

**WSR 24-18-085**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed August 30, 2024, 7:55 a.m., effective September 1, 2024]

Effective Date of Rule: September 1, 2024.

Purpose: The developmental disabilities administration (DDA) is enacting these changes on an emergency basis to implement home and community-based services (HCBS) waivers as approved by the Centers for Medicare and Medicaid Services (CMS).

Primary waiver amendments:

- These amendments add: Waiver eligibility for children and youth age 20 and younger who are subject to a court dependency or a similar proceeding in a tribal court or are receiving extended foster care services from the department of children, youth, and families (DCYF) or from a tribe in Washington state; technical information about service plan collaboration; and teleservice delivery as a service delivery method for some services.
- These amendments adjust: Waiver enrollment limits; language about cross-agency collaboration; the service definition for transportation; provider qualifications for music therapists; and level-of-care and inter-rate reliability level of care evaluation processes.
- These amendments clarify: Teleservice language in all services where teleservice delivery is now available; and waiver service definitions and service limit language across all five waivers.

To read all other CMS-approved waiver amendments effective September 1, 2024, open a waiver under "Current Approved Waivers" on DDA's home and community-based waivers website.

Citation of Rules Affected by this Order: New WAC 388-842-0001, 388-842-0005, 388-842-0010, 388-842-0015, 388-842-0020, 388-842-0025, 388-842-0030, 388-842-0035, 388-842-0040, 388-842-0045, 388-842-0060, 388-842-0065, 388-842-0070, 388-842-0075, 388-842-0080, 388-842-0085, 388-842-0090, 388-842-0095, 388-842-0110, 388-842-0115, 388-842-0120, 388-842-0125, 388-842-0140, 388-842-0145, 388-842-0150, 388-842-0165, 388-842-0170, 388-842-0175, 388-842-0180, 388-842-0185, 388-842-0190, 388-842-0195, 388-842-0205, 388-842-0210, 388-842-0215, 388-842-0220, 388-842-0230, 388-842-0235 and 388-842-0250; repealing WAC 388-825-0571 and 388-845-2019; and amending WAC 388-825-020, 388-825-096, 388-825-120, 388-828-1020, 388-828-1340, 388-828-1540, 388-828-5120, 388-828-5140, 388-828-5160, 388-828-5180, 388-828-5920, 388-828-5940, 388-828-5980, 388-845-0001, 388-845-0030, 388-845-0045, 388-845-0055, 388-845-0060, 388-845-0100, 388-845-0110, 388-845-0111, 388-845-0113, 388-845-0210, 388-845-0760, 388-845-0955, 388-845-1515, 388-845-1607, 388-845-1620, 388-845-2000, 388-845-2010, 388-845-2200, 388-845-3015, and 388-845-3095.

Statutory Authority for Adoption: RCW 34.05.350.

Other Authority: RCW 71A.12.380(1); 42 C.F.R. 441.301.

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: Enacting these rules on an emergency basis is necessary in order to implement HCBS waivers as approved by

CMS. Aligning rules with approved waiver amendments provides assurances required under 42 C.F.R. 441.301.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 39, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 39, Amended 33, Repealed 2.

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: August 29, 2024.

Katherine I. Vasquez  
Rules Coordinator

## SHS-5051.2

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

**WAC 388-825-020 Definitions. "Adult day care"** is a service administered by DDA-contracted counties that provides a structured social program for adults.

**"Authorization"** means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

**"Assistant secretary"** means the assistant secretary of the developmental disabilities administration.

**"Background check system"** or **"BCS"** means an online system for processing background checks.

**"Consumer-directed employer"** is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions.

**"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020 (~~((+3))~~) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW. "Client" may also refer to a child with a functional need for personal care services who does not have a developmental disability.

**"Community first choice"** or **"CFC"** is a medicaid state plan program defined in chapter 388-106 WAC.

**"Department"** means the department of social and health services of the state of Washington.

**"DDA"** means the developmental disabilities administration within the department of social and health services.

**"Enhanced respite services"** means respite care for DDA enrolled children and youth, who meet specific criteria, in a DDA contracted and licensed staffed residential setting.

**"Family"** means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive, or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

**"Individual provider"** means an employee of a consumer-directed employer who provides personal care or respite care services.

**"Intermediate care facility for individuals with intellectual disabilities"** or **"ICF/IID"** means a facility certified under federal law to provide active treatment and rehabilitation services.

**"Legal representative"** means a parent of a client if the client is under age 18 and parental rights have not been terminated or relinquished, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

**"Medicaid"** means the federal medical aid program under title XIX of the Social Security Act that provides health care to eligible people.

**"Person-centered service plan"** or **"PCSP"** is a document that identifies a client's goals and assessed health and welfare needs. The PCSP also indicates the paid services and natural supports that will help a client achieve their goals and address their assessed needs.

**"Residential habilitation center"** or **"RHC"** means a state-operated facility under RCW 71A.20.020.

**"Respite care"** means short-term intermittent care for DDA clients to provide relief for people who normally provide that care.

**"State-only funded services"** means those services paid entirely with state funds.

**"State supplementary payment"** or **"SSP"** is the state paid cash assistance program for certain DDA-eligible clients.

**"You"** or **"your"** means the client.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-096 Will I have to pay for the services ((DDD)) DDA authorizes for me?** (1) If you live in your own home, you do not pay toward the cost of your services except chore services. You must pay toward the cost of chore services as described in WAC 388-106-0625.

(2) If ((DDD)) DDA authorizes you to live in a licensed community residential facility you must pay your room and board costs from your earned and unearned income. You may also be responsible for a portion of the cost of your care.

(a) If you are eligible for and receiving SSI or have SSI related eligibility per chapter 182-512 WAC ((388-475-0100(2)(a) or (b))), you are not required to pay toward the cost of your care if you are living at home or in a community setting.

(b) If you are enrolled in a ((DDD)) DDA HCBS waiver you must pay toward the cost of your services as described in WAC ((388-515-1510)) 182-515-1510.

(c) If you are not enrolled in a ((DDD)) DDA HCBS waiver you must pay toward the cost of your services as described in WAC 388-106-0225.

(3) If you live in a medical institution you must pay toward the cost of your care as described in WAC ((388-513-1380)) 182-513-1380. See WAC ((182-500-0005)) 182-500-0050 for the definition of a medical institution.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

**WAC 388-825-120 When may I appeal a decision made by the developmental disabilities administration?** (1) You, your legal representative, or your authorized representative may appeal a decision made by DDA if you are an applicant, a client, or a former client.

(2) You have the right to an administrative hearing to dispute the following DDA actions:

- (a) Approval, denial, reduction, or termination of services;
- (b) Approval, denial, or termination of eligibility;
- (c) Approval, denial, reduction, or termination of payment of SSP authorized by DDA set forth in chapter 388-827 WAC;
- (d) Admission or readmission to, or discharge from, a residential habilitation center set forth in WAC 388-825-155;
- (e) Refusal to abide by your request that we not send notices to any other person;
- (f) Refusal to comply with your request to consult only with you;
- (g) Denial of payment to your provider for any reason under WAC 388-825-375;
- (h) Termination of your provider's contract for any reason under WAC 388-825-385 or 388-825-390;
- (i) An unreasonable delay to act on an application for eligibility or service;
- (j) A claim that you owe an overpayment debt;
- (k) Action related to the community protection program under WAC 388-831-0300;

(l) An exception to rule decision if:

- (i) The total number of service hours you are currently receiving includes hours approved as an exception to rule in addition to the number of hours available to you under program rule or DDA assessment; and
- (ii) The total number of service hours you are currently receiving is reduced because of a reduction or termination in the number of hours approved as an exception to rule.

(3) Except as allowed under subsection (2) ~~((+m))~~ (1) of this section, you do not have a right to appeal the department's denial of an exception to rule request.

(4) If you appeal a decision made by the developmental disabilities administration, your appeal is governed by this chapter and:

- (a) Chapter 34.05 RCW;
- (b) Chapter 71A.10 RCW; and
- (c) Chapters 388-02 or 182-526 WAC, as applicable.

(5) If any provision in this chapter conflicts with chapters 388-02 or 182-526 WAC or WAC 388-440-0001(3), the provision in this chapter prevails.

(6) If you receive personal care services under chapter 388-106 WAC that are authorized by DDA, the appeal provision in WAC 388-106-1315 applies.

(7) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited under WAC 388-845-4005.

(8) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited under WAC 388-845-4005.

**Chapter 388-828 WAC**  
**THE ((DIVISION OF)) DEVELOPMENTAL DISABILITIES ((DDD)) ADMINISTRATION (DDA) ASSESSMENT**

AMENDATORY SECTION (Amending WSR 23-12-061, filed 6/2/23, effective 7/3/23)

**WAC 388-828-1020 What definitions apply to this chapter?** The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"Administration" means the developmental disabilities administration of the department of social and health services.

"Adult family home" or "AFH" means a residential home in which a person or entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood, adoption, or marriage to a provider, entity representative, resident manager, or caregiver who resides in the home. An adult family home may be licensed to provide care to up to eight adults if the home receives approval under chapter 388-76 WAC.

"Agency provider" means a business that is licensed, certified, or both, and that is contracted with the department or a county to provide DDA services.

"Algorithm" means a numerical formula used by the DDA assessment for one or more of the following:

- (1) Calculation of assessed information to identify a client's relative level of need; and
- (2) Assignment of a service level to support a client's assessed need.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020 who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW.

"Collateral contact" means a person or agency that is involved in the client's life such as legal guardian, family member, care provider, or friend.

"Companion home" is a DDA contracted residential service that provides 24-hour training, support, and supervision, to one adult living with a paid provider.

"Contracted provider" means an individual provider contracted with the department, individual provider employed by the consumer directed employer, or an individual or agency who is one or more of the following: Licensed, certified, or contracted by the department to provide services to DDA clients.

"DDA" means the developmental disabilities administration of the department of social and health services.

"Department" means the department of social and health services (DSHS).

"Group home" or "GH" means a licensed adult family home or assisted living facility contracted and certified to provide residential services and support to adults with developmental disabilities.

"Home visit" means viewing a client's living quarters with the client present.

"ICF/IID" means a medicaid-certified facility operating under Title XIX of the Social Security Act in 42 C.F.R. 440-150 to furnish health or rehabilitation services.

"ICF/IID level of care" is a standardized assessment of a client's need for ICF/IID level of care per 42 C.F.R. Sec. 440 and 42 C.F.R. Sec. 483. In addition, ICF/IID level of care refers to one of the standards used by DDA to determine whether a client meets minimum eligibility criteria for one of the DDA HCBS waivers or the community first choice program.

"Legal guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of 18.

"Legal representative" means a parent of a client if the client is under age 18 and rights have not been terminated or relinquished, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Living quarters" means the client's bedroom and main living area(s).

"LOC score" means a level of care score for answers to questions in the support needs assessment for children that are used in determining if a client meets eligibility requirements for ICF/IID level of care.

"Panel" refers to the visual user-interface in the DDA assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

"Person-centered service plan (PCSP)" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Raw score" means the numerical value when adding a person's "frequency of support," "daily support time," and "type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

"Residential habilitation center" or "RHC" is a state-operated facility under RCW 71A.20.020.

"Respondent" means the adult client or another person familiar with the client who participates in the client's DDA assessment by answering questions and providing information. Respondents may include DDA contracted providers.

"Service provider" refers to a department contracted agency or person who provides services to DDA clients. Also refers to state operated living alternative programs (SOLA).

"Significant change assessment" means a DDA assessment completed any time a change is reported in a client's support needs, such as an increased need for medical or behavioral supports.

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD).

"SOLA" means a state operated living alternative program for adults that is operated by DDA.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDA eligible Social Security income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by DDA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the individual and family services (IFS), children's intensive in-home behavioral support (CIIBS), basic plus, and core waivers per chapter 388-845 WAC.

"You" and "your" means the client.

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

**WAC 388-828-1340 After administering the DDA assessment, when will DDA inform me of the services I am eligible to receive?** DDA will inform you of the services you are eligible to receive no more than (~~thirty~~) 30 days after DDA administers your assessment.

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

**WAC 388-828-1540 Who participates in your DDA assessment?** (1) You choose the people who participate in your assessment and person-centered service plan meeting.

(2) DDA requires that at a minimum: You, one of your respondents, and a DDA employee participate in your DDA assessment interview. In addition:

(a) If you are under the age of (~~eighteen~~) 18, your parent(s) (~~or legal guardian(s)~~) or legal representative must participate in your DDA assessment interview.

(b) If you are age (~~eighteen~~) 18 or older, DDA must consult with your court-appointed legal representative (~~(/guardian must be consulted if he/she)~~) if the representative does not attend your DDA assessment interview.

(c) If you are age (~~eighteen~~) 18 and older and have no legal representative (~~(/guardian)~~), DDA will assist you to identify a respondent.

(d) DDA may consult with other people who were not present at your DDA assessment interview, if needed, to obtain complete and accurate information.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-5120 What is the ((DD)) DDA caregiver status acuity scale?** The ((DD)) DDA caregiver status acuity scale is an assessment of risks associated with your primary caregiver's ability to provide care.

AMENDATORY SECTION (Amending WSR 08-12-037, filed 5/30/08, effective 7/1/08)

**WAC 388-828-5140 How is information in the ((DD)) DDA caregiver status acuity scale used by ((DD)) DDA?** (1) Information obtained in the ((DD)) DDA caregiver status acuity scale is one of the factors used by ((DD)) DDA to determine:

(a) The amount of waiver respite, if any, that you are authorized to receive; and

(b) Your individual and family services level, if you are authorized to receive individual and family services.

(2) The ((DD)) DDA caregiver status acuity scale does not affect service determination for the medicaid personal care or waiver personal care assessment; and

(3) The information is used for reporting purposes to the legislature and the department.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-5160 When is a collateral contact an informal caregiver?** A collateral contact is an informal caregiver when the person provides you supports without payment from ((DD)) DDA for a service.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-5180 When is a collateral contact a formal caregiver?** A collateral contact is a formal caregiver when the person receives payment from ((DD)) DDA or DCYF to provide you a service.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-5920 What is the respite assessment?** The respite assessment is an algorithm in the ((DD)) DDA assessment that determines the number of hours of respite care, if any, that your provider may receive per year if ((DD)) DDA has authorized you to receive ((Basic,)) basic plus((,)) or ((Core)) core waiver services per chapter 388-845 WAC.



AMENDATORY SECTION (Amending WSR 08-12-037, filed 5/30/08, effective 7/1/08)

**WAC 388-828-5940 Are there any exceptions when the respite assessment is not used to determine the number of hours for waiver respite services?** The respite assessment is not used to determine waiver respite when you are receiving any of the following:

- (1) (~~Voluntary placement program~~) Children's residential habilitative services per chapter 388-826 and 388-842 WAC; or
- (2) (~~Companion home~~) Residential habilitation services from a companion home provider per chapter 388-829C WAC.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-5980 How does ((DDD)) DDA determine your respite assessment level?** (1) ((DDD)) DDA determines your respite assessment level using the following table:

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
0	None	1	None	1
0	None	1	Low	1
0	None	1	Medium	1
0	None	1	High	2
0	None	2 or 3	None	1
0	None	2 or 3	Low	1
0	None	2 or 3	Medium	2
0	None	2 or 3	High	2
0	Low	1	None	1
0	Low	1	Low	1
0	Low	1	Medium	1
0	Low	1	High	2
0	Low	2 or 3	None	1
0	Low	2 or 3	Low	1
0	Low	2 or 3	Medium	2
0	Low	2 or 3	High	2
0	Medium	1	None	1
0	Medium	1	Low	1
0	Medium	1	Medium	1
0	Medium	1	High	2
0	Medium	2 or 3	None	1
0	Medium	2 or 3	Low	1
0	Medium	2 or 3	Medium	2
0	Medium	2 or 3	High	2
0	High	1	None	1
0	High	1	Low	1
0	High	1	Medium	2

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
0	High	1	High	2
0	High	2 or 3	None	2
0	High	2 or 3	Low	2
0	High	2 or 3	Medium	2
0	High	2 or 3	High	3
0	Immediate	1	None	1
0	Immediate	1	Low	1
0	Immediate	1	Medium	2
0	Immediate	1	High	2
0	Immediate	2 or 3	None	2
0	Immediate	2 or 3	Low	2
0	Immediate	2 or 3	Medium	2
0	Immediate	2 or 3	High	3
1	None	1	None	1
1	None	1	Low	1
1	None	1	Medium	1
1	None	1	High	2
1	None	2 or 3	None	1
1	None	2 or 3	Low	1
1	None	2 or 3	Medium	2
1	None	2 or 3	High	3
1	Low	1	None	1
1	Low	1	Low	1
1	Low	1	Medium	1
1	Low	1	High	2
1	Low	2 or 3	None	1
1	Low	2 or 3	Low	1
1	Low	2 or 3	Medium	2
1	Low	2 or 3	High	3
1	Medium	1	None	1
1	Medium	1	Low	1
1	Medium	1	Medium	2
1	Medium	1	High	3
1	Medium	2 or 3	None	1
1	Medium	2 or 3	Low	2
1	Medium	2 or 3	Medium	2
1	Medium	2 or 3	High	3
1	High	1	None	2
1	High	1	Low	2
1	High	1	Medium	2
1	High	1	High	3
1	High	2 or 3	None	2
1	High	2 or 3	Low	2
1	High	2 or 3	Medium	3

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
1	High	2 or 3	High	4
1	Immediate	1	None	2
1	Immediate	1	Low	2
1	Immediate	1	Medium	2
1	Immediate	1	High	3
1	Immediate	2 or 3	None	2
1	Immediate	2 or 3	Low	2
1	Immediate	2 or 3	Medium	3
1	Immediate	2 or 3	High	4
2 or 3	None	1	None	1
2 or 3	None	1	Low	1
2 or 3	None	1	Medium	2
2 or 3	None	1	High	3
2 or 3	None	2 or 3	None	2
2 or 3	None	2 or 3	Low	2
2 or 3	None	2 or 3	Medium	2
2 or 3	None	2 or 3	High	4
2 or 3	Low	1	None	1
2 or 3	Low	1	Low	1
2 or 3	Low	1	Medium	2
2 or 3	Low	1	High	3
2 or 3	Low	2 or 3	None	2
2 or 3	Low	2 or 3	Low	2
2 or 3	Low	2 or 3	Medium	2
2 or 3	Low	2 or 3	High	4
2 or 3	Medium	1	None	2
2 or 3	Medium	1	Low	2
2 or 3	Medium	1	Medium	2
2 or 3	Medium	1	High	3
2 or 3	Medium	2 or 3	None	2
2 or 3	Medium	2 or 3	Low	2
2 or 3	Medium	2 or 3	Medium	3
2 or 3	Medium	2 or 3	High	4
2 or 3	High	1	None	2
2 or 3	High	1	Low	2
2 or 3	High	1	Medium	2
2 or 3	High	1	High	3
2 or 3	High	2 or 3	None	2
2 or 3	High	2 or 3	Low	2
2 or 3	High	2 or 3	Medium	3
2 or 3	High	2 or 3	High	4
2 or 3	Immediate	1	None	2
2 or 3	Immediate	1	Low	2
2 or 3	Immediate	1	Medium	2

