

WSR 23-04-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-08—Filed January 19, 2023, 8:07 a.m., effective January 19, 2023, 8:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to set a closure date for District 1 and to open District 2-1 with a reduced weekly trip limit.

Citation of Rules Affected by this Order: 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 sets closure of harvest of sea cucumber in management District 1 and opens harvest of sea cucumber in District 2-1 with a reduced weekly trip limit. The quota in District 1 is expected to be taken by January 23, 2023; its closure is needed to fulfill obligations of state and tribal comanager agreements. There is enough harvestable surplus in District 2-1 to support a limited opening with a reduced weekly trip limit of 600 pounds per license. Sea cucumber harvest in District 2-1 will be monitored closely and closure will be announced when harvest quota fulfillment is imminent. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: January 18, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000H Commercial sea cucumber fishery. Effective immediately, and until further notice, or until this rule expires May 19, 2023 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) Effective immediately, through January 22, 2023: Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1, Monday through Sunday of each week.

(2) Effective immediately, through January 22, 2023: The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license.

(3) Effective January 23, 2023, until further notice: Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 2-1, Monday through Sunday of each week.

(4) Effective January 23, 2023, until further notice: The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 600 pounds per valid designated sea cucumber harvest license.

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WSR 23-04-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-05—Filed January 19, 2023, 8:14 a.m., effective January 19, 2023, 8:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close commercial crab fishing in crab management Region 1 on January 22, 2023.

WAC 220-340-45500W closes Puget Sound commercial crab harvest in crab management Region 1 on January 22, 2023, one hour after official sunset time.

WAC 220-340-47000T sets pot limits for all areas with commercial harvest opportunity in Puget Sound; reduces the pot limit for all areas that are closed to "0."

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500V and 220-340-47000S; and amending WAC 220-340-455 and 220-340-470.

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

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

Reasons for this Finding: There is sufficient allocation available in Subregions 3-1, 3-3, and 3-4 to accommodate continued commercial harvest. This rule closes Region 1 on January 22, 2023, following the projected harvest of state share on January 22, 2023. These provisions are in conformity with agreed[-to] management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. Further adjustment of season structure may be made pending updated harvest data. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 18, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500W Commercial crab fishery—Seasons and areas—Puget Sound. Effective immediately, until further notice, the provisions of WAC 220-340-455 regarding open periods for commercial crab harvest within Puget Sound and the geographic definition of the closure area within Marine Fish-Shellfish Management and Catch Reporting Area 21A shall be modified as described below. All other provisions of WAC 220-340-455 not addressed herein remain in effect unless otherwise amended by emergency rule:

(a) Commercial harvest of Dungeness crab in Puget Sound is allowed during the "Open period" indicated in the following table. On the opening date harvest will be permitted starting at 8:00 a.m. Harvest on all other days is allowed starting one hour before official sunrise until further notice. Any closures will take effect one hour after official sunset unless otherwise indicated.

Geographical Management Unit (WAC 220-320-110)	Open Period
Region 1, MFSF Catch Areas 21A, 21B, and 22B	Immediately, through January 22, 2023.
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	Immediately, through January 22, 2023.
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	Closed.
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	Closed.
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed.
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed.
Subregion 3-1	Immediately, through March 31, 2023.
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Closed.
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	Closed.
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	Closed.
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Closed.
Subregion 3-3	Immediately, through April 15, 2023.
Subregion 3-4	Immediately, through April 15, 2023.

(b) The area closed to commercial harvest in WAC 220-340-455 (2) (c) is amended to be: Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder off the southeast portion of Point Francis (48.69730°, -122.60730°) to the old pilings at Stevie's Point (48.77675°, -122.55196°).

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

NEW SECTION

WAC 220-340-47000T Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas Effective immediately, until further notice, the provisions of WAC

220-340-470 regarding Marine Fish-Shellfish Management and Catch Reporting Areas gear limits shall be modified as described below. All other provisions of WAC 220-340-470 not addressed herein remain in effect unless otherwise amended by emergency rule:

(a) Effective during the "Open period" listed in amended section of WAC 220-340-455 above it will be unlawful for any person to harvest crabs with more than the "Pot limit" per license per buoy tag number indicated within each "geographical management unit".

Geographical Management Unit (WAC 220-320-110)	Pot limit
Region 1, MFSF Catch Areas 21A, 21B, and 22B	30
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	30
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	0
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	0
Subregion 3-1	30
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	0
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	0
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	0
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	0
Subregion 3-3	30
Subregion 3-4	30

(b) Effective after the "Open Period" listed in amended section of WAC 220-340-455 above, the "Pot Limit" within each "geographical management unit" will be reduced to "0".

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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 sections of the Washington Administrative Code are repealed, effective immediately:

- WAC 220-340-45500V Commercial crab fishery—Seasons and areas—Puget Sound. (23-04)
- WAC 220-340-47000S Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. (23-04)

WSR 23-04-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-06—Filed January 19, 2023, 8:22 a.m., effective January 19, 2023, 8:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends coastal commercial crab rules.

Citation of Rules Affected by this Order: Amending WAC
220-340-420 and 220-340-450.

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

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

Reasons for this Finding: The season opening dates are based on an agreed-to opening of February 1 through the Pacific States Marine Fisheries Commission, Tri-State Dungeness Crab committee, or are based on state-tribal harvest management plans. Fair-start provisions further delay participation by vessels that have participated in areas on the west coast that opened earlier and provide for a noncompetitive opening for vessels that fish in areas where the season opening was delayed. Pot limits will reduce the crowding effect in this restricted area and language improves enforcement of pot limits. A delay due to elevated marine toxins aligns with the Tri-State Crab Agreement and similar rules in Oregon and California. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 19, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

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

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

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

(2) It is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery until 8:00 a.m. February 3, 2023 to:

(a) Deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(c) Fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

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

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

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

(c) Vessels that participate in the Dungeness crab fishery south of Cape Falcon (45°46.00 N. Lat.) may not deliver crab north of the Columbia River except into the ports of Ilwaco and Chinook until February 1, 2023. Such vessels must adhere to the Oregon Department of Fish and Wildlife closed area transit allowance requirements.

(4) It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and;

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

(5) Violation of subsection (5) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.500 Commercial

fishing without a license—Penalty, depending on the circumstances of the violation.

(6) All other provisions of the permanent rule remain in effect.

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NEW SECTION

WAC 220-340-45000K Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-52-450, effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay.

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

(b) It is permissible to set crab gear beginning at 8:00 a.m., January 29, 2023.

(c) It is permissible to pull crab gear beginning at 9:00 a.m., February 1, 2023.

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

i. The waters between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 a.m. February 16, 2023; and

ii. The waters between Oysterville (46°33.00) and the U.S./Canada border until 8:00 a.m. March 13, 2023.

(2) Open area: The area from Klipsan Beach (46°28.00) to U.S./Canada border and Grays Harbor.

(a) It is permissible to set crab gear beginning at 8:00 a.m., February 3, 2023.

(b) It is permissible to pull crab gear beginning at 9:00 a.m., February 6, 2023.

(3) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine biotoxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

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

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

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

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

(6) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

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

(7) All other provisions of the permanent rule remain in effect.

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WSR 23-04-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-07—Filed January 19, 2023, 8:58 a.m., effective January 23, 2023]

Effective Date of Rule: January 23, 2023.

Purpose: The purpose of this emergency rule is to open green sea urchin harvest in Districts 3 and 4.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000Q; and amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule opens harvest for green sea urchins in Districts 3 and 4. With 2,500 pounds of quota remaining, there is harvestable surplus available in these areas. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 19, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000R Commercial sea urchin fishery. Effective January 23, 2023, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for red sea urchin harvest only, seven days-per-week: Sea Urchin District 1, District 2, District 3, and District 4.

(3) The maximum cumulative landings for red sea urchins for each weekly fishery opening period is 1,500 pounds per valid designated sea urchin harvest license.

(4) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1, District 3, and District 4.

(5) The maximum cumulative landings for green sea urchins for each weekly fishery opening period is 2,500 pounds per valid designated sea urchin harvest license.

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REPEALER

The following section of Washington Administrative Code is repealed, effective January 23, 2023:

WAC 220-340-75000Q Commercial sea urchin fishery. (22-283)

WSR 23-04-010
EMERGENCY RULES
PIERCE COLLEGE

[Filed January 19, 2023, 5:51 p.m., effective January 19, 2023, 5:51 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Pierce College is utilizing the WAC emergency rule[-making process] to update the student conduct code, chapter 132K-135 WAC, in order to be in compliance with HB [2SHB] 1751 regarding hazing.

Citation of Rules Affected by this Order: Amending WAC 132K-135-040 and 132K-135-070.

Statutory Authority for Adoption: RCW 28B.50.140(13).

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: Washington state HB [2SHB] 1751 requires institutions of higher education to comply with hazing definitions and make appropriate policy and procedure changes.

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 2, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 17, 2023.

Julie A. White
Chancellor

OTS-4041.1

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-040 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

- (a) On college premises;
- (b) At or in connection with college-sponsored activities; or
- (c) Off-campus where indicated in the rule or that in the judgment of the college adversely affects the college community, visitors, or the pursuit of the college's objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, super-

vised work experiences, or any other college-sanctioned social or club activities.

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

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

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

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-040, filed 5/13/21, effective 6/13/21; WSR 17-13-102, § 132K-135-040, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-070 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences in response to academic dishonesty. Faculty may impose up to and including a failing grade in an academic class and academic divisions or departments may impose up to and including dismissal from an academic program. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the class syllabus and applicable program handbook.

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

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

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

(d) Multiple submissions includes submitting the same work in separate classes without the express permission of the instructor(s).

(e) Deliberate damage includes taking deliberate action to destroy or damage another's academic work or college property.

(f) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(3) **Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

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

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

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

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

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail (email), text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false messages to third parties using another's identity (spoofing).

(6) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, not otherwise protected by law, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational, social, or housing programs; or

(ii) Create an intimidating, hostile, or offensive environment for other college community members and/or visitors.

(b) Discriminatory harassment may include, but is not limited to, physical, verbal, written, social media, and electronic communications.

(c) Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(7) **Disorderly conduct.** Conduct, or assisting or encouraging another person to engage in such conduct, which disrupts campus operations or the college's educational, social, or housing programs.

(8) **Disruption or obstruction.** Disruption or obstruction of instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college premises or at a college activity, or any activity that is authorized to occur on college premises, whether or not actually conducted or sponsored by the college.

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

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

(11) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.

(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

(12) **Hazing.** ~~Hazing includes (, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student)~~ any act, on or off the college premises, committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. Hazing does not include customary athletic events or other similar contests or competitions.

(13) **Lewd conduct.** Conduct which is vulgar, obscene, or indecent, unless otherwise protected by law.

(14) **Marijuana or other drugs.**

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

(b) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend or prescription drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance, including nar-

cotic drugs or opiates, under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

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

(a) Unauthorized use of such resources or unauthorized opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene, harassing, or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the computer information systems resources acceptable use or subsequent similar policy.

(16) **Property violation.** Damage to, theft of, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or student organization;

(c) Any other member of the college community, or visitors.

(17) **Retaliation.** Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(18) **Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures, or interfering with or otherwise compromising any college policy, equipment, or procedure relating to the safety and security of the college community or visitors including, but not limited to, tampering with fire safety equipment or triggering false alarms and other emergency response systems.

(19) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX defined in the supplemental procedures to this code. See WAC 132K-135-300, et seq.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advan-

ces, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

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

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

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

(b) **Sexual intimidation.** The term "sexual intimidation" means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

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

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

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

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

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

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

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

- (A) Fear for their safety or the safety of others; or
- (B) Suffer substantial emotional distress.

(d) For the purposes of this code, "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 conduct.

(20) **Tobacco, electronic cigarettes, and related products.** The college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products, including chapter 70.160 RCW.

(21) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

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

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

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

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

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

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

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-070, filed 5/13/21, effective 6/13/21; WSR 17-13-102, § 132K-135-070, filed 6/20/17, effective 7/21/17.]

