director of SRR or designee shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
- (b) Manage the proceedings as described in this chapter;

(c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;

(d) Ensure complaints are promptly investigated and resolved as required by federal and state laws; and

(e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives and whether the conduct process should be initiated.

(2) Conduct review officer (CRO): The university president delegates to the vice president of student affairs the authority to designate one or more CRO(s). The director of SRR, dean of students, or any other qualified individual may be designated as a CRO. The CRO(s) shall preside over brief hearings ~~((= council hearings;))~~ and full conduct hearings under this chapter ~~((and shall serve as the decision maker in such cases unless a brief hearing is held before the student disciplinary council)).~~ For brief hearings, the CRO shall serve as the decision maker. For full hearings, the CRO shall serve as the presiding officer.

As the presiding officer, in full hearings the CRO has authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas pursuant to RCW 34.05.446;
- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on motions for summary judgment;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;
- (j) Take official notice of facts pursuant to RCW 34.05.-452(5);
- (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (m) Issue an order of default;
- (n) Hold prehearing conferences; and
- (o) Take any other action necessary and authorized by any applicable statute or rule.

(3) Student disciplinary council: ~~((All brief hearings are scheduled with a CRO unless one of the parties requests a brief hearing before the student disciplinary council. The council also serves as an appeal authority under WAC 172-121-130;))~~ The council serves as the decision maker for full hearings with respect to a finding of responsibility. The CRO in full hearings serves as the decision maker with respect to determining appropriate sanction(s) and remedies, upon a finding of responsibility.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the

council pool are appointed by the vice president for student affairs. Appointment of council pool members is as follows:

(i) Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;

(ii) Council chair: The ~~((director of SRR, or designee,))~~ dean of students shall serve as the CRO and chair of council proceedings ~~((but will not have the right to vote, except in the case of a tie));~~

(iii) Vacancies: Council pool vacancies shall be filled as needed through appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a ~~((brief hearing or an appeal, the director of SRR))~~ full hearing, the dean of students shall select available members from the council pool to serve as the session council. Each session council must include ~~((a quorum. A quorum is three voting members, which must include at least one student, one faculty/staff member, and one other member who could be a student or faculty/staff member))~~ three members. The council may consist of students, staff, or faculty members.

(4) Investigator: ~~((H))~~ For all Title IX, sexual misconduct, and interpersonal violence complaints, and certain other cases at the director's discretion, the ((CRO)) director may assign a complaint to an investigator to conduct an investigation. The investigator will provide a written investigative report to the ~~((CRO))~~ director.

(5) Presenter in cases of a full hearing, a person will present a case against the respondent on behalf of the university. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR, designee, or an assistant attorney general appearing on behalf of the university.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-075 Conflicts of interest. (1) Individuals who play a role in ~~((receiving))~~ investigating, ((advising)) presiding over, and making decisions pertaining to individual student conduct cases including, but not limited to, the director, Title IX coordinator, dean of students, investigator, and council, shall not have any conflict of interest in the process or a bias for or against complainants or respondents generally or an individual complainant or respondent. A conflict of interest exists if the investigator, ~~((advisor,))~~ presiding officer or decision maker is the respondent, complainant, or a witness; if the respondent, complainant, or witness is a family member or friend; if the individual has a personal interest or bias; or if the individual has previously served in an advisory capacity for any of the parties or witnesses. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) Challenges to council membership. Members of the student disciplinary council and the conduct review officer (CRO) are subject to the conflict of interest limitations set forth in subsection (1) of this section.

(a) If a member has such a conflict, the person shall recuse him/herself from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A council member's or the CRO's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time by submitting a motion to disqualify to the CRO. When such a challenge is made, the session council, excluding the person alleged to have a conflict of interest, shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies him/herself from a case, the ~~((director of SRR))~~ CRO will appoint a replacement.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed at least every three years under the direction of the vice president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of SRR. As much as possible, records should include:

(i) A summary of the proceedings during a prehearing conference;

(ii) An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings;

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding;

(v) A statement of matters officially noticed or considered by the council or conduct review officer (CRO);

(vi) Evidence submitted, whether or not accepted, any objections and rulings, any cross-examination questions submitted to the council and rulings on such questions;

(vii) Proposed findings, requested orders, and exceptions;

(viii) Recording of the hearing and subsequent transcript, if any;

(ix) Any staff memorandum to the extent required by RCW 34.05.476; ~~((and))~~

(x) For Title IX complaints, and remedies provided to the complainant designed to restore or preserve equal access to the university's programs or activities; and

(xi) Matters placed on the record after any ex parte communication. "Ex parte" means when a member of the student

discipline council or CRO communicates with a party about a nonprocedural matter regarding the hearing when the other party is not present.

(b) The director of SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the respondent may review the records relative to their case. The respondent shall request to review the case records by contacting the CRO. The CRO shall make every reasonable effort to support the respondent's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(iii) In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting student rights and responsibilities.

(viii) A student may obtain a copy of their disciplinary record by making a written request to student rights and responsibilities. Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by law.

(d) Supportive measures. The university will keep any supportive measures provided to the complainant or respondent in sexual misconduct or interpersonal violence cases confidential to the extent that maintaining such confidentiality will not impair the ability of the university to provide the supportive measures.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The CRO may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the CRO.

(c) Required holds: The CRO shall place a hold on a student's academic record if the student is the respondent to a violation of the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. A hold is also required if a student is subject to a pending student conduct complaint at the time of graduation. This hold shall remain in place until the allegation or complaint is resolved.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person or the university may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities; ~~((☞))~~

(ii) Title IX coordinator; or

(iii) The office of the dean of students.

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is ~~((acting as the complainant))~~ pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordinator. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of sexual misconduct or interpersonal violence, may lead to suspension or expulsion and/or felony level criminal conduct ~~((that will require special processing under subsection (3) of this section and whether))~~ to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. ~~((The director of SRR shall also review the complaint to determine whether the allegations may lead to a possible sanction of suspension, expulsion, or if the allegations rise to the level of a felony under Washington criminal law. All allegations that may lead to a possible suspension, expulsion, or that rise to the level of felony sexual misconduct under Washington criminal law shall be referred for a university investigation and full))~~ If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122.

(3) Sexual misconduct and interpersonal violence proceedings. Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct or interpersonal violence regardless of the possible level of sanction or ~~((where the alleged acts occurred))~~ whether there is a formal Title IX complaint.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within twenty-four hours.

(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless SRR has received a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from the Title IX coordinator requesting initiation of the student conduct process.

If the alleged behaviors identified in a Title IX complaint would not constitute sexual misconduct or interpersonal violence as defined in this code, even if substantiated by a preponderance of the evidence, or if they meet the definition of a Title IX complaint, the university will dismiss the Title IX complaint. Dismissal decisions may be appealed as identified in WAC 172-121-100(6). SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.

(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so ~~((to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All allegations of sexual misconduct shall be promptly investigated and resolved.~~

~~((e)))~~ The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within ninety days. If the university needs additional time, the inves-

igator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the ninety days must be based on good cause.

(d) Investigations. The university will investigate all sexual misconduct and interpersonal violence allegations, including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least ten calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least ten days prior to any hearing or other determination of responsibility. In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.

(e) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.

~~((f)))~~ (f) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct or interpersonal violence, it will notify the potential complainant of

their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the complainant that he or she is not required to file a report with local law enforcement. The university will report allegations of sexual misconduct or interpersonal violence to law enforcement or other authorities ~~((consistent with))~~ when it is required to do so under federal, state, and local law.

(4) ~~((Interim))~~ Supportive measures and interim restrictions. During the complaint review, the director of SRR or Title IX coordinator will review whether any ~~((interim))~~ supportive measures or interim restrictions are needed. ~~((Interim))~~ Supportive measures and interim restrictions are addressed in WAC 172-121-140.

(5) SRR will follow up with the parties as described below.

(a) ~~((For cases other than sexual misconduct,))~~ The director of SRR will contact the ((parties)) respondent, and the complainant in cases of sexual misconduct or interpersonal violence, and provide them with the following information:

(i) The ~~((parties'))~~ respondent's and complainant's rights under the student conduct code;

(ii) A summary of the allegations the complainant has against the respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging sexual misconduct or interpersonal violence, the director of SRR will, in addition to the information specified under (a) of this subsection, provide both parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits

this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a ~~((preliminary))~~ prehearing conference.

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, he/she may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.

(b) ~~((Preliminary))~~ Prehearing conference. If the director of SRR does not dismiss the matter he/she will arrange a ~~((preliminary))~~ prehearing conference as described in WAC 172-121-110.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-105 Conduct review proceedings. (1)

General provisions:

(a) Conduct review proceedings in which the allegations do not involve a Title IX complaint, felony level crimes, or the potential sanction is less than suspension((-)) or expulsion, ((or do not involve allegations of felony level sexual misconduct)) are brief hearings in accordance with WAC 172-108-050(3). Conduct review proceedings in which the allegations involve a Title IX complaint, felony level crimes, or the potential sanction is suspension((-)) or expulsion, ((or that involve allegations of felony level sexual misconduct)) are considered full hearings under the Administrative Procedure Act.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings. All Title IX complaints shall follow the regulations prescribed under 34 C.F.R. Part 106.

(2) Notification for student organizations: When a charge is directed towards a student organization, the ~~((conduct review officer (-)))~~ CRO((+)) will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant and the respondent may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant or the respondent that employed the advisor;

(b) The advisor may be an attorney or any other person of the student's choosing;

(c) The advisor must provide the CRO with a FERPA release signed by the student they are assisting;

(d) If a complainant or the respondent is represented by an attorney, the attorney shall provide the CRO and other parties with the attorney's name, address, telephone number, and email address. The attorney must file a notice of appearance when hired to represent a person and a notice of withdrawal upon withdrawal of representation. A notice of appearance must be filed at least two business days prior to any conduct review proceeding;

(e) If a complainant or respondent wishes to have an advisor for a Title IX complaint and is not able to identify one, the student may contact SRR for assistance in finding an advisor.

(4) Review of evidence:

(a) In brief hearings, the respondent, and, in cases of sexual misconduct or interpersonal violence, the complainant may request to view material related to their case prior to a scheduled hearing by contacting the CRO. To facilitate this process, the party should contact the CRO as early as possible prior to the scheduled hearing. The CRO shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(b) In ~~((council))~~ full hearings, the ~~((parties))~~ respondent and, in cases of sexual misconduct or interpersonal violence, the complainant may request to view material related to the case prior to the scheduled hearing by contacting the ~~((CRO))~~ director of SRR. To facilitate this process, the party should contact the ~~((CRO))~~ director as early as possible prior to the scheduled hearing. The ~~((CRO))~~ director of SRR shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(5) Continuances: Continuances, extensions of time, and adjournments may be ordered by the CRO. A party may file a timely request for a continuance if the party shows good cause for the continuance. A request for a continuance may be oral or written. Before granting a motion for a continuance, the CRO shall allow any other party to object to the request. The CRO will make a decision on the request and will communicate his/her decision in writing to the parties along with the reasons for granting or denying the request.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-110 Notice of allegations and initial scheduling. (1) ~~((Scheduling))~~ Notice of investigation. ~~If((; after reviewing a complaint,)) the director of SRR ((decides to initiate conduct review proceedings, the director shall, within ten business days of receiving the initial complaint, appoint a conduct review officer (CRO) to the case and notify the respondent. In cases alleging sexual misconduct, the CRO assigned must have completed training on issues relating to sexual misconduct, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the allegations to the respondent must))~~ refers a complaint to an investigation, the director shall provide the respondent with a notice of investigation that meets the following requirements:

~~(a) ((Be))~~ Is made in writing;

~~(b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;~~

~~(c) Indicates ((whether or not the allegation has been assigned to a university investigator and, if so, provide the contact information for the investigator; and~~

~~(d) In cases where an allegation is not assigned to an investigator, the information contained in subsection (2) of this section.~~

~~(2) After the conclusion of an investigation, or in cases where there is not an investigation, the director will provide written notice to the student the name of the CRO assigned to the case and the deadline for the respondent to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the respondent to contact the CRO will be within five business days of the date the director of SRR sent notification to the respondent.~~

~~(3) Failure to respond: If the respondent fails to respond to the notice of allegations, the director of SRR shall schedule the preliminary conference and notify the respondent. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.~~

~~(4)) that the complaint has been assigned to a university investigator and provide the contact information for the investigator;~~

~~(d) Provides notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;~~

~~(e) Provides a reminder that the person may have an advisor of their choice throughout the student conduct process;~~

~~(f) A statement that students are prohibited from knowingly furnishing false information during the student conduct process; and~~

~~(g) Information about supportive measures and resources available to the respondent as well as information about the university's prohibition on retaliation.~~

~~(2) Notice of allegations: If the director of SRR decides to send the case to hearing, following a review of the investigative report if any, the director of SRR shall appoint a CRO to the case and notify the respondent of the CRO and the date of a prehearing conference. In cases alleging sexual misconduct or interpersonal violence, the CRO and session council assigned must have completed training on issues relating to sexual misconduct and interpersonal violence, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the allegations to the respondent must:~~

~~(a) Be made in writing;~~

~~(b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information, including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;~~

~~(c) Provide notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;~~

(d) Provide a reminder that the person may have an advisor of their choice and, for Title IX complaints, that the university will provide them with an advisor upon requests for the purposes of conducting cross-examination;

(e) Provide information about how to review the evidence gathered prior to the hearing;

(f) Provide a statement that students are prohibited from knowingly furnishing false information during the student conduct process; and

(g) Include a date, time, and location of the prehearing conference.

(3) Follow up with complainant. In all cases alleging sexual misconduct ~~((or if there will be a full hearing))~~ or interpersonal violence, the SRR office shall notify the complainant(s) of the date, time, and location of the ~~((preliminary))~~ prehearing conference and of their right to attend the conference. The SRR office shall also follow up with the complainant(s)~~((^))~~ and respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant ~~((has experienced any type of))~~ or respondent engages in retaliatory behavior, the university shall take immediate steps to protect the complainant or respondent from further harassment or retaliation. The complainant will also be notified that they have a right to an advisor during the hearing process, and, for Title IX complaints, that the university will provide an advisor upon request for the purposes of conducting cross-examination.