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
2 or 3	Immediate	1	High	3
2 or 3	Immediate	2 or 3	None	2
2 or 3	Immediate	2 or 3	Low	2
2 or 3	Immediate	2 or 3	Medium	3
2 or 3	Immediate	2 or 3	High	4
4	None	1	None	2
4	None	1	Low	2
4	None	1	Medium	2
4	None	1	High	3
4	None	2 or 3	None	2
4	None	2 or 3	Low	2
4	None	2 or 3	Medium	3
4	None	2 or 3	High	4
4	Low	1	None	2
4	Low	1	Low	2
4	Low	1	Medium	2
4	Low	1	High	3
4	Low	2 or 3	None	2
4	Low	2 or 3	Low	2
4	Low	2 or 3	Medium	3
4	Low	2 or 3	High	4
4	Medium	1	None	2
4	Medium	1	Low	2
4	Medium	1	Medium	3
4	Medium	1	High	3
4	Medium	2 or 3	None	2
4	Medium	2 or 3	Low	3
4	Medium	2 or 3	Medium	3
4	Medium	2 or 3	High	4
4	High	1	None	2
4	High	1	Low	2
4	High	1	Medium	3
4	High	1	High	3
4	High	2 or 3	None	2
4	High	2 or 3	Low	3
4	High	2 or 3	Medium	4
4	High	2 or 3	High	4
4	Immediate	1	None	2
4	Immediate	1	Low	2
4	Immediate	1	Medium	3
4	Immediate	1	High	3
4	Immediate	2 or 3	None	2
4	Immediate	2 or 3	Low	3
4	Immediate	2 or 3	Medium	4

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
4	Immediate	2 or 3	High	4
5	None	1	None	2
5	None	1	Low	2
5	None	1	Medium	3
5	None	1	High	4
5	None	2 or 3	None	3
5	None	2 or 3	Low	3
5	None	2 or 3	Medium	4
5	None	2 or 3	High	5
5	Low	1	None	2
5	Low	1	Low	2
5	Low	1	Medium	3
5	Low	1	High	4
5	Low	2 or 3	None	3
5	Low	2 or 3	Low	3
5	Low	2 or 3	Medium	4
5	Low	2 or 3	High	5
5	Medium	1	None	2
5	Medium	1	Low	2
5	Medium	1	Medium	3
5	Medium	1	High	4
5	Medium	2 or 3	None	3
5	Medium	2 or 3	Low	3
5	Medium	2 or 3	Medium	4
5	Medium	2 or 3	High	5
5	High	1	None	2
5	High	1	Low	2
5	High	1	Medium	3
5	High	1	High	4
5	High	2 or 3	None	3
5	High	2 or 3	Low	3
5	High	2 or 3	Medium	4
5	High	2 or 3	High	5
5	Immediate	1	None	2
5	Immediate	1	Low	2
5	Immediate	1	Medium	3
5	Immediate	1	High	4
5	Immediate	2 or 3	None	3
5	Immediate	2 or 3	Low	3
5	Immediate	2 or 3	Medium	4
5	Immediate	2 or 3	High	5
6	None	1	None	2
6	None	1	Low	3
6	None	1	Medium	3

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
6	None	1	High	4
6	None	2 or 3	None	3
6	None	2 or 3	Low	3
6	None	2 or 3	Medium	4
6	None	2 or 3	High	5
6	Low	1	None	2
6	Low	1	Low	3
6	Low	1	Medium	3
6	Low	1	High	4
6	Low	2 or 3	None	3
6	Low	2 or 3	Low	3
6	Low	2 or 3	Medium	4
6	Low	2 or 3	High	5
6	Medium	1	None	3
6	Medium	1	Low	3
6	Medium	1	Medium	3
6	Medium	1	High	4
6	Medium	2 or 3	None	3
6	Medium	2 or 3	Low	4
6	Medium	2 or 3	Medium	4
6	Medium	2 or 3	High	5
6	High	1	None	3
6	High	1	Low	3
6	High	1	Medium	4
6	High	1	High	4
6	High	2 or 3	None	4
6	High	2 or 3	Low	4
6	High	2 or 3	Medium	5
6	High	2 or 3	High	5
6	Immediate	1	None	3
6	Immediate	1	Low	3
6	Immediate	1	Medium	4
6	Immediate	1	High	4
6	Immediate	2 or 3	None	4
6	Immediate	2 or 3	Low	4
6	Immediate	2 or 3	Medium	5
6	Immediate	2 or 3	High	5

(2) ((~~DD~~)) DDA adds one level to your respite assessment level when your respite assessment level is determined to be a one, two, three, or four and you have a score of four for question two "Other caregiving for persons who are disabled, seriously ill, or under five" in the ((~~DD~~)) DDA caregiver status acuity scale. See WAC 388-828-5260.

(3) If you live in a county where a DCYF-contracted provider of caregiver support case aid services exists, DDA will reduce your res-

pite allocation amount by the number of hours a person receives when assessed at a caregiver supports level four.

**Chapter 388-842 WAC**  
**RESIDENTIAL HABILITATION FOR DEPENDENT YOUTH (RHDY) PROGRAM**

**PURPOSE**

**NEW SECTION**

**WAC 388-842-0001 What is the residential habilitation for dependent youth program?** (1) The residential habilitation for dependent youth (RHDY) program is administered by the developmental disabilities administration (DDA) through a person-centered service plan. The program provides residential habilitation services to a dependent child or youth in a qualified setting outside of the family home that is agreed to by the parent, guardian, or legal representative.

(2) The RHDY program does not include:

(a) Maintenance or supervision, which is the responsibility of DCYF;

(b) Behavioral health services;

(c) Care provided by other paid supports or the client's family;  
or

(d) Education and related services provided under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), which are the responsibility of state and local education agencies.

**DEFINITIONS**

**NEW SECTION**

**WAC 388-842-0005 What definitions apply to this chapter? Client** means a person who has a developmental disability as defined in RCW 71A.10.020 and who has been determined DDA-eligible under chapter 388-823 WAC.

**Community inclusion activities** means person-centered activities where clients engage with others in their local community.

**Court order** means a direction ordered by a court or judge. Court orders may be redacted.

**CRM** means DDA case resource manager, social worker, or social service specialist.

**DCYF** means the department of children, youth, and families.

**DDA** means the developmental disabilities administration within the department of social and health services.

**Department** means the department of social and health services of the state of Washington.

**Dependency action** means the court process that starts with the filing of a dependency petition and can result in a court determining a child or youth to be dependent. This may include children who are in shelter care status and placed out of home or those who have been determined dependent.

**Dependent** means a child or youth for whom the court has entered an order of dependency determining that the child or youth is dependent as defined in RCW 13.34.030 or a similar tribal court action.

**Family** means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive, or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

**Habilitation** means support provided by a DDA-contacted or DDA-certified provider that assists people with developmental disabilities to acquire, retain, or improve upon the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

**Individual instruction and support plan** means a written document that describes how staff will provide habilitation and supports to meet the needs identified in the client's person-centered service plan, which are assigned to and agreed upon by the RHDY provider.

**Individualized team meeting** means a strengths-based process to review the client's individual support needs and ensure coordination with the client's team. The process is driven by the perspectives of the client.

**Legal representative** means a parent of a client if the client is under age 18 and parental rights have not been terminated or relinquished, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client. DCYF is the legal decision maker for all children and youth (dependents) placed in out-of-home care by the court.

**Maintenance** means the cost of rental or purchase of real estate and home furnishings, utilities, maintenance of the building and associated administrative services, including a full nutritional regimen of three meals a day.

**Medication administration** means the direct application of a prescribed medication by injection, inhalation, ingestion, application, or other means, to a client by a person legally authorized to do so under chapter 246-945 WAC.

**Monthly maintenance allowance** means costs associated with typical family responsibilities (e.g., clothing, toiletries, and extracurricular or school-sponsored activities).

**Out-of-home placement** means a living arrangement for a child outside of the family home that is court ordered through a juvenile court.

**Out-of-home services (OHS)** means a program administered by the developmental disabilities administration (DDA) through a person-centered service plan to provide residential habilitation services for a



client in a qualified setting outside of the family home that is agreed to by the client's parent or legal representative.

**RHDY acknowledgment** means a document that outlines the rights and responsibilities of DCYF, the legal representative, and the provider while a client is receiving services through the RHDY program.

**RHDY engagement plan** means a written agreement between the client's legal representative and the RHDY program provider.

**RHDY program** is a children's residential habilitation program available to waiver-eligible DDA clients who are a DCYF or tribal court dependent.

**Parent or legal guardian** means a biological or adoptive parent, title 11 or title 13 guardian, or legal custodian with legal authority to make decisions on behalf of the child regarding healthcare and public benefits.

**Participation** has the same meaning as is under WAC 182-513-1100.

**Personal needs allowance (PNA)** means an amount set aside from a client's income under WAC 182-513-1105.

**Person-centered service plan (PCSP)** has the same meaning as is under WAC 388-845-0001.

**Physical intervention** means the use of a manual technique intended to interrupt or stop a behavior from occurring. Physical intervention includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

**Registered nurse delegator** means a licensed registered nurse who delegates specific nursing care tasks to a qualified nursing assistant or home care aide, and supports clients in a community-based care setting or in-home care setting under RCW 18.79.260.

**Residential habilitation services** means instruction and support services under WAC 388-845-1500.

**Significant change** as defined in WAC 388-832-0001, means a change in a client's medical condition, caregiver status, behavior, living situation, or employment status.

**SOLA** means a certified state-operated living alternative program.

**Staffed residential home**, as defined in WAC 110-145-1305, means a licensed group care facility that provides 24-hour care to six or fewer children who require more supervision than can be provided in a foster home.

**Supervision** means the oversight of a client when habilitation activities or personal care are not occurring (e.g., monitoring a client while watching tv, sleeping, sitting in a classroom setting or work-site; or other day-to-day, line-of-eyesight or earshot monitoring).

**Supplemental security income (SSI)** means a needs-based assistance program administered by the federal Social Security Administration for blind, disabled, and aged individuals.

**Treating healthcare provider** means a healthcare professional who specializes in the discipline within the professional's scope of practice.

**ELIGIBILITY****NEW SECTION**

**WAC 388-842-0010 Who is eligible for the residential habilitation for dependent youth program?** A person is eligible for the RHDY program if the person's legal representative requests residential habilitation services and the person:

- (1) Is DDA-eligible under chapter 388-823 WAC;
- (2) Is eligible for the core waiver under chapter 388-845 WAC;
- (3) Is age 8-17 at the time they enter service;
- (4) Has completed the DDA assessment process under chapter 388-828 WAC;
- (5) Has received medically necessary inpatient treatment—when recommended by the client's treating professional;
- (6) Does not have a treatment recommendation for a locked or secure facility;
- (7) Is placed out of home:
  - (a) By a dependency action and is in the custody of the department of children, youth, and families under chapter 13.34 RCW and is:
    - (i) In shelter care under RCW 13.34.060; or
    - (ii) A dependent under RCW 13.34.130;
  - (b) In the custody of a tribal court via a similar tribal court child welfare action.

**NEW SECTION**

**WAC 388-842-0015 How does the provider determine if they can safely meet a client's needs?** (1) To determine whether they can safely meet a client's needs, the RHDY provider must review available client information, such as:

- (a) The client's referral packet;
  - (b) Information gathered from the client, collateral contacts, or case manager;
  - (c) Client placement and legal history;
  - (d) Child health and education tracking (CHET) report;
  - (e) Copy of behavior rehabilitation services (BRS) packet and all attachments, if applicable;
  - (f) Family time plan; or
  - (g) DCYF case plan, or similar tribal case plan as it relates to the child or youth.
- (2) Information provided as part of the client referral to the RHDY program may be redacted as necessary.

NEW SECTION

**WAC 388-842-0020 May a client age 18 or older continue to access the RHDY program?** (1) A client age 18 or older may continue in the RHDY program if the client is:

- (a) Under the age of 21;
  - (b) Accessing the RHDY program the day before their 18th birthday;
  - (c) Enrolled in extended foster care; and
  - (d) Pursuing a high school or equivalency course of study (GED/HSEC) or vocational program.
- (2) If a client over 18 and under 21 is no longer pursuing their GED, HSEC, or attending a vocational program, DDA will begin the process of transitioning the client to adult services.

PROVIDER QUALIFICATIONSNEW SECTION

**WAC 388-842-0025 Who can be a RHDY program provider?** To be a RHDY program provider, an entity must be one of the following:

- (1) A children's state-operated living alternative; or
- (2) A staffed residential home contracted with the developmental disabilities administration and licensed under chapter 74.15 RCW.

NEW SECTION

**WAC 388-842-0030 Must a state-operated RHDY provider be certified?** A state-operated RHDY provider must be certified by DDA.

NEW SECTION

**WAC 388-842-0035 Is a site visit required and what does DDA review during a site visit?** (1) To be a certified provider, a state-operated provider must participate in site visits.

- (2) During a site visit, DDA reviews the provider's service site for the following safety requirements:
- (a) The common areas of the home are unrestricted.
  - (b) All entrances and exits are unblocked.
  - (c) The home is maintained in a safe and healthy manner.
  - (d) The home has a storage area for flammable and combustible materials.
  - (e) Every floor of the home has working smoke and carbon monoxide detectors.

(f) The home has a fire extinguisher that meets requirements for the residence type. There must be a fire extinguisher in the kitchen and at least one on every floor of the home.

(g) The home has a stocked first-aid kit.

(h) The home has a working and accessible telephone.

(i) The home has a working and accessible flashlight or alternative light source.

(j) Emergency contact information is available and accessible in the home (e.g., 911, poison control, nonemergency 911, adult protective services, child protective services).

(k) The contact information for the developmental disabilities ombuds is available and accessible in the home.

(l) The water temperature at the home is 120 degrees Fahrenheit or less.

(m) There is a safety plan for any body of water more than 24 inches deep at the home.

(n) The home has an evacuation plan and an emergency food and water supply.

(o) The home meets integrated setting requirements under WAC 388-823-1096.

(p) The home has a backup power source (e.g., generator, battery pack) if the provider supports a client who uses life sustaining medical equipment.

#### NEW SECTION

**WAC 388-842-0040 What training must a children's state-operated living alternative provider complete?** (1) To provide direct support to a client in the RHDY program, a direct support professional at a children's state-operated living alternative must complete:

(a) Training and continuing education required under chapter 388-829 WAC;

(b) Training according to the timelines in chapter 388-101D WAC; and

(c) Nurse delegation training if delegation criteria are met under WAC 246-840-930.

(2) The provider must ensure that each employee providing direct support keeps their first-aid training, CPR certification, food worker card, and bloodborne pathogens training current.

#### NEW SECTION

**WAC 388-842-0045 What training must a staffed residential home provider complete?** To support a client in the RHDY program, a direct support professional of a staffed residential home must complete:

(1) Training required under chapter 110-145 WAC;

(2) Training and continuing education required under chapter 388-829 WAC;

(3) Client-specific training based on the individual instruction and support plan; and

(4) Nurse delegation training if the client needs delegation and criteria are met under WAC 246-840-930.

**HEALTH AND SAFETY**NEW SECTION

**WAC 388-842-0060 What water temperature safety measures must be met?** (1) The provider must regulate the facility's water temperature no higher than 120 degrees Fahrenheit.  
(2) The provider must complete and document monthly water temperature checks.

NEW SECTION

**WAC 388-842-0065 What infection control practices must the provider implement?** (1) The provider must have written policies and procedures about the control of infections. These must include, but are not limited to, the following areas:  
(a) Isolation of sick individuals;  
(b) Germ control procedures;  
(c) Hygiene, including hand washing, toileting, and laundering;  
(d) Prevention of the transmission of communicable diseases including management and reporting;  
(e) First aid;  
(f) Care of minor illnesses;  
(g) Actions to be taken for medical emergencies; and  
(h) General health practices.  
(2) The provider must promote personal hygiene to help prevent the spread of germs.  
(3) The provider must provide staff with the supplies necessary for limiting the spread of infections.  
(4) Staff with a reportable communicable disease or a notifiable disease condition in an infectious stage, as defined by the department of health in chapter 246-101 WAC, must not be on duty until they have a healthcare professional's approval for returning to work.

NEW SECTION

**WAC 388-842-0070 What are the fire drill requirements for providers?** (1) The provider must conduct a fire drill at least once each month at varying times of the day and night so that staff on all shifts practice the procedures with the clients they support.  
(2) The provider must maintain a written record on the premises that indicates the date and time each fire drill is completed.  
(3) If a provider supports a non-ambulatory child, the provider must consult with and follow the Washington state patrol/fire protection bureau (WSP/FPB) protocol for simulated fire drills.

NEW SECTION

**WAC 388-842-0075 What must the provider do to prepare for emergency evacuations?** (1) The provider must display an emergency evacuation plan in a common area on every floor of the home.

(2) The emergency evacuation plan must include:

- (a) A floor plan of the home with clearly marked exits;
- (b) Emergency evacuation routes; and
- (c) The location for the clients to meet outside the home.

(3) The provider must be able to evacuate all clients to a safe location outside the home.

(4) If a client requires assistance during an evacuation, the provider's evacuation plan must describe the type of assistance that will be provided.

NEW SECTION

**WAC 388-842-0080 What are the requirements for storing chemicals and other substances?** (1) The provider must safely secure cleaning supplies, flammables, and other combustible materials, toxic or poisonous substances, and aerosols.

(2) If a container is filled with a toxic substance from a bulk supply, the provider must clearly label the container.

NEW SECTION

**WAC 388-842-0085 How must the provider store medication?** (1) The provider must store a client's medication:

- (a) In a locked container, such as a lockbox;
- (b) Separate from food and toxic chemicals;
- (c) Under proper conditions for sanitation, temperature, and ventilation; and
- (d) In the original medication container with the pharmacist-prepared or manufacturer's label, which must include the:
  - (i) Name of the client for whom the medication is prescribed;
  - (ii) Name of the medication; and
  - (iii) Dosage and frequency.

(2) The provider may store a client's medication in a medication organizer if the medication organizer was prepared by a pharmacist or registered nurse.

(3) Life-saving medications must be accessible in an emergency.

NEW SECTION

**WAC 388-842-0090 When and how must the provider dispose of medication?** (1) The provider must follow the Food and Drug Administration guidelines on proper disposal of medications.

(2) When disposing a client's medication, the provider must list the:

- (a) Client's name;
- (b) Medication name;

- (c) Amount disposed; and
- (d) Date of disposal.
- (3) Two people must verify the disposal by signature.

#### NEW SECTION

**WAC 388-842-0095 What must the provider do if a client refuses a prescribed medication?** If a client refuses a prescribed medication, the provider must:

- (1) Document the refusal, including the time, date, and medication refused;
- (2) Inform the client of the benefit of the medication;
- (3) Consult a pharmacist or licensed medical provider with prescription authority to determine if medication refusal could significantly harm the client;
- (4) If recommended, continue to offer the medication following consultation with subsection (3) of this section; and
- (5) Inform the client's parent or legal representative of the refusal and any reasons for the refusal if shared by the client.

### **FACILITY REQUIREMENTS**

#### NEW SECTION

**WAC 388-842-0110 What fire safety requirements must the facility meet?** (1) The provider must be located in an area with public fire protection.

(2) The provider must have working smoke and carbon monoxide detectors installed. Each smoke and carbon monoxide detector must address the needs of clients who are deaf or hard of hearing.

(3) Smoke detectors must:

(a) Be in operating condition both inside and outside of all sleeping areas.

(b) Be installed on each story of the facility, in all play areas, and in the basement.

(c) Be installed and maintained according to the manufacturer's specifications.

(d) If mounted on a wall, be 12 inches from the ceiling and a corner.

(e) Be tested twice a year to ensure they are in working order. The provider must document the date and time of the test.

(4) Carbon monoxide detectors must be located in or near each client's bedroom and on every floor of the facility.

(5) The provider must have at least one approved 2A10BC-rated five pound or larger all-purpose (ABC) fire extinguisher readily available at all times. "Approved 2A10BC-rated" means a fire extin-

guisher with an underwriters laboratory label on the nameplate classifying the extinguisher as 2A10BC-rated or larger.

(6) The provider must maintain and service fire extinguishers according to manufacturer's specifications.

(7) An approved fire extinguisher must be located in the area of the normal path of exiting. The maximum travel distance to an extinguisher from any place on the premises must not exceed 75 feet. When the travel distance exceeds 75 feet, additional extinguisher(s) are required.