WSR 23-04-014
EMERGENCY RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed January 20, 2023, 8:36 a.m., effective January 20, 2023, 8:36 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend WAC 363-116-078 Pilot training program, pursuant to RCW 34.05.350 Emergency rules and amendments, in response to the COVID-19 pandemic and other emergency situations as defined by RCW 34.05.350.

Citation of Rules Affected by this Order: Amending WAC 363-116-078.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Other Authority: Chapter 34.05 RCW; RCW 34.05.350 Emergency rules and amendments.

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: To minimize the risk of introducing COVID-19 vectors of exposure onto a vessel or to pilot trainees, the board may suspend or adjust the pilot training program, including the number of trips needed to obtain maximum monthly stipend, as recommended by the board of pilotage commissioners' trainee evaluation committee (TEC). TEC may also consider additional training opportunities for pilot trainees, such as distance learning.

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

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

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

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

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

Date Adopted: January 19, 2023.

Jaimie C. Bever
Executive Director

OTS-2151.4

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~~) 15 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~~) 90 days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within (~~ninety~~) 90 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~~) 15 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 pilotage 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~~) 15 months), the trainee must:

(i) Take and pass with a minimum score of (~~eighty~~) 80 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~~) 85 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~~) 150 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~~) 36 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~~) 15 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~~) 85 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 re-ency 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~~) \$6,000 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~~) \$200 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~~) 12 trips are required each month for eligibility to receive the minimum stipend amount as set by the board, or (~~eighteen~~) 18 trips to receive the maximum stipend amount as set by the board. A trainee may make more than (~~eighteen~~) 18 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~~) 70 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 or if the board determines that there is immediate need to act for the preservation of public health, safety, or general welfare, and that 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. Suspending or adjusting the pilot training program may include the number of trips necessary to receive the maximum stipend allowable under this section as determined by the board. The trainee evaluation committee may further consider additional nonship-board 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 employment 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~~) 30 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.

[Statutory Authority: Chapter 88.16 RCW. WSR 19-03-141, § 363-116-078, filed 1/22/19, effective 2/22/19; WSR 13-08-025, § 363-116-078, filed 3/27/13, effective 4/27/13; WSR 12-05-064, § 363-116-078, filed 2/15/12, effective 3/17/12; WSR 10-04-100, § 363-116-078, filed 2/3/10, effective 3/6/10. Statutory Authority: Chapter 88.16 RCW and 2008 c 128. WSR 08-15-119, § 363-116-078, filed 7/21/08, effective 8/21/08. Statutory Authority: RCW 88.16.105. WSR 06-20-107, § 363-116-078, filed 10/4/06, effective 11/4/06. Statutory Authority: Chapter 88.16 RCW and 2005 c 26. WSR 05-18-021, § 363-116-078, filed 8/29/05, effective 10/1/05.]

WSR 23-04-019

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed January 20, 2023, 3:29 p.m., effective January 20, 2023, 3:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-171 Retired active pharmacist license status, establishing a new section of rule. This emergency rule will extend WSR 22-20-023, filed on September 23, 2022, without change. On March 26, 2020, Governor Inslee signed Proclamation 20-32 to help increase the number of health care workers available to meet the needs of patients during the coronavirus disease 2019 (COVID-19) pandemic. This proclamation included a provision that allows a pharmacist with a retired active pharmacist license status to practice pharmacy. Specifically, the proclamation amended WAC 246-863-080(2), which was effective at that time, to allow holders of a retired active pharmacist license status to practice pharmacy while the proclamation remains in effect.

The pharmacy quality assurance commission (commission) updated and consolidated all rules under its authority into one new chapter (chapter 246-945 WAC), effective July 1, 2020. In this rewrite process, the requirements from WAC 246-863-080 and the retired active pharmacist license status were repealed. Beginning July 1, 2020, chapter 246-945 WAC took effect and the commission no longer enforces WAC 246-863-080. The proclamation was rescinded by the governor on October 27, 2022; however, the emergency rule is still needed while permanent rules are in progress. This emergency rule reinstates the retired active pharmacist credential and allows a pharmacist to apply for a retired active pharmacist license status. The holder of a retired active pharmacist license is allowed to practice during emergent or intermittent circumstances. This emergency rule also establishes the criteria for returning to active status.

Citation of Rules Affected by this Order: New WAC 246-945-171.

Statutory Authority for Adoption: RCW 18.64.005 and 18.64.205.

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

Reasons for this Finding: The immediate adoption of WAC 246-945-171 is necessary for the preservation of public health, safety, and general welfare. This rule allows retired pharmacists to assist in the response during public health emergencies such as the COVID-19 pandemic. This emergency rule allows retired pharmacists to help meet the needs of patients during such things as the COVID-19 pandemic through performing pharmacy services such as vaccine administration. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

The commission authorized permanent rules and the CR-102 (WSR 22-20-101) was filed October 4, 2022, but may not be completed by the time the current emergency rules expire. Proposed rule language for a permanent rule was recently approved by the commission during the public hearing and the CR-103[P] should be filed soon.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 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: January 20, 2023.

Teri Ferreira, RPh
Chair

OTS-2798.2

NEW SECTION

WAC 246-945-171 Retired active pharmacist license status. (1) A pharmacist may apply for a retired active pharmacist license status if they:

(a) Hold an active pharmacist license issued by the commission under chapter 18.64 RCW that is in good standing;

(b) Submit an application on a form provided by the commission; and

(c) Pay the retired credential application fee as specified in WAC 246-907-030.

(2) A pharmacist with a retired active pharmacist license status shall practice only in emergent or intermittent circumstances.

(a) "Emergent" includes, but is not limited to, earthquakes, floods, times of declared war or other states of emergency.

(b) "Intermittent" means no more than a total of ninety days each year in Washington state.

(3) A pharmacist with a retired active pharmacist license status must renew every year, comply with WAC 246-12-130 and pay the retired credential renewal fee in WAC 246-907-030.

(4) To return to active status, a retired active pharmacist must comply with WAC 246-12-140 and pay the pharmacist license renewal fee in WAC 246-907-030.

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WSR 23-04-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-09—Filed January 20, 2023, 3:54 p.m., effective January 21, 2023]

Effective Date of Rule: January 21, 2023.

Purpose: The purpose of this emergency rule is to open razor clam seasons for Copalis Beach (Razor Clam Area 4).

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000S; and amending WAC 220-330-160.

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

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

Reasons for this Finding: This emergency rule is needed to open razor clam seasons in Razor Clam Area 4. Survey results show that adequate clams are available for harvest in Razor Clam Area 4 for recreational harvest. Washington department of health has certified clams from Razor Clam Area 4 to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 20, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. January 21, through 11:59 p.m. January 25, 2023, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	Closed	Closed
Area 2	Closed	Closed
Area 3	Closed	Closed
Area 4	January 21, 23, and 25	From 12:01 p.m. to 11:59 p.m.
Area 5	Closed	Closed
Area 6	Closed	Closed
Area 7	Closed	Closed

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

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REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 26, 2023:

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

WSR 23-04-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-11—Filed January 24, 2023, 6:12 p.m., effective February 25, 2023, 5:00 a.m.]

Effective Date of Rule: February 25, 2023, 5:00 a.m.

Purpose: Opens a commercial smelt fishery on the Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-358-06000F; and amending WAC 220-358-060.

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 sets a limited Columbia River commercial fishery for eulachon smelt. The regulation is consistent with a conservative research-level fishery, reduced from the level-one fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. The expected return of eulachon to the Columbia River in 2023 is expected to be similar in magnitude to the run in 2022. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. National Oceanic Atmospheric Administration fisheries concurs that a limited fishery is consistent with recovery of eulachon smelt. Rule is consistent with Columbia River compact action of January 24, 2023. The general public welfare is protected with the immediate and limited duration opening of the commercial smelt fishing in the mainstem Columbia River. This limited research-level harvest opportunity allows for maintenance and monitoring of a sustainable fish population. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 24, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-06000F Commercial fisheries—Columbia River below Bonneville Dam—Smelt. Notwithstanding the provisions of WAC 220-358-060, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: January 25 through March 16, 2023, open Mondays, Wednesdays, and Thursdays only, 5:00 a.m. to 5:00 p.m. (12-hour periods).

Open Area: Columbia River - SMCRA 1A, 1B, 1C.

Gear: It is unlawful to use anything other than gillnets. Gillnets must meet the following specifications per WAC 220-358-060: mesh size not to exceed 2 inches stretch measure; not to exceed 1,500 feet in length along the cork line. Use of monofilament nets is permissible.

Allowable sales: Smelt.

Other: 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC. 220-352-315.

Multi-Net Rule: Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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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 effective March 17, 2023:

WAC 220-358-06000F Commercial fisheries—Columbia River
below Bonneville Dam—Smelt.

WSR 23-04-029
EMERGENCY RULES
GREEN RIVER COLLEGE

[Filed January 25, 2023, 10:53 a.m., effective January 25, 2023, 10:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington state legislature passed HB [2SHB] 1751 referred to as "Sam's Law," which took effect June 9, 2022. The law requires colleges to take several actions to prevent hazing, including modifying the code of student conduct.

Citation of Rules Affected by this Order: New WAC 132J-126-125; and amending WAC 132J-126-030 and 132J-126-090.

Statutory Authority for Adoption: RCW 28B.50.140.

Other Authority: Washington state HB [2SHB] 1751.

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: Washington [state] HB [2SHB] 1751 became effective June 9, 2022, and the law requires colleges to modify their student conduct code fall quarter 2022, to implement anti-hazing provisions. The Green River College board of trustees adopted these emergency rules in an open public meeting on September 15, 2022, and approved the emergency rules becoming effective upon filing. Extending the emergency rules to allow additional time to complete the permanent rule-making process. The date permanent rules will be adopted is planned for February 25, 2023, effective 31 days later.

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 2, Repealed 0.

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

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

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

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

Date Adopted: January 25, 2023.

Shawn Percell
Director of Judicial Affairs and Compliance

OTS-4045.1

AMENDATORY SECTION (Amending WSR 15-15-071, filed 7/13/15, effective 8/13/15)

WAC 132J-126-030 Definitions. The following definitions shall apply for the purpose of this student conduct code:

"Assembly" is any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, peti-

tion for a cause or disseminate information to any person, persons, or groups of persons.

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

"Cheating" is defined as intentional deception in producing or creating academic work. Cheating includes, but is not limited to:

- (a) Intentional plagiarism;
- (b) Selling or giving your own completed work to others who intend to turn it in as their own;
- (c) Purchasing or accepting the work of others with the intent of turning it in as your own;
- (d) Acquiring and/or using teachers' editions of textbooks, without the permission of the specific instructor, in order to complete your course assignments;
- (e) Obtaining or attempting to obtain an examination prior to its administration;
- (f) Referring to devices, materials or sources not authorized by the instructor;
- (g) Receiving assistance from another person when not authorized by the instructor;
- (h) Providing assistance to another person when not authorized by the instructor;
- (i) Taking an examination for another person;
- (j) Obtaining or attempting to obtain another person to take one's own examination;
- (k) Falsifying laboratory results or copying another person's laboratory results; and
- (l) Falsifying or attempting to falsify the record of one's grades or evaluation.

"College" means Green River College.

"College facilities" includes all buildings, structures, grounds, office space, and parking lots.

"College groups" shall mean individuals or groups who are currently enrolled students or current employees of the college, or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

"College official" includes any person employed by the college, performing assigned administrative or professional responsibilities.

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

"Complainant" means any person who submits a charge alleging that a student violated the student code. When a student believes that she/he has been a victim of another student's misconduct, the student who believes she/he has been a victim will have the same rights under this student code as are provided to the complainant, even if another member of the college community submitted the charge himself or herself.

"Conduct review officer" is the vice president of student affairs or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

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

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

"Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspectives or viewpoints.

"Fabrication" is defined as intentional misrepresentation of an activity done by a student for an academic project or practicum. Fabrication includes, but is not limited to:

- (a) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;
- (b) Counterfeiting a record of internship or practicum experiences;
- (c) Submitting a false excuse for absence or tardiness; and
- (d) Unauthorized multiple submission of the same work; sabotage of others' work.