(4) If additional information is learned during the investigation that may rise to additional allegations, the university must provide the respondent with an updated notice of allegations.

(5) The procedures for the ~~((preliminary))~~ prehearing conference for brief hearings is contained in WAC 172-121-121. The procedures for the ~~((preliminary and))~~ prehearing conference for full hearings is contained in WAC 172-121-122.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-121 Brief hearing~~((s))~~ procedures.
~~((Brief hearing procedures.))~~

(1) Applicability: The conduct review officer (CRO) may hold a brief hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve a Title IX complaint, or felony level ~~((sexual misconduct. A respondent shall be informed of the option to have a brief hearing before a CRO or before the student discipline council. Unless the respondent affirmatively requests a council hearing, brief hearings shall be conducted with a CRO))~~ criminal behavior.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closing hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the ~~((hearing authority))~~ CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising

from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) Appearance: The ~~((parties))~~ respondent, and complainant in cases of sexual misconduct or interpersonal violence, will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. ~~((The parties))~~ People may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (c) of this subsection. If a ~~((party))~~ person does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. In brief hearings, the advisor is limited to advising the student and cannot speak on behalf of the student.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) ~~((Telephonic))~~ Electronic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by ~~((a telephonic))~~ an electronic appearance as determined by the CRO.

(4) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) ~~((Preliminary))~~ Prehearing conference. The SRR office will schedule a ~~((preliminary))~~ prehearing conference with the respondent. Only the respondent and the respondent's advisor may appear at the ~~((preliminary))~~ prehearing conference, unless the case involves alleged sexual misconduct or interpersonal violence. In cases alleging sexual misconduct or interpersonal violence, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate ~~((preliminary))~~ prehearing conferences. The purpose of the ~~((preliminary))~~ prehearing conference is to advise the parties regarding the student conduct process. During the ~~((preliminary))~~ prehearing conference, the CRO will:

(a) Review the written list of allegations with the respondent;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

At the end of the ~~((preliminary))~~ prehearing conference, the CRO will either conduct or schedule a brief hearing with the respondent as set forth in this subsection. If proper notice was given of the ~~((preliminary))~~ prehearing conference and the respondent fails to attend the conference, the CRO may either proceed with the brief hearing and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

(6) Scheduling. A brief hearing may take place immediately following the ~~((preliminary))~~ prehearing conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct or interpersonal violence, a brief hearing cannot take place without first notifying the complainant/respondent of the hearing. If the brief hearing will be held at a later date or time, the CRO shall schedule the hearing and notify the respondent and, in the case of sexual misconduct or interpersonal violence, the complainant of the date, time, and place of the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so. The CRO has sole discretion as to whether to call witnesses.

(7) If the respondent fails to appear at the brief hearing, the CRO may conduct the hearing without the respondent present. The CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

(8) Deliberation. After the hearing, the CRO ~~((and/or council))~~ shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence and issue a decision within seven business days. ~~((For council hearings, the council shall meet in closed session and, within seven business days, determine by majority vote whether the respondent violated the student conduct code.))~~

(a) If the CRO ~~((and/or council))~~ determines that there is not sufficient information to establish a violation by a preponderance of evidence, the CRO ~~((and/or council))~~ shall dismiss the complaint.

(b) If the CRO ~~((and/or council))~~ determines that the respondent violated the student conduct code, the CRO ~~((and/or council))~~ shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

(9) Sanctions. In determining what sanctions shall be imposed, the ~~((hearing authority))~~ CRO may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the ~~((hearings))~~ CRO authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed. In addition to sanctions under this code, if the stu-

dent is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

(10) Notification. The CRO ~~((, and/or the presiding officer in cases of a council hearing,))~~ shall serve the respondent with a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the ~~((council's/CRO's))~~ CRO's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

(a) The findings shall be based exclusively on the evidence provided at the hearing. The decision must also ~~((identify the))~~ include:

(i) Identification of the section of the code alleged to have been violated;

(ii) A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews, methods to gather evidence, and hearings;

(iii) Findings of fact supporting the determination;

(iv) Conclusions regarding the application of the code to the facts along with the rationale for each determination;

(v) Sanctions and remedies;

(vi) Respondent's right to appeal.

(b) In cases of sexual misconduct or interpersonal violence, the complainant shall be provided with written notice of:

~~((a))~~ (i) The university's determination as to whether such sexual misconduct or interpersonal violence occurred;

~~((b))~~ (ii) The complainant's right to appeal;

~~((c))~~ (iii) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).

(c) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or

(ii) The misconduct involves a crime of violence or ~~((a sexual assault, including rape, dating violence, domestic violence or stalking))~~ other crime as defined in 42 U.S.C. Sec. 13925 (a).

(11) Finality. The CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be timely.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-122 Full hearing procedures. (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime, involve a Title IX complaint, or could result in a sanction of suspension or expulsion ~~((or that involve felony-level sexual misconduct)).~~ Following provision of the notice of allegations to the respondent, as set

forth in WAC 172-121-110, the SRR office shall arrange for a ~~((preliminary))~~ prehearing conference.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO. The CRO chairs the disciplinary council.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the ~~((CRO))~~ council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the ~~((CRO))~~ council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person ~~((, through telephone conference, or through any other practical means of communication))~~ via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the ~~((CRO))~~ council will decide the case based on the information available. Solely for Title IX complaints, if a party or witness does not appear at the hearing and submit to cross-examination, the council must not rely on any statement of that party or witness in reaching a determination regarding responsibility; additionally, the council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) ~~((Telephonic))~~ Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by ~~((telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by a telephonic appearance as determined by the CRO))~~ a method that allows the person to be seen and heard by the council.

(4) Standard of ~~((proof))~~ evidence. The ~~((CRO))~~ council shall determine whether the respondent violated the student

conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) ~~((Preliminary))~~ Prehearing conference. The SRR office or designee will arrange for a ~~((preliminary))~~ prehearing conference with ~~((each of))~~ the parties ~~((separately))~~ to advise them about the student conduct process. During the ~~((preliminary))~~ prehearing conference, the SRR office or designee will:

(a) Review the written list of allegations ~~((with the respondent))~~;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent and complainant with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's and complainant's rights and responsibilities under the student code;

(e) Explain the conduct review procedures;

(f) ~~((Explain the respondent's and complainant's rights and responsibilities in the conduct review process; and~~

~~((g)))~~ Explain possible penalties under the student conduct code;

(g) Schedule a date for the full hearing; and

(h) Address any preliminary matters or motions.

(6) ~~((Prehearing conference. Following the preliminary conference, the case will be referred to the CRO and the CRO will arrange for a prehearing conference with the parties. The purpose of the prehearing conference is for the CRO to explain what will occur for during the full hearing process, to schedule a date for the full hearing, and to address any preliminary matters or motions.))~~ Notice of hearing. Following the prehearing conference, the ~~((CRO))~~ director shall schedule the hearing and notify the respondent ~~((with))~~ and complainant of the date, time, ~~((and))~~ location, participants, and purpose of the hearing. ~~((The director of SRR shall also notify the complainant of the date, time, and location of the hearing in writing as well as any other details required by RCW 34.05.434.))~~ The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The ~~((CRO))~~ director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the ~~((CRO))~~ council in accordance with RCW 34.05.452. Any investigation conducted by the university will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs; however, solely for Title IX complaints, statements obtained from a person who does not tes-

tify at the hearing shall not be considered by the council. The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude ~~((incompetent,))~~ irrelevant ~~((-immaterial or unduly repetitious))~~ material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.

(b) The respondent and complainant have the right to view all material presented during the course of the hearing, except a respondent's previous disciplinary history which shall be used solely for the purpose of determining the appropriate sanction.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and 5.56.010.

(b) Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under his or her control.

(i) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(ii) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for the hearing, or another reasonably convenient time and place in advance of the hearing.

(c) A subpoena may be served by any suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(d) The CRO, upon motion by a party or at his or her own discretion, may (i) quash or modify the subpoena if it is unreasonable and oppressive or (ii) condition denial of the motion upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A motion for summary judgment is not permitted for Title IX complaints.

(11) Witnesses.

(a) The complainant, respondent, ~~((investigator, and CRO may present))~~ and the university's presenter may call witnesses at full hearings.

(b) The ~~((party))~~ person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable ~~((and)),~~ oppressive, or does not conform to EWU's subpoena form.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be ~~((inappropriate,))~~ irrelevant ~~((-immaterial, or unduly repetitious))~~. For Title IX complaints, any decision to exclude a witness shall be explained on the record.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

(12) Questioning:

(a) The ~~((complainant, the respondent, and their advisors))~~ complainant's advisor, the respondent's advisor, and the university's presenter may ask questions of ~~((each other or of any witnesses, except cross-examination questions for another party must be submitted in writing to the CRO))~~ any

witness, or party, including cross-examination questions. For cases that do not involve Title IX complaints, if the student does not have an advisor, the complainant and respondent may submit questions in writing to the CRO and the CRO may ask the questions. For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the hearing. The CRO may also ask ~~((such))~~ questions, but is not required to do so. The CRO may preclude any questions which ~~((he/she))~~ they consider ~~((s inappropriate, irrelevant, immaterial or unduly repetitious or may require that all questions be submitted to the CRO rather than allowing the parties to directly question witnesses))~~ irrelevant, and for Title IX cases such decision must be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The ~~((CRO))~~ council may ask their own questions of any witness or party called before them.

(13) Remote appearance. The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by ~~((telephone, audio tape,))~~ video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate, subject to subsection (3)(b) of this section.

(14) Deliberations and sanctions. Following the hearing, the ~~((CRO))~~ council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the ~~((CRO))~~ council shall make a decision based on the information available. If the ~~((CRO))~~ council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history solely for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The ~~((CRO))~~ council shall issue a decision including ~~((his/her))~~ their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the ~~((CRO's))~~ council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within ~~((seven))~~ ten business days from the date of the hearing. The written decision shall also:

(a) Be correctly captioned identifying EWU and the name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Identify the allegations at issue;

(d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;

~~((f))~~ (f) Contain ~~((appropriate))~~ appropriately numbered conclusions ~~((of law, including citations of statutes and rules relied upon;~~

(e) Contain an initial or final order disposing of all contested issues;

~~((f))~~ regarding the application of university policies and this code to the facts;

(g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities;

(h) Contain a statement describing ~~((the available post-hearing remedies))~~ rights to appeal and the procedures for appealing.

(15) Finality. The council's and CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be timely.

(16) Notification to the respondent. The ~~((director of SRR))~~ CRO shall serve the respondent with a copy of the decision and notice of the right to appeal.

~~((16))~~ (17) Notification to the complainant. In cases of sexual misconduct or interpersonal violence, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct or interpersonal violence occurred;

(b) The complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, ~~((relationship))~~ dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(e) Any remedies provided to the complainant. For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.

(18) Notification to Title IX coordinator. For Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-130 Appeals. (1) Basis: Appeals following a brief hearing(~~(s)~~) or full hearing(~~(s) or dismissal of a complaint~~) may be filed by the respondent (~~(or the complainant)~~) under this section. In cases of sexual misconduct, interpersonal violence, or a Title IX complaint, the complainant may also file an appeal following dismissal of a complaint or a full hearing. Appeals of interim restrictions are governed by WAC 172-121-140. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures(~~(-A hearing may have deviated from established procedures if:~~

~~(i) The hearing was not conducted fairly in light of the notice of allegations and information presented;~~

~~(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;~~

~~(iii) The respondent was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code)) that affected the outcome of the matter.~~

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority, or the director of SRR's decision to not proceed with a hearing, was based on the information presented and that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information (~~(which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing)) that was not reasonably available at the time the determination finding responsibility or dismissal was made that could affect the outcome of the matter. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.~~

(f) The Title IX coordinator, investigator, or hearing authorities had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(2) Filing: Appeals may be filed following a brief hearing, full hearing, or dismissal of a complaint, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within ten business days from service of the (~~(CRO's)~~) council's decision following a full hearing or dismissal of a complaint, or within twenty-one calendar days from service of a decision from a brief hearing conducted by the CRO (~~(or student disciplinary council)~~);

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct or interpersonal violence, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days(~~(-and~~

~~(d) For dismissal of a complaint, appeals are determined by the dean of students)).~~

(3) Appeal authorities:

(a) For dismissal of a complaint, appeals are determined by the dean of students.

~~(b) For brief hearings ((heard by the CRO)), appeals are determined by the ((student disciplinary council.~~

~~(b) For brief hearings heard by the student disciplinary council, appeals are determined by the)) dean of students.~~

(c) or full hearings, appeals are determined by the vice president for student affairs.

(4) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be issued within thirty calendar days of the appeal authority receiving all necessary documentation.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsid-

eration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

(9) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the respondent, and, in cases of sexual misconduct or interpersonal violence, notify the complainant, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

(10) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

(11) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-140 ((Interim)) Supportive measures and interim restrictions. (1) ((Interim)) Supportive measures. During the complaint review, the director of SRR, Title IX coordinator, or designee will evaluate the circumstances and ~~((recommend to the dean of students))~~ determine if any ~~((interim))~~ supportive measures to assist or protect the parties during the conduct code process are needed. ~~((Interim))~~ For sexual misconduct and interpersonal violence cases, supportive measures are available before or after the filing of a complaint or where no formal complaint is filed. Supportive measures are provided to students free of charge and may include, but are not limited to, safety planning with the ((EWU police department, no contact directives)) university, mutual restrictions on contact between the parties, academic or workplace modifications, providing counseling for the complainant and/or respondent, campus housing modifications, and/or an interim restriction for the respondent. The purpose of ((an interim)) a supportive measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus. For Title IX complaints, sup-

portive measures are designed to restore or preserve equal access to the university's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and the university's educational environment, or deterring sexual harassment. Supportive measures in cases of sexual misconduct and interpersonal violence are coordinated by the Title IX coordinator or designee.