(8) The provider must install at least one fire extinguisher on each floor of a multilevel facility.

(9) Fire extinguishers must:

(a) Be mounted in a bracket or in a fire extinguisher cabinet so that the top of the extinguisher is no more than five feet above the floor; and

(b) Receive an annual maintenance certification by a licensed firm specializing in this work, based on the manufacturer's recommended schedule. Maintenance means a thorough check of the extinguisher for:

- (i) Mechanical parts;
- (ii) Extinguishing agent; and
- (iii) Expelling means.

(10) New fire extinguishers do not need to receive an additional certification test during the first year.

(11) DDA may require that additional fire extinguishers be available on the premises, in consultation with the local fire authority or Washington state patrol's fire protection bureau.

#### NEW SECTION

##### **WAC 388-842-0115 What other requirements must the facility meet?**

(1) The provider must maintain buildings, premises, and equipment in a clean and sanitary condition, free of hazards, and in good repair. The provider must ensure the facility has:

(a) Handrails for steps, stairways, and ramps if identified as a safety need.

(b) Appropriate furnishings, based on the age and activities of the client supported.

(c) Washable, water-resistant floors in bathrooms, kitchens, and other rooms exposed to moisture. Washable short-pile carpeting may be approved in kitchen areas if kept clean and sanitary.

(d) Tamper-proof or tamper-resistant electrical outlets or blank covers installed in areas accessible to clients who might be endangered by access to them.

(e) Easy access to the outdoors and rooms occupied by children in case an emergency arises.

(f) Non-breakable light fixture covers or shatter-resistant light bulbs or tubes in food preparation and dining areas.

(2) Adequate indoor and outdoor space, ventilation, light, and heat to ensure the health and comfort of all members of the household.

(3) The bathroom facilities must include:

(a) Toilets, urinals, and handwashing sinks appropriate to the height for the clients supported, or have a safe and easily cleaned step stool or platform that is water-resistant; and



(b) Soap and clean towels, disposable towels, or other approved hand-drying devices.

(4) The cleanliness and care of the premises must meet generally accepted health standards for the storage and preparation of food.

(5) The provider must make reasonable attempts to keep the premises free from pests, such as rodents, flies, cockroaches, fleas, and other insects using the least toxic methods.

(6) The provider must have an immediate plan to address hazardous conditions on the property or in the facility.

(7) The facility must be accessible to emergency vehicles and the address must be clearly visible on the facility or mailbox so that first responders can easily find the facility.

(8) The facility must be located on a well-drained site, free from hazardous conditions.

(9) Utility rooms with mop sinks that do not have windows opening to the outside must be ventilated with a mechanical exhaust fan to the outside of the building.

(10) The use of window blinds or other window coverings with pull cords capable of forming a loop and posing a risk of strangulation to children are prohibited under RCW 43.216.380.

### SERVICE DELIVERY

#### NEW SECTION

**WAC 388-842-0120 When must an individual instruction and support plan be developed or revised?** (1) The provider must develop and implement an individual instruction and support plan for each client they support.

(2) The provider must develop and implement a client's instruction and support plan no more than 30 days after the client begins receiving RHDY services.

(3) The provider must revise a client's individual instruction and support plan:

(a) As goals are achieved or as the client's assessed needs change;

(b) At least semi-annually; and

(c) If requested by the client or the client's legal representative.

#### NEW SECTION

**WAC 388-842-0125 What requirements must the individual instruction and support plan meet?** The individual instruction and support plan must:

(1) Describe habilitation goals that the provider and client will work on together while the provider supports the client;

- (2) List the instruction and support activities the provider will provide to the client and explain how those activities meet the assessed needs identified in the client's person-centered service plan;
- (3) Describe other relevant support and service information; and
- (4) For clients over age 16, include a plan for promoting independent living skills, including financial readiness education and internet literacy.

### RECORDKEEPING

#### NEW SECTION

**WAC 388-842-0140 What are the quarterly report requirements?** A quarterly report from a staffed residential provider or a children's SOLA must:

- (1) Be submitted to DDA and sent to the client's parent or legal representative no more than 10 business days after the end of each quarter; and
- (2) Include:
  - (a) A copy of the client's current positive behavior support plan and individual instruction and support plan, including progress charts or graphs;
  - (b) A document that tracks community inclusion activities and a running balance of funds;
  - (c) A brief summary of progress toward habilitation goals listed in the individual instruction and support plan;
  - (d) A summary of target behaviors and any notable observations;
  - (e) Description of significant incidents;
  - (f) Total number and type of physical interventions implemented;
  - (g) Integrated settings modifications being requested, if any;
  - (h) Any significant changes in the client's condition or prescribed medications;
  - (i) Summary of school participation;
  - (j) Additional resources needed to support the client; and
  - (k) A summary of staff training hours per month if the client receives enhanced out-of-home services.

#### NEW SECTION

**WAC 388-842-0145 Must the provider keep a record of a client's property?** The provider must maintain current, written property records. The record must consist of:

- (1) A list of personal possessions with a value of at least \$25.00 that the client owns when moving into the program;
- (2) A list of personal possessions with a value of \$75.00 or more per item after the client moves into the program;
- (3) Description and identifying numbers, if any, of the property.

NEW SECTION

**WAC 388-842-0150 What records must the provider keep and how long must the records be retained?** (1) The provider must keep the following in the client's record:

- (a) Referral packet contents;
- (b) Service notes;
- (c) The client's individual instruction and support plan;
- (d) The client's positive behavior support plan;
- (e) Signed RHDY acknowledgment;
- (f) RHDY engagement plan;
- (g) Log of client expenses for community inclusion;
- (h) Log of client expenses for monthly maintenance allowance;
- (i) Medication records; and
- (j) Incident reports.

(2) The provider must retain a client's records for at least six years after delivering services to the client.

**RIGHTS AND RESPONSIBILITIES**NEW SECTION

**WAC 388-842-0165 What is the RHDY acknowledgment?** (1) The RHDY acknowledgment is a document that outlines the rights and responsibilities of the client, DCYF, and the provider while a client is receiving services from a RHDY provider. The RHDY acknowledgment is signed by the client's legal representative, client if over 18, and the provider designee.

(2) The RHDY acknowledgment must state:

- (a) Integrated setting requirements under 42 C.F.R. 441.301
- (c) (4);
- (b) The responsibilities of the legal representative;
- (c) DSHS and DDA are offering services through medicaid;
- (d) That the client's receipt of services is voluntary and can be terminated at any time;
- (e) Termination requirements for the provider under RCW 71A.26.030;
- (f) The provider will assist in accessing non-DDA related services including but not limited to education and medically necessary treatments. This includes participation in IEP and individualized team meetings; and
- (g) The provider will participate in the creation and implementation of a RHDY engagement plan.

NEW SECTION

**WAC 388-842-0170 What is a RHDY engagement plan?** (1) A RHDY engagement plan is a written agreement between DCYF and the provider.

(2) A RHDY engagement plan must include:

(a) A schedule of court-ordered family time or a copy of the family time plan.

(b) A safety plan for any documented safety issues.

(c) Identification of any legal documents that place restrictions on the child or family members.

(d) Identification of a DCYF representative who is able to make decisions on behalf of the youth to attend medical and dental appointments and provide consents as required, unless the parent is serving in that capacity.

(e) Identification of a court-ordered educational liaison who will sign documents for school and participate in meetings, including individual education plan meetings, unless the parent is serving in that capacity.

(f) A plan for after-hours emergencies.

(3) A RHDY engagement plan must:

(a) Outline the provider's role, including:

(i) Participation in scheduling and attending medical and dental appointments, school meetings, and community inclusion activities;

(ii) Supporting the client or families cultural or religious practices; and

(iii) Celebrating holidays and special occasions;

(b) Be developed before the start date of the client's RHDY services;

(c) Be reviewed during the annual assessment or more frequently upon request; and

(d) Be updated when:

(i) Changes to the family time plan occur; or

(ii) The client turns age 18 to reflect the client's individualized transition goals, and legal guardianship if applicable.

NEW SECTION

**WAC 388-842-0175 What are DDA's responsibilities for a client in the RHDY program?** When a client is in the RHDY program, DDA must:

(1) Facilitate the development of the RHDY engagement plan under WAC 388-842-0170 before the start of service and at each annual assessment;

(2) Visit the client in their licensed or certified setting at least every 90 days;

(3) Develop the client's person-centered service plan as required under WAC 388-845-3055;

(4) Assist with accessing a client's medically necessary physical or behavioral health benefits, which may include attending care conferences and sharing information with medicare, medicaid, or private health insurance representatives for purposes of care coordination;

(5) Monitor the client's services by:

(a) Facilitating individualized team meetings on a quarterly basis;

(b) Reviewing the individual instruction and support plan;

(c) Reviewing the quarterly report;

- (d) Reviewing incident reports and follow-up measures involving the client;
- (e) Authorizing payment for services;
- (6) Determine eligibility for medicaid coverage under chapters 182-513 and 182-515 WAC;
- (7) Complete an individual rate assessment;
- (8) Monitor the provider to ensure the provider complies with contract requirements, which includes compliance with DDA policies;
- (9) Refer a client for a nurse delegation assessment by a registered nurse delegator, if required under chapter 246-945 WAC.

NEW SECTION

**WAC 388-842-0180 What are the provider's responsibilities for a client in the RHDY program?** (1) When a client is in the RHDY program, the licensed or certified provider must:

- (a) Ensure the health and safety of the client;
- (b) Provide adequate staff to meet the needs of the client as identified in the rate assessment;
- (c) Develop and implement the client's individual instruction and support plan;
- (d) Complete quarterly reports as outlined under WAC 388-842-0140;
- (e) Participate in the development of the RHDY engagement plan with the client, the client's legal representative, and DDA social service specialist;
- (f) Implement the RHDY engagement plan;
- (g) Support the client in regular school attendance, including following the school's reporting requirements when the client is absent or has an appointment during the school day;
- (h) With the legal representative and educational liaison or parent's consent, maintain regular communication with school representatives and attend school-related meetings;
- (i) Participate in the client's individualized education program and collaborate with the school, legal representative, and parent or educational liaison to ensure timely and continuous access to a free and appropriate public education in the least restrictive environment;
- (j) Maintain regular communication with the client's legal representative;
- (k) Develop and practice evacuation plans in case of fire, natural disaster, or other emergencies in accordance with WAC 388-842-0075;
- (l) Maintain a client rights policy in accordance with chapter 71A.26 RCW;
- (m) Request an assessment for nurse delegation if the client needs medication administration;
- (n) Monitor community inclusion funds in the following ways:
  - (i) Discuss and schedule community inclusion activity options with the client; and
  - (ii) Track, and make available to DDA upon request, the client's participation in community inclusion activities, including:
    - (A) Date of each activity;
    - (B) Cost of each activity; and
    - (C) A running balance of the client's community inclusion activities funds;

(o) Monitor monthly maintenance allowance by tracking, and making available to DDA and DCYF upon request, the following client expenditures:

- (i) Date of purchase;
  - (ii) Cost of each item; and
  - (iii) A running balance of the client's monthly maintenance allowance funds;
- (p) Support and assist client with requested or needed DCYF case-specific communications.

(2) If DCYF provides a copy of the family time plan, the provider must support DCYF with implementation by having the client available at scheduled times.

(a) Providers must not provide transportation, supervision, or documentation regarding family time.

(b) If a child chooses to not participate in family time, the provider will not enforce the plan.

(c) DCYF must provide DDA and the provider with updated copies of the family time plan as changes occur.

#### NEW SECTION

**WAC 388-842-0185 What are DCYF's responsibilities for a client in the RHDY program?** When a client is in the RHDY program, DCYF must:

(1) Enroll the client in the local school district where the RHDY program is located.

(2) Identify the court-ordered educational liaison who will sign documents for school and participate in meetings, including individual education plan meetings, unless the parent is serving in that capacity.

(3) Identify a DCYF representative who is able to make medical and dental decisions and provide consents on behalf of the youth as required per WAC 110-145-1845. Attend and participate in:

(a) The development and implementation of the RHDY engagement plan;

(b) Individualized team meetings; and

(c) The DDA annual assessment, including the person-centered service plan.

(4) Ensure management of the client's finances and benefits, by:

(a) Maintaining client financial eligibility;

(b) Managing, or appointing a representative payee to manage, the client's social security or supplemental security income in accordance with federal social security rules, including ensuring that the client is not over federal resource limits; and

(c) Ensuring payment of DCYF's responsibility for the DCYF portion of client's daily rate in the RHDY program.

(5) Coordinate family time visits, in person or remote, by:

(a) Identifying a provider for any supervision or monitoring needs; and

(b) Securing transportation to and from family time visits.

(6) Arrange for non-routine transportation, including transportation:

(a) To the RHDY program;

(b) To and from family time visits; and

(c) To court hearings and other DCYF case related appointments or meetings.

(7) Partner with DDA before any potential change to the client's court-ordered placement or dependency status.

(8) Notify DDA no more than one business day after a change to a client's dependency status or placement.

(9) Provide updated copies of court orders to DDA on a regular basis showing that the client continues to meet eligibility for the RHDY program.

#### NEW SECTION

**WAC 388-842-0190 How must the provider obtain medical care for a client?** (1) The provider is responsible for partnering with a client's legal representative to obtain medical care for the client.

(2) The legal representative must provide a copy of the court order or signed parent consent to the RHDY provider before care occurs if the client requires:

(a) General anesthesia or surgery and is under age 18;

(b) Gender-affirming medical care and is under age 18; or

(c) A prescribed psychotropic medication, and is:

(i) Under age 13; or

(ii) Age 13-17 and their treating healthcare professional has determined they are not capable of giving consent.

(3) The RHDY provider must notify DCYF and DDA of emergency care provided.

#### NEW SECTION

**WAC 388-842-0195 What is a provider's responsibility to engage in dependency court proceedings?** (1) The provider is not required to:

(a) Participate in dependency court proceedings;

(b) Provide court reports and other documentation; or

(c) Provide testimony.

(2) The provider must ensure that a client is available for scheduled dependency court hearings and court-related appointments.

### RATES

#### NEW SECTION

**WAC 388-842-0205 What must a client pay toward the cost of the RHDY program?** DDA determines the amount of client responsibility and room and board a client must pay under WAC 182-515-1510.

NEW SECTION

**WAC 388-842-0210 How does DDA determine the rate to support a client in the RHDY program and when may it be updated?** (1) DDA determines the rate to support a client in a staffed residential home by assessing the client's identified needs.

(2) DDA completes a rate assessment, which consists of four cost centers:

(a) Administrative and non-staff costs, including transportation and damage reimbursement, if applicable;

(b) Funds for community inclusion activities as outlined in WAC 388-842-0180;

(c) Consultant and training costs; and

(d) Instruction and support services, which are determined by assessing a client's identified needs and supervision in the following areas:

(i) Activities of daily living as defined in WAC 388-106-0010;

(ii) Instrumental activities of daily living as defined in WAC 388-106-0010; and

(iii) Support and supervision.

(3) DDA must conduct a rate assessment before a client starts services with a RHDY provider, if a significant change occurs, or if the household composition changes.

NEW SECTION

**WAC 388-842-0215 What must DCYF pay when a client is in the RHDY program?** When a client is in the RHDY program, DCYF must pay for the client's:

(1) Basic expenses (including maintenance) and supervision.

(2) Monthly maintenance allowance.

NEW SECTION

**WAC 388-842-0220 What does DDA pay when a client is in the RHDY program?** For a client in the RHDY program, DDA pays the cost of the RHDY program services minus client responsibility under WAC 388-842-0205 and the amount determined to be DCYF responsibility under WAC 388-842-0215.

**TERMINATION AND CHANGE IN PROVIDER**



NEW SECTION

**WAC 388-842-0230 What happens if a provider decides to stop providing services to a client?** (1) If a provider decides to stop providing services to a client, the provider must:

- (a) Notify DDA and DCYF at least 30 days before the effective date;
  - (b) Provide one of the following reasons:
    - (i) The provider cannot meet the needs of the client;
    - (ii) The client's safety or the safety of other people in the facility is endangered;
    - (iii) The client's health or the health of other people in the facility would otherwise be endangered;
    - (iv) The provider ceases to operate; or
  - (c) Participate in the development of a transition plan.
- (2) If the client does not transition to a new provider by the end of 30 days, DCYF must resume care and custody of the client.
- (3) If the client is in a temporary setting, (e.g., medical or criminal justice facility) and the provider determines they are unable to have the client safely return to their program, DCYF must resume care and custody of the client upon discharge from the temporary setting.

NEW SECTION

**WAC 388-842-0235 What happens if a client's dependency is closed, or the placement is changed to in-home while the client is in the RHDY program?** (1) A client is no longer eligible for the RHDY program if the client's dependency status changes and the dependency is closed, or the placement is changed to in-home.

- (2) DDA will meet with the parent or legal representative (or client if over 18) to explore waiver services through other programs.
  - (a) If the client requests services through the out-of-home services (OHS) program, and the client meets eligibility under WAC 388-826-0010, DDA will follow the OHS referral process.
  - (b) If the client does not pursue services through the OHS program, the client must not remain in the RHDY home or facility more than 15 days after the date of the court-ordered change.
- (3) Transportation and moving expenses from the RHDY program are the responsibility of DCYF, the parent, or legal representative.

**ADMINISTRATIVE HEARING RIGHTS**

NEW SECTION

**WAC 388-842-0250 Who may appeal a DDA action?** A client, the client's parent, or the client's legal representative may appeal DDA decisions under WAC 388-825-120.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0001 Definitions.** "Aggregate services" means a combination of services subject to the dollar limits in the basic plus waiver and CIIBS waiver.

"Allocation" means the amount of individual and family services (IFS) waiver funding available to a client for a maximum of 12 months.

"Behavior support plan" means a plan written by a professionally trained behavioral health or similar provider to address behavioral health intervention needs.

"CARE" (~~means~~) stands for comprehensive assessment and reporting evaluation.

"Client" means a person who has a developmental disability under RCW 71A.10.020 (~~(-5)~~) and has been determined eligible to receive services from (~~the administration~~) DDA under chapter (~~71A.16 RCW~~) 388-823 WAC.

"DDA" means the developmental disabilities administration, of the department of social and health services.

"DDA assessment" refers to the standardized assessment tool under chapter 388-828 WAC, used by DDA to measure the support needs of people with developmental disabilities.

"Department" means the department of social and health services (DSHS).

"DCYF out-of-home caregiver" means a caregiver approved by DCYF, who may also be licensed by DCYF, for children and youth placed out-of-home by a court and in the care and custody of DCYF.

"DCYF placement provider" means a provider contracted with DCYF to provide placement for children and youth placed out-of-home by the court and in the care and custody of DCYF.

"Dependency action" means the court process that starts with the filing of a dependency petition and can result in a court determining a child or youth to be dependent.

"Dependent" refers to a child or youth for whom the court has entered an order of dependency determining that the child or youth is dependent within the meaning of RCW 13.34.030 or a similar tribal court action.

"Evidence-based treatment" means the use of physical, mental, and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive, or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your family live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"General utility" describes something used by people in the absence of illness, injury, or disability.

"HCBS waiver" is a home and community based services waiver program under section 1915(c) of the Social Security Act.

"Home" means present place of long-term residence.

"ICF/IID" means an intermediate care facility for individuals with intellectual disabilities.

"Integrated business settings" means a setting that enables participants to either work alongside or interact with individuals who do not have disabilities, or both.

"Integrated setting" means a typical community setting in ~~((the community that supports a client's full access to the greater community, including opportunities to seek employment and work in competitive settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as people not receiving home and community-based services))~~ compliance with 42 C.F.R. 441.301 (c) (4).