"Faculty member" means any person hired by the college to conduct classroom, counseling, or teaching activities or who is otherwise considered by the college to be a member of its faculty.

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

- (a) Hand delivery of the document to the specified college official or college official's assistant; or
- (b) By sending the document by email and first class mail to the specified college official's office and college email address.

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

"May" is used in the permissive sense.

"Member of the college community" includes any person who is a student, faculty member, college official or any other person employed by the college. A person's status in a particular situation shall be determined by the vice president of student affairs or designee.

"Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

"Organization" means number of persons who have complied with the formal requirements for college recognition/registration.

"Plagiarism" is defined as using others' original ideas in your written or spoken work without giving proper credit.

- (a) Ideas include, but are not limited to:
 - (i) Facts;
 - (ii) Opinions;
 - (iii) Images;
 - (iv) Statistics;

- (v) Equations;
- (vi) Hypotheses;
- (vii) Theories.

(b) Plagiarism can occur in two ways: Intentional and unintentional.

(c) Ways that intentional plagiarism occur include, but are not limited to:

- (i) Turning in someone else's work as your own;
- (ii) Copying words or ideas from someone else without giving credit;
- (iii) Failing to put a quotation in quotation marks;
- (iv) Giving incorrect information about the source of a quotation;
- (v) Changing words but copying the sentence structure of a source without giving credit;
- (vi) Copying so many words or ideas from a source that it makes up the majority of your work, whether you give credit or not.

(d) Unintentional plagiarism may occur when a student has tried in good faith to document their academic work but fails to do so accurately and/or thoroughly. Unintentional plagiarism may also occur when a student has not had course work covering plagiarism and documentation and is therefore unprepared for college academic writing or speaking.

"Policy" means the written regulations of the college as found in, but not limited to, the student code, the college web page and computer use policy, and catalogs.

"Respondent" is the student against whom disciplinary action is initiated.

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

- (a) Hand delivery of the document to the party; or
- (b) By sending the document by email and by certified mail or first class mail to the party's last known address.

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

"Shall" is used in the imperative sense.

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

"Student conduct officer" is a college administrator designated by the president or vice president of student affairs to be responsible for implementing and enforcing the student conduct code. The president or vice president of student affairs is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

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

"The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

"Vice president of student affairs" means the college administrator who reports to the college president, who serves as the college's student judicial affairs administrator, and who is responsible for administering the student rights and responsibilities code. The vice president of student affairs may designate a student conduct officer to fulfill this responsibility.

[Statutory Authority: RCW 28B.50.140 and 34.02.353 [34.05.353]. WSR 15-15-071, § 132J-126-030, filed 7/13/15, effective 8/13/15. Statutory Authority: RCW 28B.50.140(13) and P.L. 113-4. WSR 14-24-129, § 132J-126-030, filed 12/3/14, effective 1/3/15.]

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

WAC 132J-126-090 Conduct—Student responsibilities. Any student or student group shall be subject to disciplinary action as provided for in this chapter, who either as a principal actor, aide, abettor, or accomplice as defined in RCW 9A.08.020:

Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college;

Violates any provision of this chapter; or

Commits any prohibited act including, but not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. In academically honest writing or speaking, the student documents his/her source of information whenever:

Another person's exact words are quoted;

Another person's idea, opinion or theory is used through paraphrase; and

Facts, statistics, or other illustrative materials are borrowed.

In order to complete academically honest work, students should:

Acknowledge all sources according to the method of citation preferred by the instructor;

Write as much as possible from one's own understanding of the materials and in one's own voice;

Ask an authority on the subject, such as the instructor who assigned the work; and

Seek help from academic student services such as the library and/or writing center.

(2) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products are not allowed on college campus. In addition to the main campus, this also includes any building and premises owned, leased or operated by the college outside of the main campus. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

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

(4) **Drugs/substance abuse.**

(a) Any student who, while in any college facility or participating in a college-related program, uses, possesses, consumes, is demonstrably under the influence of, or sells any narcotic drug or controlled substance as defined in RCW 69.50.101, in violation of law or in a manner which significantly disrupts a college activity. For purposes of this section, "sell" includes the statutory meaning in RCW 69.50.410.

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

(5) **Conduct at college functions.** Any student who significantly disrupts or obstructs any teaching, research, administration, disciplinary proceedings, other college activities, including its public service functions on or off campus, or of other authorized noncollege activities when the conduct occurs on college premises.

(6) **Theft; stolen property; robbery.** Any student who, while in any college facility or participating in a college-related program, commits or attempts to commit theft as defined in RCW 9A.56.020, or possesses stolen property as defined in RCW 9A.56.140, or commits or attempts to commit robbery as defined in RCW 9A.56.190.

(7) **Damaging property.**

(a) Any student who causes or attempts to cause physical damage to property owned, controlled or operated by the college, or to property owned, controlled or operated by another person while said property is located on college facilities.

(b) Any student who in this or any other manner is guilty of malicious mischief in violation of RCW 9A.48.070 through 9A.48.100.

(8) **Abuse; intimidation.** Physical abuse, verbal abuse, threats, intimidation, coercion, and/or other conduct which threatens or endangers the health or safety of any person.

(9) **Hazing.** (~~Hazing, defined as an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization. The express or implied consent of the victim will not be a defense. Apathy or acquiescence in the presence of hazing are not neutral acts; they are violations of this rule.~~)

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

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

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

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

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

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

(ii) Humiliation by ritual act;

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

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

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

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

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

(10) **Failure to comply.** Failure to comply with directions of college officials, campus safety officers, or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

(11) **Possession of keys.** Unauthorized possession, duplication or use of keys to any college premises or unauthorized entry to or use of college premises.

(12) **Policy violation.** Violation of any college policy, rule, or regulation published in hard copy or available electronically on the college website.

(13) **Violation of laws.** Violation of any federal, state, or local law.

(14) **False alarms.** Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(15) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(16) **Sexual misconduct.**

(a) Sexual misconduct is any sexual activity with another that is unwanted and nonconsensual. Sexual misconduct includes physical contact as well as voyeurism.

(b) Consent to sexual activity requires that, at the time of the act, there are actual words or conduct demonstrating freely given agreement to sexual activity, silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(i) Force or blackmail is threatened or used to procure compliance with the sexual activity; or

(ii) The person is unconscious or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(iii) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause.

(c) A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge

and consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy.

(d) The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(e) The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(17) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(18) **Weapons and fireworks.** Possession or use of fireworks anywhere on campus; possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or any other cutting or stabbing instrument, or club, or incendiary device, or explosive, or any facsimile weapons, or any other weapon apparently capable of producing bodily harm and/or property damage is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel, legally authorized military personnel, or bank-related security personnel required by their office to carry such weapons or devices.

(b) Possession or use of disabling chemical sprays when used for self-defense.

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

(19) **Demonstrations.** Participating in an on-campus or off-campus demonstration, riot, or activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area.

(20) **Disorderly conduct.** Conduct that is disorderly, lewd, indecent, or obscene; breach of peace; or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored by, or participated in by, the college or members of the college community. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without his/her prior knowledge, or without his/her effective consent when such a recording is in a place or situation where he or she has a reasonable expectation of privacy. This includes, but is not limited to,

surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(21) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of his/her race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(22) **Stalking.** Stalking, defined as intentionally and repeatedly harassing or following a person and intentionally or unintentionally placing the person being followed or harassed in fear of physical harm to one's self or property or physical harm to another person or another's property.

(23) **Improper use of technology.** Theft or other abuse of computer facilities and resources including, but not limited to:

(a) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.

(b) Unauthorized transfer of a file.

(c) Use of another individual's identification and/or password.

(d) Use of computing facilities and resources to interfere with the work of another student, faculty member, or college official.

(e) Use of computing facilities and resources to view or send obscene or abusive messages.

(f) Use of computing facilities and resources to interfere with normal operation of the college computing system.

(g) Use of computing facilities and resources in violation of copyright laws.

(h) Any violation of the Student Affairs Policy SA-24 - Student Acceptable Computer Use.

(24) **Forgery or alteration of records.** Any student who, while in any college facility or participating in a college-related program, engages in forgery, as defined in RCW 9A.60.020.

(25) **Disruption of conduct process.** Abuse of the student conduct system including, but not limited to:

(a) Falsification, distortion, or misrepresentation of information before a student conduct officer.

(b) Disruption or interference with the orderly conduct of a student conduct hearing proceeding.

(c) Institution of a student conduct code proceeding in bad faith.

(d) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(e) Attempting to influence the impartiality of a member of a student conduct officer prior to, and/or during the course of, the student conduct hearing proceeding.

(f) Harassment (verbal or physical) and/or intimidation of a member of a student conduct officer prior to, during, and/or after a student conduct hearing proceeding.

(g) Failure to comply with the sanction(s) imposed under the student code.

(h) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

(26) **False complaint.** Filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.

(27) **Classroom conduct.** Any student who significantly disrupts any college class and makes it unreasonably difficult to conduct the class in an orderly manner shall be subject to disciplinary action. An instructor/faculty member may impose any of the following actions for classroom conduct:

(a) Warning: An oral or written notice to a student that college and/or classroom expectations about conduct have not been met.

(b) Reprimand: A written notice which censures a student for improper conduct and includes a warning that continuation or repetition of improper conduct shall result in further disciplinary action.

(c) Summary suspension for a maximum of two days: As defined in WAC 132J-126-230.

At any time, severe misconduct or continued misconduct shall be just cause for the matter to be forwarded immediately to the vice president of student affairs or designee for further action.

[Statutory Authority: RCW 28B.50.140(13) and P.L. 113-4. WSR 14-24-129, § 132J-126-090, filed 12/3/14, effective 1/3/15.]

NEW SECTION

WAC 132J-126-125 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132-126-090(9).

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

(3) Washington state law provides that:

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

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

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

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

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WSR 23-04-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-10—Filed January 25, 2023, 11:07 a.m., effective January 26, 2023]

Effective Date of Rule: January 26, 2023.

Purpose: The purpose of this emergency rule is to set closure dates for harvest of white sturgeon in The Dalles and John Day pools.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000H; 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 close the recreational white sturgeon retention seasons in The Dalles and John Day reservoirs.

Projected white sturgeon harvest for The Dalles Pool, through January 25, is 184 of the 190 fish guideline. It is projected that the 2023 The Dalles Reservoir harvest guideline may be exceeded if the fishery were to continue beyond January 25.

Projected catch for John Day Pool, through January 29, is 101 of the 105 fish guideline. It is projected that the 2023 John Day Reservoir harvest guideline may be exceeded if the fishery were to continue beyond January 29.

These populations are managed under sustainable harvest guidelines and this action is intended to keep harvest within that guideline. This action is consistent with decisions made by the states of Washington and Oregon during Columbia River compact hearings on November 9, 2022, January 10, and January 24, 2023.

The public welfare is protected with the immediate and limited duration opening of recreational sturgeon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 25, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000I Freshwater exceptions to statewide rules—Columbia River. Effective January 26 through April 30, 2023 the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding white sturgeon retention seasons from Bonneville Dam to McNary Dam are as follows. All other provisions of WAC 220-312-060, WAC 220-316-010, and WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From Bonneville Dam upstream to The Dalles Dam, including adjacent tributaries:

(a) Effective immediately, through April 30, 2023, sturgeon retention is prohibited.

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

(2) From The Dalles Dam upstream to John Day Dam, including adjacent tributaries:

(a) Effective immediately, through April 30, 2023, sturgeon retention is prohibited.

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

(3) From John Day Dam to McNary Dam, including adjacent tributaries:

(a) Effective immediately, through January 29, 2023, it is permissible to retain white sturgeon:

(i) Minimum fork length 43 inches. Maximum fork length 54 inches.

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

(b) Effective January 30, through April 20, 2023:

(i) Sturgeon retention is prohibited.