(2) Interim restrictions. For Title IX complaints, in situations where there is cause to believe that a student or a student organization poses an immediate ((danger)) threat to the physical health((;)) or safety((, or welfare of)) of any student or other individual, including themselves, the ((university community, or property of the university community, the dean of students)) Title IX coordinator in conjunction with the director of SRR may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing.

Simultaneous with such action(s), the ~~((dean of students))~~ director of SRR will refer the allegations to the conduct review officer, who will process such allegations in accordance with the provisions of this student conduct code.

For all non-Title IX cases, the director may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing. Simultaneously, the director shall refer the allegations to the conduct review officer. For non-Title IX cases, interim restriction is subject to the following:

(a) Interim restriction actions may only be imposed in the following situations:

(i) When a student or student organization poses an immediate threat to:

(A) The physical health((;)) or safety ((or welfare)) of any ~~((part of the university community or public at large))~~ student or any other individual;

(B) The student's own physical safety and well-being; or

(C) Any property of the university community; or

(ii) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community.

(b) During the interim restriction period, a student may be restricted by any or all of the following means:

(i) Denial of access including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(ii) Interim suspension, including temporary total removal from the university or restriction of access to campus. For Title IX complaints, a student may only be placed on interim suspension if, after conducting an individualized safety and risk analysis, the director determines the person poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct or interpersonal violence;

(iii) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The ~~((dean of students))~~ director of SRR will determine what restriction(s) will be placed on a student.

(4) The ~~((dean of students))~~ director of SRR will prepare a brief memorandum for record containing the reasons for the interim restriction. The ~~((dean of students))~~ director will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) could constitute a violation of the student conduct code;

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) An explanation of the process for emergency appeal reviews.

(5) Notice to complainant. In cases alleging sexual misconduct or interpersonal violence, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement within five business days of the notice as to why the interim restriction should or should not be modified.

(6) Emergency appeal review.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within five business days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within ten business days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to the criteria identified in WAC 172-121-140(1) upon which the interim restriction was imposed (threat to health or safety of the university community, potential for creating campus disorder, impeding the lawful activity of others, etc.). Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator or provided to the CRO under the regular hearing process.

(b) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the dean of students and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular hearing process. In the emergency appeal review, the vice president will only review materials available to and information considered by the dean of students at the time the interim restriction was imposed, written statements by the two parties, and information that becomes available as a part of the university's investigation that the vice president deems relevant.

(c) In cases alleging sexual misconduct or interpersonal violence, if a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal the interim restriction using the process outlined in this subsection. If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to submit a written statement to the vice president within five business days of receiving notice of the complainant's appeal.

(d) During the emergency appeal review, the vice president for student affairs will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction action. The written decision shall include a rationale for the basis of the decision and be issued within fifteen business days of the date of service of an interim restriction.

(e) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

(f) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

AMENDATORY SECTION (Amending WSR 20-01-032, filed 12/6/19, effective 1/6/20)

WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) **Acts of academic dishonesty.** University policy regarding academic dishonesty is governed by the university academic integrity policy.

(2) **Abuse, threats and harassment.**

(a) Abuse. Assault and other forms of physical abuse.

(b) Threats. Any conduct or statement that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person.

(c) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Hostile or offensive; and

(v) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate in, or benefit from the university's programs and activities.

(d) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, citizenship or immigration status, disability, or veteran status when one of the conditions outlined in ~~((subsection (1) or (2)))~~ (c)(i) or (ii) of this ~~((section))~~ subsection are present:

(i) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a

basis for evaluation in making academic or personnel decisions; or

(ii) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.

(e) Interpersonal violence. Interpersonal violence includes domestic violence (and), dating violence, and stalking.

(i) Domestic violence means:

(A) ~~Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;~~

(B) ~~Sexual assault of one family or household member by another; or~~

(C) ~~Stalking of one family or household member by another family or household member)) a felony or misdemeanor crime of violence committed by: A current or former spouse or intimate partner of the complainant; a person with whom the complainant shares a child in common; a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner; adult persons related by blood or marriage; adult persons who are presently residing together or who have resided together in the past; and, persons who have a biological or legal parent-child relationship. "Domestic violence" is further defined by 34 U.S.C. Sec. 12291 (a)(8).~~

(ii) Dating violence ((is a type of domestic violence, except the acts specified above are)) means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The ((nature of the)) type of relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

(f) ~~((Sexual and gender-based harassment. Sexual harassment is defined by the Office of Civil Rights as unwelcome conduct of a sexual nature and may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code when it is sufficiently severe or pervasive such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.~~

~~In determining whether conduct is severe or pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the complainant; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.~~

~~Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or~~

~~hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code when it is sufficiently severe or pervasive, such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.)) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

~~(i) Fear for their health and/or safety or the health/safety of others; or~~

~~(ii) Suffer substantial emotional distress.~~

~~(g) Retaliation. Any ((actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of)) intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights under this code or because a person has made a report, complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation ((or act of intimidation directed towards a person who participates in an investigation or disciplinary process under this code)) is prohibited and is a separate violation of this code.~~

(3) **Sexual misconduct.** Sexual misconduct includes, but is not limited to:

(a) ~~((Noneconsensual sexual activity. Noneconsensual sexual activity is sexual contact or sexual intercourse without consent. Sexual contact is intentional contact with a person's intimate body parts without their consent. Intimate body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks. Noneconsensual sexual intercourse is penetration, no matter how slight, of the vagina, or anus, with any body part or object, without consent; or, oral penetration by a sex organ of another person without consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is noneconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.~~

~~(b)) Sexual harassment. Sexual harassment is conduct that meets one or more of the following:~~

~~(i) An EWU employee conditioned the provision of an aid, benefit, or service of the university on the complainant's participation in unwelcome sexual conduct; or~~

~~(ii) Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the complainant equal access to the university's programs or activities.~~

~~In determining whether conduct is severe or pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and~~

severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the complainant; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(b) Sexual assault. Any sexual act directed against another person, without a person's consent, including instances where a person is not capable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, age, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

Sexual assault includes:

(i) Rape: The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without a person's consent.

(ii) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the person's consent. Private body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks.

(iii) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

(iv) Statutory rape: Sexual intercourse with a person who is under the age of consent as defined by state law.

(4) Other forms of inappropriate sexual (~~misconduct~~. Other forms of sexual misconduct include) behavior. Other forms of inappropriate sexual behavior that do not fall under Title IX or the definition of sexual harassment or interpersonal violence, such as indecent liberties; indecent exposure; sexual exhibitionism; (~~sex-based cyber harassment~~;) prostitution or the solicitation of a prostitute; peeping or other voyeurism; sexual misconduct with a minor; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.

(~~(4) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:~~

(a) Fear for their health and/or safety or the health/safety of others; or

(b) Suffer substantial emotional distress.)

(5) Unauthorized use of electronic or other devices. Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously

taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(6) Property violations. Theft of, damage to, or misuse of another person's or entity's property. This also includes any conduct or statement that, when viewed objectively, threatens to damage another's property.

(7) Weapons. Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

(8) Failure to comply.

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

(9) Trespassing/unauthorized use of keys.

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

(10) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(11) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(12) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(ii) Use, possession, distribution, manufacture, or sale of marijuana is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention).

(iii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

(13) Hazing. Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) Endangers the mental or physical health or safety of any student or other person;

(b) Destroys or removes public or private property; or

(c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

(14) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

(15) Violations of other laws, regulations and policies.

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies, regulations, contracts, or handbook provisions.

(16) Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

(17) Acts against the administration of this code.

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code including, but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

(18) Other responsibilities.

(a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

(19) Student organization and/or group offenses.

Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

AMENDATORY SECTION (Amending WSR 18-06-021, filed 2/27/18, effective 3/30/18)

WAC 172-121-210 Sanctions and remedies. If any student or student organization is found to have committed any of the offenses described in WAC 172-121-200, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of the university, the university may impose additional discipline in accordance with its policies and procedures pertaining to employees.

(1) Individual student sanctions:

(a) Admonition: An oral statement to a student that he/she has violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time. ~~((Loss of financial aid is subject to the processes outlined in this chapter except any such loss must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.))~~

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment

and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. ~~((Suspension is subject to the processes outlined in this chapter except any suspension must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.))~~ Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.

(k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. ~~((Expulsion is subject to the processes outlined in this chapter except any expulsion must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed.))~~ Expulsions may be noted on the student's transcript.

(l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) Revocation of degree: A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) Student organizations and/or group sanctions: Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) Revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization ~~((Revocation is subject to the processes outlined in this chapter except any revocation must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed.))~~;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

- (i) Exclusion from intramural competition as a group;
- (ii) Denial of use of university facilities for meetings, events, etc.;
- (iii) Restitution; and/or
- (iv) Fines.

(3) Remedies. For Title IX complaints, if the respondent is found responsible for violating the code, the university may provide remedies to the complainant designed to restore or preserve equal access to the university's educational programs or activities.

WSR 20-19-070

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-190—Filed September 14, 2020, 8:51 a.m., effective September 14, 2020, 8:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close the commercial shrimp trawl fishery in the portion of Catch Area 20B within Shrimp Management Area 1B, effective September 16, 2020, at 11:59 p.m.

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

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes the portion of Catch Area 20B within Shrimp Management Area 1B due to the attainment of quota; (2) closes the pot fishery season for spot shrimp; (3) opens spot shrimp for the final clean-up fishery in SMAs 2W, 3, and 6; (4) defines the Shrimp Management Areas and regions open to spot and nonspot commercial harvest; (5) sets harvest restrictions for the non-spot commercial pot fishery; (6) sets harvest restrictions and available quota remaining for the spot commercial pot fishery; (7) sets the harvest and gear limitations for the Puget Sound shrimp trawl fishery; and (8) requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 14, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000Z Puget Sound shrimp pot and trawl fishery—Season. Effective immediately until further notice, pursuant to RCW 34.05.350, the following provisions of WAC 220-340-520 regarding Puget Sound commercial shrimp pot harvest, non-spot shrimp harvest, spot shrimp harvest, trawl shrimp harvest and sales shall be described below. All other provisions of WAC 220-340-520 not addressed herein, and unless otherwise amended, remain in effect:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 2W, 3 and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Areas) 23A-E, 23A-W, 23A-C, and 23A-S are closed to the harvest of non-spot shrimp until the spot quota is attained in all sub-areas of 23A. Catch Areas 23A-E, 23A-W, 23A-C, and 23A-S AE are within Shrimp Management Area 3 and comprise Catch Area 23A.

(ii) Effective immediately it is unlawful to harvest spot shrimp from sub-areas 23A-W, 23A-C, 25A, and 28A-D. Catch Areas 23A-W, 23A-C and 25A are within Shrimp Management Area 3. Catch Area 28A-D is within Shrimp Management Area 6.

(iii) Discovery Bay Shrimp District is closed to the harvest of all shrimp species.

(b) It is unlawful to harvest non-spot and spot shrimp in the same day.

(c) It is unlawful to harvest shrimp in more than one Shrimp Management Area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly from Wednesday through Tuesday, totaling 7 days in length.

(b) It is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from Shrimp Management Areas 2W combined.

(c) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Region 2W. Region 2W is comprised of Catch Areas 25B, 25C, 25D, and 26AW.

(3) Shrimp Spot Pot Harvest Restrictions:

(a) All waters of Shrimp Management Area 2W are open to the harvest of all shrimp species. There are 750 pounds of spot shrimp quota remaining in Shrimp Management Area 2W.

(b) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 23A East in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 1005 pounds of quota remaining in Catch Area 23A East.

(c) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 23A South and 23D in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 935 pounds of quota remaining in Catch Area 23A South/23D.

(d) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 23C in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 1200 pounds of quota remaining in Catch Area 23C.

(e) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 29 in Shrimp Management Area 3 are open to harvest of spot shrimp. There are 500 pounds of quota remaining in Catch Area 29.

(f) Effective immediately until 11:59 pm on September 15, 2020, all waters of Catch Area 26D are open to harvest of spot shrimp. There are 500 pounds of quota remaining in Catch Area 26D. Catch Areas 26D is within Shrimp Management Area 6.

(g) For the catch accounting periods defined in 3(a) of this rule each fisher or alternate operator is required to report their intended catch area of harvest prior to the deployment of any spot shrimp gear to either shrimp.report@dfw.wa.gov or by text message to 360-302-6372.

(4) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) The remaining portion of Catch Area 22A within SMA 1B is open immediately, until further notice.

(d) Effective immediately until September 16, 2020 at 11:59 p.m., the portion of Catch Area 20B within SMA 1B is open.

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

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 section of the Washington Administrative Code is repealed:

WAC 220-340-52000Y Puget Sound shrimp pot and trawl fishery—Season. (20-183)

WSR 20-19-072

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 14, 2020, 11:10 a.m., effective September 14, 2020, 11:10 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-436-0040 Excluded income and resources for CEAP, 388-436-0050 Determining financial need and benefit amount for CEAP, and 388-436-0055 What is the disaster cash assistance program (DCAP)?

These amendments are necessary to ensure consolidated emergency assistance and related disaster cash assistance program rules are responsive to current proclaimed states of emergency.

This subsequent emergency adoption amends the emergency rule adopted as WSR 20-17-069.

Citation of Rules Affected by this Order: Amending WAC 388-436-0040, 388-436-0050, and 388-436-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.660, 74.08.090, 74.08A.230.

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

Reasons for this Finding: This filing is necessary to provide economic relief to people affected by current states of emergency caused by wildfires in addition to the existing COVID-19 emergency. Per Proclamations of the Governor 20-72 and 20-63.2, expanded support through family emergency assistance under RCW 74.04.660 has been authorized.