"Legal representative" means a parent of a ~~((person who))~~ client if the client is under age 18 ((years of age)) and parental rights have not been terminated or relinquished, a ((person's legal)) court-appointed guardian((, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney-at-law, a person's attorney-in-fact,)) if a decision is within the scope of the guardianship order, or any other person who is authorized by law to act for ((another person)) the client.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his or her living expenses.

"Maintenance" means the cost of rental or purchase of real estate and home furnishings, utilities, maintenance of the building and associated administrative services, including a full nutritional regimen of three meals a day. Home furnishings are excluded if they are intended to remain in the home for the benefit of future clients.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Participant" means a client who is enrolled in a home and community-based services waiver program.

"Person-centered service plan" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Primary caregiver" means the person who provides the majority of your care and supervision.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with DSHS to provide services to you.

"Respite assessment" means an algorithm within the DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the basic plus, children's intensive in-home behavioral support, or core waiver.

"SSI" means supplemental security income, an assistance program administered by the federal Social Security Administration for blind, disabled, and aged individuals.

"SSP" means state supplementary payment program, a state-paid cash assistance program for certain clients of the developmental disabilities administration.

"State-funded services" means services that are funded entirely with state dollars.

"Supervision" means the oversight of a client when habilitation activities or personal care are not occurring, such as monitoring a client while watching tv, sleeping, sitting in a classroom setting or worksite, or other day-to-day line-of-eyesight or earshot monitoring.

"You" means the client or participant.

"Waiver year" means the 12-month period starting from the initial or annual plan effective date in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services?** (1) You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

(a) You have been determined eligible for DDA services per RCW 71A.10.020.

(b) You have been determined to meet ICF/IID level of care per WAC 388-845-0070, 388-828-3060, and 388-828-3080.

(c) You meet disability criteria established in the Social Security Act.

(d) You meet financial eligibility requirements as defined in WAC 182-515-1510.

(e) You choose to receive services in the community rather than in an ICF/IID facility.

(f) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan.

(g) You are not residing in hospital, jail, prison, nursing facility, ICF/IID, or other institution.

(h) Additionally, for the children's intensive in-home behavioral support (CIIBS) waiver-funded services:

(i) You are age eight or older and under the age of 18 for initial enrollment and under age 21 for continued enrollment;

(ii) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(iii) You live at home with a family member; and

(iv) DDA receives a signed participation agreement from your:

(A) Parent, guardian, or primary caregiver; and

(B) Legal representative if that person is not your parent or guardian.

(2) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and also live (~~in your~~) at home with a family ((home)) member.

~~((3) For the children's intensive in-home behavioral supports (CIIBS) waiver, in addition to meeting criteria in subsection (1) of this section:~~

~~(a) You must:~~

- ~~(i) Be age eight or older and under the age of 18 for initial enrollment and under age 21 for continued enrollment;~~  
~~(ii) Be determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only; and~~  
~~(iii) Live with your family.~~  
~~(b) Your parent or guardian, and primary caregiver if other than your parent or guardian, must sign the participation agreement.))~~

AMENDATORY SECTION (Amending WSR 24-01-116, filed 12/19/23, effective 1/19/24)

**WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?** When there is capacity on a waiver, DDA may enroll people from the statewide database in a waiver based on the following priority considerations:

- (1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.
- (2) DDA may also consider any of the following populations in any order:
  - (a) Priority populations as identified and funded by the legislature.
  - (b) Persons DDA has determined to be in immediate risk of ICF/IID admission due to unmet health and welfare needs.
  - (c) Persons identified as a risk to the safety of the community.
  - (d) Persons currently receiving services through state-only funds.
  - (e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.
  - (f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(k).
  - (g) Persons exiting the Washington department of children, youth, and families foster care or aging out of dependency.
  - (h) Persons age 20 and younger who are subject to a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in tribal court, are receiving extended foster care services, or exited a dependency or discontinued extended foster care services from the department of children, youth, and families or from a tribe in Washington state and desire waiver services.
- (3) DDA may consider persons who need the waiver services available in the basic plus or IFS waivers to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

- WAC 388-845-0055 How do I remain eligible for the waiver?** (1) Once you are enrolled in a DDA HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:
- (a) You complete a reassessment with DDA at least once every ((twelve)) 12 months to determine if you continue to meet all of these eligibility requirements;

(b) You must either receive a waiver service at least once in every ~~((thirty))~~ 30 consecutive days, as specified in WAC 182-513-1320(3), or your health and welfare needs require monthly monitoring, which will be documented in your client record;

(c) You complete an in-person DDA assessment/reassessment interview per WAC 388-828-1520.

(2) For the children's intensive in-home behavioral supports waiver, you must meet the criteria in subsection (1) of this section and you must:

(a) Be under age ~~((twenty-one))~~ 21;

(b) Live ~~((with your))~~ at home with a family member;

(c) Have an annual participation agreement signed by your:

(i) Parent(~~(/)~~) or guardian(s) and primary caregiver(~~((s),)~~); or

(ii) Primary caregiver(s) and legal representative, if other than parent(~~(/)~~) or guardian(s); and

(d) Continue to participate in the program as outlined in the annual participation agreement.

(3) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and live ~~((in your))~~ at home with a family (~~(home))~~ member.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

**WAC 388-845-0060 Can your waiver enrollment be terminated?** DDA may terminate your waiver enrollment if DDA determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual person-centered service plan;

(c) You do not use a waiver service at least once in every ~~((thirty))~~ 30 consecutive days and your health and welfare do not require monthly monitoring to avoid institutionalization;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program;

(e) You choose to unenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) Your needs exceed the maximum funding level or scope of services under the basic plus waiver as specified in WAC 388-845-3080;

(i) Your needs exceed what can be provided under WAC 388-845-3085;

(j) You refuse to participate with DDA in:

(i) Service planning;

- (ii) Required quality assurance and program monitoring activities; or
  - (iii) Accepting services agreed to in your person-centered service plan as necessary to meet your health and welfare needs; or
  - (k) You are in a hospital, jail, prison, nursing facility, ICF/IID, or other institution for at least one full calendar month, ~~((and))~~ are under the care of that institution or entity, and:
    - (i) At the end of that full calendar month and there is no immediate plan for you to return to the community;
    - (ii) At the end of the ~~((twelfth))~~ 12th month following the effective date of your current person-centered service plan, as described in WAC 388-845-3060; or
    - (iii) At the end of the waiver fiscal year, whichever date occurs first.
- (2) Services offered on a different waiver can meet your health and welfare needs and DDA enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0100 What determines which waiver I am assigned to?**

DDA will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDA assessment as described in chapter 388-828 WAC and the following criteria:

- (1) For the individual and family services waiver, you:
  - (a) Live ~~((in your))~~ at home with a family ~~((home))~~ member; and
  - (b) Are assessed to need a waiver service to remain ~~((in the))~~ at home with a family ~~((home))~~ member.
- (2) For the basic plus waiver your health and welfare needs require a waiver service to remain in the community.
- (3) For the core waiver:
  - (a) You are at immediate risk of out-of-home placement due to your disability and not related to chapter 13.34 RCW; or
  - (b) You have an identified health and welfare need for residential services that cannot be met by the basic plus waiver.
- (4) For the community protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.
- (5) For the children's intensive in-home behavioral support waiver, you:
  - (a) Are age eight or older but under age 18;
  - (b) Live at home with ~~((your))~~ a family member;
  - (c) Are assessed at high or severe risk of out-of-home placement due to challenging behavior per chapter 388-828 WAC; and
  - (d) Have a signed family participation agreement from your:
    - (i) Parent, ~~((or))~~ guardian, or ~~((and))~~ primary caregiver ~~((r))~~;
    - and
    - (ii) Legal representative, if ~~((other than))~~ that person is not your parent or guardian.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0110 What are the limits to the waiver services you may receive?** The following limits apply to the waiver services you may receive:

(1) A service must be available in your waiver and address an unmet need identified in your DDA assessment and person-centered service plan.

(2) Stabilization services may be added to your person-centered service plan after the services have been provided.

(3) Waiver services are limited to services required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

(4) The daily cost of your waiver services must not exceed the average daily cost of care in an ICF/IID.

(5) Waiver services must not replace or duplicate other available paid or unpaid supports or services. Before DDA will cover a service through waiver services, you must first request and be denied all applicable covered benefits through private insurance, medicare, the medicaid state plan, and other resources.

(6) Waiver services must supplement, and not supplant, the child welfare services and supports a child or youth is entitled to from the department of children, youth, and families (DCYF), from Title IV-E of the Social Security Act, or from other sources.

~~((6))~~ (7) Waiver funding must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0050.

~~((7))~~ (8) For the individual and family services (IFS) waiver, basic plus waiver, and children's intensive in-home behavioral support waiver, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.

~~((8))~~ (9) Your choice of qualified providers and services is limited to the most cost-effective option that meets your unmet need identified in your DDA assessment and person-centered service plan.

~~((9))~~ (10) Services, with the exception of respite care, must be provided in integrated settings.

~~((10))~~ (11) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care during vacations of not more than 30 consecutive days.

~~((11))~~ (12) You may receive services in a recognized out-of-state bordering city under WAC 182-501-0175.

~~((12))~~ (13) Other out-of-state waiver services require an approved exception to rule before DDA will authorize payment.

~~((13))~~ (14) Waiver services do not cover:

- (a) Copays;
- (b) Deductibles;
- (c) Dues;
- (d) Membership fees; or
- (e) Subscriptions.

~~((14))~~ (15) Waiver services do not cover a product unless the product is:

- (a) The most basic model of the product available that can meet your health and safety need related to your intellectual or developmental disability;
- (b) The least restrictive means for meeting that need; and
- (c) Requested by you.



AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0111 Are there ((limitations regarding)) limits to who can provide waiver services?** The following ((limitations)) limits apply to providers ((for)) of waiver services:

(1) Your spouse must not be your paid provider for any waiver service.

(2) If you are under age 18, your natural, step, ((or)) adoptive parent, legal representative, or DCYF out-of-home caregiver must not be your paid provider for any waiver service.

(3) If you are age 18 or older, your natural, step, or adoptive parent must not be your paid provider for any waiver service with the exception of:

(a) Personal care;

~~((b))~~ (b) Transportation to and from a waiver service ((per WAC 388-845-2200 through 388-845-2210)) or nonmedical services in the community;

~~((c))~~ (c) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or

~~((e))~~ (d) Respite care if you and the parent who provides the respite care live in separate homes.

(4) If you receive CIIBS waiver services, your legal representative or family member per WAC 388-845-0001 must not be your paid provider for any waiver service with the exception of:

(a) Transportation to and from a waiver service ((per WAC 388-845-2200 through 388-845-2210)); and

(b) Respite per WAC 388-845-1605 through 388-845-1620.

(5) A person must not be your provider of a DDA waiver service if the person is also:

(a) Providing a DCYF-paid service to you; or

(b) Is your DCYF out-of-home caregiver.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0113 When may I receive waiver services through teleservice?** (1) Teleservice is a remote service delivery method that uses a HIPAA-compliant technology system approved by DDA.

(2) The following services may be delivered through teleservice:

(a) Assistive technology;

(b) Community engagement;

~~((c))~~ (c) Individual supported employment;

~~((e))~~ (d) Individualized technical assistance;

~~((d))~~ (e) Music therapy;

~~((e))~~ (f) Occupational therapy;

~~((f))~~ (g) Peer mentoring;

~~((g))~~ (h) Person-centered plan facilitation;

~~((h))~~ (i) Physical therapy;

~~((i)) Positive behavior support and consultation until August 31, 2023;~~

~~((j))~~ (j) Residential habilitation;

~~((j))~~ (k) Specialized evaluation and consultation;

~~((k))~~ (l) Specialized habilitation;

- ~~((1))~~ (m) Speech, hearing, and language services;
- ~~((m) Supported employment;)~~
- (n) Supported parenting; ~~((and))~~
- (o) Stabilization - staff and family consultation ~~((-))~~;
- (p) Stabilization - specialized habilitation;
- (q) Stabilization - crisis diversion bed; and
- (r) Staff and family consultation.

(3) A waiver service may be delivered through teleservice if:

(a) The waiver participant chooses that service delivery method and acknowledges the teleservice agreement through signature on the person-centered service plan;

(b) DDA determines through the person-centered planning process that the waiver service can be adequately provided remotely based on the reason for the service request;

(c) There is no risk to the waiver participant's health or safety as a result of the waiver service being provided remotely; and

(d) The waiver participant's person-centered service plan indicates each waiver service that will be provided through teleservice.

(4) For each waiver service that occurs regularly over the course of the plan year and is being delivered remotely, the service must be delivered in-person at least one time per plan year.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0210 What services are available under the basic plus waiver?** The following services are available under the basic plus waiver:

SERVICE	YEARLY LIMIT
AGGREGATE SERVICES:	
Assistive technology	Total costs must not exceed \$6,192 per year per participant
Extermination of cimex lectularius (bedbugs)	
Community engagement	
Environmental adaptations	
Occupational therapy	
Physical therapy	
Remote support	
Skilled nursing	
Specialized equipment and supplies	
Specialized habilitation	
Speech, hearing, and language services	
Staff and family consultation	
Transportation	
Wellness education	

SERVICE	YEARLY LIMIT
Therapeutic adaptations	Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding
EMPLOYMENT SERVICES: Individual technical assistance Supported employment Community inclusion	Limits determined by DDA assessment and employment status  Limits determined by the person-centered service plan
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA
Community engagement Environmental adaptations Occupational therapy Physical therapy <u>Remote support</u> Specialized equipment and supplies Speech, hearing, and language services Skilled nursing Staff and family consultation Therapeutic adaptations Transportation	\$6,000 per year for emergency assistance funding

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

**WAC 388-845-0760 Are there limits to community transition services I can receive?** (1) Community transition services does not include:

- ~~((a) [(1)])~~ (a) Diversional or recreational items such as televisions, cable TV access, VCRs, MP3, CD, or DVD players;
- ~~((2))~~ (b) Computers, if primarily used as a diversion or for recreation; or
- ~~((3))~~ (c) Rent assistance.

(2) Expenditures above \$1,500 for community transition require prior approval by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0955 Are there limits to the remote support I may receive?** The following limits apply to your receipt of remote support:

- (1) Remote support must never be used to restrict ~~((people))~~ a person from their home, community, or body autonomy.
- (2) Before DDA authorizes remote support, a ~~((safety))~~ backup plan must be established and documented in the waiver participant's person-centered service plan.
- (3) The need for remote support must be identified in the waiver participant's person-centered service plan.
- (4) Remote support cannot pay for internet, data plans, or wi-fi access.
- (5) Remote support requires prior approval by the regional administrator or designee.
- (6) For basic plus, remote support is limited to:
  - (a) The aggregate budget((-); and
  - (b) Emergency assistance funding, if eligible per WAC 388-845-0810.
- (7) For IFS, remote support is limited to the annual allocation.
- (8) Remote support must not replace, duplicate, or be the delivery method for other available paid or unpaid supports or services.
- ~~((9) Remote support must not be authorized to waiver participants receiving residential habilitation.))~~

AMENDATORY SECTION (Amending WSR 18-23-004, filed 11/7/18, effective 12/8/18)

**WAC 388-845-1515 Are there limits to the residential habilitation services I may receive?** (1) You may only receive one type of residential habilitation service at a time.

- (2) None of the following may be paid for under the core or community protection waiver:
  - (a) Room and board;
  - (b) The cost of building maintenance, upkeep, improvement, modifications, or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;
  - (c) Activities or supervision already being paid for by another source;
  - (d) If you are a child or youth (up to age 21), and you are subject to a dependency action, and placed in out-of-home care by the court, DCYF is responsible for your maintenance and supervision costs;
  - ~~((d))~~ (e) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.
- (3) Alternative living services in the core waiver cannot:
  - (a) Exceed ~~((forty))~~ 40 hours per month;
  - (b) Provide personal care or protective supervision.
- (4) The following persons cannot be paid providers for your service:
  - (a) Your spouse;

(b) Your natural, step, or adoptive parents if you are a child age ~~((seventeen))~~ 17 or younger;

(c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

(5) The initial authorization of residential habilitation services requires prior approval by the DDA regional administrator or designee.

(6) If you are under age ~~((eighteen))~~ 18, the residential habilitation services you receive are subject to requirements under chapter 388-826 WAC.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-1607 Can someone who lives with you be your respite provider?** A person who lives with you may be your respite care provider if the person is not:

- (1) Your primary care provider;
- (2) Providing any other DSHS or DCYF paid service to you in the month that person provides respite care to you; or
- (3) Excluded from providing services based on the limits under WAC 388-845-0111.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-1620 Are there limits to the respite care you may receive?** The following limits apply to the respite care you may receive:

(1) For basic plus, core, and the children's intensive in-home behavioral support (CIIBS) waivers, the developmental disabilities administration (DDA) assessment will determine how much respite you may receive under chapter 388-828 WAC.

(2) If you are a dependent child or youth through the DCYF, your respite hours determined by the DDA assessment may be reduced based on your access to case aide hours through DCYF.

~~((2))~~ (3) For the individual and family services (IFS) waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.

~~((3))~~ (4) Respite must not replace:

- (a) Day care while your parent or guardian is at work; or
- (b) Personal care hours available to you.

~~((4))~~ (5) If you receive respite in a private home, the home must be licensed to provide respite care unless the home is:

- (a) Your private home; or
- (b) The home of a relative under WAC 388-825-345.

~~((5))~~ (6) If you receive respite from a provider who requires licensure, the respite services are limited to activities and age-specific criteria contained in the provider's license.

~~((6))~~ (7) Your individual respite provider must not provide:

- (a) Other DDA services for you during your respite care hours; or

(b) DDA paid services to other persons during your respite care hours.

~~((7))~~ (8) Your primary caregivers must not provide other DDA services for you during your respite care hours.

~~((8))~~ (9) If your personal care provider is your parent and you live in your parent's adult family home you must not receive respite.

(10) If you are a dependent child or youth, your DCYF out-of-home caregiver or provider must not provide respite to you.

~~((9))~~ (11) DDA must not pay for fees - such as a membership or insurance fee - associated with your respite care.

~~((10))~~ (12) If you require respite care from a licensed practical nurse (LPN) or a registered nurse (RN), respite services may be authorized using an LPN or RN. Respite services are limited to the assessed respite care hours identified in your person-centered service plan. Respite provided by an LPN or RN requires a prior approval by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-2000 What is staff and family consultation?** (1)

Staff and family consultation is assistance, not covered by the medic-aid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation is available in all DDA HCBS waivers.

(3) Staff and family consultation is ~~((consultation and))~~ guidance ~~((to))~~ for a ~~((staff member))~~ DDA direct support provider, DCYF out-of-home caregiver, DCYF placement provider, informal caregiver, or family member ~~((about))~~ working with the participant. Staff and family consultation includes one or more of the following:

(a) Health and medication monitoring to track and report to healthcare provider;

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) Consultation with potential referral resources;

(e) Augmentative communication systems;

(f) Diet and nutritional guidance;

(g) Disability information and education;

(h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental consultation;

(j) Assistive technology safety;

(k) Parenting skills; and

(l) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-2010 Are there limits to the staff and family consultation you may receive?** (1) Staff and family consultation are limited to supports identified in your DDA assessment and documented in the person-centered service plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff and family consultation.

(3) The dollar amounts for aggregate service in your basic plus or CIIBS waiver or the dollar amount of the annual allocation in your individual and family services (IFS) waiver limit the amount of staff and family consultation you may receive.

(4) Individual and family counseling is limited to family members who:

(a) Live with the participant; and

(b) Have been assaulted by the participant and the assaultive behavior was:

(i) Documented in the participant's (~~(DDA assessment and)~~) person-centered service plan; and

(ii) Addressed in the participant's (~~(positive)~~) DDA assessment and behavior support plan or therapeutic plan.

(5) For a child or youth currently subject to a dependency action, parenting skills for parents, foster care parents, or other staff must only be authorized after confirmation that parenting support has been accessed through the supports available through DCYF.