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

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REPEALER

The following section of Washington Administrative Code is repealed, effective January 26, 2023:

WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia River. (23-03)

WSR 23-04-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-12—Filed January 25, 2023, 11:15 a.m., effective February 1, 2023]

Effective Date of Rule: February 1, 2023.

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

Citation of Rules Affected by this Order: Amending WAC 220-359-020.

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

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

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

Reasons for this Finding: This rule sets the 2023 tribal winter gillnet and platform, hook and line fisheries above Bonneville Dam. This rule is consistent with actions of the Columbia River compact on January 24, 2023. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource, as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: January 25, 2023.

Kelly Susewind
Director

NEW SECTION

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

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

(a) Season: 6 AM Saturday, February 4, 2023, until 6 PM Monday, February 6, 2023.

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length caught in The Dalles Pool may be sold or kept for subsistence purposes.

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

(2) Open Areas: SMCRA 1H (John Day Pool)

(a) Season: 6 AM Wednesday, February 1, 2023, until 6 PM Monday, February 13, 2023.

(b) Gear: Gillnets with no minimum mesh size restriction.

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

subsistence. Sturgeon from 43 to 54 inches fork length caught in the John Day Pool may be sold or kept for subsistence purposes.

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

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

(a) Season: 6 AM Wednesday, February 1, 2023, until 6 PM Saturday, March 18, 2023.

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

(c) Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length caught in the Bonneville Pool, and from 43 to 54 inches fork length caught in The Dalles and John Day Pools, may be kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold only if caught during the open period and open Pool of an open gillnet fishery.

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

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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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 23-04-038

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed January 25, 2023, 4:14 p.m., effective January 25, 2023, 4:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add a new standard in WAC 51-54A-8000 and provide additional guidance on the installation of energy storage systems by adding a new amendment to WAC 51-54A-1201.

Citation of Rules Affected by this Order: New WAC 51-54A-1201; and amending WAC 51-54A-8000.

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: Energy storage systems is an industry that is emerging very quickly and there are many associated life and safety hazards to the installation of these systems. The 2018 International Fire Code (IFC) does not have enough language to address these hazards. This proposal permits the authority having jurisdictions to use NFPA 855 as a referenced document, per Section 102.7. The standard will be part of the IFC as a state amendment until the appropriate code sections are updated in future editions.

Date Adopted: January 20, 2023.

Tony Doan
Council Chair

OTS-3419.4

NEW SECTION

WAC 51-54A-1201 General. 1201.1 Scope. The provisions of this chapter shall apply to the installation, operation, and maintenance of energy systems used for generating or storing energy. It shall not apply to equipment associated with the generation, control, transformation, transmission, or distribution of energy installations that is under the exclusive control of an electric utility or lawfully designated agency. Energy storage systems regulated by Section 1206 shall comply with this chapter as applicable and NFPA 855.

[]

AMENDATORY SECTION (Amending WSR 19-02-086, filed 1/2/19, effective 7/1/19)

WAC 51-54A-8000 Referenced standards.

The following standards are added:

NFPA 96-07 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations 609.3

NFPA 720-15 Standard for the Installation of Carbon Monoxide (CO) Warning Equipment in Dwelling Units 1103.9

NFPA 130-17 Standard for Fixed Guideway Transit and Passenger Rail Systems 3901.1

NFPA 855-23 Standard for the Installation of Stationary Energy Storage Systems 1201.1

[Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-8000, filed 1/2/19, effective 7/1/19. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-8000, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-8000, filed 2/1/13, effective 7/1/13.]

WSR 23-04-043
EMERGENCY RULES
BELLEVUE COLLEGE

[Filed January 26, 2023, 10:05 a.m., effective January 26, 2023, 10:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Extension of WSR 22-20-099 emergency rule filing October 4, 2022, regarding chapter 132H-126 WAC, BC Policy 2050, student conduct code revision, with added sections related to definition of hazing. Current CR-103E expires February 1, 2023.

Citation of Rules Affected by this Order: New WAC 132H-126-111; and amending WAC 132H-126-030, 132H-126-040, 132H-126-100, 132H-126-120, 132H-126-130, 132H-126-300, 132H-126-400, 132H-126-410, and 132H-126-460.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Other Authority: P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

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

Reasons for this Finding: WSR 22-20-099 emergency rule filing October 4, 2022, will expire before final amendment process is complete. This filing is a request for extension of the following activity and clarification of the sections being amended in chapter 132H-126 WAC. Bellevue College is planning to revise its student conduct code to comply with new state regulations. On March 30, 2022, Governor Inslee signed Sam's Law (HB [2SHB] 1751) into law. This bill requires the college to update the definition of hazing. Additionally, edits are needed to comply with an August 10, 2021, decision from a federal district that vacates portions of the 2020 amendments to the Title IX regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 6, Repealed 0.

Date Adopted: January 26, 2023.

Loreen M. Keller
Associate Director
Policies and Special Projects

OTS-4125.2

AMENDATORY SECTION (Amending WSR 19-01-082, filed 12/17/18, effective 1/17/19)

WAC 132H-126-030 Statement of jurisdiction. (1) The student conduct code shall apply to (~~student~~) conduct by students or student groups that occurs:

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

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

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

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

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

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

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 19-01-082, § 132H-126-030, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-040 Definitions. The following definitions shall apply for the purposes of this student conduct code:

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

(2) "**College official**" is an employee of the college performing assigned administrative, security, professional, or paraprofessional duties.

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

lege, study abroad program, retreat, and conference sites, and college-sponsored and/or college-hosted online platforms.

(4) **"Complainant"** is a student or another member of the college community who is allegedly directly affected by a reported violation of this student conduct code. The complainant may be the reporting party, but not necessarily; witnesses or other third parties may report concerns. In any case involving a report of sexual misconduct as defined in this student conduct code, a complainant is afforded certain rights under this student conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which this person is a complainant;

(b) The right to appeal a disciplinary decision; and

(c) The right to be accompanied by a process advisor.

(5) **"Conduct review officer"** is the provost for academic and student affairs or designee or other college administrator designated by the president to be responsible for receiving and reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

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

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

(8) **"Filing"** is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

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

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

(9) **"Process advisor"** is a person selected by a respondent or a complainant to provide support and guidance during disciplinary proceedings under this student conduct code.

(10) **"Respondent"** is a student against whom disciplinary action is initiated. Each respondent is afforded certain rights including, but not limited to:

(a) The right to be presumed not responsible for the reported misconduct unless or until a determination of responsibility is reached after completion of the disciplinary process;

(b) The right to be informed of all orders issued in the respondent's disciplinary case;

(c) The right to appeal a disciplinary decision; and

(d) The right to be accompanied by a process advisor.

(11) **"Service"** is the process by which a document is officially delivered to a party. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in

the mail. Unless otherwise provided, service upon a party shall be accomplished by:

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

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

(12) "**Sexual misconduct**" includes prohibited sexual- or gender-based conduct by a student including, but not limited to, sexual harassment, sexual violence, sexual exploitation, indecent exposure, dating violence, or domestic violence.

(13) "**Student**" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw, graduate, or complete courses after the date of a reported violation, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(14) "**Student conduct officer**" is a college administrator designated by the president or provost for academic and student affairs or designee to be responsible for implementing and enforcing the student conduct code. The president or provost for academic and student affairs or designee is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

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

(16) "**The president**" is the president of the college. The president is authorized to delegate any and all of their responsibilities, as set forth in this chapter, as may be reasonably necessary.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-040, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-040, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-100 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits or attempts to commit, or aids, abets, incites, encourages, or assists another person to commit the following acts of misconduct:

(1) **Abuse of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property unless otherwise protected by law.

(2) **Abuse in later life.**

(a) Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or

(b) Domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and

(c) Does not include self-neglect.

(3) Abuse of the student conduct process.

(a) Abuse of the student conduct process includes:

(i) Attempting to influence the impartiality or participation of any decision maker including a student conduct officer, conduct review officer, or presiding student conduct committee member;

(ii) Influencing or attempting to influence another person to commit an abuse of the student conduct process;

(iii) Harassment or intimidation of any participant in the student conduct process; or

(iv) Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in the conduct process.

(b) This provision does not apply to reports made or information provided in good faith, even if the respondent is ultimately found not responsible in that conduct proceeding.

~~((3))~~ **(4) Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. The decision to bring a student conduct proceeding under this code for academic dishonesty is at the sole discretion of the student conduct officer. Nothing in this code prohibits instructors and/or academic divisions or departments from imposing academic consequences, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty. Policies and procedures governing the imposition of academic consequences for academic dishonesty can be found in the course syllabus and any applicable program handbook.

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

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

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

(d) **Multiple submissions.** Submitting the same work in separate courses without the express permission of the instructor(s).

(e) **Deliberate damage.** Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.

~~((4))~~ **(5) Acts of dishonesty.** Acts of dishonesty include, but are not limited to:

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

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

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

~~((5))~~ **(6) Alcohol.** Use, possession, manufacture, or distribution of alcoholic beverages or paraphernalia (except as expressly permitted by college policies, and federal, state, and local laws), or public intoxication on college premises or at college-sponsored

events. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person not of legal age.

~~((6))~~ (7) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, text messaging, social media sites, or applications (apps), to harass, abuse, bully, or engage in other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's electronic communications or computer activities directly or through spyware, sending threatening emails or texts, disrupting electronic communications with spam or by sending a computer virus, or sending false emails or texts to third parties using another's identity (spoofing).

~~((7))~~ (8) **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.

~~((8))~~ (9) **Discriminatory harassment.**

(a) Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently severe, persistent, or pervasive so as to:

(i) Limit the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing;

(ii) Alter the terms of an employee's employment; or

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

(b) Protected status includes a person's race; color; creed/religion; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; sex, including pregnancy; marital status; age; genetic information; sexual orientation; gender identity or expression; honorably discharged veteran or military status; HIV/AIDS and hepatitis C status; or membership in any other group protected by federal, state, or local law.

(c) Discriminatory harassment may be physical, verbal, or nonverbal conduct and may include written, social media, and electronic communications not otherwise protected by law.

~~((9))~~ (10) **Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace.

~~((10))~~ (11) **Disruption or obstruction.** Disruption or obstruction of any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

~~((11))~~ (12) **Domestic violence.** ~~((Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexu-~~

~~al 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)) Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:~~

~~(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;~~

~~(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;~~

~~(c) Who shares a child in common with the victim; or~~

~~(d) Who commits acts 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.~~

~~((12)) (13) **Economic abuse.** In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:~~

~~(a) Restrict a person's access to money, assets, credit, or financial information;~~

~~(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or~~

~~(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.~~

~~(14) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.~~

~~((13)) (15) **Failure to comply with directive.** Failure to comply with the reasonable direction of a college official or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.~~

~~((14)) (16) **Harassment or bullying.** Conduct unrelated to a protected class that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.~~

~~(a) Harassing conduct may include, but is not limited to, physical, verbal, or nonverbal conduct, including written, social media and electronic communications unless otherwise protected by law.~~

~~(b) For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior not otherwise protected by law when a reasonable person would feel humiliated, harmed, or intimidated.~~

(c) For purposes of this code, "intimidation" is an implied threat. Intimidation exists when a reasonable person would feel threatened or coerced even though an explicit threat or display of physical force has not been made. Intimidation is evaluated based on the intensity, frequency, or duration of the comments or actions.

~~((15))~~ **(17) Hazing.** ~~((Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.~~

~~(16))~~ (a) Hazing is any act committed as part of:

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

(ii) Any pastime or amusement engaged in with respect to such a student group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

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

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

(ii) Humiliation by ritual act;

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

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

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

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

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

(18) Indecent exposure. The intentional or knowing exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm. Breastfeeding or expressing breast milk is not indecent exposure.

~~((17) **Marijuana**)~~ **(19) Cannabis or other drugs.**

(a) ~~((**Marijuana**))~~ **Cannabis.** The use, possession, growing, delivery, sale, or being visibly under the influence of ~~((marijuana))~~ cannabis or the psychoactive compounds found in ~~((marijuana))~~ cannabis and intended for human consumption, regardless of form, or the possession of ~~((marijuana))~~ cannabis paraphernalia on college premises or college-sponsored events. While state law permits the recreational use of ~~((marijuana))~~ cannabis, federal law prohibits such use on college premises or in connection with college activities.