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

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

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

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

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

Date Adopted: September 14, 2020.

Katherine I. Vasquez

Rules Coordinator

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.

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-436-0040 Excluded income and resources for CEAP. Resources and income listed below will not be considered in determining need or payment for CEAP:

- (1) A home as defined under WAC 388-470-0045;
(2) Liquid resources as defined in WAC 388-470-0045 valued at six thousand dollars or less;
(3) One vehicle, running and used regularly by the assistance unit, with an equity value not to exceed ((one)) ten thousand ((five hundred)) dollars;
((3)) (4) Household furnishings being used by the assistance unit;
((4)) (5) Personal items being used by members of the assistance unit;
((5)) (6) Tools and equipment being used in the applicant's occupation;
((6)) (7) The value of the coupon allotment under the Food Stamp Act of 1977, as amended;
((7)) (8) Benefits received under the women, infants and children program (WIC) of the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;
((8)) (9) Energy assistance payments;
((9)) (10) Grants, loans, or work study to a student under Title IV of the Higher Education Amendments or Bureau of Indian Affairs for attendance costs as identified by the institution;
((10)) (11) Income and resources of an SSI recipient;
((11)) (12) Livestock when the products are consumed by members of the assistance unit;
((12)) (13) All resources and income excluded for the TANF program under WAC 388-470-0045 and by federal law.

Need item: Maximum allowable amount by assistance unit size:

Table with 9 columns: Item, 1, 2, 3, 4, 5, 6, 7, 8 or more. Rows include Food, Shelter, Clothing, Minor medical care, Utilities, Household maintenance, Job related transportation, and Child related transportation.

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

- (a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;
(b) Cash on hand, if not already counted as income; and
(c) The value of other nonexcluded resources available to the assistance unit.

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than ((ninety percent of)) or equal to the temporary assistance for needy families (TANF) payment standard for households with shelter costs. The net income limit for CEAP assistance units is:

Table with 2 columns: Assistance unit members, Net income limit. Rows show net income limits for 1 through 7 members and 8 or more members.

(2) The assistance unit's allowable amount of need is the lesser of:

- (a) The TANF payment standard, based on assistance unit size, for households with shelter costs as specified under WAC 388-478-0020; or
(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

AMENDATORY SECTION (Amending WSR 08-18-008, filed 8/22/08, effective 9/22/08)

WAC 388-436-0055 What is the disaster cash assistance program (DCAP)? Disaster cash assistance program (DCAP) is paid through the consolidated emergency assistance program (CEAP) and is designed to provide cash assistance to individuals and families who face an emergency and do not have the money to meet their basic needs.

(1) DCAP is available if you meet all of the following:

(a) You suffered losses (~~(and)~~);

(b) You live in an area that has been declared a disaster for individuals or a state of emergency related to COVID-19 by the Governor(-);

~~((b))~~ (c) In the event of a declared disaster, you are not able to live in your home or you cannot return to your home because of the disaster;

~~((c))~~ (d) Your home in the disaster or emergency area is your primary residence (not a vacation home) and you were living there at the time of the disaster or emergency;

~~((d))~~ (e) You are a resident of Washington state as defined in WAC 388-468-0005;

~~((e))~~ (f) Your net income is under the limits in WAC 388-436-0050(1); and

~~((f))~~ (g) You or your family is not eligible for any other program that could meet your need as stated in WAC 388-436-0030.

(2) Applicants must demonstrate a financial need for emergency funds for one or more of the following basic requirements:

(a) Food;

(b) Shelter;

(c) Clothing;

(d) Minor medical care;

(e) Utilities;

(f) Household maintenance supplies; or

(g) Necessary clothing or transportation costs to accept or retain a job.

(3) Payments under this program are limited to not more than thirty consecutive days within a period of twelve consecutive months. During a period when RCW 74.04.660(1) is suspended or waived by the Governor under RCW 43.06.220, a second thirty-day payment may be received within a period of twelve consecutive months if no more than one payment is related to COVID-19 and no more than one payment is related to a declaration of disaster unrelated to COVID-19.

Citation of Rules Affected by this Order: Repealed WAC 220-354-18000N; and amending WAC 220-354-180.

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 open commercial reef net fisheries in Puget Sound Salmon Management and Catch Reporting Area 7. The Fraser River Panel of the Pacific Salmon Commission relinquished its annual regulatory control of Marine Area 7 on September 12. This rule opens state commercial salmon fisheries that were planned to occur as soon as Fraser Panel management concluded for the year.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 14, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-18000N Puget Sound salmon—Reef net open periods. Effective immediately through September 19, 2020, pursuant to RCW 34.05.350, the following provision of WAC 220-354-180 regarding Puget Sound commercial salmon reef net open areas and periods shall be as described below. All other provisions of WAC 220-354-180 not addressed herein, and unless otherwise amended remain in effect:

It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7	5 AM - 9 PM Daily	immediately - 9/19

WSR 20-19-073

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-191—Filed September 14, 2020, 12:53 p.m., effective September 14, 2020, 12:53 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is open commercial reef net fisheries in Puget Sound Salmon Management and Catch Reporting Area 7.

REPEALER

The following section of Washington Administrative code is repealed effective September 20, 2020:

WAC 220-354-18000N Puget Sound salmon—Reef net open periods. (20-191)

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 20-19-075
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-186—Filed September 14, 2020, 4:26 p.m., effective September 14, 2020, 4:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000T; and amending WAC 220-330-160.

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

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

Reasons for this Finding: This emergency rule is needed to open recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5 for recreational harvest. Washington department of health (DOH) has certified clams from this beach to be safe for human consumption. The recreational razor clam fishery was closed early on March 12, 2020, due to county health agency concerns with the potential that a high number of harvesters traveling to coastal communities could exacerbate the COVID-19 pandemic in [that] area. The Washington department of fish and wildlife has coordinated with coastal city and county leaders, the Grays Harbor and Pacific County health departments and the Washington DOH and have reached [an] agreement to allow a reopening [of] coastal beaches to the recreational harvest of razor clams. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 14, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000T 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 a.m. September 16, 2020 through 11:59 a.m. September 19, 2020, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 p.m. September 20, 2020 through 11:59 p.m. September 22, 2020, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 a.m. September 16, 2020 through 11:59 a.m. September 19, 2020, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 p.m. September 20, 2020 through 11:59 p.m. September 22, 2020, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) Effective 12:01 a.m. September 16, 2020 through 11:59 a.m. September 16, 2020, and Effective 12:01 a.m. September 18, 2020 through 11:59 a.m. September 18, 2020, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(6) Effective 12:01 p.m. September 20, 2020 through 11:59 p.m. September 20, 2020, and Effective 12:01 p.m. September 22, 2020 through 11:59 p.m. September 22, 2020, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(7) Effective 12:01 a.m. September 17, 2020 through 11:59 a.m. September 17, 2020, and Effective 12:01 a.m. September 19, 2020 through 11:59 a.m. September 19, 2020, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(8) Effective 12:01 p.m. September 21, 2020 through 11:59 p.m. September 21, 2020, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 23, 12:01 a.m.:

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

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 20-19-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-192—Filed September 15, 2020, 2:09 p.m., effective September 16, 2020]

Effective Date of Rule: September 16, 2020.

Purpose: The purpose of this rule is to close recreational spot shrimp seasons in Marine Area 4 east of the Bonilla-Tatoosh line and Marine Area 5.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000D, 220-330-07000E and 220-359-02000D; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. This closes the last two areas with recreational spot shrimp harvest opportunity in Puget Sound on September 16, consistent with signed comanagement plans. It opens the nonspot shrimp harvest opportunity in these two areas which (by permanent rule) allows using 1/2 inch mesh pots through October 15. Additionally, this rule also maintains areas currently open to the harvest of nonspot shrimps using 1/2 inch mesh pots with depth restrictions specific to each marine area. This emergency regulation allows nonspot shrimp opportunities to take place one hour before sunrise to one hour after sunset, which is the default daily times for those areas by permanent rule.

This rule also repeals WSR 20-17-114 as a matter of housekeeping; the repealer for this filing was inadvertently omitted because of a typo in the subsequent filing of WSR 20-19-015.

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 3.

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

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

Date Adopted: September 15, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000E Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective immediately until further notice, or until this rule expires on October 16, 2020, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District portion of Marine Area 6, except as provided for in this section. All other provisions of WAC 220-330-070 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Marine Area 4 (east of the Bonilla-Tatoosh line) and 5: Open until further notice to the harvest of all shrimp species except spot shrimp. All spot shrimp must be immediately returned to the water unharmed.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open until further notice, to the harvest of all shrimp species except spot shrimp with a 200-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(3) Marine Area 6 (within the Discovery Bay Shrimp District): Closed to the harvest of all species of shrimp.

(4) Marine Area 7 East: Open until further notice to the harvest of all shrimp species except spot shrimp with a 200-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(5) Marine Area 7 South: Closed to the harvest of all species of shrimp.

(6) Marine Area 7 West: Closed to the harvest of all species of shrimp.

(7) Marine Areas 8-1 and 8-2: Open until further notice to harvest of all shrimp species except spot shrimp with a 150-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(8) Marine Area 9: Open until further notice to the harvest of all shrimp species except spot shrimp with a 150-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot

shrimp caught must be immediately returned to the water unharmed.

(9) Marine Area 10: Closed to the harvest of all species of shrimp.

(10) Marine Area 11: Open until further notice to harvest of all shrimp species except spot shrimp with a 150-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(11) Marine Area 12: Closed to the harvest of all species of shrimp.

(12) Marine Area 13: Open until further notice to harvest of all species except spot shrimp with a 200-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be returned to the water unharmed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-330-07000D Shrimp—Areas and seasons. (20-173)

The following section of the Washington Administrative Code is repealed effective October 16, 2020:

WAC 220-330-07000E Shrimp—Areas and seasons. (20-192)

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000D Columbia River salmon seasons. (20-161)

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 20-19-080 EMERGENCY RULES LIQUOR AND CANNABIS BOARD

[Filed September 16, 2020, 10:31 a.m., effective September 16, 2020, 10:31 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-1065 Prohibition—Vitamin E acetate, the Washington state liquor and cannabis board (board) has adopted an emergency rule to extend WAC 314-55-1065 that prohibits the sale of vapor products containing vitamin E acetate. This applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means including by telephone or other method of voice transmission, the mail or any other delivery service, or the internet or other online service. This filing supersedes and replaces emergency rules filed as WSR 20-12-035 on May 27, 2020.

Citation of Rules Affected by this Order: Amending WAC 314-55-1065.

Statutory Authority for Adoption: HB 2826 (chapter 133, Laws of 2020), effective March 25, 2020; RCW 69.50.342, 69.50.345.

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 standards in this emergency rule have not changed from the previous emergency rule. HB 2826 concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new subsection (m), providing that the board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the board determines, following a determination by the Washington state department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

On November 19, 2019, March 19, 2020, and July 17, 2020, the Washington state board of health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- In July 2019 the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration, state and local health jurisdictions and other clinical and public health partners began investigation [of] outbreaks of lung injury associated with e-cigarette product use, or vaping. In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak. As of February 18, 2020, CDC reported a total of two thousand eight hundred seven cases of hospitalized e-cigarette, or vaping, product use associated lung injury (EVALI) cases, and sixty-eight deaths in twenty-nine states and the District of Columbia. Twenty-seven cases of lung injury, including two deaths, have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, a recent study cited by the CDC conducted laboratory tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease from sixteen states. Forty-nine samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of the injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, sub-

stances or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and recommends that vitamin E acetate not be added to any vapor products.

- During the 2020 legislative session, the governor submitted request legislation (SB [E2SSB] 6254) aimed at increasing regulation of vapor products in Washington. The bill included a ban of vitamin E acetate, however the legislature failed to pass SB [E2SSB] 6254. Due to the clear association of vitamin E acetate with EVALI and absent legislative action to ban vitamin E acetate, SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the board by HB 2826, and upon the determination of SBOH that vitamin E acetate is a drug of concern and should be banned, the board adopted an emergency rule on May 27, 2020, as WAC 314-55-1065 prohibiting the use of vitamin E acetate. That emergency rule has been extended.

The extension of this emergency rule provides that no person including, but not limited to, a person licensed under chapter 69.50 RCW, may sell, offer for sale, or possess with intent to sell, vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate extension of rule that prohibits the use of vitamin E acetate and preserves the public health, safety and general welfare is necessary. Therefore, the immediate extension of a rule prohibiting the use of vitamin E acetate is necessary.

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

Number of Sections Adopted at the Request of a 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: September 16, 2020.

Jane Rushford
Chair

NEW SECTION

WAC 314-55-1065 Prohibition—Vitamin E acetate.

(1) Vitamin E acetate is a chemical that is used as an additive

or thickening ingredient in vapor products. As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the Centers for Disease Control (CDC) conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. All of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. The CDC did not determine that vitamin E acetate was present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples.

Subsequently, tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease in sixteen states identified vitamin E acetate in forty-eight of the samples. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven samples. Evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that it is important that vitamin E acetate not be added to any vapor products. Adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate is necessary for the preservation of the public health, safety, and general welfare.

(2) No person including, but not limited to, a person licensed under chapter 69.50 RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale, vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell, or offer for sale, vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

WSR 20-19-081

EMERGENCY RULES

LIQUOR AND CANNABIS

BOARD

[Filed September 16, 2020, 10:32 a.m., effective September 16, 2020, 10:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-077 Marijuana processor license—Privileges, requirements and fees, the Washington state liquor and cannabis board (board) has adopted an emergency rule as WAC 314-55-077(16) that continues to allow the board to take disciplinary action against any licensed marijuana processor failing to comply with the provisions of WAC 314-55-1065 concerning prohibition of the sale of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 20-12-036 on May 27, 2020.

Citation of Rules Affected by this Order: Amending WAC 314-55-077.

Statutory Authority for Adoption: HB 2826 (chapter 133, Laws of 2020), effective March 25, 2020; RCW 69.50.-342, 69.50.345.