~~((5))~~ (6) Staff and family consultation does not provide training or consultation necessary to meet a contracted provider's or staff's contractual licensing or certification requirements or to complete the necessary functions of their job.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-2200 What are transportation services?** Transportation services provide reimbursement to a provider when the transportation is required and specified in the person-centered service plan. This service is available in all DDA HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services (~~(specified by)~~) and nonmedical services in the community identified in your person-centered service plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-3015 How is the waiver respite assessment administered?** The waiver respite assessment is administered by department staff during an in-person interview with you if you choose to be

present, and at least one other person with knowledge of you, such as your primary caregiver or legal representative.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-3095 Will I have to pay toward the cost of waiver services?** (1) You are required to pay toward (~~board and~~) room and board costs if you live in a licensed facility or in a companion home as room and board is not considered to be a waiver service.

(2) If you are a dependent child or youth subject to a court order, DCYF is responsible to pay your maintenance and supervision.

~~((2))~~ (3) You will not be required to pay towards the cost of your waiver services if you receive SSI.

~~((3))~~ (4) You may be required to pay towards the cost of your waiver services if you do not receive SSI. DDA determines what amount, if any, you pay in accordance with WAC 182-515-1510.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                  |  |
|------------------|--|
| WAC 388-825-0571 | What services am I eligible to receive from DDA if I am under the age of eighteen, have been determined to meet DDA eligibility requirements, and I am in a dependency guardianship or foster care with children's administration? |
| WAC 388-845-2019 | What modifications to waiver services apply during the COVID-19 outbreak?  |



**WSR 24-20-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-194—Filed September 18, 2024, 7:03 p.m., effective September 18, 2024, 7:03 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule sets an additional late fall nontreaty commercial gill net season upstream of the Lewis River confluence and adds one period to the ongoing tangle net fishery. These fisheries are consistent with the 2024 nontreaty fall fisheries plan that was developed in conjunction with the annual North of Falcon management process, the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with Compact Action of July 18, August 14, September 4, September 10, and September 18, 2024. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon Fish and Wildlife Commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

Number of Sections Adopted at the Request of a 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: September 18, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000I Columbia River seasons below Bonneville.**

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**(1) Mainstem Gillnet:**

Open Dates	Open Days	Open Time	Open Duration
September 19 - September 20	Thursday (night)	8:00 pm - 6:00 am	10 hrs
September 22 - September 23	Sunday (night)	8:00 pm - 6:00 am	10 hrs
September 24 - September 25	Tuesday (night)	8:00 pm - 6:00 am	10 hrs
September 26 - September 27	Thursday (night)	8:00 pm - 6:00 am	10 hrs

(a) **Area:** Catch Reporting Areas 1E and 1D (Zones 4-5). The deadline at the lower end of Area 1E (Zone 4) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore

easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy River.

(b) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. 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. Lighted buoys required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

**(2) Emerging Commercial Fishery - Mainstem Seine:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday - Friday	6:00 am - 5:00 pm	11 hrs

(a) **Area:** Catch Reporting Areas 1A, 1B, and 1C (Zones 1-3). The deadline at the upper end of Area 1C (Zone 3) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Elokomina-B, Cowlitz, Kalama-B, Lewis-B and Select Area commercial fishing sites.

(b) **Gear:** Beach seines or purse seines only. Only one seine net per primary vessel. Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure). Net material to consist of 3-strand nylon; twine size ≥#12. Seines may include a bunt of 1.0-2.0 inch knotless mesh. Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet). Seine and lead lines may not be connected. Lead nets must be retrieved daily. No restrictions on corkline, leadline or use of stringers and slackers. A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline. Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net. Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size ≥#12, ≤3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size ≥14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

(c) **Allowable Possession and Sales:** Subject to IFQs as defined on individual permits. Except as noted below, allowable sales limited to adipose fin-clipped Chinook, adipose fin-clipped Coho, sockeye, and pink salmon and shad. All legal adult Chinook and legal adult Coho caught must be kept and sold. Adult salmon defined in WAC 220 300-010. Retained Chinook and Coho must have a healed scar at the location of the adipose-clipped fin.

(d) **Handling of Catch:** Hand sorting or use of a knotless dip net is required when sorting fish. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

(e) **Sort time not to exceed 75 minutes:**

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.

(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(f) **Observer Program:** Agency observers must be present during all fishing operations.

**(3) Mainstem Tangle Net:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Mondays, Tuesdays, Wednesdays, Thursdays	4:00 am - 10:00 pm	18 hrs
September 20 - October 25	Fridays	4:00 am - 6:00 pm	14 hrs

(a) **Area:** SMCRA 1A, 1B, and 1C. Upper deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries include Elokomina-A, Cowlitz River, Kalama-A and Lewis-A.

(b) **Gear:** Drift nets only. Maximum mesh size is 3.75 inches. Un-slackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(c) **Allowable Sales:** Salmon (except chum), and shad; all coho must be adipose fin-clipped.

(d) **Regulations:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

(e) **Soak times,** defined as the time elapsed from when the first of the net web is deployed into the water until the web is fully retrieved from the water, must not exceed 30 minutes.

(f) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(g) **Measuring mesh size:** Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(h) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(i) **Multiple 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.

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

(k) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

**(4) Tongue Point/South Channel Select Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

(ii) The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG

light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be on-board.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

**(5) Blind Slough/Knappa Slough Select Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 10:00 am	16 hrs

(a) **Area:** The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge. The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

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

(c) **Allowable Sales:** Salmon (except Chum) and shad.

**(6) Deep River Select Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 11	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs

Open Dates	Open Days	Open Time	Open Duration
October 14 - October 31	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 4 - November 28	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

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

(b) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically authorized for use may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(7) **24-hour quick reporting** is in effect for Washington buyers WAC 220-352-315. Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

(8) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

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

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

## REPEALER

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

WAC 220-358-03000H Columbia River seasons below  
Bonneville. (24-184)



## WSR 24-20-004

## EMERGENCY RULES

## HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Order Admin # 2024-03.03—Filed September 19, 2024, 7:58 a.m., effective September 19, 2024, 7:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (agency) is creating new WAC 182-12-5110 When is a retiring school employee of an employer group eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage[?] and WAC 182-12-5120 What options for continuing health plan enrollment are available to a retiree of an employer group that ends participation in public employees benefits board (PEBB) or school employees benefits board (SEBB) insurance coverage[?] as authorized in SHB 1804, section 1, chapter 312, Laws of 2023, 68th legislature, 2023 regular session.

Citation of Rules Affected by this Order: New WAC 182-12-5110 and 182-12-5120.

Statutory Authority for Adoption: RCW 41.05.080 and 41.05.083; SHB 1804, section 1, chapter 312, Laws of 2023, 68th legislature, 2023 regular session.

Other Authority: RCW 41.05.021 and 41.05.160.

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

Reasons for this Finding: This emergency rule making is necessary to preserve the public peace, health, or safety, or support of the state government and its existing public institutions by establishing enrollment rules for a retiring school employee of an employer group and a retiree of an employer group that ends participation in PEBB or SEBB insurance coverage. This emergency rule making is necessary to implement SHB 1804, section 1, chapter 312, Laws of 2023, 68th legislature, 2023 regular session while the authority conducts the permanent rule-making process.

This filing continues the emergency rules filed under WSR 24-10-057, filed on August 23, 2024, to cover the gap between the expiration of this emergency and the effective date of the permanent rules. The agency adopted the permanent rules under WSR 24-18-076 on August 29, 2024, to be effective January 1, 2025.

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 2, Amended 0, Repealed 0.

Date Adopted: September 19, 2024.

Wendy Barcus

OTS-4949.2

NEW SECTION

**WAC 182-12-5110 When is a retiring school employee of an employer group eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage?** (1) The following definitions apply for this section:

(a) "Employer group" for the school employees' benefits board (SEBB) program means an employee organization representing school employees and a tribal school as defined in RCW 28A.715.010, obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by SEBB;

(b) "Employer-paid coverage" means SEBB insurance coverage for which an employer contribution is made by a SEBB employer group;

(c) "School employee" means an employee of an employee organization representing school employees and an employee of a tribal school as defined in RCW 28A.715.010, receiving SEBB insurance coverage under contractual agreement with the authority; and

(d) "Washington state-sponsored retirement plan" means the same as described in WAC 182-12-171(4).

(2) A retiring school employee of an employer group is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if they meet the procedural and substantive eligibility requirements as described in subsections (3) and (4) of this section.

(3) **Procedural requirements.** A retiring school employee of an employer group must meet the substantive eligibility requirements as described in subsection (4) of this section and enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) and (b) of this subsection:

(a) A retiring school employee of an employer group must enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 (1)(a) through (c).

(b) A retiring school employee of an employer group may defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 or 182-12-205 (4)(a).

(4) **Substantive eligibility requirements.** A school employee who is eligible for SEBB benefits through an employer group who ends public employment may enroll or defer enrollment in PEBB retiree insurance coverage if they meet procedural requirements as described in subsection (3) of this section and substantive eligibility requirements as described in this subsection, and WAC 182-12-171(3).

To be eligible to continue enrollment or defer enrollment in PEBB retiree insurance coverage, the school employee must be vested in and eligible to retire under a Washington state-sponsored retirement plan when the school employee's own employer-paid coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. An exception to the requirement to be vested in and eligible to retire under a Washington state-sponsored retirement plan is provided in (a) of this subsection. To satisfy the requirement to im-

mediately begin to receive a monthly retirement plan payment as described in (b) of this subsection, the school employee must begin receiving a monthly retirement plan payment no later than the first month following the school employee's own employer-paid coverage, COBRA coverage, or continuation coverage ending.

A retiring school employee of an employer group participating in SEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (a) or (b) of this subsection to be eligible to continue PEBB retiree insurance coverage.

(a) A retiring school employee who is eligible to retire under a retirement plan sponsored by an employer group that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if they were a member of teachers retirement system Plan 1, if their date of hire with that employer group was before October 1, 1977, or Plan 2, if their date of hire with that employer group was on or after October 1, 1977.

(b) A retiring school employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with the exceptions described in WAC 182-12-171 (2)(d)(ii) and 182-12-5200(2).

(5) Eligible school employees of an employer group who participate in SEBB life insurance as a school employee and meet the qualifications for PEBB retiree insurance coverage provided in this section are eligible for retiree term life insurance and may enroll as described in WAC 182-12-209.

(6) A school employee of an employer group who is determined to be retroactively eligible for disability retirement is eligible to enroll or defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-211. The exceptions to the requirement to immediately begin to receive a monthly pension benefit as described in WAC 182-12-211 (1)(c)(i) and 182-12-5200(2) include a school employee of an employer group.

(7) The survivor of an eligible school employee of an employer group is eligible to enroll or defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-265(3).

(8) Once enrolled in PEBB retiree insurance coverage, retirees and their dependents are subject to all applicable rules in chapters 182-08, 182-12, and 182-16 WAC.

(9) A retired school employee of an employer group that ends participation in SEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-5120.

#### NEW SECTION

**WAC 182-12-5120 What options for continuing health plan enrollment are available to a retiree of an employer group that ends participation in public employees benefits board (PEBB) or school employees benefits board (SEBB) insurance coverage?** (1) The following definitions apply to this section only:

(a) "School employee" means an employee of an employee organization representing school employees and an employee of a tribal school as defined in RCW 28A.715.010.

(b) "Subscriber" means the retired employee or the retired school employee as described in subsection (3) of this section who is requesting enrollment in public employees benefits board (PEBB) health plan coverage.

(2) A retired employee or a retired school employee of an employer group as defined in RCW 41.05.011 (9) (a) and (b), except a Washington state educational service district, that ends participation in PEBB or school employees benefits board (SEBB) insurance coverage, is no longer eligible to continue enrollment in PEBB retiree insurance coverage if they enrolled after September 15, 1991.

(3) A retired employee or a retired school employee who loses eligibility for PEBB retiree insurance coverage as described in subsection (2) of this section, may continue PEBB health plan coverage as follows:

(a) The subscriber may elect to enroll in PEBB medical, dental, or both by self-paying the premium and applicable premium surcharges set by the health care authority (HCA). The subscriber enrolled under this section is not eligible for any subsidy provided under RCW 41.05.085.

(b) The subscriber must submit the required forms to the PEBB program and they must be received no later than 60 days after the employer group ends their participation.

(i) The subscriber may enroll eligible dependents as described in WAC 182-12-260 and must include the dependent's enrollment information on the required forms.

(ii) If the subscriber elects to enroll a dependent in PEBB health plan coverage, the dependent will be enrolled in the same PEBB medical and PEBB dental plans as the subscriber.

**Exception:** If the subscriber selects a medicare supplement plan or medicare advantage prescription-drug (MA-PD) plan, nonmedicare enrollees will be enrolled in the Uniform Medical Plan (UMP) Classic. If the subscriber selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(iii) The subscriber's account may incur a premium surcharge in addition to their monthly medical premium and the subscriber must attest as described in WAC 182-08-185 (1) and (2). A premium surcharge will be applied to a subscriber who does not attest. If the subscriber's attestation results in a premium surcharge, it will take effect the same date as PEBB medical begins.

(c) The effective date of enrollment in PEBB health plan coverage will be the first day of the month following the day the subscriber loses eligibility for PEBB retiree insurance coverage.

**Note:** Enrollment in the PEBB program's medicare advantage (MA) or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB health plan coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB health plan coverage is to begin, the subscriber and their enrolled dependents will be enrolled in the UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(d) The subscriber's first premium payment and applicable premium surcharges are due to HCA no later than 45 days after the election period ends as described in (b) of this subsection. Following the first premium payment, premiums and applicable premium surcharges must be paid as premiums become due. If the subscriber's monthly premium and applicable premium surcharges remain unpaid for 60 days from the original due date, the subscriber's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-08-180 (1) (c).

**Exception:** For a subscriber enrolled in a MA or a MA-PD plan, a notice will be sent to them notifying them that they are delinquent on their monthly premiums and that the enrollment will be terminated prospectively to the end of the month after the notice is sent.

**Note:** An employer group as defined in RCW 41.05.011 (9)(a) and (b) that enters into a contractual agreement with the authority on or after May 4, 2023, and whose contractual agreement is subsequently terminated, shall make a one-time payment to the authority for each of the employer group's retired employees or retired school employees who continue participation under this section as described in RCW 41.05.083.

(e) PEBB health plan coverage may continue unless the subscriber requests to terminate enrollment as described in subsection (5) of this section, or premiums and applicable premium surcharges are no longer paid as described in (d) of this subsection. If PEBB health plan coverage is terminated for these reasons, the subscriber and their enrolled dependents will not be eligible to reenroll under this section.

**Note:** The eligibility described in this subsection regarding continuing health plan enrollment when an employer group ends participation, replaces the eligibility described in WAC 182-08-245(7), 182-12-146(3), and 182-12-171 (2)(c)(iii) and (iv).

(4) The subscriber enrolled under this section may make enrollment changes on the same terms and conditions as a continuation coverage subscriber as described in WAC 182-08-185, 182-08-196, 182-08-198, and 182-12-262.

(5) The subscriber enrolled under this section who requests to voluntarily terminate their PEBB health plan coverage must do so in writing. PEBB health plan coverage will end on the last day of the month in which the PEBB program receives the termination request or on the last day of the month specified in the subscriber's termination request, whichever is later. If the termination request is received on the first day of the month, PEBB health plan coverage will end on the last day of the previous month.

**Exception:** When a subscriber or their dependent is enrolled in a MA or MA-PD plan, then enrollment in PEBB health plan coverage will terminate on the last day of the month when the MA plan disenrollment form is received.

(6) The subscriber must update their address with the PEBB program as described in WAC 182-08-191.

(7) The subscriber is limited to one enrollment per individual in PEBB health plan coverage as described in WAC 182-12-123.

(8) The requirements in WAC 182-12-263 about National Medical Support Notice apply.

(9) The subscriber may receive the PEBB wellness incentive as described in WAC 182-12-300.

**WSR 24-20-005**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-192—Filed September 19, 2024, 8:15 a.m., effective September 20, 2024]

Effective Date of Rule: September 20, 2024.

Purpose: The purpose of this emergency rule is to extend Chinook and coho retention seasons from Buoy 10 upstream to the Highway 395 Bridge at Pasco.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000T; and amending WAC 220-312-060.

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

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

Reasons for this Finding: The Columbia River technical advisory committee (TAC) recently updated the upriver Chinook return to the Columbia River mouth. Current in-season catch and stock composition projections indicate that sufficient Chinook remain available, which allows for additional Chinook retention in these areas. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowable ESA impact rate and per Washington Fish and Wildlife Policy C-3630. This rule conforms Washington state rules with Oregon state rules and is consistent with compact action on September 10, and September 18, 2024.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

There is insufficient time to promulgate 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: September 18, 2024.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia River.** Effective September 20 through October 31, 2024, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a true north-south line through Buoy 10 upstream to Highway 395 Bridge at Pasco, shall be modified during the dates listed and as described below. All year-round Closed Waters areas remain in effect. Other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) From a true north-south line through Buoy 10 upstream to a line from Rocky Point on the Washington Bank through red buoy 44 to red navigation marker 2 at Tongue Point on the Oregon bank.**

(a) Effective September 20 through September 30, 2024: Salmon and steelhead: Daily limit 3 including no more than 1 Chinook. Chinook minimum size 24 inches. Coho minimum size 16 inches. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective October 1 through October 31, 2024: Salmon and steelhead: Daily limit 6 including no more than 3 adults. Release all salmon and steelhead other than hatchery coho.

**(2) From a line from Rocky Point on the Washington Bank through red buoy 44 to red navigation marker 2 at Tongue Point on the Oregon bank upstream to a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank:**

(a) Effective September 20 through September 30, 2024: Salmon and steelhead: Daily limit 6. Up to 3 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective October 1 through October 31, 2024: Salmon and steelhead: Daily limit 6 including no more than 3 adults. Release all salmon and steelhead other than hatchery coho.

**(3) From a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red**

navigation marker 44A on the Oregon bank upstream to a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line):

Effective September 20 through September 30, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

**(4) From a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line) upstream to a point 600 feet below the fish ladder at the new Bonneville Dam Powerhouse:**

Effective September 20 through September 30, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

**(5) From Bonneville Dam upstream to the Hood River Bridge:**

Effective September 20 through September 30, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

**(6) From Hood River Bridge upstream to the Highway 395 Bridge at Pasco:**

Effective September 20 through September 30, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and coho.

#### REPEALER

The following section of Washington Administrative Code is repealed, effective September 20, 2024:

WAC 220-312-06000T Freshwater exceptions to statewide rules—Columbia River. (24-183)



WSR 24-20-006  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 24-193—Filed September 19, 2024, 8:30 a.m., effective September 19, 2024, 8:30 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule sets the 2024 Columbia River treaty fall season commercial fisheries for nontreaty buyers. This rule is consistent with actions of the Columbia River Compact on July 18, August 14, September 4, September 10, and September 18, 2024. Confirms 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 ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

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

Number of Sections Adopted at the Request of a 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: September 18, 2024.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000I 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 1F, 1G, 1H (Zone 6)

(a) Season: Immediately through 6:00 PM September 20

6:00 AM September 23 through 6:00 PM September 28

6:00 AM September 30 through 6:00 PM October 4

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

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

(d) Standard sanctuaries applicable to gillnet gear. The small Spring Creek Hatchery sanctuary (150-feet around the hatchery ladder) is in place effective immediately through October 4.

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

(a) Season: Immediately, until further notice.

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

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

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

(3) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: Immediately, until further notice. Only during days and times opened under tribal rule.

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

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

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

(a) Season: Immediately, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

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

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

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

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

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

#### REPEALER

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

WAC 220-359-02000H Columbia River salmon seasons above Bonneville Dam. (24-182)

**WSR 24-20-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-198—Filed September 19, 2024, 2:25 p.m., effective September 20, 2024]

Effective Date of Rule: September 20, 2024.