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

~~((18))~~ **(20) Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of computer time or resources to interfere with someone else's work;

(e) Use of computer time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of computer time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of computer time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

~~((19))~~ (21) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism of, or other nonaccidental damaging or destruction of college property or the property of another person. Property, for purposes of this subsection, also includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

~~((20))~~ (22) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported a violation of this code or college policy, provided information about a reported violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

~~((21))~~ (23) **Safety violations.** Safety violations include committing any reckless or unsafe act that endangers others, failing to follow established safety procedures (e.g., failing to evacuate during a fire alarm), or interfering with or otherwise compromising any college equipment relating to the safety and security of the campus community including, but not limited to, tampering with fire safety or first-aid equipment, or triggering false alarms or other emergency response systems.

~~((22))~~ (24) **Sexual exploitation.** Taking nonconsensual or abusive sexual advantage of another for the respondent's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, when the behavior does not otherwise constitute one of the other sexual misconduct offenses described herein. Examples of sexual exploitation may include, but are not limited to:

(a) Invading another person's sexual privacy;

(b) Prostituting another person;

(c) Nonconsensual photography and digital or video recording of nudity or sexual activity, or nonconsensual audio recording of sexual activity;

(d) Unauthorized sharing or distribution of photographs or digital or video recording of nudity or sexual activity, or audio recording of sexual activity, unless otherwise protected by law;

(e) Engaging in voyeurism. A person commits voyeurism if they knowingly view, photograph, record, or film another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where the person has a reasonable expectation of privacy;

(f) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection; or

(g) Causing the nonconsensual indecent exposure of another person, as defined by subsection ~~((13))~~ (18) of this section.

~~((23))~~ (25) **Sexual harassment.** Unwelcome sexual- or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual- or gender-based nature that is sufficiently severe, persistent or pervasive as to:

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

(b) Alter the terms or conditions of employment; or

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

For sexual harassment prohibited under Title IX, refer to WAC 132H-126-410.

~~((24))~~ (26) **Sexual violence.** A type of sexual harassment that includes nonconsensual intercourse, nonconsensual sexual contact, and sexual coercion.

(a) Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.

(i) Effective consent cannot result from force, or threat of physical force, coercion, dishonesty, or intimidation.

(ii) Physical force means someone is physically exerting control of another person through violence. Physical force includes, but is not limited to, hitting, kicking, and restraining.

(iii) Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.

(iv) 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.

(v) 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.

(b) **Nonconsensual sexual intercourse.** Any sexual intercourse (anal, oral, or vaginal), however slight, with any object, 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.

(c) **Nonconsensual sexual contact.** Any intentional sexual touching, however slight, with any 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.

(d) **Sexual coercion.** Unreasonably pressuring another for sexual contact. When a complainant makes it clear through words or actions that they do not want to engage in sexual contact, want to stop, or do not want to go past a certain point of sexual interaction, continued

pressure beyond that point is presumptively unreasonable and coercive. Other examples of coercion may include using blackmail or extortion, or administering drugs and/or alcohol to overcome resistance or gain consent to sexual activity. Sexual contact that is the result of coercion is nonconsensual.

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

(f) **Statutory rape.** Consensual sexual intercourse between someone who is ~~((eighteen))~~ 18 years of age or older and someone who is under the age of ~~((sixteen))~~ 16.

~~((+25+))~~ (27) **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. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

~~((+26+))~~ (28) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

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

~~((+27+))~~ (30) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

~~((+28+))~~ (31) **Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy (e.g., restroom or residence hall room).

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

~~((+29+))~~ (32) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including on-campus housing policies and college traffic and parking rules.

~~((+30+))~~ (33) **Weapons.**

(a) Possessing, holding, wearing, transporting, storing, or exhibiting any firearm, dagger, sword, knife or other cutting or stab-

bing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

- (i) Commissioned law enforcement personnel; or
 - (ii) Legally authorized military personnel while in performance of their official duties.
- (b) Students with legally issued concealed weapons permits may store their weapons in vehicles parked in accordance with RCW 9.41.050 on campus provided the vehicle is locked and the weapon is concealed from view.
- (c) The president or delegate may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to any terms or conditions incorporated therein.
- (d) Possession and/or use of disabling chemical sprays for purposes of self-defense is not prohibited.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-100, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-100, filed 12/17/18, effective 1/17/19.]

NEW SECTION

WAC 132H-126-115 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132H-126-100(17).

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

(3) Washington state law provides that:

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

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

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

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

[]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-120 Initiation of disciplinary action. (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) Upon receipt, a student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Student on student sexual misconduct.** The college's Title IX coordinator or designee shall investigate complaints or other reports of sexual misconduct by a student against a student.

(b) **Sexual misconduct involving an employee.** The college's human resource office or designee shall investigate complaints or other reports of sexual misconduct in which an employee is either the complainant or respondent.

(c) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(d) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for student disciplinary action.

~~((d))~~ (e) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done in compliance with federal and state laws and without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community.

(3) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

(4) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(a) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(b) The student conduct officer, prior to initiating disciplinary action in cases involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) All disciplinary actions will be initiated by a student conduct officer. If that officer is the subject of a complaint initiated by the respondent or the complainant, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities.

(6) A student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting.

(a) The notice shall briefly describe the factual allegations, the provision(s) of the student conduct code the respondent is reported to have violated, the range of possible sanctions for the reported violation(s), and it will specify the time and location of the meeting.

(b) At the disciplinary meeting, the student conduct officer will present the allegations to the respondent, and the respondent shall be afforded an opportunity to explain what occurred.

(c) If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(7) Within (~~ten~~) 10 days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting the decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended if the student conduct officer, based on information presented at the disciplinary meeting, concludes that additional investigation is necessary. If the period is extended, the student conduct officer will notify the respondent, and the complainant in cases involving allegations of sexual misconduct, of this extension, the reason(s), and the anticipated extension time frame.

(8) A student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), with or without condition(s), as described in WAC 132H-126-110 and 132H-126-115.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(9) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant of the decision, the reasons for the decision, and any disciplinary sanctions and/or conditions that may have been imposed upon the respondent, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-120, filed

12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-120, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-130 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within (~~twenty-one~~) 21 days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the student conduct officer. If a case involves allegations of sexual misconduct, a complainant also has a right to appeal a disciplinary decision or to intervene in the respondent's appeal of a disciplinary decision to the extent the disciplinary decision, sanctions or conditions relate to allegations of sexual misconduct against the respondent.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless the respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals regarding:

(a) The imposition of disciplinary suspensions in excess of (~~ten~~) 10 instructional days or, for a student group, suspensions in excess of two academic quarters;

(b) Dismissals or, for a student group, deprivation of recognition or approval granted by the college; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Residence hall dismissals;

(b) Residence hall suspensions;

(c) Suspensions of (~~ten~~) 10 instructional days or less;

(d) Disciplinary probation;

(e) Written reprimands;

(f) Sanctions against a student group, other than those set forth in subsection (7) (a) and (b) of this section;

(g) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(~~(g)~~) (h) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to the respondent.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary complaints are final actions and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-130, filed 12/2/20, effective 1/2/21; WSR 19-01-082, § 132H-126-130, filed 12/17/18, effective 1/17/19.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-400 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132H-126-100 through 132H-126-340, these supplemental procedures shall take precedence. Bellevue College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-400, filed 12/2/20, effective 1/2/21.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

WAC 132H-126-410 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

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

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

(4) **Domestic violence.** ~~((Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim))~~ Use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person:

(a) Who is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington;

(b) Who is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(c) Who 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) with the victim; or~~

~~(d) Who commits acts 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) **Economic abuse.** In the context of domestic violence dating violence, economic abuse includes behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

(a) Restrict a person's access to money, assets, credit, or financial information;

(b) Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or

(c) Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

(7) **Technological abuse.** An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology including, but not limited to: Internet-enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.

(8) **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.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-410, filed 12/2/20, effective 1/2/21.]

AMENDATORY SECTION (Amending WSR 21-01-008, filed 12/2/20, effective 1/2/21)

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

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

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

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

(a) Is asked or offered to prove someone other than the respondent committed the reported 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 committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5))~~ No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~ (5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: Chapter 34.05 RCW; and RCW 28B.50.140(13); P.L. 113-4, 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-008, § 132H-126-460, filed 12/2/20, effective 1/2/21.]

WSR 23-04-050

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed January 27, 2023, 8:32 a.m., effective January 27, 2023, 8:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-338-020 and 246-338-026, medical test site licensure and notification requirements.

The department of health (department) is adopting an emergency rule to amend WAC 246-338-020 and 246-338-026. The amendment to WAC 246-338-026 mandates reporting of test results intended to detect SARS-CoV-2 or diagnose a possible case of coronavirus disease 2019 (COVID-19). These amendments align with federal changes published in 85 F.R. 54820 on September 2, 2020.

WAC 246-338-020 is also amended by adding a citation to the emergency amendments made to WAC 246-338-026. The amendments to WAC 246-338-020 bring department reporting, inspection, and fining processes in compliance with the new federal requirements. This ensures the current clinical laboratory improvement amendments (CLIA) exempt status is maintained and allows for the continued response to incidents of COVID-19 disease activity.

This is the eighth emergency rule for these amendments. It continues, without change, the emergency rule that was filed on September 30, 2022, under WSR 22-20-073, and the prior filings on June 3, 2022, under 22-13-016; February 4, 2022, under WSR 22-05-013; October 8, 2021, under WSR 21-21-013; June 11, 2021, under WSR 21-13-045; February 12, 2021, under WSR 21-05-048; and October 15, 2020, under WSR 20-21-062.

Citation of Rules Affected by this Order: Amending WAC 246-338-020 and 246-338-026.

Statutory Authority for Adoption: RCW 70.42.060.

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: This emergency rule amends Washington rules to align with updated federal requirements published in 85 F.R. 54820, which include new reporting and inspection requirements and fines for nonreporting. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and federal compliance requirements, which must be satisfied to maintain CLIA exempt status. The department of health and human services (HHS) renewed the federal public health emergency on October 13, 2022.

The department continues to consider options for maintaining this requirement under a permanent rule-making process, recognizing the temporary nature of the federal regulation. There are no updates currently. The department will make this determination when it learns if the Centers for Medicare and Medicaid Services (CMS) intend to adopt permanent rules requiring laboratories to report SARS-CoV-2 data to HHS. If CMS adds permanent rules, the department will need to permanently adopt rules to align with CMS's CLIA program.

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

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

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

Date Adopted: January 27, 2023.

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

OTS-2664.2

AMENDATORY SECTION (Amending WSR 02-12-105, filed 6/5/02, effective 7/6/02)

WAC 246-338-020 Licensure—Types of medical test site licenses.

After July 1, 1990, any person advertising, operating, managing, owning, conducting, opening, or maintaining a medical test site must first obtain a license from the department. License types are described in Table 020-1.

(1) Certificate of waiver.

Applicable if the medical test site performs only the tests classified as waived.

(2) Provider performed microscopic procedures (PPMP).

Applicable if the medical test site restricts its testing performance to one or more of the following moderate complexity tests performed by one of the licensed professionals listed, in conjunction with a patient's visit. In addition, the medical test site can perform tests classified as waived with this type of license.

(a) PPMP may be performed only by one of the following licensed professionals:

(i) Physician licensed under chapter 18.71 RCW, Physicians; chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery; or chapter 18.22 RCW, Podiatric medicine and surgery;

(ii) Advanced registered nurse practitioner, licensed under chapter 18.79 RCW, Nursing care;

(iii) Midwife licensed under chapter 18.50 RCW, Midwifery;

(iv) Physician assistant licensed under chapter 18.71A RCW, Physician assistants;

(v) Naturopath licensed under chapter 18.36A RCW, Naturopathy; or

(vi) Dentist licensed under chapter 18.32 RCW, Dentistry.