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 standards in this emergency rule have not changed from the previous emergency rule. HB 2826 concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new subsection (m), providing that the board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the board determines, following a determination by the Washington state department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

On November 19, 2019, March 19, 2020, and July 17, 2020, the Washington state board of health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- In July 2019 the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration, state and local health jurisdictions and other clinical and public health partners began investigation [of] outbreaks of lung injury associated with e-cigarette product use, or vaping. In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak. As of February 18, 2020, CDC reported a total of two thousand eight hundred seven cases of hospitalized e-cigarette, or vaping, product use associated lung injury (EVALI) cases, and sixty-eight deaths in twenty-nine states and the District of Columbia. Twenty-seven cases of lung injury, including two deaths, have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, a recent study cited by the CDC conducted laboratory tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease from sixteen states. Forty-nine samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of the injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and recommends that vitamin E acetate not be added to any vapor products.

- During the 2020 legislative session, the governor submitted request legislation (SB [E2SSB] 6254) aimed at increasing regulation of vapor products in Washington. The bill included a ban of vitamin E acetate, however the legislature failed to pass SB [E2SSB] 6254. Due to the clear association of vitamin E acetate with EVALI and absent legislative action to ban vitamin E acetate SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the board by HB 2826, and upon the determination of SBOH that vitamin E acetate is a drug of concern and should be banned, the board adopted an emergency rule on May 27, 2020, as WAC 314-55-1065 under WSR 20-12-035, prohibiting the sale of vitamin E acetate. That emergency rule has been extended.

The extension of this emergency rule allows the board to take disciplinary action, without interruption, against any licensed marijuana processor that fails to comply with the provisions of its emergency rule WAC 314-55-1065 prohibiting the use of vitamin E acetate consistent with the authority of chapter 69.50 RCW.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate extension of rule that provides uninterrupted enforcement of WAC 314-55-1065, and preserves public health, safety and general welfare is necessary. Therefore, the immediate extension of this emergency rule concerning enforcement provisions for WAC 314-55-1065 prohibiting the sale of vitamin E acetate is necessary.

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

Number of Sections Adopted at the Request of a 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: September 16, 2020.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 20-01-172, filed 12/18/19, effective 1/1/20)

WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees. (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) Application and license fees.

(a) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The board may reopen the marijuana processor application window at subsequent times when the board deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4)(a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the board or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5)(a) A marijuana processor may blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(6) Recipes, product, packaging, and labeling approval.

(a) A marijuana processor licensee must obtain label and packaging approval from the board for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the board for approval. More information on the product, packaging, and label review process is available on the board's website.

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible prod-

ucts, packages, and labels for review and approval by the board. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the board or its designee.

(c) If the board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Marijuana-infused edible products in solid or liquid form must be homogenized to ensure uniform disbursement of cannabinoids.

(9) A marijuana processor may infuse food or drinks with marijuana, provided that:

(a) The product or products do not require cooking or baking by the consumer;

(b) Coatings applied to the product or products are compliant with the requirements of this chapter;

(c) The product and package design is not similar to commercially available products marketed for consumption by persons under twenty-one years of age, as defined by WAC 314.55.105 (1)(c).

(10) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(11) Other food items that may not be infused with marijuana to be sold in a retail store include:

(a) Any food that has to be acidified to make it shelf stable;

(b) Food items made shelf stable by canning or retorting;

(c) Fruit or vegetable juices (this does not include shelf stable concentrates);

(d) Fruit or vegetable butters;

(e) Pumpkin pies, custard pies, or any pies that contain egg;

(f) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(g) Dried or cured meats.

(h) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(i) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(12) Consistent with WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources, and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested

orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

The board may designate other food items that may not be infused with marijuana.

(13) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

(14) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(15) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A marijuana processor may accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the

responsibility of the retailer to ensure the product or sample jar is returned to the processor.

(16) The board may take disciplinary action against any marijuana processor that fails to comply with the provisions of WAC 314-55-1065.

WSR 20-19-082
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed September 16, 2020, 10:32 a.m., effective September 16, 2020, 10:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-079, Marijuana retailer license—Privileges, requirements and fees, the Washington state liquor and cannabis board (board) has adopted an emergency rule as WAC 314-55-079(14) that continues to allow the board to take disciplinary action against any licensed marijuana retailer failing to comply with the provisions of WAC 314-55-1065 concerning prohibition of the sale of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 20-12-037 on May 27, 2020.

Citation of Rules Affected by this Order: Amending WAC 314-55-079.

Statutory Authority for Adoption: HB 2826 (chapter 133, Laws of 2020), effective March 25, 2020; RCW 69.50-.342, 69.50.345.

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 standards in this emergency rule have not changed from the previous emergency rule. HB 2826 concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new subsection (m), providing that the board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the board determines, following a determination by the Washington state department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

On November 19, 2019, March 19, 2020, and July 17, 2020, the Washington state board of health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- In July 2019 the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration, state and local health jurisdictions and other clinical and public health partners began investigation [of] outbreaks of lung injury associated with e-ciga-

rette product use, or vaping. In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multi-state outbreak. As of February 18, 2020, CDC reported a total of two thousand eight hundred seven cases of hospitalized e-cigarette, or vaping, product use associated lung injury (EVALI) cases, and sixty-eight deaths in twenty-nine states and the District of Columbia. Twenty-seven cases of lung injury, including two deaths, have been reported in Washington state.

- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, a recent study cited by the CDC conducted laboratory tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease from sixteen states. Forty-nine samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of the injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and recommends that vitamin E acetate not be added to any vapor products.
- During the 2020 legislative session, the governor submitted request legislation (SB [E2SSB] 6254) aimed at increasing regulation of vapor products in Washington. The bill included a ban of vitamin E acetate, however the legislature failed to pass SB [E2SSB] 6254. Due to the clear association of vitamin E acetate with EVALI and absent legislative action to ban vitamin E acetate, SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the board by HB 2826, and upon the determination of SBOH that vitamin E acetate is a drug of concern and should be banned, the board adopted an emergency rule on May 27, 2020, as WAC 314-55-1065 under WSR 20-15-035, prohibiting the sale of vitamin E acetate. That emergency rule has been extended.

This extension of this emergency rule allows the board to take disciplinary action, without interruption, against any licensed marijuana retailer that fails to comply with the provisions of extended emergency rule WAC 314-55-1065 prohibiting the use of vitamin E acetate consistent with the authority of chapter 69.50 RCW.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate extension of rule that provides uninterrupted enforcement of WAC 314-55-1065, and preserves public health, safety, and general welfare is necessary. Therefore, the immediate extension of this emergency rule concerning enforcement provisions for WAC 314-55-1065 prohibiting the sale of vitamin E acetate is necessary.

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

Number of Sections Adopted at the Request of a 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: September 16, 2020.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-079 Marijuana retailer license—Privileges, requirements, and fees. (1) A marijuana retailer license allows the licensee to sell only useable marijuana, marijuana concentrates, marijuana-infused products, marijuana paraphernalia, and lockable boxes to store marijuana at retail in licensed retail outlets to persons twenty-one years of age and older, except as allowed for persons under twenty-one years of age consistent with RCW 69.50.357 and WAC 314-55-080.

(2) The WSLCB may accept applications for marijuana retail licenses at time frames published on its website at www.lcb.wa.gov. Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the WSLCB will determine the maximum number of marijuana retail locations per county.

(a) The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

(b) The number of retail licenses determined by the board can be found on the WSLCB website at www.lcb.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than five retail marijuana licenses.

(4) Application and license fees.

(a) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is responsible for fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana retailer license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the

licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(5) Internet sales and delivery of product to customers are prohibited.

(6) Sales of marijuana-infused products not permissible under WAC 314-55-077 are prohibited.

(7) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(8) All marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(9) A marijuana retailer may not sell lockable boxes for less than the cost of acquisition or sell boxes received as a donation. The donation of lockable boxes must come from a person or entity that is not a licensed marijuana producer, processor, or retailer.

(10) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(11) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in WAC 314-55-085.

(12) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(13) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097.

(14) The board may take disciplinary action against any marijuana retailer that fails to comply with the provisions of WAC 314-55-1065.

WSR 20-19-083
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed September 16, 2020, 10:35 a.m., effective September 16, 2020, 10:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting, the Washington state liquor and cannabis board (board) has adopted an emergency rule to extend WAC 314-55-1055 Ingredient disclosure, requiring the disclosure of all ingredients used in the production of marijuana concentrates for inhalation and marijuana extracts for inhalation consistent with the provisions of WAC 314-55-1065 concerning prohibition of the sale of vitamin E acetate, and HB 2826 (chapter 133, Laws of 2020). This filing supersedes and replaces emergency rules filed as WSR 20-12-039 on May 27, 2020.

Citation of Rules Affected by this Order: WAC 314-55-1055.

Statutory Authority for Adoption: HB 2826 (chapter 133, Laws of 2020), effective March 25, 2020; RCW 69.50.-342, 69.50.345.

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 standards in this emergency rule have not changed from the previous emergency rule. HB 2826 concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new subsection (m), providing that the board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the board determines, following a determination by the Washington state department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

HB 2826 further amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new subsection (n), providing that the board may establish, by rule, requirements for processors to submit under oath to the department of health a complete list of all constituent substances and the amount and sources thereof in each marijuana vapor product, including all additives, thickening agents, preservatives, compounds, and any other substance used in the production and processing of each marijuana vapor product.

On November 19, 2019, March 19, 2020, and July 17, 2020, the Washington state board of health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- In July 2019 the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration, state and local health jurisdictions and other clinical and public health partners began investigation [of] outbreaks of lung injury associated with e-cigarette product use, or vaping. In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak. As of February 18, 2020, CDC reported a total of two thousand eight hundred seven cases of hospitalized e-cigarette, or vaping, product use associated lung injury (EVALI) cases, and sixty-eight deaths in twenty-nine states and the District of Columbia. Twenty-seven cases of lung injury, including two deaths, have been reported in Washington state.
- As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, a recent study cited by the CDC conducted laboratory tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease from sixteen states. Forty-nine samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of the injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven samples. None of a range of other potential chemicals of concern was

detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and recommends that vitamin E acetate not be added to any vapor products.

Jane Rushford
Chair

- During the 2020 legislative session, the governor submitted request legislation (SB [E2SSB] 6254) aimed at increasing regulation of vapor products in Washington. The bill included a ban of vitamin E acetate, however the legislature failed to pass SB [E2SSB] 6254. Due to the clear association of vitamin E acetate with EVALI and absent legislative action to ban vitamin E acetate, SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the board by HB 2826, and upon the determination of SBOH that vitamin E acetate is a drug of concern and should be banned, the board adopted an emergency rule on May 27, 2020, as WAC 314-55-1065 prohibiting the sale of vitamin E acetate. That emergency rule has been extended.

The extension of this emergency rule requires that marijuana licensees disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes, and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source or origin. Disclosure must be made to the board on forms provided by the board, and submitted to an email address or other platform provided or maintained by the board until permanent rules are established to create a framework for submission of such forms to the department of health consistent with HB 2826.

The immediate extension of rule requiring disclosure of compounds and other substances, including but not limited to vitamin E acetate added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation is necessary for the preservation of public health, safety and general welfare. Extension of this emergency rule provides continuity of existing efforts to assist public health officials in isolating the compounds and products that may be connected to lung disease.

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: September 16, 2020.

NEW SECTION

WAC 314-55-1055 Ingredient disclosure. (1) All licensed marijuana processors and producers must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation.

(2) All chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, must be disclosed to the board as follows:

(a) On a form provided by the board and stored by the licensee, either electronically or in hard copy, and made available for inspection if requested by an employee of the board; and

(b) In a manner directed by the board including, but not limited to, submission to an email address or other online platform provided and maintained by the board.

(3) The complete list of all chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, that is required under subsection (2) of this section must be kept and maintained, consistent with recordkeeping requirements described in WAC 314-55-087, at the facility in which the products are processed. The list must be updated whenever there is any change in product composition.

WSR 20-19-087

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-195—Filed September 16, 2020, 1:57 p.m., effective September 16, 2020, 1:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to change the season dates for the Umtanum and Cleman Mountain A ram (male) only special permits from Sept. 15-Oct. 9 to Sept. 15-Oct. 31. The fire is currently ninety-five percent contained and is expected to stay within control lines and minimal spread is expected in the interior unburned islands. Although the fire is mostly contained, the area remains closed to public access. It is anticipated the area will reopen within the next two weeks. The season opener associated with these permits is September 15, which could result in hunters not being able to access a substantial portion of their hunt area during the first two weeks of their season. In response, the department is proposing to extend the season by approximately the same length of time. Doing so will still provide meaningful recreational opportunity without compromising conservation goals.

Citation of Rules Affected by this Order: Amending WAC 220-415-120.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Other Authority: None.

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

Reasons for this Finding: Hunter access to the hunt areas associated with these special permits has been significantly impacted by the Evans Canyon wildfire. The fire has been nearly contained and the area is expected to be open to public access within the next week or two. Extending the season dates will replace opportunity that may have been lost during the early part of the season.

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

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

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

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

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

Date Adopted: September 16, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-415-12000A 2020 Bighorn sheep seasons and permit quotas. Effective October 9, 2020, the following provisions of WAC 220-415-120 regarding bighorn sheep seasons and permit quotas for the Umtanum (Sheep Unit 5) and Cleman Mountain A (Sheep Unit 7) special permits shall be as described below. All other provisions of WAC 220-415-120 not addressed herein, or otherwise amended by emergency rule, remain in effect:

Ram (male) bighorn sheep only				
Hunt Name	Permit Season	Permit Hunt Boundary Description	Special Restrictions	Permits
Umtanum	Sept. 15- Oct. 31	Sheep Unit 5	Any Legal Weapon	3
Ram (male) bighorn sheep only				
Hunt Name	Permit Season	Permit Hunt Boundary Description	Special Restrictions	Permits
Cleman Mountain A	Sept. 15- Oct. 31	Sheep Unit 7	Any Legal Weapon	5

WSR 20-19-088

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 16, 2020, 3:12 p.m., effective September 16, 2020, 3:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending emergency WAC 388-437-0020 Availability of pandemic EBT benefits, to clarify the deadline for receipt of all Pandemic EBT (P-EBT) applications.