Purpose: The purpose of this rule is to open commercial salmon fishing in Willapa Bay Salmon Management and Catch Reporting Area 2M and to switch commercial fishing gear to small mesh gillnet (maximum 6.5") in Willapa Bay Salmon Management and Catch Reporting Area 2U, both on September 20, 2024.

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

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

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

Reasons for this Finding: This emergency rule is needed to open the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Area 2M and change mesh size in Area 2U on September 20, 2024. The catch for the Willapa Bay commercial fishery for both Chinook and coho has been lower than preseason predictions. The estimated preseason impacts for natural origin (NOR) Chinook for statistical weeks 38 are 118 fish. To date in statistical week 38, the fishery has accrued 38 NOR Chinook impacts. In total, the fishery has accrued 114 NOR Chinook impacts, or 27.8 percent, of the preseason prediction for weeks 33 - 38 combined.

The total catch for Willapa Bay commercial coho is 4,507 to date, or 17.3 percent, of the preseason prediction through statistical week 38. Of those, only 5.4 percent are natural origin coho. Opening 2M for one 12-hour fishery would allow for approximately 440 additional hatchery coho to be caught in the commercial fishery, while minimizing impacts to NOR Chinook and NOR coho. Managers will continue to assess the fishery each opener and make any changes if warranted. All other rules remain in effect.

There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: September 19, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-354-25000I Willapa Bay salmon fall fishery.** Notwithstanding the provisions of WAC 220-354-250, the following seasons for Willapa Bay commercial salmon area 2U and 2M on September 20, 2024, shall be modified as described herein. All other provisions of WAC 220-354-250, not contained herein remain in effect unless otherwise altered by emergency rule:

Gillnet gear may be used to fish for coho salmon, chum salmon, and adipose clipped Chinook salmon marked with a clipped adipose fin with a healed scar, during dates and times and in areas listed in the table below:

Area	Time	Date	Maximum Mesh Size
2U	7:00 a.m. through 7:00 p.m.	September 20, 2024	6.5"
2M	7:00 a.m. through 7:00 p.m.	September 20, 2024	6.5"

**WSR 24-20-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-201—Filed September 19, 2024, 5:04 p.m., effective September 22, 2024]

Effective Date of Rule: September 22, 2024.

Purpose: The purpose of this emergency rule is to temporarily close recreational fishing in Skagit River from the Hwy. 9 Bridge in Sedro Woolley to the Baker River.

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

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

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

Reasons for this Finding: This rule is necessary to temporarily close a portion of the Skagit River to avoid gear conflicts with treaty fisheries. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: September 19, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000V Freshwater exceptions to statewide rules—Puget Sound.** Effective September 22 through September 24, 2024, the following provisions of WAC 220-312-040 regarding fishing seasons for the Skagit River from the Hwy 9 Bridge in Sedro Woolley to the Baker River shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, unless otherwise amended by emergency rule, remain in effect:

**Skagit River (Skagit Co.):** From the Hwy 9 Bridge in Sedro Woolley to the Baker River:

All species: Closed Waters.

**WSR 24-20-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-196—Filed September 19, 2024, 5:08 p.m., effective September 21, 2024]

Effective Date of Rule: September 21, 2024.

Purpose: The purpose of this emergency rule is to open recreational coho retention seasons in the Columbia River upstream of Priest Rapids Dam and in Icicle River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000S; and amending WAC 220-312-050 and 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 necessary to open coho retention in some areas of the Columbia River upstream of Priest Rapids Dam and in some areas of Icicle River. Returns of upper Columbia River-bound coho salmon are sufficient to meet conservation objectives and to provide for sport angler harvest between Priest Rapids Dam and Chief Joseph Dam and in Icicle River.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 19, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia River.** Effective September 21 through October 15, 2024, the provisions of WAC 220-312-060 regarding recreational salmon seasons from Priest Rapids Dam to Chief Joseph Dam, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) Priest Rapids Dam to Rock Island Dam:**

Salmon: Daily limit 6, including no more than 2 adult Chinook and no more than 2 coho. Release all salmon other than Chinook and coho.

**(2) Rock Island Dam to Wells Dam:**

Salmon: Daily limit 2. Release all salmon other than coho.

**(3) Highway 173 Bridge at Brewster to the rock jetty at the upstream shoreline of Foster Creek (Douglas County side):**

Salmon: Daily limit 2. Release all salmon other than coho.

NEW SECTION

**WAC 220-312-05000X Freshwater exceptions to statewide rules—Eastside.** Effective 1 hour before official sunrise September 21 through 1 hour after official sunset November 30, 2024, provisions of WAC 220-312-050 regarding salmon seasons for the Icicle River shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

**Icicle River:**

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

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

(ii) Bait is prohibited.

(iii) Night closure in effect.

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

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

(ii) Bait is prohibited.

(iii) Night closure in effect.

REPEALER

The following section of Washington Administrative Code is repealed, effective September 21, 2024:

WAC 220-312-06000S Freshwater exceptions to statewide rules—Columbia River. (24-154)



**WSR 24-20-016**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed September 20, 2024, 8:15 a.m., effective September 21, 2024]

Effective Date of Rule: September 21, 2024.

Purpose: The department of social and health services (department) is creating chapter 388-487 WAC, SUN Bucks; and adopting WAC 388-487-0010 What is the sun bucks program?, 388-487-0020 Is my child eligible for sun bucks?, and 388-487-0030 General information about sun bucks benefits.

Adoption of these rules will support implementation of the new summer electronic benefits transfer (EBT) program, known as "SUN Bucks," beginning after the 2023-24 school session in accordance with a federally approved state plan.

Related emergency rules are currently in effect under WSR 24-12-014.

Citation of Rules Affected by this Order: New WAC 388-487-0010, 388-487-0020, and 388-487-0030.

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

Other Authority: H.R. 2617 - Consolidated Appropriations Act, 2023.

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

Reasons for this Finding: Emergency adoption of these rules supports implementation of the summer EBT program, also known as SUN Bucks. SUN Bucks was authorized under the Consolidated Appropriations Act, 2023 (H.R. 2617) and provides additional food benefits to certain eligible children for a designated summer period following the 2023-24 school year.

The department is proceeding with the permanent rule making and has filed a CR-101 preproposal under WSR 24-12-024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 3, Amended 0, Repealed 0; Federal Rules or Standards: New 3, 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 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 3, Amended 0, Repealed 0.

Date Adopted: September 19, 2024.

Katherine I. Vasquez  
Rules Coordinator

**SHS-5033.3**

NEW SECTION

**WAC 388-487-0010 What is the sun bucks program?** The sun bucks program is the summer electronic benefits transfer (summer EBT) program that provides a one-time food benefit to eligible children during designated summer periods following the academic school year. Sun bucks is administered by the department of social and health services and is not bound by the same state or federal rules, regulations, or procedures governing basic food as described in WAC 388-400-0040.

The following definitions apply to this program:

- (1) "Compulsory age" means the age children are required by law to attend school; in Washington this is between the ages of eight and 18.
- (2) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:
  - (a) Receiving a benefit from a federal means tested assistance program, including supplemental nutrition assistance program, temporary assistance for needy families, food distribution program on Indian reservations, some medicaid programs; or
  - (b) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program.
- (3) "Expungement" means removal of benefits due to nonuse after 122 days from the date sun bucks benefits were deposited into the EBT account.
- (4) "Free or reduced-price meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act.
- (5) "Income eligibility guidelines" means income limits to determine eligibility for free and reduced-price meals adjusted annually by the US department of agriculture food and nutrition service as required by the national school lunch act.
- (6) "Sun bucks application" means an application available to households with potentially eligible children who do not automatically meet streamline certification criteria.
- (7) "Sun bucks card" means the unique EBT card that accesses sun bucks food benefits issued to individual eligible children.
- (8) "Streamline certified" means a child automatically approved for sun bucks because they meet the following criteria:
  - (a) A child, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program and school breakfast program during the school year, who:
    - (i) Is determined by the school to be eligible for free or reduced-priced school meals; or
    - (ii) Attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program and identified as eligible for free or reduced-price school meals using direct certification or a free or reduced-price school meals application.
  - (b) A child who meets compulsory age requirements and resides in a household receiving one of the following public assistance benefits:
    - (i) Temporary assistance for needy families as described in WAC 388-400-0005;
    - (ii) State funded assistance as described in WAC 388-400-0010;
    - (iii) Basic food as described in WAC 388-400-0040; or

(iv) The state funded food assistance program as described in WAC 388-400-0050.

(10) "Summer operational period" means the period between the end of the current school year and the start of the next school year, as determined by the state.

#### NEW SECTION

**WAC 388-487-0020 Is my child eligible for sun bucks?** (1) To be streamline certified for sun bucks benefits, a child must:

(a) Attend a school that participates in the national school lunch program or school breakfast program; and

(i) Is determined by the school to be eligible for free or reduced-price school meals; or

(ii) Who attends a school that operates the community eligibility provision or provision 2 lunch and breakfast program and identified as eligible for free or reduced-price meals using direct certification or a free or reduced-price school meals application.

(b) Meet compulsory age requirements and reside in a household receiving one of the following public assistance benefits:

(i) Temporary assistance for needy families as described in WAC 388-400-0005;

(ii) State funded assistance as described in WAC 388-400-0010;

(iii) Basic food as described in WAC 388-400-0040; or

(iv) The state funded food assistance program as described in WAC 388-400-0050.

(2) Children who are not streamline certified must submit a sun bucks application during the summer operational period and must meet the following criteria:

(a) Attend a school that participates in the national school lunch program or school breakfast program; and

(b) Meet income eligibility guidelines for free or reduced-price school meals.

(i) Income eligibility guidelines change annually on July 1.

(ii) The income eligibility guidelines in effect on the date of application are used to determine eligibility.

(3) Applications received after the end of the summer operational period will be considered for sun bucks in the following year.

(4) If information on an application is questionable, verification may be requested and must be provided within 30 days of the date of application.

(5) Children approved for sun bucks receive a notice of approval describing their eligibility and other information related to the program.

#### NEW SECTION

**WAC 388-487-0030 General information about sun bucks benefits.**

(1) The amount of sun bucks each eligible child will receive is \$120 for the summer of 2024 and will be adjusted annually for inflation.

(2) Sun bucks benefits are deposited into an account accessible with a designated sun bucks card. Each sun bucks card is:

(a) Linked to a sun bucks account for each eligible child; and

(b) Mailed to the last known address as reported by the parent or caregiver to either:

(i) The child's school if directly certified for free or reduced-price meals; or

(ii) The department for the eligible child's cash or food assistance household.

(c) It is the parent's or caregiver's responsibility to accurately and timely report any address changes to the child's school and to the department. The department or school is not responsible for the expungement of benefits due to unreceived sun bucks notices or cards sent through the mail.

(3) To use a sun bucks account:

(a) The sun bucks EBT card can be used by the eligible child or responsible household member, such as a parent or caregiver on behalf of the eligible child, to purchase eligible food items.

(b) A personal identification number (PIN) must be created to use the sun bucks card. Families are responsible for keeping the sun bucks card and PIN of an eligible child in a safe and secure place.

(c) Sun bucks benefits are only accessed from the sun bucks card and cannot be transferred to a bank account or issued as a check.

(4) The purpose of sun bucks benefits is to help low-income families have a more nutritious diet by providing food benefits to eligible children during the summer months between academic school years.

(a) Any remaining sun bucks benefits not used within 122 days from the date of deposit into each eligible child's account are expunged.

(b) Sun bucks benefits cannot be replaced, redeemed, expunged, lost, or stolen due to fraudulent activity or use.

(c) Sun bucks benefits are used to buy food items for an eligible child from a food retailer authorized to accept supplemental nutrition assistance program benefits.

(d) Intentional misuse of sun bucks benefits may be subject to fines or legal action including criminal prosecution.

(5) The household must request a hearing within 90 days of the end of the summer operational period when disagreeing with a decision explained in the notice.

(6) Children cannot receive sun bucks from more than one state at a time for the same summer operational period.

**WSR 24-20-019**  
**RESCISSION OF EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed September 20, 2024, 9:17 a.m., effective September 20, 2024]

On August 19, 2024, the office of superintendent of public instruction (OSPI) filed CR-103E emergency rule-making order WSR 24-17-119 concerning WAC 392-190-048, 392-400-010, 392-400-020, 392-400-025, 392-400-110, 392-400-330, 392-400-335, 392-400-510, 392-400-515, 392-400-520, 392-400-525, 392-400-530, 392-400-610, 392-401-020, and 392-401-040. However, OSPI determined that revisions to the emergency rules related to student discipline are needed, which include changes to additional WAC sections. OSPI will submit an updated CR-103E emergency rule-making order that entails these changes, which OSPI plans to file today.

Therefore, this document serves as official notification that OSPI is rescinding the CR-103E emergency rule-making order WSR 24-17-119, effective September 20, 2024.

Chris P. S. Reykdal  
State Superintendent of Public Instruction

**WSR 24-20-020**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-197—Filed September 20, 2024, 9:19 a.m., effective September 23, 2024]

Effective Date of Rule: September 23, 2024.

Purpose: The purpose of this emergency rule is to reduce the salmon daily limit to one in Catch Record Card Area 7.

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

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

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

Reasons for this Finding: This emergency rule is necessary to [reduce] the salmon daily limit in Catch Record Card Area 7. The coho catch to date has greatly exceeded the preseason projected catch for the months of August and September. The daily retention limit is being reduced to allow the fishery to continue without putting attainment of conservation objectives at risk.

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: September 20, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000H Puget Sound salmon—Saltwater seasons and daily limits.** Effective September 23 through September 29, 2024, salmon rules for Catch Record Card Area 7 shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

**Catch Record Card Area 7, except waters listed as closed to salmon fishing in WAC 220-313-020 during the effective time period (including Samish Bay, and Southern Rosario Strait and eastern Strait of Juan de Fuca); and except waters of Lummi Bay east of a line from**

Gooseberry Point to Sandy Point, and waters of Bellingham Bay and Padilla Bays south and east of a line from Sandy Point to the northern most point of Lone Tree Island, easterly to the northeast point of Sinclair Island, then from the southeastern most point on Sinclair Island to Clark Point and true west from Yellow Bluff (southwest corner of Guemes Island) to Yellow Bluff Reef Range Marker to Washington State Department of Transportation ferry terminal dock east of Shannon Point and north of the railroad bridges at Swinomish Slough:

Salmon: Daily limit 1. Release Chinook, chum, and sockeye.

**WSR 24-20-021**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed September 20, 2024, 9:19 a.m., effective September 20, 2024, 9:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The office of superintendent of public instruction (OSPI) is adopting emergency rule making in the area of student discipline with revisions that are intended to: (1) Update statutory definitions of discipline that are in alignment with current law; (2) require school boards to establish policies for reporting and notification when classroom exclusions occur; (3) clarify the scope of authority for teachers when administering classroom exclusions; (4) make evident the standards and procedures that educators must follow to maintain an optimal learning environment for all students; (5) promote the involvement of families as integral partners in helping students to be successful; and (6) ensure manageable data and reporting requirements from each level of the system, where applicable (i.e., classroom, school, district, state, etc.). Adopting these rule updates before the beginning of the 2024-25 school year would allow these critical changes involving the health and safety of both students and educators to take effect immediately.

Citation of Rules Affected by this Order: Amending WAC 392-190-048, 392-400-010, 392-400-020, 392-400-025, 392-400-110, 392-400-330, 392-400-335, 392-400-435, 392-400-440, 392-400-445, 392-400-455, 392-400-460, 392-400-510, 392-400-515, 392-400-520, 392-400-525, 392-400-530, 392-400-610, 392-401-020, and 392-401-040.

Statutory Authority for Adoption: RCW 28A.300.046, 28A.600.010, 28A.600.015, 28A.600.020.

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 timing of the COVID-19 pandemic disrupted the planned comprehensive roll-out of revised student discipline rules and professional development for educators at all levels of the K-12 education system. Unclear sections of the rules, coupled with new challenges in student behavior and mental health following the pandemic, require immediate intervention to preserve the K-12 instructional environment as students and educators return to the classroom this fall. OSPI is also replacing the prejudicial term "emergency expulsion" with the term "emergency removal" in the context of student discipline in compliance with legislative mandates under RCW 28A.600.495.

OSPI will soon initiate permanent rule making concerning these clarifications.

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 20, Repealed 0.



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

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

Date Adopted: September 20, 2024.

Chris P. S. Reykdal  
State Superintendent of Public Instruction

### OTS-5253.1

AMENDATORY SECTION (Amending WSR 14-23-072, filed 11/18/14, effective 12/19/14)

**WAC 392-190-048 Access to course offerings—Student discipline and corrective action.** At least annually, each school district and public charter school must review data on corrective and disciplinary actions taken against students within each school disaggregated by sex, race, limited-English proficiency (i.e., English language learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act. This review must include, but is not limited to, short-term suspensions, long-term suspensions, expulsions, and emergency (~~expulsions~~) removals. In reviewing this data, each school district or public charter school must determine whether it has disciplined or applied corrective action to a substantially disproportionate number of students within any of the categories identified in this section. If a school district or public charter school finds that it has disciplined or applied corrective action to a substantially disproportionate number of students who are members of one of the categories identified in this section, the school district or charter school must take prompt action to ensure that the disproportion is not the result of discrimination.

### OTS-5777.3

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-010 Purpose.** The purpose of this chapter is to ensure that school districts in Washington:

(1) Provide a safe and supportive learning environment for all students;

(2) Provide due process to students;

~~((2))~~ (3) Implement culturally responsive discretionary and nondiscretionary discipline policies and procedures that provide opportunity for all students to achieve personal and academic success;

~~((3))~~ (4) Engage school personnel, students, parents, families, and the community in decisions related to the development and implementation of discretionary and nondiscretionary discipline policies and procedures;

~~((4))~~ (5) Ensure fairness and equity in the administration of discretionary and nondiscretionary discipline;

~~((5))~~ (6) Administer discretionary discipline in ways that respond to the needs and strengths of students, support students in meeting behavioral expectations, and keep students in the classroom to the maximum extent possible;

~~((6))~~ (7) Provide educational services that students need to complete their education without disruption; and

~~((7))~~ (8) Facilitate collaboration between school personnel, students, and families regarding nondiscretionary discipline to ensure successful reentry into the classroom following a suspension or expulsion ~~(; and~~

~~(8) Provide a safe and supportive learning environment for all students).~~

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-020 Application.** (1) This chapter establishes the minimum procedural and substantive due process rights of students when they may be subject to discipline in Washington school districts. A school district may establish additional due process protections for students consistent with federal statutes and regulations, state statutes, common law, and rules prescribed by the office of superintendent of public instruction.

(2) This chapter must be construed in a manner consistent with the following laws and rules:

(a) RCW 28A.600.010 through 28A.600.022 and 28A.320.211, regarding the administration of student discipline;

(b) RCW 28A.300.042, regarding the collection, reporting, and disaggregation of student-level discipline data;

(c) Chapter 392-190 WAC, prohibiting unlawful discrimination in Washington public schools, including the requirement under WAC 392-190-048 that school districts annually review disaggregated discipline data to identify and address disproportionality in the administration of discipline on the basis of sex, race, limited-English proficiency (i.e., English learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and Part B of the Individuals with Disabilities Education Act;

(d) WAC 392-172A-05140 through 392-172A-05175, and 34 C.F.R. Part 300.530 through 300.536, regarding the discipline of students with disabilities under the Individuals with Disabilities Education Act; and

(e) ~~((RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior; and~~

~~(f))~~ RCW 28A.415.410 ~~((and 28A.415.420))~~, regarding training to support school personnel in implementing discipline policies and procedures and gaining knowledge and skills in cultural competence.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-025 Definitions.** As used in this chapter the terms:

(1) "Behavioral violation" means a student's behavior that violates a school district's discipline policy adopted under WAC 392-400-110.