(b) Microscopic procedures authorized under a PPMP license are:

(i) All direct wet mount preparations for the presence or absence of bacteria, fungi, parasites, and human cellular elements;

(ii) All potassium hydroxide (KOH) preparations;

(iii) Pinworm examinations;

(iv) Fern tests;

(v) Postcoital direct, qualitative examinations of vaginal or cervical mucous;

- (vi) Urine sediment examinations;
- (vii) Nasal smears for granulocytes;
- (viii) Fecal leukocyte examinations;
- (ix) Qualitative semen analysis (limited to the presence or absence of sperm and detection of motility); and
- (x) Any other tests subsequently categorized under CLIA as provider-performed microscopy procedures.

(3) **Moderate/high complexity.**

(a) **Low volume, Category A-J**, as described in Table 990-1.

Applicable if the medical test site performs any tests that are not classified as waived or qualified as PPMP under subsection (2) of this section. Under this type of license, the medical test site may also perform tests classified as waived.

(b) **Accredited: Low volume, Category A-J**, as described in Table 990-1.

Applicable if the medical test site performs any tests that are not classified as waived, and is accredited **and** inspected by an accreditation organization approved by the department under WAC 246-338-040. Under this type of license, the medical test site may also perform tests classified as waived.

020-1 Table of Requirements for Each License Type

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
(1) Certificate of Waiver	<ul style="list-style-type: none"> • Restrict testing to tests classified as waived. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections. • Follow manufacturers' instructions for performing the test. 	<ul style="list-style-type: none"> • Complaint • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • When indicated
(2) PPMP	<ul style="list-style-type: none"> • Restrict testing to tests classified as PPMP or waived. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. • Follow manufacturers' instructions for performing the test. 	<ul style="list-style-type: none"> • Complaint • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • When indicated
(3) Moderate/High Complexity			
(a) Low Volume, Category A-J	<ul style="list-style-type: none"> • Perform tests classified as moderate or high complexity. 	<ul style="list-style-type: none"> • Initial 	<ul style="list-style-type: none"> • First 6 months of license

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
(b) Accredited: Low Volume, Category A-J	<ul style="list-style-type: none"> Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. Follow manufacturers' instructions for performing test. 	<ul style="list-style-type: none"> Routine Complaint On-site follow-up Technical assistance <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> Every 2 years When indicated When indicated When indicated
	<ul style="list-style-type: none"> Perform tests classified as moderate or high complexity. Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. Follow manufacturers' instructions for performing the test. Submit to the department upon request, or authorize the accreditation organization to submit: Proof of accreditation; On-site inspection results; Statement of deficiencies; Plan of correction for the deficiencies cited; Any disciplinary action and results of any disciplinary action taken by the accreditation organization against the medical test site. 	<ul style="list-style-type: none"> Validation Complaint On-site follow-up Technical assistance <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> 2.5% of accredited sites annually When indicated When indicated When indicated

[Statutory Authority: RCW 70.42.090 and 2002 c 371. WSR 02-12-105, § 246-338-020, filed 6/5/02, effective 7/6/02. Statutory Authority: RCW 70.42.005, 70.42.060. WSR 01-02-069, § 246-338-020, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 70.42.005, 70.42.060 and chapter 70.42 RCW. WSR 00-06-079, § 246-338-020, filed 3/1/00, effective 4/1/00. Statutory Authority: RCW 70.42.005. WSR 97-14-113, § 246-338-020, filed 7/2/97, effective 8/2/97. Statutory Authority: Chapter 70.42 RCW. WSR 94-17-099, § 246-338-020, filed 8/17/94, effective 9/17/94; WSR 93-18-091 (Order 390), § 246-338-020, filed 9/1/93, effective 10/2/93; WSR 91-21-062 (Order 205), § 246-338-020, filed

10/16/91, effective 10/16/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-338-020, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.42 RCW. WSR 90-20-017 (Order 090), § 248-38-020, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

- WAC 246-338-026 Notification requirements.** (1) The owner must notify the department in writing at least thirty days prior to the date of opening or closing the medical test site.
- (2) The owner must notify the department in writing within thirty days of any changes in:
- (a) Name of site;
 - (b) Director;
 - (c) Location of site;
 - (d) Tests, specialties, and subspecialties; and
 - (e) Test methodologies.
- (3) Proposed change of ownership. Transfer or reassignment of a license is prohibited without the department's approval, and must be initiated by the current owner sending a written notice to the department thirty days prior to transfer.
- (a) The current owner of a medical test site must notify the department, in writing at least thirty days prior to the change and provide the following information:
- (i) Name, address, and federal tax ID number of the medical test site;
 - (ii) Full name, address, and location of the current owner and prospective new owner; and
 - (iii) The date of the proposed change of ownership.
- (b) The prospective new owner must submit the following information at least thirty days prior to the change of ownership:
- (i) New name and federal tax ID number of the medical test site;
 - (ii) Changes in technical personnel and supervisors;
 - (iii) Any changes in tests, specialties, and subspecialties; and
 - (iv) Other information as requested by the department.
- (4) The medical test site must authorize an approved accreditation organization to notify the department of the test site's compliance with the standards of the accreditation organization.
- (5) The owner of an accredited license must notify the department in writing within thirty days of the medical test site having its accreditation denied or terminated by the accreditation organization or voluntarily dropping its accreditation status.
- (6) The owner must notify the department in writing within thirty days of any convictions of fraud and abuse, false billing, or kick-backs under state or federal law.
- (7) During the public health emergency, as defined in 42 C.F.R. 400.200, each medical test site that performs a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19 must report SARS-CoV-2 test results to HHS in such form and manner, and at such timing and frequency, as the department may prescribe. For the purposes of this subsection, "SARS-CoV-2 test" means any test that is intended to detect SARS-CoV-2 or diagnose a possible case of COVID-19.

[Statutory Authority: RCW 70.42.005, 70.42.060 and chapter 70.42 RCW.
WSR 00-06-079, § 246-338-026, filed 3/1/00, effective 4/1/00.]

WSR 23-04-051
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 27, 2023, 8:51 a.m., effective January 27, 2023, 8:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is extending emergency amendments to WAC 388-412-0015 General information about your food assistance allotments, 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?

Citation of Rules Affected by this Order: Amending WAC 388-412-0015, 388-450-0185, 388-450-0190, 388-450-0195, 388-470-0005, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250.

Other Authority: New standards issued by United States Department of Agriculture (USDA), Food and Nutrition Services (FNS).

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: USDA, FNS issued annual updates to standards for federal fiscal year 2023, effective October 1, 2022. These updates affect the standard deduction, shelter deduction, homeless shelter deduction, utility deduction, minimum and maximum allotments, and resource limits for the basic food program.

The department is concurrently proceeding with the permanent rule-making process. Refer to preproposal statement of inquiry (CR-101) filed as WSR 22-20-084 on October 3, 2022. A proposed rule-making notice (CR-102) was filed as WSR 23-04-045 on January 26, 2023. Public hearing is set for March 7, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: January 26, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4947.1

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) **How we determine monthly allotments:**

(a) We calculate your monthly allotment for federally funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) **Maximum allotment:**

(a) The maximum allotment for the number of people in your AU eligible for federally funded basic food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) **Prorated benefits in the first month.** If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a (~~thirty~~) 30-day month:

(a) If your prorated benefits for the first month are under (~~ten~~) 10 dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) **Combined allotment for first and second month's benefits.** If you apply for benefits on or after the (~~sixteenth~~) 16th of the month and we determine you are eligible for food assistance for both the first and second month, we will issue both months' benefits in one allotment.

(6) **Minimum allotment.** Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) (~~Twenty dollars~~) \$23 if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) (~~Twenty~~) \$23 dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

(7) **Use of food assistance benefits.** Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-412-0015, filed 4/13/22, effective 5/14/22. Statutory Authority: 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, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-412-0015, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-412-0015, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 16-20-087, § 388-412-0015, filed 10/4/16, effective 2/1/17. Statutory Authority: 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. WSR 15-02-041, § 388-412-0015, filed 1/2/15, effective 2/2/15. Statutory Authority: 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 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-412-0015, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-412-0015, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0015, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-412-0015, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-412-0015, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 05-02-016, § 388-412-0015, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-22-038, § 388-412-0015, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. WSR 01-18-054, § 388-412-0015, filed 8/30/01, effective 9/30/01; WSR 99-16-024, § 388-412-0015, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-412-0015, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? (1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
((3)) 4 or fewer	\$((177)) 193
((4)) 5	\$((184)) 225
((5))	\$215)
6 or more	\$258

(b) (~~Twenty percent~~) 20% of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over \$35 (~~dollars~~) a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-450-0185, filed 4/13/22, effective 5/14/22. Statutory Authority: 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 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0185, filed 6/21/21, effective 7/22/21. Statutory Authority: 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, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0185, filed 1/27/20, effective 2/27/20. Statutory Authority: 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 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0185, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0185, filed 12/26/17, effective 1/26/18. Statutory Authority: 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 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0185, filed 12/1/16, effective 1/1/17. Statutory Authority: 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, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0185, filed 11/25/15, effective 12/26/15. Statutory Authority: 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. WSR 15-02-041, § 388-450-0185, filed 1/2/15, effective 2/2/15. Statutory Authority: 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 and USDA, FNS, per SNAP Administrative Notice

13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0185, filed 1/27/14, effective 2/27/14. Statutory Authority: 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, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0185, filed 11/27/12, effective 12/28/12. Statutory Authority: 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, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0185, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0185, filed 11/17/10, effective 12/18/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 U.S.C. 2014 (a) and (e) (1); 7 C.F.R. §§ 273.1 and 273.9 (d) (1). 10-16-104, § 388-450-0185, filed 8/2/10, effective 9/2/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and P.L. 107 - 171 § 4101. WSR 09-23-004, § 388-450-0185, filed 11/5/09, effective 11/15/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and Food and Nutrition Act of 2008, Title 7 Part 273 of the C.F.R. WSR 09-07-054, § 388-450-0185, filed 3/11/09, effective 4/11/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-450-0185, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0185, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0185, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0185, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0185, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0185, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-044, § 388-450-0185, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-450-0185, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0185, filed 7/31/98, effective 9/1/98.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
 - (i) AU intends to return to the home;
 - (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
 - (iii) AU's home is not being leased or rented during your AU's absence.

(h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of (~~(159-dollars)~~) \$166. If the homeless AU has shelter costs in excess of this amount, the AU has the option to claim either:

- (i) The homeless shelter deduction; or
 - (ii) Actual shelter costs.
- (2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2) (a) through (2) (d) from your AU's gross income. The result is your AU's countable income.
- (3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:
- (a) Up to a maximum of (~~(597-dollars)~~) \$624 if no one in your AU is elderly or disabled; or
 - (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over (~~(597-dollars)~~) \$624.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-450-0190, filed 4/13/22, effective 5/14/22. Statutory Authority: 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 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0190, filed 6/21/21, effective 7/22/21. Statutory Authority: 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, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0190, filed 1/27/20, effective 2/27/20. Statutory Authority: 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 and 7 C.F.R. §§ 273.1, 273.9 (d)(iii)(B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0190, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0190, filed 12/26/17, effective 1/26/18. Statutory Authority: 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 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0190, filed 12/1/16, effective 1/1/17. Statutory Authority: 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, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0190, filed 11/25/15, effective 12/26/15. Statutory Authority: 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 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0190, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.10. WSR 13-11-103, § 388-450-0190, filed 5/20/13, effective 6/20/13. Statutory Authority: 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, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0190, filed 11/27/12, effective 12/28/12. Statutory Authority: 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, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0190, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0190, filed 11/17/10, effective 12/18/10; WSR 09-24-001, § 388-450-0190, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-450-0190, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0190, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0190, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0190, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, §

388-450-0190, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-07-138, § 388-450-0190, filed 3/22/04, effective 5/1/04; WSR 03-21-030, § 388-450-0190, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0190, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0190, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 01-06-030, § 388-450-0190, filed 3/2/01, effective 4/2/01; WSR 99-16-024, § 388-450-0190, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0190, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than (~~20 dollars~~) \$20 in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of (~~459 dollars~~) \$462.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of (~~459 dollars~~) \$462.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of (~~361 dollars~~) \$365.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~59 dollars~~) \$59.