H.R. 6201 (116th Congress) Families First Coronavirus Response Act signed into law on March 18, 2020, allows for households with school age children participating in Free or Reduced-Price Lunch program to receive benefits after the school closes for five consecutive days due to the COVID-19 public health emergency declaration. P-EBT payments to eligible families end September 30, 2020, with the exception of case-by-case review and approval by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS). The department will not accept applications for P-EBT past 5:00 p.m. on September 11, 2020, for online and paper applications, and 3:00 p.m. on September 16, 2020, for telephonic applications to allow benefit authorization to all eligible applicants by the end date of September 30, 2020.

This second emergency adoption amends the emergency rule adopted under WSR 20-19-059.

Citation of Rules Affected by this Order: New WAC 388-437-0020.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: H.R. 6201.

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

Reasons for this Finding: The USDA approved Washington's state plan to provide emergency Supplemental Nutrition Assistance Program (SNAP) benefits to households with children who would otherwise receive free or reduced-price school meals if not for school closures due to COVID-19. In the time since the existing emergency P-EBT program rule was adopted under WSR 20-14-030, the USDA has approved an amendment to the original plan allowing children under five years old, as of October 1, 2019, to receive P-EBT if eligible to receive free and reduced-price lunches. The USDA FNS has also since provided an end date for benefits to be authorized and advised states to set a deadline for P-EBT applications that allots sufficient time to process applications and make the disbursements by that date. Due to the disasters facing our state, including the wildfires and intermittent power outages, we have experienced a larger than normal forced disconnect rate on our call center and have received feedback [that] this has adversely impacted customers' ability to meet the September 11, 2020, application deadline for the P-EBT program.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal

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

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

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

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

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

Date Adopted: September 16, 2020.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-437-0020 Availability of pandemic EBT benefits. (1) Pandemic EBT benefits are available to households that include:

(a) School age children whose schools closed due to the COVID-19 pandemic as described in WAC 388-437-0010 filed under WSR 20-14-030; and

(b) Children regardless of age who:

(i) Would normally receive free or reduced price meals under the Richard B. Russell National School Lunch Act if not for school closures due to the COVID-19 pandemic.

(ii) Attend a school of early learning that followed school district closure dates of March 16, 2020 through June 19, 2020.

(2) Pandemic EBT benefits as described in subsection (1) of this section and in WAC 388-437-0010 filed under WSR 20-14-030 must be received no later than September 30, 2020, except when reviewed and approved on a case-by-case basis by the US department of agriculture's food and nutrition service. Online and paper applications for pandemic EBT will not be accepted after 5:00 p.m. on September 11, 2020. Telephonic applications for pandemic EBT will not be accepted after 3:00 p.m. on September 16, 2020.

WSR 20-19-090

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-193—Filed September 17, 2020, 9:49 a.m., effective September 17, 2020, 9:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule opens the harvest of nonspot shrimp in subareas of 23A, within Shrimp Management Area (SMA) 3, and SMA 1A to allow for the harvest of state share.

In addition, this regulation includes previous emergency regulation amendments:

1. Closes the portion of 20B within SMA 1B to nonspot shrimp trawl harvest due to the attainment of quota;

2. Defines the SMAs and regions open to nonspot shrimp commercial harvest;

3. Sets the harvest and gear limitations for the Puget Sound shrimp trawl fishery;

4. Requires purchase of shrimp harvested by designated fisheries to be done by appropriately licensed dealers.

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

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This rule opens the Puget Sound commercial nonspot shrimp fishery in Areas 23A, within SMA 3 and SMA 1A following the attainment of the spot shrimp quota.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 15, 2020.

Nate Pamplin
for Kelly Suswind
Director

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

NEW SECTION

WAC 220-340-52000A Puget Sound shrimp pot and trawl fishery—Seasons. Effective immediately until further notice, pursuant to RCW 34.05.350, the following provisions of WAC 220-340-520 regarding Puget Sound commercial shrimp pot harvest, non-spot shrimp harvest, spot shrimp harvest, trawl shrimp harvest and sales shall be described below. All other provisions of WAC 220-340-520 not addressed herein, and unless otherwise amended, remain in effect:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas (SMA's) 1A, 1B, 1C, 2W, and 3 are open to the harvest of all non-spot shrimp species, effective immediately until further notice, except as provided for in this section:

Discovery Bay Shrimp District is closed to the harvest of all shrimp species.

(b) It is unlawful to harvest shrimp in more than one SMA per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly from Wednesday through Tuesday, totaling 7 days in length.

(b) It is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from SMA's 1A, 1B, 1C, 2W combined. SMA 3 does not have a weekly landing limit.

(c) Harvest of non-spot shrimp is not permitted deeper than 175 feet in SMA 2W. SMA 2W is comprised of Catch Areas 25B, 25C, 25D, and 26AW.

(3) Shrimp trawl gear:

(a) SMA 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open.

(c) The remaining portion of Catch Area 22A within SMA 1B is open immediately, until further notice.

(d) Effective immediately, the portion of Catch Area 20B within SMA 1B is closed.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000Z Puget Sound shrimp pot and trawl fishery—Season. (20-190)

**WSR 20-19-091
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-194—Filed September 17, 2020, 9:50 a.m., effective September 17, 2020]

Effective Date of Rule: September 17, 2020.

Purpose: The purpose of this rule is to close the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Area 2M and 2U on September 17 and delay openings in Areas 2N, 2M, 2U and 2T from September 21 and 24

to September 22 and 25 respectively while also changing allowable gear during these two days to tangle net gear with 4.25" maximum mesh size.

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

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

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

Reasons for this Finding: This emergency rule is needed to close the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Area 2M and 2U on September 17 and delay openings in Areas 2N, 2M, 2U, and 2T from September 21 and 24 to September 22 and 25 respectively while also changing allowable gear during these two days to tangle net gear with 4.25" maximum mesh size.

Due to the weather system this past week, that came in weaker than initially expected producing less rain and the lack of Chinook recruitment to hatchery facilities necessary to meet escapement objectives that are higher than in past years, coupled with the high encounter rate of unmarked Chinook in the commercial fisheries prosecuted so far, the department has decided to make these additional changes to the upcoming commercial schedule for this week and next.

The impacts of natural origin fall Chinook and coho have been higher than preseason predictions. Based on preseason predictions and uncertainty around run sizes of Chinook and coho in-season, a modification of the commercial fishery is necessary to help ensure that conservation objectives for Chinook and coho are met. For statistical week thirty-seven (September 6 through 12, 2020), the total impacts predicted preseason for natural origin Chinook was twenty-five fish and the natural origin coho catch predicted preseason was one hundred fourteen. The estimated impacts for natural origin Chinook and natural origin coho in-season for statistical week thirty-seven is one hundred and one hundred eighty, respectively. This is a four hundred percent increase for Chinook and a one hundred fifty-eight percent increase for coho compared to preseason predictions.

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 2.

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

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

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

Date Adopted: September 16, 2020.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000F Willapa Bay salmon fall fishery. Effective September 17 through September 25, 2020, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except during the times and dates in the Willapa Bay Catch Reporting Areas listed below, using only gear with mesh size listed below. All other provisions of WAC 220-354-250 not addressed herein remain in effect unless otherwise amended by emergency rule:

Fishing periods:

Area	Time	Date(s)	Gear type	Maximum mesh size
2N, 2T	6:00 a.m. through 6:00 p.m.	9/17	Tangle net	4.25"
2N, 2M, 2T, 2U	6:00 a.m. through 6:00 p.m.	9/22, 9/25	Tangle net	4.25"

REPEALER

The following section of the Washington Administrative Code is repealed effective September 17, 2020:

WAC 220-354-25000E Willapa Bay salmon fall fishery. (20-189)

The following section of the Washington Administrative Code is repealed effective September 26, 2020:

WAC 220-354-25000F Willapa Bay salmon fall fishery. (20-194)

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 20-19-092
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-196—Filed September 17, 2020, 10:56 a.m., effective September 17, 2020, 10:56 a.m.]

Effective Date of Rule: Immediately upon filing.

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

relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

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

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

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

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

Reasons for this Finding: Allowable harvest of Columbia River salmonids remains available to provide additional fishing opportunity to the previously planned tribal commercial fishery period in Areas SMCRA 1F, 1G, 1H. This rule is consistent with actions of the Columbia River Compacts on June 8, June 30, July 8, July 15, July 30, August 13, September 3, September 10, and September 16, 2020. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal

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

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

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

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

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

Date Adopted: September 17, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000H Columbia River salmon seasons Effective immediately until further notice, the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Season: Immediately through 6:00 PM December 31.

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

(c) Allowable sale: Salmon (any species) and steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

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

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

Season: Immediately through 6:00 PM September 18

6:00 AM September 21 through 6:00 PM September 25

(a) Gear: Set and Drift Gillnets with an 8-inch minimum mesh size

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

(c) Standard sanctuaries applicable to gillnet gear. The standard Spring Creek Hatchery Sanctuary is in place.

3) Open Areas: SMCRA 1E1 (Downstream of Bonneville Dam)

(a) Season: Immediately through 11:59 PM October 31, 2020, only during days and times opened under tribal rules. Enrolled members of the Yakama, Warm Springs, Nez Perce, and Umatilla tribes when lawfully permitted by Treaty regulations under provisions of the agreements with the states of Oregon and Washington. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in the fisheries downstream of Bonneville Dam.

4) Open Areas: Wind River, Drano Lake, and Klickitat River

(a) Season: Wind River open immediately until further notice and Drano Lake and Klickitat River immediately through 6:00 PM December 31 only during those days and hours when the tributaries listed are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and Reel with Hook and Line. Gillnets may only be used in Drano Lake.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000G Columbia River salmon seasons.
(20-187)

WSR 20-19-094

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed September 17, 2020, 11:35 a.m., effective October 31, 2020]

Effective Date of Rule: October 31, 2020.

Purpose: To extend the effective date for the 2018 building codes to February 1, 2021.

Citation of Rules Affected by this Order: Amending 5.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

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

Reasons for this Finding: Implementing code changes on November 1 does not provide enough time to adjust to the new realities for code training due to COVID-19. This delay will benefit building design professionals, contractors and regulators at the local level who are now faced with steep reductions in revenue as well as strained and, in some jurisdictions, reduced, staffing levels because of the actions taken to address the global health crisis.

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 5, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 5, 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: June 26, 2020.

Diane Glen
Chair

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-008 Implementation. The *International Building Code* adopted under chapter 51-50 WAC shall become effective in all counties and cities of this state on (~~July 1, 2020~~) February 1, 2021.

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-008 Implementation. The International Residential Code adopted by chapter 51-51 WAC shall become effective in all counties and cities of this state on (~~July 1, 2020~~) February 1, 2021.

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

WAC 51-52-008 Implementation. The International Mechanical Code adopted by chapter 51-52 WAC shall become effective in all counties and cities of this state on (~~July 1, 2020~~) February 1, 2021.

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-008 Implementation. The *International Fire Code* adopted by chapter 51-54A WAC shall become effective in all counties and cities of this state on (~~July 1, 2020~~) February 1, 2021.

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

WAC 51-56-008 Implementation. The Uniform Plumbing Code adopted by chapter 51-56 WAC shall become effective in all counties and cities of this state on (~~July 1, 2020~~) February 1, 2021.

WSR 20-19-101

EMERGENCY RULES

BOARD OF

PILOTAGE COMMISSIONERS

[Filed September 18, 2020, 9:02 a.m., effective September 18, 2020, 9:02 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: Chapter 88.16 RCW.

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

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

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

Number of Sections Adopted at the Request of a 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: September 17, 2020.

Jaimie C. Bever
Executive Director

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

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

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

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

that other district's training program in accordance with his/her position on that list.

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

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

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

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

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

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

age district's training program and the board may give notice to the next available pilot candidate that he/she is eligible for entry into a training program pursuant to the terms in subsections (1) and (2) of this section.

(5) Initial assigned route.

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

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

(i) Take and pass with a minimum score of eighty percent all conning quizzes provided by the board applicable to the initial assigned route as described in subsection (8) of this section. These quizzes may be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed within the time period specified in (b) of this subsection; and

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

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

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

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

(8) Local knowledge conning quizzes and local knowledge exams. A training program shall provide opportunities

for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the pilotage district for which he/she is applying. Each conning quiz will be organized by main channel routes, ports, and approaches. A conning quiz is not intended to replace a local knowledge exam as specified in subsection (5)(b)(ii) of this section, but there will be some overlap of subject matter. A pilot trainee shall pass a conning quiz or quizzes related to the route or harbor area to move from the observation phase to the training phase of his/her training program for that route or harbor area. After a trainee has successfully passed a conning quiz on a main channel route or a port and approach, he/she will be eligible to take the conn on that route or approach unless it is a U.S. flag vessel and the required federal pilotage endorsement has not been obtained. The local knowledge exam for the initial route must be completed within eight months of the training start date if the trainee is taking the stipend. For each month the trainee is off stipend, an additional month is added up to a maximum of fifteen months to successfully pass the appropriate local knowledge exam. The final local knowledge exam must be completed before consideration for licensing and must be successfully passed before the expiration date of the training program. The conning quizzes and local knowledge exams will be administered at the offices of the board of pilotage commissioners. Eighty percent is the passing grade for conning quizzes, and eighty-five percent is required for the local knowledge exams. If a trainee fails a conning quiz or local knowledge exam, it may be retaken after seven days, but must be passed within the timing deadlines discussed above. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

- (a) Area geography;
- (b) Waterway configurations including channel depths, widths and other characteristics;
- (c) Hydrology and hydraulics of large ships in shallow water and narrow channels;
- (d) Tides and currents;
- (e) Winds and weather;
- (f) Local aids to navigation;
- (g) Bottom composition;
- (h) Local docks, berths and other marine facilities including length, least depths and other characteristics;
- (i) Mooring line procedures;
- (j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;
- (k) Vessel traffic system;
- (l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;
- (m) Air draft and keel clearances;
- (n) Submerged cable and pipeline areas;
- (o) Overhead cable areas and clearances;
- (p) Bridge transit knowledge - Signals, channel width, regulations, and closed periods;
- (q) Lock characteristics, rules and regulations;
- (r) Commonly used anchorage areas;

- (s) Danger zone and restricted area regulations;
- (t) Regulated navigation areas;
- (u) Naval operation area regulations;
- (v) Local ship assist and escort tug characteristics;
- (w) Tanker escort rules - State and federal;
- (x) Use of anchors and knowledge of ground tackle;
- (y) Applicable federal and state marine and environmental safety law requirements;
- (z) Marine security and safety zone concerns;
- (aa) Harbor safety plan and harbor regulations;
- (bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and

(cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.