(2) "Classroom exclusion" means the exclusion of a student from a classroom (~~(or)~~) and instructional or activity area for a discretionary behavioral violation (~~(s, subject to the requirements in WAC 392-400-330 and 392-400-335. Classroom exclusion does not include actions that result in missed instruction for a brief duration when:~~

~~(a) A teacher or other school personnel attempts other forms of discipline to support the student in meeting behavioral expectations; and~~

~~(b) The student remains under the supervision of the teacher or other school personnel during such brief duration)) that creates a disruption of the educational process in violation of the district disciplinary policies subject to the requirements in WAC 392-400-110.~~

(3) "Corrective action" means disciplinary and nondisciplinary actions taken by a certificated educator. Nondisciplinary actions include evidence-based interventions and support outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations.

(4) "Culturally responsive" has the same meaning as "cultural competency" in RCW 28A.410.270.

~~((4) "Discipline" means any action taken by a school district in response to behavioral violations.))~~

(5) "Discretionary discipline" means a disciplinary action taken by a school district for student behavior that violates rules of student conduct adopted by a school district board of directors under RCW 28A.600.015(6). Discretionary discipline does not include evidence-based interventions and support outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations.

(6) "Disruption of the educational process" means the interruption of classwork, the creation of disorder, or the invasion of the rights of a student or group of students.

~~((6))~~ (7) "Emergency (~~(expulsion)~~) removal" means the removal of a student from school because the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process, subject to the requirements in WAC 392-400-510 through 392-400-530.

~~((7))~~ (8) "Expulsion" means a denial of admission to the student's current school placement in response to a behavioral violation, subject to the requirements in WAC 392-400-430 through 392-400-480.

~~((8))~~ (9) "Length of an academic term" means the total number of school days in a single trimester or semester, as defined by the school board.

~~((9) "Other forms of discipline" means actions used in response to behavioral violations, other than classroom exclusion, suspension, expulsion, or emergency expulsion, which may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.))~~

(10) "Nondiscretionary discipline" means:

(a) Violations of RCW 28A.600.420;

(b) An offense listed in RCW 13.04.155;

(c) Two or more violations of RCW 9A.46.120, 9.41.280, 28A.600.455, 28A.635.020, or 28A.635.060 within a three-year period;  
or

(d) Behavior that adversely impacts the health or safety of other students or educational staff. RCW 28A.600.015.

(11) "Parent" has the same meaning as in WAC 392-172A-01125.

~~((11))~~ (12) "School business day" means any calendar day, except Saturdays, Sundays, or any federal, state, or school holiday, when the office of the superintendent of a school district is open to the public for business.

~~((12))~~ (13) "School board" means the governing board of directors of a local school district.

~~((13))~~ (14) "School day" means any day or partial day that students are in attendance at school for instructional purposes.

~~((14))~~ (15) "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including ~~(classroom exclusions,)~~ expulsions ~~(,)~~ or emergency ~~(expulsions)~~ removals.

(a) "In-school suspension" means a suspension in which a student is excluded from the student's regular educational setting but remains in the student's current school placement for up to ~~(ten)~~ 10 consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(b) "Long-term suspension" means a suspension in which a student is excluded from school for more than ~~(ten)~~ 10 consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(c) "Short-term suspension" means a suspension in which a student is excluded from school for up to ~~(ten)~~ 10 consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-110 Discipline policies and procedures—Development, review, and distribution.** (1) **School district policies and procedures ~~(beginning in the 2019-20 school year)~~.** ~~((Before the commencement of the 2019-20 school year)) Pursuant to RCW 28A.600.010, a school district must adopt ~~(written policies and procedures for supporting students in meeting behavioral expectations and administering discipline in accordance with this chapter)~~ and make available to each pupil, teacher, and parent in the district reasonable written policies and procedures regarding pupil conduct, discipline, and rights, including, but not limited to, classroom exclusions, short-term suspensions, long-term suspensions, emergency removals, and expulsions. The policies and procedures must:~~

(a) Clearly state the types of behaviors for which discretionary and nondiscretionary discipline, including classroom exclusion, suspension, emergency removal, and expulsion, may be administered;

(b) Have a real and substantial relationship to the lawful maintenance and operation of the school district including, but not limited to, the preservation of the health and safety of students and em-

ployees and the preservation of an educational process that is conducive to learning;

(c) Provide for early involvement of parents in efforts to support students in meeting behavioral expectations;

(d) Provide that school personnel make every reasonable attempt to involve parents and students in the resolution of behavioral violations for which discipline may be administered;

~~(e) ((Identify other forms of discipline that school personnel should administer before or instead of administering classroom exclusion, suspension, or expulsion to support students in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035;))~~ Ensure the highest consideration is given to the judgment of qualified certificated educators regarding conditions necessary to maintain the optimum learning atmosphere as outlined in: RCW 28A.410.270, 28A.410.278, 28A.405.100, 28A.410.260, and 28A.415.443;

(f) Recognize that educators create an environment that welcomes all students and families, recognizing that the school belongs to them and the community. School faculty, staff, and administration highlight and center community expertise for learning partnerships. RCW 28A.410.260 and 28A.415.443;

(g) Identify school personnel with the authority to administer classroom exclusions, suspensions, expulsions, and emergency ((expulsions, and other forms of discipline)) removals;

~~((g))~~ (h) Establish appeal and review procedures related to the administration of suspensions, expulsions, and emergency ((expulsions)) removals, consistent with WAC 392-400-430 through 392-400-530;

~~((h))~~ (i) Establish grievance procedures to address parents' or students' grievances related to the administration of ((classroom exclusions and other forms of)) discretionary and nondiscretionary discipline other than suspensions, expulsions, and emergency removals, including discipline that excludes a student from transportation or extra-curricular activity. The procedures must, at a minimum, include an opportunity for the student to share the student's perspective and explanation regarding the behavioral violation;

~~((i))~~ (j) Describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to be followed for the provision of educational services under WAC 392-400-610;

~~((j))~~ (k) Provide for reengagement meetings and plans, consistent with WAC 392-400-710;

~~((k))~~ (l) Provide a process for students who have been suspended or expelled to petition for readmission; and

~~((l))~~ (m) Be consistent with the model policy developed under RCW 28A.345.090.

(2) **Development and review.** A school district must develop and periodically review discretionary and nondiscretionary discipline policies and procedures with the participation of school personnel, students, parents, families, and the community. During the development and review of discretionary and nondiscretionary discipline policies and procedures, the school district must use disaggregated data collected under RCW 28A.300.042 to:

(a) Monitor the impact of the school district's discipline policies, procedures, and practices; and

(b) Update the school district's discretionary and nondiscretionary discipline policies and procedures to improve fairness and equity in the administration of discipline.

(3) **Distribution of policies and procedures.** A school district must make discretionary and nondiscretionary discipline policies and procedures available to families and the community. The school district must annually provide the district's discretionary and nondiscretionary discipline policies and procedures to all district personnel, students, and parents, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964. The school district must ensure district employees and contractors are knowledgeable of the discretionary and nondiscretionary discipline policies and procedures.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-330 Classroom and instructional or activity area exclusions—Conditions and limitations.** (1) **Authority to administer classroom and instructional or activity area exclusions.** Discretionary discipline leading to a classroom exclusion as determined by the school district's written procedures per RCW 28A.600.010 must give the highest consideration to the judgment of qualified certificated educators regarding the conditions necessary to maintain the optimum learning experience.

~~((a) **Teacher authority.** A teacher may exclude a student from the teacher's classroom or instructional or activity area for behavioral violations that disrupt the educational process while the student is under the teacher's immediate supervision, subject to the requirements in this section and WAC 392-400-335.~~

~~(b) **Other school personnel authority.** A school district may authorize other school personnel to exclude a student from a classroom or instructional or activity area for behavioral violations of the district's discipline policy adopted under WAC 392-400-110 or 392-400-225, subject to the requirements in this section and WAC 392-400-335.~~

~~(2) **Other forms of discipline.** The teacher or other school personnel must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations, unless the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process. In administering other forms of discipline, the teacher or other school personnel may consider using best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.~~

~~(3) **Limitations on classroom exclusion.**~~

~~(a)) (2) A teacher may exclude a student from the teacher's individual classroom and instructional or activity area while the student is under the teacher's immediate supervision, subject to the requirements in WAC 392-400-110. Except in emergency circumstances, the teacher first must attempt one or more alternative forms of corrective action. A classroom exclusion does not include actions that result in missed instruction when:~~

(a) A teacher or other school personnel uses evidence-based classroom management practices outlined in RCW 28A.410.270, 28A.405.100, and 28A.410.260 to support the student in meeting behavioral expectations; and

(b) The student remains under the supervision of the teacher or other school personnel.

**(3) Duration of classroom exclusion.**

(a) A classroom exclusion may be administered for all or any portion of the balance of the school day ((in which the student was excluded from the student's classroom or instructional or activity area. When a student is excluded from the student's classroom or instructional or activity area for longer than the balance of the school day, the school district must provide notice and due process for a suspension, expulsion, or emergency expulsion under this chapter)), or up to the following two days, or until the principal or designee and teacher have conferred, whichever occurs first.

(b) ((**Removal from school.** A student may not be removed from school during a classroom exclusion unless the school district provides notice and due process for a suspension, expulsion, or emergency expulsion under this chapter.

(4)) A classroom exclusion that exceeds this time period, and if such students have repeatedly disrupted the learning of other students, may be considered a suspension in accordance with this chapter and must provide for early involvement of parents in attempts to improve the student's behavior.

(4) The procedures shall assure, pursuant to RCW 28A.400.110, that all staff work cooperatively toward consistent enforcement of proper student behavior throughout each school, as well as within each classroom.

(5) **Assignments and tests.** The school district must provide the student an opportunity to make up any assignments and tests missed during the classroom exclusion.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

**WAC 392-400-335 Classroom exclusion—Notice and procedure.**

((Following a classroom exclusion under WAC 392-400-330:

(1) **Notice to principal.** The teacher or other school personnel must report the classroom exclusion, including the behavioral violation that led to the classroom exclusion, to the principal or designee as soon as reasonably possible.

(2) **Notice to parents.** The teacher, principal, or designee must notify the student's parents regarding the classroom exclusion as soon as reasonably possible. The school district must ensure that this notification is in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(3) **Emergency circumstances.** When a teacher or school personnel administers a classroom exclusion on the grounds that the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process:

~~(a) The teacher or other school personnel must immediately notify the principal or designee; and~~

~~(b) The principal or designee must meet with the student as soon as reasonably possible and administer appropriate discipline.)~~ School boards must ensure they have a policy that determines when a teacher or other school personnel shall report a classroom exclusion to a principal, principal designee, and parent. School district policies under this section must ensure:

(1) The teacher communicates and collaborates with students, families, and all educational stakeholders in an ethical and professional manner to promote student learning. WAC 392-400-110.

(2) Regardless of how the notice is provided to the parents, guardians, or families (electronically, face-to-face), the school district must ensure that this notification is in a language that the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-435 Short-term and in-school suspensions—Additional conditions and limitations.** ~~(1) ((Other forms of discipline. Before administering a short-term or in-school suspension, a school district must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.~~

~~(2))~~ **Length of exclusion.** A school district may not administer a short-term or in-school suspension beyond the school year in which the behavioral violation occurred.

~~((3))~~ **(2) Grade-level limitations.**

(a) A school district may not administer a short-term or in-school suspension for a student in kindergarten through fourth grade for more than ~~((ten))~~ 10 cumulative school days during any academic term; and

(b) A school district may not administer a short-term or in-school suspension for a student in grades five through ~~((twelve))~~ 12:

(i) For more than ~~((fifteen))~~ 15 cumulative school days during any single semester; or

(ii) For more than ~~((ten))~~ 10 cumulative school days during any single trimester.

~~((4))~~ **(3) School personnel.** When administering an in-school suspension, a school district must ensure school personnel:

(a) Are physically in the same location as the student to provide direct supervision during the duration of the in-school suspension; and

(b) Are accessible to offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes as required under WAC 392-400-610.



AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-440 Long-term suspensions—Additional conditions and limitations.** (1) ~~((Other forms of discipline. Before administering a long-term suspension, a school district must consider one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.~~

~~(2))~~ **Limitations on long-term suspensions.** A school district may only administer a long-term suspension:

(a) For behavioral violations under RCW 28A.600.015 (6) (a) through (d); and

(b) After the school district has determined that, if the student returned to school before completing a long-term suspension:

(i) The student would pose an imminent danger to students or school personnel; or

(ii) The student would pose an imminent threat of material and substantial disruption of the educational process.

~~((3))~~ **(2) Length of exclusion.**

(a) A long-term suspension may not exceed the length of an academic term.

(b) A school district may not administer a long-term suspension beyond the school year in which the behavioral violation occurred.

~~((4))~~ **(3) Grade-level limitations.** Except for a violation of WAC 392-400-820, a school district may not administer a long-term suspension for any student in kindergarten through fourth grade.

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-445 Expulsions—Additional conditions and limitations.** (1) ~~((Other forms of discipline. Before administering an expulsion, a school district must consider one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.~~

~~(2))~~ **Limitations on expulsions.** A school district may only administer an expulsion:

(a) For behavioral violations under RCW 28A.600.015 (6) (a) through (d); and

(b) After the school district has determined that if the student returned to school before completing an expulsion, the student would pose an imminent danger to students or school personnel.

~~((3))~~ **(2) Length of exclusion.** An expulsion may not exceed the length of an academic term, unless the principal or designee petitions the school district superintendent for extension of an expulsion under WAC 392-400-480, and the petition is granted.

~~((4))~~ **(3) Grade-level limitations.** Except for violations of WAC 392-400-820, a school district may not administer an expulsion for any student in kindergarten through fourth grade.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-455 Suspensions and expulsions—Notice to student and parents.** (1) **Initial notice.** Before administering any suspension or expulsion, a school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the behavioral violation.

(2) **Written notice.** No later than one school business day following the initial hearing with the student in WAC 392-400-450, a school district must provide written notice of the suspension or expulsion to the student and parents in person, by mail, or by email. The written notice must include:

(a) A description of the student's behavior and how the behavior violated the school district's policy adopted under WAC 392-400-110;

(b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;

(c) ~~((The other forms of discipline that the school district considered or attempted, and))~~ An explanation of the district's decision to administer the suspension or expulsion;

(d) The opportunity to receive educational services during the suspension or expulsion under WAC 392-400-610;

(e) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-460;

(f) The student's and parents' right to appeal the suspension or expulsion under WAC 392-400-465, including where and to whom the appeal must be requested; and

(g) For a long-term suspension or expulsion, the opportunity for the student and parents to participate in a reengagement meeting under WAC 392-400-710.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-460 Suspensions and expulsions—Optional conference with principal.** (1) **Requesting a conference.** If the student or parents disagree with the school district's decision to suspend or expel the student, the student or parents may request an informal conference with the principal or designee to resolve the disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide the student and parents the opportunity to:

(a) Share the student's perspective and explanation regarding the behavioral violation; and

(b) Confer with the principal or designee and school personnel involved in the incident that led to the suspension or expulsion (~~and~~

~~(c) Discuss other forms of discipline that may be administered).~~

(4) **Language assistance.** The school district must ensure the conference is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the suspension or expulsion under WAC 392-400-465, participate in a reengagement meeting under WAC 392-400-710, or petition for readmission.

### EMERGENCY ((EXPULSIONS)) REMOVALS

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-510 Emergency ((expulsions)) removals—Conditions and limitations.** A school district may immediately remove a student from the student's current school placement, subject to the following requirements:

(1) **Sufficient cause.** The school district must have sufficient cause to believe that the student's presence poses:

(a) An immediate and continuing danger to other students or school personnel; or

(b) An immediate and continuing threat of material and substantial disruption of the educational process.

(2) **Determination of immediate and continuing threat of disruption.** For purposes of this section, an immediate and continuing threat of material and substantial disruption of the educational process means:

~~((a))~~ The student's behavior results in an extreme disruption of the educational process that creates a substantial barrier to learning for other students across the school day (~~and~~

~~(b) School personnel have exhausted reasonable attempts at administering other forms of discipline to support the student in meeting behavioral expectations).~~

(3) **Time limit.** An emergency ((expulsion)) removal may not exceed ~~((ten))~~ 10 consecutive school days. An emergency ((expulsion)) removal must end or be converted to another form of discipline within ~~((ten))~~ 10 school days from the start of the emergency ((expulsion)) removal.

(4) **Conversion.** If a school district converts an emergency ((expulsion)) removal to a suspension or expulsion, the district must:

(a) Apply any days that the student was emergency ((expelled)) removed before the conversion to the total length of the suspension or expulsion; and

(b) Provide the student and parents notice and due process under WAC 392-400-430 through 392-400-480.

(5) **Reporting.** All emergency (~~(expulsions)~~) removals, including the reason the student's presence poses an immediate and continuing danger to other students or school personnel, must be reported to the district superintendent or designee within (~~(twenty-four)~~) 24 hours after the start of the emergency (~~(expulsion)~~) removal.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-515 Emergency (~~(expulsions)~~) removals—Notice to student and parents.** (1) **Initial notice.** After an emergency (~~(expulsion)~~) removal, the school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the reason the district believes the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process.

(2) **Written notice.** Within (~~(twenty-four)~~) 24 hours after an emergency (~~(expulsion)~~) removal, a school district must provide written notice of the emergency (~~(expulsion)~~) removal to the student and parents in person, by mail, or by email. The written notice must include:

(a) The reason the student's presence poses an immediate and continuing danger to students or school personnel, or poses an immediate and continuing threat of material and substantial disruption of the educational process;

(b) The duration and conditions of the emergency (~~(expulsion)~~) removal, including the dates on which the emergency (~~(expulsion)~~) removal will begin and end;

(c) The opportunity to receive educational services during the emergency (~~(expulsion)~~) removal under WAC 392-400-610;

(d) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-520; and

(e) The student's and parents' right to appeal the emergency (~~(expulsion)~~) removal under WAC 392-400-525, including where and to whom the appeal must be requested.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 7/1/19)

**WAC 392-400-520 Emergency (~~(expulsions)~~) removals—Optional conference with principal.** (1) **Requesting a conference.** If a student or the parents disagree with the school district's decision to administer an emergency (~~(expulsion)~~) removal, the student or parents may request an informal conference with the principal or designee to resolve the

disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide students and parents the opportunity to share the student's perspective and explanation regarding the events that led to the emergency (~~(expulsion)~~) removal.

(4) **Language assistance.** The school district must ensure the conference is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the emergency (~~(expulsion)~~) removal under WAC 392-400-525.

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-525 Emergency (~~(expulsions)~~) removals—Appeal.** (1) **Requesting an appeal.** A student or the parents may appeal an emergency (~~(expulsion)~~) removal to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal an emergency (~~(expulsion)~~) removal. Appeal time limits must be no less than three school business days from the date the school district provides the written notice of the emergency (~~(expulsion)~~) removal.

(3) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee must provide the student and parents written notice in person, by mail, or by email of:

- (a) The time, date, and location of the appeal hearing;
- (b) The name(s) of the official(s) presiding over the appeal;
- (c) The student's and parents' rights to inspect the student's education records under subsection (6) of this section;
- (d) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under subsection (6) of this section; and
- (e) The student's and parents' rights under subsection (7) of this section.

(4) **Appeal hearing.** The school district must hold an appeal hearing as soon as reasonably possible, but no later than two school business days after the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s).** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to emergency (~~(expel)~~) remove the student and must be knowledgeable about the rules in this

chapter and of the school district's discipline policies and procedures.