(3) "Utility costs" include the following:

(a) Heating or cooling fuel;

(b) Electricity or gas;

(c) Water;

(d) Sewer;

(e) Well installation/maintenance;

(f) Septic tank installation/maintenance;

(g) Garbage/trash collection; and

(h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and

74.08A.250. WSR 22-09-040, § 388-450-0195, filed 4/13/22, effective 5/14/22. Statutory Authority: 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 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0195, filed 6/21/21, effective 7/22/21. Statutory Authority: 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, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0195, filed 1/27/20, effective 2/27/20. Statutory Authority: 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 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0195, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0195, filed 12/26/17, effective 1/26/18. Statutory Authority: 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, 7 C.F.R. 273.9 (d) (6) (iii) (B). WSR 17-10-069, § 388-450-0195, filed 5/3/17, effective 6/3/17. Statutory Authority: 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 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0195, filed 12/1/16, effective 1/1/17. Statutory Authority: 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, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0195, filed 11/25/15, effective 12/26/15. Statutory Authority: 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. WSR 15-02-041, § 388-450-0195, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090 and Agricultural Act of 2014. WSR 14-12-085, § 388-450-0195, filed 6/3/14, effective 7/4/14. Statutory Authority: 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 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0195, filed 1/27/14, effective 2/27/14. Statutory Authority: 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, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0195, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9 (d) (6) (3). WSR 10-18-050, § 388-450-0195, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-450-0195, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055,

74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 08-21-106, § 388-450-0195, filed 10/16/08, effective 11/16/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-036, § 388-450-0195, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. 273.9 (d)(6)(iii)(b). WSR 06-21-011, § 388-450-0195, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-10-056, § 388-450-0195, filed 5/1/06, effective 6/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9. WSR 05-19-062, § 388-450-0195, filed 9/16/05, effective 10/17/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-09-087, § 388-450-0195, filed 4/19/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0195, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0195, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0195, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0195, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510. WSR 00-22-065, § 388-450-0195, filed 10/27/00, effective 11/1/00. Statutory Authority: RCW 74.040.510 [74.04.510]. WSR 99-24-052, § 388-450-0195, filed 11/29/99, effective 12/1/99. Statutory Authority: RCW 74.04.510. WSR 99-09-055, § 388-450-0195, filed 4/19/99, effective 5/20/99. Statutory Authority: RCW 74.04.510 and 7 C.F.R. 273.9 (d)(6). WSR 99-01-069, § 388-450-0195, filed 12/14/98, effective 1/14/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0195, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

- (a) **"We"** means the department of social and health services.
 - (b) **"You"** means a person applying for or getting benefits from the department.
 - (c) **"Fair market value"** or **"FMV"** means the price at which you could reasonably sell the resource.
 - (d) **"Equity value"** means the FMV minus any amount you owe on the resource.
 - (e) **"Community property"** means a resource in the name of the husband, wife, or both.
 - (f) **"Separate property"** means a resource of a married person that one of the spouses:
 - (i) Had possession of and paid for before they were married;
 - (ii) Acquired and paid for entirely out of income from separate property; or
 - (iii) Received as a gift or inheritance.
- (2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:

- (a) It is a resource we must count under WAC 388-470-0045 for cash assistance or WAC 388-470-0055 for basic food;
- (b) You own the resource and we consider you to own a resource if:
- (i) Your name is on the title to the property; or
 - (ii) You have property that does not have a title;
 - (c) You have control over the resource, which means the resource is actually available to you; and
 - (d) You could legally sell the resource or convert it into cash within 20 days.
- (3) For cash assistance, you must try to make your resources available even if it will take you more than 20 days to do so, unless:
- (a) There is a legal barrier; or
 - (b) You must petition the court to release part or all of a resource.
- (4) When you apply for assistance, we count your resources as of:
- (a) The date of your interview, if you are required to have an interview; or
 - (b) The date of your application, if you are not required to have an interview.
- (5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.
- (6) For cash assistance, there is an equity value resource limit of (~~(\$6,000 dollars)~~) \$6,000.
- (7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for basic food.
- (8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:
- (a) (~~(Three thousand seven hundred fifty dollars)~~) \$4,250 if your AU has either an elderly or disabled individual; or
 - (b) (~~(Two thousand five hundred dollars)~~) \$2,750 for all other AUs.
- (9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:
- (a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.
 - (b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.
- (10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.
- (11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.
- (12) We do not count the resources of victims of family violence when:
- (a) The resource is owned jointly with members of the former household;
 - (b) Availability of the resource depends on an agreement of the joint owner; or
 - (c) Making the resource available would place the client at risk of harm.
- (13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:
- (a) Who owns a resource;

- (b) Who has legal control of a resource;
- (c) The value of a resource;
- (d) The availability of a resource; or
- (e) The portion of a property you or another person owns.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-470-0005, filed 4/13/22, effective 5/14/22; WSR 19-01-105, § 388-470-0005, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-470-0005, filed 12/26/17, effective 1/26/18. Statutory Authority: 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. WSR 15-02-041, § 388-470-0005, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: 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, and Supplemental Nutrition Assistance Program Administrative Notice 11-37, "Supplemental Nutrition Assistance Program FY 2012 Asset Limit Increase for Households with and [an] Elderly or Disabled Member." WSR 11-24-028, § 388-470-0005, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0005, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section.

The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE 10/1/2021				
Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net (Countable) Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$((1,396)) <u>1,473</u>	\$((1,074)) <u>1,133</u>	\$((250)) <u>281</u>	\$((1,777)) <u>1,869</u>
2	((1,888)) <u>1,984</u>	((1,452)) <u>1,526</u>	((459)) <u>516</u>	((2,396)) <u>2,518</u>
3	((2,379)) <u>2,495</u>	((1,830)) <u>1,920</u>	((658)) <u>740</u>	((3,020)) <u>3,167</u>
4	((2,871)) <u>3,007</u>	((2,209)) <u>2,313</u>	((835)) <u>939</u>	((3,644)) <u>3,816</u>
5	((3,363)) <u>3,518</u>	((2,587)) <u>2,706</u>	((992)) <u>1,116</u>	((4,268)) <u>4,465</u>
6	((3,855)) <u>4,029</u>	((2,965)) <u>3,100</u>	((1,190)) <u>1,339</u>	((4,893)) <u>5,114</u>
7	((4,347)) <u>4,541</u>	((3,344)) <u>3,493</u>	((1,316)) <u>1,480</u>	((5,517)) <u>5,763</u>
8	((4,839)) <u>5,052</u>	((3,722)) <u>3,886</u>	((1,504)) <u>1,691</u>	((6,141)) <u>6,412</u>

9	((5,331)) <u>5,564</u>	((4,101)) <u>4,280</u>	((1,692)) <u>1,902</u>	((6,766)) <u>7,061</u>
10	((5,823)) <u>6,076</u>	((4,480)) <u>4,674</u>	((1,880)) <u>2,113</u>	((7,391)) <u>7,710</u>
Each Additional Member	+((492)) <u>512</u>	+((379)) <u>394</u>	+((153)) <u>211</u>	+((625)) <u>649</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is 60 years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are 60 years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-478-0060, filed 4/13/22, effective 5/14/22. Statutory Authority: 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 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-478-0060, filed 6/21/21, effective 7/22/21. Statutory Authority: 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, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-478-0060, filed 1/27/20, effective 2/27/20. Statutory Authority: 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 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-478-0060, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-478-0060, filed 12/26/17, effective 1/26/18. Statutory Authority: 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 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-478-0060, filed 12/1/16, effective 1/1/17. Statutory Authority: 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, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-478-0060, filed 11/25/15, effective 12/26/15. Statutory Authority: 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. WSR 15-02-041, § 388-478-0060, filed 1/2/15, effective 2/2/15. Statutory Authority: 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 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-478-0060, filed 1/27/14, effective 2/27/14. Statutory Authority: 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, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-478-0060, filed 11/27/12, effective 12/28/12. Statutory Authority: 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, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-478-0060, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-478-0060, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-478-0060, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-478-0060, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-478-0060, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-478-0060, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-478-0060, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-478-0060, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-478-0060, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-21-050, § 388-478-0060, filed 10/14/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-478-0060, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510, 74.08.090. WSR 00-23-013, § 388-478-0060, filed 11/3/00, effective 12/4/00. Statutory Authority: RCW 74.04.510. WSR 99-24-053, § 388-478-0060, filed 11/29/99, effective 12/30/99. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-478-0060, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090. WSR 99-05-074, § 388-478-0060, filed 2/17/99, effective 3/20/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0060, filed 7/31/98, effective 9/1/98.]

WSR 23-04-055
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
[Filed January 27, 2023, 2:13 p.m., effective January 31, 2023]

Effective Date of Rule: January 31, 2023.

Purpose: WAC 388-71-0876 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training?, WAC 388-112A-0081 When must long-term care workers who were working or hired during COVID-19 public health emergency complete training, including required specialty training? The department of social and health services (department) is requiring that long-term care workers (LTCWs) complete training and certification by certain dates in response to the COVID-19 public health emergency. The department divided the group of LTCWs into cohorts based on the employee's date of hire or rehire. The rule requires each cohort to complete the requirements by deadlines in rule with the "oldest" LTCWs having the first deadline and then working through the groups chronologically. The department is extending the deadlines to allow more time to complete training and certification. This emergency rule supersedes the emergency rule filed as WSR 22-22-043.

Citation of Rules Affected by this Order: Amending WAC 388-71-0876 and 388-112A-0081.

Statutory Authority for Adoption: RCW 74.39A.074, 74.08.090, 74.09.520.

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

Reasons for this Finding: Long-term care workers hired or rehired during the COVID-19 public health emergency are required to complete certain training and certification requirements within specific deadlines. Stakeholders have reported that the number of workers in multiple cohorts still needing training and certification far exceeds the number that can be trained by the current deadline. This will result in LTCWs failing to complete the requirements in time and create risk to clients' ability to access a qualified worker for provision of their personal care services. To prevent this, the department is extending the training and certification deadlines.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: January 26, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4951.2

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

WAC 388-71-0876 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or ((WAC)) 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	((10/31/2022) <u>1/31/2023</u>)
10/1/2020 to ((4/30/2021) <u>3/31/2022</u>)	((1/31/2023) <u>4/30/2023</u>)
((5/1/2021 to 3/31/2022) <u>4/1/2022 to 9/30/2022</u>)	((4/30/2023) <u>8/31/2023</u>)
((4/1/2022 to 9/30/2022) <u>10/1/2022 to 12/31/2022</u>)	((8/31/2023) <u>9/30/2023</u>)
((10/1/2022 – 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later) <u>Beginning 1/1/2023</u>)	((9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later) <u>Standard training requirements</u>)
((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later)	((Standard training)

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	((1/19/2023) <u>5/31/2023</u>)
10/1/2020 to ((4/30/2021) <u>3/31/2022</u>)	((4/21/2023) <u>8/28/2023</u>)
((5/1/2021 to 3/31/2022) <u>4/1/2022 to 9/30/2022</u>)	((7/19/2023) <u>12/29/2023</u>)

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
((4/1/2022 to 9/30/2022)) 10/1/2022 to 12/31/2022	((11/19/2023)) 1/28/2024
((10/1/2022 – 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) Beginning 1/1/2023	((12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) Standard certification requirements
((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later))	((Standard training))

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in subsection (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 8/17/2019 and 9/30/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-71-0876, filed 5/31/22, effective 7/1/22.]