(9) Rest. It is the responsibility of the pilot trainee to obtain adequate rest. Pilot trainees shall observe the rest rules for pilots in place by federal or state law or regulation and rules established in the applicable pilotage district in which they will train, or any other rest requirements contained in a training program.

(10) Stipend.

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

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

set by the board from time to time), under the following circumstances:

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

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

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

(ii) Whenever the governor issues a proclamation declaring a state of emergency, the board may determine whether there is a threat to trainees, pilots, vessel crews, or members of the public. Notwithstanding the other provisions of this chapter, the board, at its discretion, may suspend or adjust the pilot training program during the pendency of a state of emergency lawfully declared by the governor. If the board suspends or adjusts the pilot training program, pilot trainees will continue to receive the maximum stipend allowable under this section, as if a trainee had taken eighteen trips per month, until the board determines otherwise. The trainee evaluation committee may further consider additional nonshipboard pilot training including, but not limited to, distance learning.

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

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

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

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

(e) If a pilot trainee elects to engage in any full-or part-time employment, the terms and conditions of such employ-

ment must be submitted to the TEC for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

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

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

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

(12) Supervising pilots. The board shall designate as supervising pilots those pilots who are willing to undergo such specialized training as the board may require and provide. Supervising pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of supervising pilots

available for public inspection at all times. All pilot members TEC shall also be supervising pilots.

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

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

- (a) Failure to maintain the minimum federal license required by RCW 88.16.090;
- (b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;
- (c) Failure to devote full time to training in the Puget Sound pilotage district while receiving a stipend;
- (d) The pilot trainee is not physically fit to pilot;
- (e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in a training program;
- (f) Inadequate performance on examinations or other actions required by a training program;
- (g) Failure to complete the initial route requirements specified in subsection (5) of this section within the time periods specified;
- (h) Inadequate, unsafe, or inconsistent performance in a training program and/or on training program trips as determined by the supervising pilots, the TEC and/or the board; or
- (i) Violation of a training program requirement, law, regulation or directive of the board.

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

- (a) Successfully complete all requirements set forth in the training program including any addendum(s) to the program;
- (b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot candidate seeks a license; and
- (c) Complete portable piloting unit (PPU) training as defined by the TEC.

WSR 20-19-104
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-198—Filed September 18, 2020, 12:42 p.m., effective September 19, 2020]

Effective Date of Rule: September 19, 2020.

Purpose: The purpose of this rule is modify salmon daily limits and to open salmon seasons in the Columbia River, from the mouth to the Hwy. 395 Bridge at Pasco beginning September 19, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000W; 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 rule is needed to open a limited Chinook salmon retention season in the lower Columbia River, from the mouth to the Highway 395 Bridge at Pasco, beginning September 19, 2020. Additional recreational fishery impacts to upriver bright and lower river hatchery fall Chinook are available, as are coho under the preseason fishing plan. This action is consistent with decisions made by the states of Washington and Oregon during compact actions of September 3, September 9, and September 17, 2020.

There is insufficient time to adopt permanent regulations.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: September 18, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000X Freshwater exceptions to statewide rules—Columbia River. Effective September 19 through December 31, 2020, the provisions of WAC 220-

312-060 regarding recreational sturgeon seasons in the Columbia River downstream of Bonneville Dam and the Cowlitz River and Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to the Hwy. 395 Bridge at Pasco, shall be as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From Wauna powerlines upstream to Bonneville Dam, including the Cowlitz River:

Sturgeon:

(a) It is permissible to retain white sturgeon on Saturday, September 19, 2020.

(i) The daily limit of white sturgeon is one fish.

(ii) Minimum fork length 44 inches. Maximum fork length 50 inches.

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

(2) From a true North and South line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), and including Youngs Bay: Salmon and Steelhead

(a) Effective September 19 through September 30, 2020: Daily limit 2, no more than 1 may be a Chinook. Coho minimum size 16 inches. Chinook minimum size 24". Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(b) Effective October 1 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained, no more than 1 may be a Chinook. Coho minimum size 16 inches. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(c) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, no more than 1 may be a Chinook and no more than 1 may be a steelhead. Coho minimum size 16 inches. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(3) From the Rocky Point/Tongue Point line to Bonneville Dam:

(a) Effective September 19 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(b) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook and up to 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(4) From Bonneville Dam to Hood River Bridge: salmon and steelhead:

(a) Effective September 19 through October 15: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and hatchery coho. Release all steelhead. Anti Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) October 16 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(c) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook and up to 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(5) From the Hood River Bridge to the Dalles Dam: salmon and steelhead:

(a) Effective September 19 through October 15: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and coho. Release all steelhead. Anti Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) October 16 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and coho. Release all steelhead.

(c) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook and up to 1 may be a hatchery steelhead. Release all salmon other than Chinook and coho. Release wild steelhead.

(6) From the Dalles Dam to Hwy. 395 Bridge at Pasco;

(a) Effective September 19 through October 15: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and coho. Release all steelhead. Anti Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) October 16 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and coho. Release all steelhead.

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

REPEALER

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

WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River. (20-185)

REPEALER

The following section of Washington Administrative Code is repealed, effective January 1, 2021:

WAC 220-312-06000X Freshwater exceptions to statewide rules—Columbia River.

**WSR 20-19-105
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-197—Filed September 18, 2020, 1:54 p.m., effective September 21, 2020]

Effective Date of Rule: September 21, 2020.

Purpose: The purpose of this rule is to close all recreational fishing in the Skagit River, from the Highway 9 Bridge to the Baker River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000T; and amending WAC 220-312-040.

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

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

Reasons for this Finding: This rule is necessary to avoid gear conflicts with treaty fisheries scheduled those dates.

The Washington department of fish and wildlife asks anglers to respect tribal fishers and not to interfere with tribal fisheries. Conflicts that arise during on-going fisheries may necessitate additional time and area closures in the future to reduce conflicts.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 18, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000T Freshwater exceptions to statewide rules—Puget Sound. Effective 12:01 a.m. September 21 until 6:00 p.m. September 22, 2020, the following provisions of WAC 220-312-040 regarding recreational fishing seasons for the Skagit River from Highway 9 Bridge to the mouth of the Baker River, shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Skagit River (Skagit Co.) from Highway 9 Bridge to the mouth of the Baker River:

All species: Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m., September 22, 2020.:

WAC 220-312-04000T Freshwater exceptions to statewide rules—Puget Sound.

Wendy Barcus
Rules Coordinator

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 20-19-106
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed September 18, 2020, 3:44 p.m., effective September 18, 2020, 3:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending WAC 182-505-0215 to expand the children's health insurance program (CHIP) to include coverage for eligible children of public employees.

Citation of Rules Affected by this Order: Amending WAC 182-505-0215.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Affordable Care Act section 10203 (b) (2)(D) permits the agency to expand CHIP to include coverage for eligible children of public employees, specifically, it permits states to extend CHIP coverage to eligible children of public employees when it is demonstrated that the cost of employer-based coverage would exceed five percent of the family's income.

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

Reasons for this Finding: The Washington state legislature passed section 211(66), chapter 357, Laws of 2020, which directs the agency to implement a CHIP state plan amendment in calendar year 2020, once approved by the federal Centers for Medicare and Medicaid Services (CMS). The state plan amendment maintains CHIP coverage as secondary payer for eligible child dependents of employees eligible for school employee or public employee benefit coverage. CMS approved the state plan amendment August 28, 2020, with a retroactive effective date of January 1, 2020.

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

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

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

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

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

Date Adopted: September 18, 2020.

AMENDATORY SECTION (Amending WSR 19-21-103, filed 10/16/19, effective 1/1/20)

WAC 182-505-0215 Children's Washington apple health with premiums. (1) A child is eligible for Washington apple health with premiums if the child:

(a) Meets the requirements in WAC 182-505-0210(1);

(b) Has countable income below the standard in WAC 182-505-0100 (6)(b); and

(c) Pays the required premium under WAC 182-505-0225, unless the child is exempt under WAC 182-505-0225 (2)(c).

(2) A child is not eligible for Washington apple health with premiums if the child:

(a) Is eligible for no-cost Washington apple health;

(b) Has creditable health insurance coverage as defined in WAC 182-500-0020((

~~e))~~). A child with creditable health insurance coverage may be eligible for Washington apple health with premiums if the child:

(i) Is eligible for public employees benefits board (PEBB) health insurance coverage based on a family member's employment with a Washington state agency, or a Washington state university, community college, or technical college; or

~~((+))~~ (ii) Is eligible for school employees benefits board (SEBB) health insurance coverage based on a family member's employment with a Washington school district, charter school, or educational service district; and

(iii) Meets the requirements in WAC 182-505-0210(1).

WSR 20-19-108
EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed September 18, 2020, 4:00 p.m., effective September 18, 2020, 4:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To exempt Pandemic Emergency Unemployment Compensation (PEUC), established by Sec. 2107 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law No. 116-136, from the waiver provisions of WAC 192-240-070(3).

Citation of Rules Affected by this Order: Amending WAC 192-240-070.

Other Authority: Public Law No. 116-136, Sec. 2107; Unemployment Insurance Program Letter No. 17-20, Change 1 (May 13, 2020).

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

Reasons for this Finding: On March 27, 2020, the employment security department (ESD) signed an agreement

with the United States Department of Labor (USDOL) to administer the PEUC program. The PEUC program provides an extra thirteen weeks of federally funded unemployment benefits to unemployed individuals who have exhausted their unemployment claim. As business activity remains restricted in order to prevent the spread of COVID-19, these PEUC benefits provide a vital benefit to individuals who remain unemployed for an extended period of time. In order to continue to provide these benefits, ESD must conform and comply with guidance issued by USDOL on how to administer the program.

Under guidance issued by USDOL in Unemployment Insurance Program Letter No. 17-20, Change 1 (May 13, 2020), anytime a state is deciding whether to waive an overpayment of PEUC benefits, "states must determine waiver requirements on an individual basis and cannot apply 'blanket' waivers to a group of individuals." WAC 192-240-070(3) states that when a claimant is being paid federal emergency unemployment compensation, and it is later discovered that the claimant was actually eligible for a regular unemployment claim at a lower weekly benefit amount, the difference between the amounts paid in federal emergency unemployment compensation and the weekly benefit amount on the new regular unemployment claim "will be waived."

As WAC 192-240-070(3) allows for a blanket, rather than an individualized, waiver of PEUC overpayments, it is necessary to amend the rule to exempt PEUC overpayments in order to remain in compliance with federal guidance. Otherwise, if the rule is not changed, ESD risks losing the agreement that allows it to provide the PEUC benefits so many Washingtonians rely on.

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

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

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

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

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

Date Adopted: September 18, 2020.

Daniel Zeitlin
Policy Director

AMENDATORY SECTION (Amending WSR 09-24-011, filed 11/20/09, effective 12/21/09)

WAC 192-240-070 What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim? If you are paid emergency unemployment compensation, state extended benefits, or any similar state or federal extension, and it is later discovered that you were eligible for a regular unemployment claim during

all or part of the period in which you received such benefits, the regular unemployment claim takes priority. The balance on your new unemployment claim will be adjusted for any week(s) at issue, meaning those weeks in which you should have received regular unemployment benefits, subject to the following:

(1) Except as provided in subsection (4) of this section, you may not be paid twice for the same week

(2) If your new weekly benefit amount is equal to the amount you were paid for the weeks at issue, the amount you were paid in emergency unemployment compensation or extended benefits will be deducted from the maximum benefits payable on your new claim.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. The five hundred dollars paid for eight weeks will be deducted from the maximum benefits payable on your new claim.

(3) If your new weekly benefit amount is lower than the amount you were paid for the weeks at issue, the amount you were paid in emergency unemployment compensation or extended benefits that is equivalent to the weekly benefit amount on your new claim will be deducted from the maximum benefits payable on your new claim. Except for pandemic emergency unemployment compensation established under Sec. 2107 of Public Law No. 116-136, the difference between the amounts paid in emergency unemployment compensation or extended benefits for the week(s) at issue and the weekly benefit amount on your new claim will be waived as provided in RCW 50.20.190.

Example: Your previous weekly benefit amount was five hundred dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of three hundred-fifty dollars. The three hundred-fifty dollars for eight weeks will be deducted from the maximum benefits payable on your new claim. The one hundred-fifty dollar difference between your previous weekly benefit amount and your new weekly benefit amount will be waived.

(4) If your new weekly benefit amount is higher than the amount you were paid for the week(s) at issue, the amount you were paid in emergency unemployment compensation or extended benefits will be supplemented so that you receive your new weekly benefit amount for the weeks at issue and the total deducted from the maximum benefits payable on your new claim.

For example: Your previous weekly benefit amount was three hundred-fifty dollars. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of five hundred dollars. You will be paid an additional one hundred-fifty dollars for each of the eight weeks at issue and the total deducted from the maximum benefits payable on your new claim.

WSR 20-19-114
RECISSION OF EMERGENCY RULES
DEPARTMENT OF LICENSING

[Filed September 21, 2020, 11:22 a.m.]

The department of licensing, business and professions division, notaries public program requests to rescind the emergency rule-making order for chapter 308-30 WAC, Notaries public, filed as WSR 20-15-115 on July 16, 2020.

Damon Monroe
Rules Coordinator

WSR 20-19-119
EMERGENCY RULES
DEPARTMENT OF LICENSING

[Filed September 21, 2020, 2:41 p.m., effective September 21, 2020, 2:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of licensing is refiled emergency rules allowing for remote notarization in Washington state. After receiving stakeholder input on the original emergency rules, the language was adjusted. The department will file the CR-102 to propose the permanent adoption of these rules on September 23, 2020. The department originally filed notice for permanent rule making regarding SB 5641 under WSR 20-06-073. Interested stakeholders can participate in the rule-making process for the permanent rules by contacting rulescoordinator@dol.wa.gov.

Citation of Rules Affected by this Order: Amending chapter 308-30 WAC, Notaries public.

Statutory Authority for Adoption: RCW 42.45.250.

Other Authority: Proclamation by the Governor 20-27 Electronic Notary Effective Date.

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 rulemaking is enacted to decrease in-person notarization to assist with COVID-19 response efforts, allowing remote notarization in Washington state ahead of SB 5641 implementation.

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

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

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

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

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

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

Date Adopted: September 21, 2020.

Ellis Starrett
Rules and Policy Manager

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-020 Definitions. Words and terms used in these rules have the same meaning as in the Revised Uniform Law on Notarial Acts, RCW 42.45.010.

"Appear personally" means:

(a) Being in the same physical location as another individual and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(b) For remote notarial acts, being in a different physical location from another individual but able to see, hear, and communicate with that individual by means of communication technology.

"Commission" is equivalent to the term "license" as defined in RCW 18.235.010(6).

"Department" means the Washington state department of licensing.

"Director" means the director of the department of licensing or the director's designee.

"Electronic journal" means a chronological record of notarizations maintained by a notary public in an electronic format in compliance with these rules.

"Electronic notarial acts" means notarizations or notarial acts with respect to electronic records.

"Electronic notarial certificate" means the part of, or attachment to, an electronic record that is completed by the notary public, contains the information required under RCW 42.45.130 and the notary's official stamp, bears that notary's electronic signature, and states the facts attested to by the notary in a notarization performed on an electronic record.

"Enroll" and "enrollment" mean a process for registering a notary public with a technology provider to access and use a tamper-evident technology in order to perform electronic notarial acts.

"Principal" means:

(a) An individual whose electronic signature is notarized; or

(b) An individual, other than a witness required for an electronic notarial act, taking an oath or affirmation from the notary public.

"Remote notarial act" means a notarization that is performed using audio-video technology that meets the requirements in WAC 308-30-130 and allows for direct interaction between the notary and the individual(s) that are remotely located.

"Sole control" means at all times being in the direct physical custody of the notary public or safeguarded by the notary with a password or other secure means of authentication.

"Tamper-evident technology" means a set of applications, programs, hardware, software, or other technologies designed to enable a notary public to perform electronic

notarial acts and to display evidence of any changes made to an electronic record.

"Technology provider" means an individual or entity that offers the services of a tamper-evident technology for electronic notarial acts.

"Venue" means the state and county where the notary public is physically located while performing a notarial act.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-030 Application process for notary public commission. (1) To apply for a notary public commission, an applicant who meets the requirements of RCW 42.45.200(2) shall submit an application on forms provided by the department. The application shall include:

(a) Evidence of a ten thousand dollar surety bond, signed by the notary public, that conforms to RCW 42.45.200(4);

(b) Payment of the prescribed fee; and

(c) A signed and notarized oath of office.

(2) As part of a notary public commission application, an applicant shall provide both their legal name and their commission name. The applicant's commission name must contain their surname, and at least the initials of the applicant's first and middle name.

(3) To apply for an electronic records notary public endorsement, an applicant who meets the requirements of RCW 42.45.200(7) shall submit an electronic records notary public application on forms provided by the department and pay the prescribed fee.

(4) An applicant may only apply for an electronic records notary public endorsement if:

(a) They currently hold an active notary public commission; or

(b) They are applying for a notary public commission and an electronic records notary public endorsement simultaneously.

(5) An individual applying for an electronic records notary public endorsement must inform the department within thirty days of applying of the tamper-evident technology provider that they have enrolled with before they perform their first electronic notarial act.

(6) To apply for a remote notary endorsement, an electronic records notary public shall submit a remote notary endorsement application on forms provided by the department.

(7) An applicant may only apply for a remote notary endorsement if:

(a) They currently hold an active notary public commission with an electronic records notary public endorsement;

(b) They currently hold an active notary public commission, and are applying for an electronic records notary public endorsement and a remote notary endorsement simultaneously; or

(c) They are applying for a notary public commission, an electronic records notary public endorsement, and a remote notarial acts endorsement simultaneously.

(8) A notary public shall reapply with the department for each commission term before performing notarial acts.

~~((7))~~ (9) A notary public may elect not to apply for an electronic records notary public endorsement or a remote notary endorsement.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-040 Approval or denial of application.

(1) Upon ~~((the))~~ an applicant's fulfillment of the requirements for a notary public commission ~~((or))~~ and/or an electronic records notary public endorsement, and/or a remote notary endorsement, the department shall approve the application and issue the notary public commission ~~((or))~~ and/or any endorsements.

(2) If the department receives an incomplete or invalid application, the department shall hold the application for thirty calendar days to allow the applicant to cure any defects. After the thirty day period, the application shall be canceled and any application fees forfeited.

(3) An applicant may not perform any notarial acts on a tangible or electronic record before receiving a notary public commission and the appropriate endorsement from the department.

~~(4) ((A notary public may not perform any electronic notarial acts before receiving an electronic records notary public endorsement from the department.~~

~~(5))~~ The department may deny a commission or endorsement application if the applicant fails to comply with these rules or does not meet the requirements for licensure.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-050 Term of commission. (1) The term of a notary public commission shall expire on the expiration date of the notary public's surety bond, no more than four years after their commission date.

(2) Unless terminated pursuant to WAC 308-30-270, an electronic records notary public endorsement ~~((is))~~ and the remote notary endorsement are valid from the date the endorsement is issued by the department, and continues as long as the notary public's current commission remains valid.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-150 Completion of electronic notarial certificate. (1) For every electronic notarial act and remote notarial act, a notary public shall complete an electronic notarial certificate that complies with the requirements of these rules, RCW 42.45.130 and 42.45.140.

(2) An electronic notarial certificate shall be completed at the time of notarization and in the ~~((physical))~~ presence of the principal.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-200 Format of journals of notarial acts.

(1) A tangible notarial journal shall:

(a) Be a permanent, bound book with numbered pages; and

(b) Have the capacity to record for each notarial act:

(i) The information required by RCW 42.45.180(4);

(ii) A description of the notary public's method of identifying the principal; and

(iii) The principal's signature, or the signature of an authorized party in compliance with RCW 42.45.070, or a notation in the notary journal that the notarial act was performed via remote notarization.

(2) If a notary public keeps an electronic journal pursuant to RCW 42.45.180(3), the electronic journal shall:

(a) Be maintained only in addition to the tangible journal;

(b) Have the capacity to record the information required for a tangible notarial journal;

(c) Enable access by a password or other secure means of authentication;

(d) Be tamper-evident;

(e) Create a duplicate record of the journal as a backup; and

(f) Be capable of providing tangible or electronic copies of any entry made in the journal.

(3) A notary public's journal is the exclusive property of the notary public, and shall not be surrendered to an employer upon demand or termination, whether the employer paid for the journal or the notary's bond or application fees.

(4) A notary performing remote notarization must maintain a tangible notary journal as required in RCW 42.45.180 and WAC 308-30-190, 308-30-200, and 308-30-210. Notaries performing remote notarization are not required to collect and maintain the signatures of the signers when those notarizations were performed remotely. Notaries must note in their tangible notary log that a notarization was performed remotely.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-220 Fees for notarial acts. (1) The maximum fees a notary may charge for notarial acts are:

Notarial Act	Fee
Witnessing or attesting a signature	\$10.00
Taking an acknowledgment or a verification upon oath or affirmation	\$10.00
Certifying or attesting a copy	\$10.00
Administering an oath or affirmation	\$10.00
Certifying that an event has occurred or an act has been performed	\$10.00

(2) A notary public need not charge for notarial acts.

(3) A notary public may not charge fees for receiving or noting a protest of a negotiable instrument.

(4) A notary public may additionally charge the actual costs of copying any instrument or record.

(5) A notary public may charge a travel fee when traveling to perform a notarial act if:

(a) The notary public and the individual requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary public explains to the individual requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.

(6) Notwithstanding the maximum fees set forth in subsection (1) of this section and the prohibition set forth in subsection (3) of this section, a notary public may charge a maximum fee of twenty-five dollars to perform a remote notarial act.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-270 Termination or suspension of commission or endorsement. (1) The department may take action against the commission and/or endorsement of a notary public who fails to comply with these rules as provided in RCW 42.45.210, 42.45.270, and chapter 18.235 RCW. Any restriction, suspension, or revocation of a notary public's commission will automatically have the same effect on any endorsement the notary public holds.

(2) A notary public may terminate their notary public commission and/or electronic records endorsement and/or remote notary endorsement by notifying the department of this intent in writing and disposing of all or any part of a tamper-evident technology in the notary's control whose purpose was to perform electronic notarizations.

(3) A notary public may terminate the electronic records notary public endorsement or the remote notary endorsement and maintain the underlying notary public commission.

(4) A notary public whose commission is terminated or expired, either by the notary or the department, shall disable their official stamp by destroying, defacing, damaging, or securing the device against use. The notary shall maintain their notarial journals for ten years as required by RCW 42.45.180 and WAC 308-30-210.

NEW SECTION

WAC 308-30-290 Authorized remote notarial acts.

(1) A notary public who has received both an electronic records notary public endorsement and a remote notarial acts endorsement from the department may perform the following remote notarial acts:

(a) Taking an acknowledgment;

(b) Taking a verification on oath or affirmation;

(c) Witnessing or attesting a signature;

(d) Certifying or attesting a copy;

(e) Certifying that an event has occurred or an act has been performed; and

(f) Noting a protest of a negotiable instrument, if the notary public is:

(i) Acting under the authority of an attorney who is licensed to practice law in this state or another state; or

(ii) Acting under the authority of a financial institution regulated by this state, another state, or the federal government.

(2) In performing remote notarial acts, a notary public shall comply with all requirements for electronic notarial acts under this chapter.

NEW SECTION

WAC 308-30-300 Standards for technology identity proofing and documentation. In performing remote notarial acts, a notary must use technology which allows for a multi-factor authentication process in compliance with RCW 42.45.050 and this chapter. To perform remote notarial acts the notary must use technology which:

- (1) Verifies the identity of the signer in compliance with RCW 42.45.050;
- (2) Has two-way audio-visual capabilities between the notary and signer(s);
- (3) Is capable of recording the notarization; and
- (4) Has reasonable security measures which ensure notarial acts are secure once recorded.

**WSR 20-19-137
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-200—Filed September 22, 2020, 3:47 p.m., effective September 22, 2020, 3:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Purpose: The purpose of this rule is to open two additional recreational halibut fishing days in Marine Areas 1 and 2 and three additional recreational halibut fishing days in Marine Areas 3 through 10 already established by WSR 20-15-135. This will also align sport fishing rules with federal rules adopted by the National Marine Fisheries Service (NMFS).

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000B and 220-314-03000C; and amending WAC 220-314-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Under the Halibut Convention Act, NMFS has the authority to promulgate regulations for domestic halibut regulations and the states are required to conform. Therefore, this rule conforms to the NMFS's final rule, which is consistent with the actions taken by the Pacific Fishery Management Council (PFMC) and the International Pacific Halibut Commission.

Recreational halibut fishing is scheduled to close at the end of September; however, only sixty percent of the Washington sport quota has been taken based on catch data through September 13, leaving over one hundred thousand pounds of quota remaining. Reduced fishing effort due to poor weather in recent weeks has been a factor and has resulted in lower

catch than expected. PFMC's Pacific Halibut Catch Sharing Plan and federal regulations allow the recreational halibut season to be open up to three days per week. Allowing additional fishing days will provide anglers the opportunity to take more of the remaining quota before the recreational halibut season closes at the end of September. The recreational halibut quota is enough to provide for these additional days. Halibut catch will continue to be closely monitored by the Washington department of fish and wildlife staff. 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 2.

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

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

Date Adopted: September 22, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000C Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, WAC 220-314-040, and 220-314-010, effective immediately through September 30, 2020, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-040, and 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

(1) **Catch Record Card Area 1:**

(a) Open September 24, 27, 28 and 29, 2020.

(b) Lingcod can be retained when halibut are on board, during the halibut season north of the Washington-Oregon border.

(2) **Catch Record Card Area 1 (Nearshore fishery);**

Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

(a) Open September 22, 23, 28, 29, and 30 2020.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2:**

(a) Open September 24, 27, 28 and 29, 2020.

(4) **Card Areas 3 and 4:**

(a) Open September 24, 25, 26, 27, 28 and 29, 2020.

(5) **Catch Record Card Area 5 through 10:**

(a) Open September 24, 25, 26, 27 28, and 29, 2020

(b) It is permissible for halibut anglers to retain Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Area 5.

(6) **Catch Record Card Areas 11, 12 and 13:** Closed.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000B Halibut—Seasons—Daily and possession limits. (20-180)

The following section of the Washington Administrative Code is repealed effective October 1, 2020:

WAC 220-314-03000C Halibut—Seasons—Daily and possession limits.