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

WAC 388-112A-0081 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or ((WAC) 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	((10/31/2022)) 1/31/2023
10/1/2020 to ((4/30/2021)) 3/31/2022	((1/31/2023)) 4/30/2023
((5/1/2021 to 3/31/2022)) 4/1/2022 to 9/30/2022	((4/30/2023)) 8/31/2023
((4/1/2022 to 9/30/2022)) 10/1/2022 to 12/31/2022	((8/31/2023)) 9/30/2023

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
((10/1/2022 – 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>Beginning 1/1/2023</u>	((9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>Standard training requirements</u>
((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later))	((Standard training))

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	((1/19/2023)) <u>5/31/2023</u>
10/1/2020 to ((4/30/2021)) <u>3/31/2022</u>	((4/21/2023)) <u>8/28/2023</u>
((5/1/2021 to 3/31/2022)) <u>4/1/2022 to 9/30/2022</u>	((7/19/2023)) <u>12/29/2023</u>
((4/1/2022 to 9/30/2022)) <u>10/1/2022 to 12/31/2022</u>	((11/19/2023)) <u>1/28/2024</u>
((10/1/2022 – 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>Beginning 1/1/2023</u>	((12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>Standard certification requirements</u>
((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later))	((Standard training))

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in subsection (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 8/17/2019 and 9/30/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-112A-0081, filed 5/31/22, effective 7/1/22.]

WSR 23-04-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-13 [23-13]—Filed January 27, 2023, 3:25 p.m., effective January 30, 2023]

Effective Date of Rule: January 30, 2023.

Purpose: Closes sea cucumber harvest in all management districts.

Citation of Rules Affected by this Order: Repealing WAC
220-340-73000H.

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 District 2-1 commercial sea cucumber quota is expected to be harvested by the end of the day January 29, 2023. This emergency rule closes harvest of sea cucumber in all management districts because there is no harvestable surplus remaining. This concludes the 2022-23 sea cucumber harvest season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 27, 2023.

Kelly Susewind
Director

REPEALER

The following section of Washington Administrative Code is repealed, effective January 30, 2023:

WAC 220-340-73000H Commercial sea cucumber fishery (23-08)

WSR 23-04-097
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-14—Filed January 31, 2023, 3:10 p.m., effective February 1, 2023]

Effective Date of Rule: February 1, 2023.

Purpose: The purpose of this emergency rule is to clarify that the lower portion of Willapa River, from the mouth to the second bridge on Camp One Road, is closed, as written under permanent rules, beginning February 1, 2023.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000Y; and amending WAC 220-312-020.

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

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

Reasons for this Finding: This rule is necessary to clarify the lower portion of Willapa River, from the mouth to the second bridge on Camp One Road, is closed to all fishing beginning February 1, 2023, as written in permanent rules under WAC 220-312-020. WSR 22-24-047, filed November 30, 2022, could be interpreted in such a way that one may think that this lower portion of Willapa River is open to fishing for gamefish, which was not intended. Other rules from the previous filing of WSR 22-24-047 are carried forward and remain in effect.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 31, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000Z Freshwater exceptions to statewide rules—Coast. Effective February 1, 2023, through April 30, 2023, the following provisions of WAC 220-312-020, regarding gamefish seasons, fishing from a floating device, and gear and hook restrictions for coastal tributaries, including tributaries of Grays Harbor and Willapa

Bay shall be modified as described below. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

1. Bear River (Pacific Co.):

(a) Effective immediately, through February 28, 2023:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release wild rainbow trout.

(b) Effective March 1, 2023, until further notice: All species: Closed.

2. Big River (Clallam Co.), outside Olympic National Park:

(a) Effective immediately, through February 28, 2023:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release wild rainbow trout.

(b) Effective March 1, 2023, until further notice: All species: Closed.

4. Bogachiel River (Clallam Co.): Effective immediately, until further notice:

(a) From the mouth to Mill Creek:

(i) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(ii) Steelhead: Daily limit is 2 hatchery steelhead

(b) From Mill Creek to Olympic National Park Boundary:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Steelhead: Daily limit is 2 hatchery steelhead.

5. Calawah River: (Clallam Co.): Effective immediately, until further notice:

(a) From the mouth to the Hwy. 101 Bridge:

(i) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(ii) Steelhead: Daily limit is 2 hatchery steelhead.

(b) From the Hwy. 101 Bridge to the forks:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Steelhead: Daily limit is 2 hatchery steelhead.

6. Calawah, South Fork (Clallam Co.), from the mouth to Olympic National Park boundary: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

7. Cedar Creek (Jefferson Co.), outside Olympic National Park boundary: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

8. Chehalis River (Grays Harbor Co.): From the mouth upstream, including all forks: Effective immediately, until further notice: All species: Closed.

9. Cloquallum Creek (Grays Harbor/Mason Co.), from the mouth to the outlet at Stump Lake: Effective immediately, through February 28, 2023:

All species: Closed.

10. Copalis River (Grays Harbor Co.): Effective immediately, through February 28, 2023:

All species: Closed.

11. Dickey River (Clallam Co.), from the Olympic National Park boundary upstream including the East and West forks: Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

12. Elk Creek (Lewis/Pacific Co.): Effective immediately, until further notice:

All species: Closed.

13. Elk River (Grays Harbor Co.): Effective immediately, through February 28, 2023:

All species: Closed.

14. Fork Creek (Pacific Co.): from Fork Creek Hatchery rack upstream 500 feet at fishing boundary sign, Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

15. Goodman Creek (Jefferson Co.), outside of Olympic National Park boundary: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

16. Hoh River (Jefferson Co.), from Olympic National Park boundary upstream to Olympic National Park boundary below mouth of South Fork Hoh: Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Steelhead: Daily limit is 2 hatchery steelhead.

17. Hoh River, South Fork (Jefferson Co.), outside of Olympic National Park boundary: Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

18. Hoquiam River including West and East forks (Grays Harbor Co.): Effective immediately, through February 28, 2023:

All species: Closed.

19. Humptulips River (Grays Harbor Co.):

From the mouth to confluence of East and West forks and West Fork from mouth to Donkey Creek: immediately, until further notice:

All species: Closed.

20. Johns River (Grays Harbor Co.), from the mouth (Hwy. 105 Bridge) to Ballon Creek: Effective immediately, through February 28, 2023:

All species: Closed.

21. Kalaloch Creek (Jefferson Co.), outside Olympic National Park boundary: Effective immediately, through February 28, 2023:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release wild rainbow trout.

22. Moclips River (Grays Harbor Co.), from the mouth to Quinault Indian Reservation boundary: Effective immediately, through February 28, 2023:

All species: Closed.

23. Mosquito Creek (Jefferson Co.), from Olympic National Park boundary upstream to Goodman 3000 Mainline Bridge: Effective immediately, through February 28, 2023:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release wild rainbow trout.

24. Naselle River (Pacific Co.), from the Hwy. 101 Bridge to the North Fork: Effective immediately, until further notice:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release wild rainbow trout.

25. Naselle River, South (Pacific Co.), from the mouth to Bean Creek: Effective immediately, through February 28, 2023:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release wild rainbow trout.

26. Nemah River, Middle (Pacific Co.):

- (a) Effective immediately, through February 28, 2023:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release wild rainbow trout.
- (b) Effective March 1, 2023, until further notice: All species: Closed

27. Nemah River, North (Pacific Co.), from Hwy. 101 Bridge to Cruiser Creek:

- (a) Effective immediately, through February 28, 2023:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release wild rainbow trout.
- (b) Effective March 1, 2023, until further notice: All species: Closed

28. Nemah River, South (Pacific Co.):

- (a) Effective immediately, through February 28, 2023:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release wild rainbow trout.
- (b) Effective March 1, 2023, until further notice: All species: Closed

29. Newaukum River, including South Fork (Lewis Co.), from mouth to Hwy. 508 Bridge near Kearny Creek: Effective immediately, until further notice:

All species: Closed.

30. Newaukum River, Middle Fork (Lewis Co.), from mouth to Taucher Rd. Bridge: Effective immediately, until further notice: All species: Closed.

31. Newaukum River, North (Lewis Co.), from mouth to 400' below Chehalis City water intake: Effective immediately, until further notice:

All species: Closed.

32. North River (Grays Harbor/Pacific Co.), from the Hwy. 105 bridge to Raimie Creek: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

33. Palix River (Pacific Co.):

(a) From Hwy. 101 Bridge to the mouth of the Middle Fork:

(i) Effective immediately, through February 28, 2023:

(A) All species: Fishing from a floating device is prohibited.

(B) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(C) Release wild rainbow trout.

(ii) Effective March 1, 2023, until further notice: All species: Closed

(b) From the confluence with the Middle Fork upstream (all forks including South fork Palix River and Canon River):

(i) Effective immediately, through February 28, 2023:

(A) All species: Fishing from a floating device is prohibited.

(B) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(C) Release wild rainbow trout.

(ii) Effective March 1, 2023, until further notice: All species: Closed

34. Quillayute River (Clallam Co.), from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers: Effective immediately, until further notice:

(a) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(b) Steelhead: Daily limit 2 hatchery steelhead.

35. Quinault River (Grays Harbor/Jefferson Co.), from the mouth at upper end of Quinault Lake upstream to Olympic National Park boundary: Effective immediately, until further notice:

All species: Closed.

36. Satsop River and East Fork (Grays Harbor Co.):

(a) From the mouth to bridge at Schafer State Park: Effective immediately, until further notice:

All species: Closed.

(b) From 400' below Bingham Creek Hatchery dam to the dam and all Forks: Effective immediately, until further notice:

All species: Closed.

37. Satsop River, Middle Fork (Grays Harbor Co.), Effective immediately, through February 28, 2023.

All species: Closed

38. Satsop River, West Fork (Grays Harbor Co.), Effective immediately, through February 28, 2023.

All species: Closed

39. Skookumchuck River (Lewis/Thurston Co.), from mouth to 100' below outlet of TransAlta WDFW steelhead rearing pond located at the base of Skookumchuck Dam: Effective immediately, until further notice: All species: Closed.

40. Smith Creek (near North River) (Pacific Co.): Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

41. Sol Duc River (Clallam Co.): Effective immediately, until further notice:

(a) From mouth to the WDFW boat launch at Maxfield Rd: All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(b) From the WDFW boat launch at Maxfield Rd. to Hwy. 101 Bridge upstream of Klahowya campground:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

42. Sooes River (Clallam Co.), outside of Makah Indian Reservation: Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

43. Stevens Creek (Grays Harbor Co.), from mouth to Hwy 101 Bridge: Effective immediately, through February 28, 2023:

All Species: Closed.

44. Thunder Creek (Clallam Co.), from mouth to D2400 Rd.:

(a) Effective immediately, through February 28, 2023:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release wild rainbow trout

(b) Effective March 1, 2022, until further notice: All species: Closed

45. Willapa River (Pacific Co.), the second bridge on Camp One Rd. to Hwy. 6 Bridge (near the town of Lebam): Effective immediately, until further notice:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

46. Willapa River, South Fork (Pacific Co.): Effective immediately, through February 28, 2023:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release wild rainbow trout.

47. Wishkah River (Grays Harbor Co.), from the mouth to 200' below the weir at the Wishkah Rearing Ponds and from 150' upstream to 150' downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary): Effective immediately, through February 28, 2023:

All species: Closed.

48. Wynoochee River (Grays Harbor Co.): Effective immediately, until further notice:
All species: Closed.

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

REPEALER

The following section of Washington Administrative Code is repealed, effective February 1, 2023:

WAC 220-312-02000Y Freshwater exceptions to statewide rules—Coast. (22-277)

WSR 23-04-102
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-15—Filed January 31, 2023, 4:38 p.m., effective January 31, 2023, 4:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close harvest of green sea urchin in Districts 3 and 4.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000R; and amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule closes harvest for green sea urchins in Districts 3 and 4 because the quota has been reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 31, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000S Commercial sea urchin fishery. Effective immediately, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for red sea urchin harvest only, seven days-per-week: Sea Urchin District 1, District 2, District 3, and District 4.

(3) The maximum cumulative landings for red sea urchins for each weekly fishery opening period is 1,500 pounds per valid designated sea urchin harvest license.

(4) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1.

(5) The maximum cumulative landings for green sea urchins for each weekly fishery opening period is 2,500 pounds per valid designated sea urchin harvest license.

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REPEALER

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

WAC 220-340-75000R Commercial sea urchin fishery. (23-07)