(6) **Evidence and witnesses.**

(a) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(b) Upon request, the student and parents may review the student's education records. The school district must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(c) If a witness for the school district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

(i) The district made a reasonable effort to produce the witness; and

(ii) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(7) **Student and parent rights.** The student and parents have the right to:

(a) Be represented by legal counsel;

(b) Question witnesses;

(c) Share the student's perspective and provide explanation regarding the events that led to the emergency (~~(expulsion)~~) removal; and

(d) Introduce relevant documentary, physical, or testimonial evidence.

(8) **Recording of hearing.** The appeal hearing must be recorded by analog, digital, or other type of recording device. The school district must provide the recording to the student or parents upon request.

(9) **Appeal decision.** The school district must provide a written decision to the student and parents in person, by mail, or by email within one school business day after the appeal hearing. The written decision must include:

(a) The findings of fact;

(b) A determination whether the student's presence continues to pose:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process.

(c) Whether the school district will end the emergency (~~(expulsion)~~) removal or convert the emergency (~~(expulsion)~~) removal to a suspension or expulsion. If the school district converts the emergency (~~(expulsion)~~) removal to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-430 through 392-400-480; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-530, including where and to whom to make the request.

(10) **Language assistance.** The school district must ensure that any appeal proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language

assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

AMENDATORY SECTION (Amending WSR 19-12-050, filed 5/31/19, effective 7/1/19)

**WAC 392-400-530 Emergency (~~(expulsions)~~) removals—Review and reconsideration.** (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-525. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than five school business days from the date the school district provided the written appeal decision to the student and parents under WAC 392-400-525.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the events that led to the emergency (~~(expulsion)~~) removal, any records from the appeal under WAC 392-400-525, relevant state law, and the district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The decision of the school board or discipline appeal council must be made only by board or council members who were not involved in the events that led to the emergency (~~(expulsion)~~) removal, the decision to emergency (~~(expel)~~) remove the student, or the appeal decision under WAC 392-400-525. If the discipline appeal council presided over the appeal under WAC 392-400-525, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within five school business days after receiving the request for review and reconsideration. The written decision must identify:

(a) Whether the school board or discipline appeal council affirms or reverses the school district's decision that the student's presence posed:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process.

(b) If the emergency (~~(expulsion)~~) removal has not yet ended or been converted, whether the school district will end the emergency (~~(expulsion)~~) removal or convert the emergency (~~(expulsion)~~) removal to a suspension or expulsion. If the school district converts the emergency (~~(expulsion)~~) removal to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-430 through 392-400-480.

(5) **Language assistance.** The school district must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

AMENDATORY SECTION (Amending WSR 18-16-081, filed 7/30/18, effective 8/31/18)

- WAC 392-400-610 Educational services during suspension, expulsion, or emergency (~~expulsion~~) removal.** (1) **Educational services.**
- (a) A school district may not suspend the provision of educational services to a student in response to behavioral violations.
- (b) During the suspension, expulsion, or emergency (~~expulsion~~) removal of a student, a school district must provide the student the opportunity to receive educational services. The educational services must enable the student to:
- (i) Continue to participate in the general education curriculum;
- (ii) Meet the educational standards established within the district; and
- (iii) Complete subject, grade-level, and graduation requirements.
- (c) When providing a student the opportunity to receive educational services under this section, the school district must consider:
- (i) Meaningful input from the student, parents, and the student's teachers;
- (ii) Whether the student's regular educational services include English language development services, special education, accommodations and related services under Section 504 of the Rehabilitation Act of 1973, or supplemental services designed to support the student's academic achievement; and
- (iii) Access to any necessary technology, transportation, or resources the student needs to participate fully in the educational services.
- (d) A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.
- (2) **Notice.** As soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. The school district must provide the written notice in person, by mail, or by email. The notice must include:
- (a) A description of the educational services that will be provided; and
- (b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section.
- (3) **Exclusions for up to five days.** For students subject to suspension or emergency (~~expulsion~~) removal for up to five consecutive school days, a school district must provide at least the following:
- (a) Course work, including any assigned homework, from all of the student's regular subjects or classes;



(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes; and

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency (~~expulsion~~) removal.

(4) **Exclusions for six to (~~ten~~) 10 days.** For students subject to suspension or emergency (~~expulsion~~) removal for six to (~~ten~~) 10 consecutive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. School personnel must make a reasonable attempt to contact the student or parents within three school business days following the start of the suspension or emergency (~~expulsion~~) removal and periodically thereafter until the suspension or emergency (~~expulsion~~) removal ends to:

(i) Coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with assignments and course work for all of the student's regular subjects or classes; and

(ii) Communicate with the student, parents, and the student's teacher(s) about the student's academic progress.

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency (~~expulsion~~) removal.

(5) **Long-term suspensions and expulsions.** For students subject to expulsion or suspension for more than (~~ten~~) 10 consecutive school days, a school district must provide educational services in accordance with WAC 392-121-107.

(6) **Language assistance.** The school district must ensure that notices and communications required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

## OTS-5254.1

AMENDATORY SECTION (Amending WSR 22-13-056, filed 6/8/22, effective 8/1/22)

**WAC 392-401-020 Excused absences.** (1) Absences due to the following reasons must be excused:

(a) Physical health or mental health symptoms, illness, health condition or medical appointment for the student or person for whom the student is legally responsible. Examples of symptoms, illness, health conditions, or medical appointments include, but are not limited to, medical, counseling, mental health wellness, dental, optometry, pregnancy, and behavioral health treatment (which can include in-patient or out-patient treatment for chemical dependency or mental health);

- (b) Family emergency including, but not limited to, a death or illness in the family;
  - (c) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;
  - (d) Court, judicial proceeding, court-ordered activity, or jury service;
  - (e) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;
  - (f) State-recognized search and rescue activities consistent with RCW 28A.225.055;
  - (g) Absence directly related to the student's homeless or foster care/dependency status;
  - (h) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;
  - (i) Absences due to suspensions, expulsions or emergency (~~expulsions~~) removals imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;
  - (j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;
  - (k) Absences due to a student's migrant status;
  - (l) Absences due to an approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth; and
  - (m) Absences due to the student's lack of necessary instructional tools, including internet access or connectivity.
- (2) In the event of emergency school facility closure due to COVID-19, other communicable disease outbreak, natural disaster, or other event when districts are required to provide synchronous and asynchronous instruction, absences due to the following reasons must be excused:
- (a) Absences related to the student's illness, health condition, or medical appointments due to COVID-19 or other communicable disease;
  - (b) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19, other communicable disease, or other emergency health condition related to school facility closures;
  - (c) Absences related to the student's family obligations during regularly scheduled school hours that are temporarily necessary because of school facility closures, until other arrangements can be made; and
  - (d) Absences due to the student's parent's work schedule or other obligations during regularly scheduled school hours, until other arrangements can be made.
- (3) Districts may define additional categories or criteria for excused absences. A school principal or designee has the authority to determine if an absence meets the criteria in subsections (1) and (2) of this section and school district policy for an excused absence.

AMENDATORY SECTION (Amending WSR 21-17-088, filed 8/13/21, effective 9/13/21)

**WAC 392-401-040 Student absences—General requirements.** (1)

Students shall not be considered absent if:

- (a) The student has been suspended, expelled, or emergency (~~ex-pelled~~) removed pursuant to chapter 392-400 WAC;
  - (b) Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and
  - (c) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.
- (2) A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.

**WSR 24-20-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-199—Filed September 20, 2024, 9:25 a.m., effective September 20, 2024, 9:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Removes trout daily limits and extends season; closes other game fish in West Medical Lake.

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

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

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

Reasons for this Finding: This emergency rule is necessary to provide additional angling and harvest opportunity for trout in West Medical Lake prior to the scheduled treatment with the piscicide rotenone. 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: September 20, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-05000Y Freshwater exceptions to statewide rules—Eastside.** Effective immediately, through October 13, 2024, the following provisions of WAC 220-312-050, regarding gamefish seasons, and trout daily limits for West Medical Lake shall be modified as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

**Medical Lake, West (Spokane County):**

- (a) Trout: No daily limit.
- (b) Other game fish: Closed.

WSR 24-20-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-200—Filed September 20, 2024, 9:29 a.m., effective September 21, 2024]

Effective Date of Rule: September 21, 2024.

Purpose: The purpose of this emergency rule is to modify commercial gillnet openings in Puget Sound Salmon Management and Catch Reporting Area 6D.

Citation of Rules Affected by this Order: Amending WAC 220-354-160.

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

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

Reasons for this Finding: This rule is necessary to modify gillnet openings in Puget Sound Salmon Management and Catch Reporting Area 6D scheduled during the 2024 North of Falcon seasons setting process. Based on comanager agreement, the schedule will be modified as described. 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: September 20, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000S Puget Sound salmon—Gillnet—Open periods.

Effective September 21 through September 27, 2024, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Puget Sound Salmon Management and Catch Reporting area 6D shall be modified as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Table with 5 columns: Area(s), Date(s), Open/Closed, Daily open period, Minimum mesh size. Row 1: 6D, 9/21, 9/22, Open, 7 am - 7 pm, 5"

Area(s)	Date(s)	Open/Closed	Daily open period	Minimum mesh size
6D	9/26, 9/27	Closed	7 am - 7 pm	5"

## WSR 24-20-024

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

[Filed September 20, 2024, 12:11 p.m., effective September 20, 2024, 12:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Establishing a directory to help mental health counselor, marriage and family therapist, and social worker associates find supervisors and setting supervision standards.

The department of health (department) is continuing emergency rules that establish new WAC 246-809-020, 246-809-070, 246-809-071, and 246-809-072 in chapter 246-809 WAC, Licensure for mental health counselors, marriage and family therapists, and social workers.

These emergency rules implement RCW 18.225.180. These emergency rules: (1) Establish a new program to facilitate placement of associates with qualified supervisors (referred to as the "directory"), (2) set requirements for individual providers and facilities to be listed in the directory, and (3) set minimum standards for supervision of associates.

These rules continue without change the emergency rules filed on September 28, 2023, under WSR 23-20-055, and continued on January 26, 2024, under WSR 24-04-011, and May 22, 2024, under WSR 24-11-153. The department will continue these emergency rules until the directory and supervision standards are adopted as permanent rules. The department filed the preproposal statement of inquiry (CR-101) to begin the permanent rule making on December 27, 2023, under WSR 24-02-038.

Citation of Rules Affected by this Order: New WAC 246-809-020, 246-809-070, 246-809-071, and 246-809-072.

Statutory Authority for Adoption: RCW 18.225.040; and 2SHB 1724 (chapter 425, Laws of 2023), codified as RCW 18.225.180.

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

Reasons for this Finding: This emergency rule is necessary to support the Washington state behavioral health workforce, which is increasingly strained. By establishing and continuing the directory and supervision standards through emergency rule, the department will facilitate associates finding supervisors that can support their professional development, completing supervised experience requirements and becoming licensed as independent providers. Additionally, the statutory authority for the directory was designated by the legislature as necessary for the immediate preservation of the public health, safety, or general welfare. Pursuant to section 33 of 2SHB 1724, the department is implementing the directory immediately.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, 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 4, Amended 0, Repealed 0.

Date Adopted: September 19, 2024.

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

#### OTS-4907.4

#### NEW SECTION

**WAC 246-809-020 Mental health counselor, marriage and family therapist, and social worker supervision standards.** (1) For any mental health counselor, marriage and family therapist, or social worker licensure candidate (licensure candidate), supervision must include:

- (a) Clearly communicating the nature of the supervisory relationship to the public, other professionals, and all clients served, consistent with the requirements of WAC 246-809-710(2);
- (b) Regular supervision, including meeting at least one hour for every 80 hours of the licensure candidate's clinical practice time; and
- (c) Discussing the following topics:
  - (i) Services provided by the licensure candidate;
  - (ii) Caseload and treatment plans of the licensure candidate;
  - (iii) Theory and practice of the work being conducted;
  - (iv) Relevant Washington laws and rules;
  - (v) Standards of practice;
  - (vi) Coordination of work with other professionals and parties; and
  - (vii) Relevant professional literature and research.

(2) The supervisor must:

- (a) Qualify as an approved supervisor or equally qualified licensed mental health practitioner under this chapter and, in the event they no longer qualify, immediately notify licensure candidates under their supervision;
- (b) Have expertise and knowledge necessary to directly supervise the licensure candidate's work;
- (c) Assure that the licensure candidate has sufficient and appropriate education, background, and preparation for the work they will be doing;
- (d) Provide sufficient training and supervision to the licensure candidate to assure the health and safety of clients;
- (e) Maintain documentation of work done and supervision provided; and
- (f) Provide accurate and objective letters of reference or other documentation of the licensure candidate's work at the licensure candidate's request.

(3) A licensure candidate must:

- (a) Confirm that a potential supervisor meets the approved supervisor requirements for the licensure candidate's intended profession;



(b) Maintain documentation of work done and supervision provided; and

(c) Periodically submit to the department documentation of supervision hours completed.

(4) A candidate seeking licensure as a licensed marriage and family therapist or licensed social worker must ensure that any supervision hours under a licensed mental health counselor or other equally qualified licensed mental health practitioner comply with the requirements in WAC 246-809-130 or 246-809-330, as applicable.

#### NEW SECTION

**WAC 246-809-070 Licensed counselor supervisor directory.** (1) Effective October 1, 2023, the licensed counselor supervisor directory (directory) is established.

(2) The purpose of the directory is to facilitate placement of associates seeking supervisors with eligible providers or facilities for postgraduate supervision as required by WAC 246-809-130, 246-809-230, and 246-809-330.

(3) The directory shall not be made available for any commercial purpose consistent with RCW 42.56.070(8).

(4) A provider or facility shall be removed from the directory:

(a) When a department audit shows the provider or facility no longer meets directory requirements as established in WAC 246-809-071 or 246-809-072;

(b) Upon the request of the provider or facility; or

(c) For other good cause as determined by the department.

(5) Participation in the directory is not required to be a supervisor under WAC 246-809-134, 246-809-234, or 246-809-334.

#### NEW SECTION

**WAC 246-809-071 Individual licensed counselor supervisor directory application.** To be listed in the licensed counselor supervisor directory, an individual provider shall:

(1) Hold a license or retired active license that permits treatment of individuals in the state of Washington without restrictions, in an eligible profession, including:

(a) Mental health counselor, marriage and family therapist, or social worker under chapter 18.225 RCW;

(b) Psychologist under chapter 18.83 RCW;

(c) Physician practicing as a psychiatrist under chapter 18.71 RCW; or

(d) Psychiatric nurse practitioner under chapter 18.79 RCW.

(2) Submit a completed application on forms provided by the department;

(3) Submit verification of meeting the following education requirements:

(a) A minimum of 15 clock hours of training in clinical supervision obtained through:

(i) A supervision course;

(ii) Continuing education credits on supervision;

(iii) Supervision of supervision; or

- (iv) Any combination of these; and
- (b) Twenty-five hours of experience in supervision of clinical practice; and
- (4) Meet any other qualifications as required by law.

NEW SECTION

**WAC 246-809-072 Facility licensed counselor supervisor directory application.** To apply to be listed in the licensed counselor supervisor directory, a facility or agency must:

- (1) Provide mental health, substance use disorder, or co-occurring disorder services to persons with a behavioral health disorder;
- (2) Operate under the authority of one or more of the following:
  - (a) Washington state departments and agencies listed in the government agency directory available on the state of Washington website;
  - (b) Federally recognized Indian tribes located within the state;
  - (c) Counties as listed in chapter 36.04 RCW;
  - (d) Community and technical colleges governed by the Washington state board for community and technical colleges;
  - (e) Colleges and universities governed by the Washington state higher education coordinating board;
  - (f) Hospitals licensed under chapter 70.41 RCW;
  - (g) Home health care agencies, home care agencies, and hospice care agencies licensed under chapter 70.127 RCW;
  - (h) Agencies and facilities licensed or certified under chapter 71.05 or 71.24 RCW; or
  - (i) Psychiatric hospitals, residential treatment facilities, and hospitals licensed under chapter 71.12 RCW;
- (3) Submit a completed application on forms provided by the department; and
- (4) Submit verification that at least one individual responsible for providing supervision to associates at the facility meets requirements in WAC 246-809-071.

**WSR 24-20-026**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-195—Filed September 20, 2024, 1:24 p.m., effective September 23, 2024]

Effective Date of Rule: September 23, 2024.

Purpose: The purpose of this emergency rule is to close recreational fishing in Hoh River and South Fork Hoh River, including their tributaries.

Citation of Rules Affected by this Order: 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 emergency rule is necessary to close recreational fishing seasons for the Hoh River, including the South Fork, including their tributaries. Low flows have resulted in coho and Chinook holding in the lower river and not moving upstream to spawning grounds. Returning salmon abundance will be monitored and fishing may be reopened as conditions change. 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: September 20, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-02000L Freshwater exceptions to statewide rules—Coast.** Effective September 23, 2024, until further notice, provisions of WAC 220-312-020 regarding fishing seasons for the Hoh River (Jefferson Co.), Hoh River, South Fork (Jefferson Co.), and their tributaries, 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) Hoh River (Jefferson Co.):** From the Olympic National Park boundary near the mouth upstream to the Olympic National Park boundary below mouth of South Fork Hoh River, including all tributaries:

All species: Closed Waters

**(2) Hoh River, South Fork (Jefferson Co.):** Outside the Olympic National Park Boundary, including all tributaries:

All species: Closed Waters

**WSR 24-20-045**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-205—Filed September 24, 2024, 4:34 p.m., effective September 25, 2024]

Effective Date of Rule: September 25, 2024.

Purpose: Amends fishing rules for Drano Lake.

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

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

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

Reasons for this Finding: Summer steelhead fisheries for 2024 remained closed in Drano Lake due to low preseason forecasts and the need to limit Endangered Species Act (ESA)-listed steelhead impacts in nontreaty fisheries. The estimated returns of A and B-index summer steelhead were recently increased from preseason forecasts. Due to the increased return sizes, sufficient fishery impacts are available to reopen hatchery steelhead retention, while also meeting conservation objectives for ESA-listed steelhead stocks. 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: September 24, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-03000Y Freshwater exceptions to statewide rules—Southwest.** Effective September 25 through October 31, 2024, provisions of WAC 220-312-030 regarding fishing seasons for Drano Lake shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

**Drano Lake:** Salmon and hatchery steelhead daily limit is 6 fish, of which 1 may be an adult salmon or hatchery steelhead. Salmon minimum size: 12 inches.

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

**WSR 24-20-046**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-203—Filed September 24, 2024, 5:17 p.m., effective September 26, 2024]

Effective Date of Rule: September 26, 2024.

Purpose: Amends recreational fishing rules for the Stillaguamish River.

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

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

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

Reasons for this Finding: Catch of coho in the marine area adjacent to the Stillaguamish greatly exceeded preseason expectations. While early indicators are that coho returns to river systems neighboring the Stillaguamish are strong, it is too early to assess abundance returning to the Stillaguamish. A reduction to the daily limit for the recreational fishery will allow the fishery to continue prior to having in-season indicators of the number of coho returning to the river, while minimizing the risk of not meeting conservation objectives for Stillaguamish coho. 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: September 24, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000W Freshwater exceptions to statewide rules—Puget Sound.** Effective September 26, 2024, until further notice, provisions of WAC 220-312-040 regarding salmon fishing seasons for the Stillaguamish River shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

**Stillaguamish River (Snohomish Co.)** From Marine Drive (south of Stanwood) upstream to forks.

**Daily limit:** One salmon, release Chinook and chum.



**WSR 24-20-050**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-202—Filed September 25, 2024, 9:48 a.m., effective October 1, 2024]

Effective Date of Rule: October 1, 2024.

Purpose: The purpose of this emergency rule is to extend gamefish seasons in Blue, Deep, and Park lakes of Grant County.

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

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

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

Reasons for this Finding: This emergency rule is necessary to extend gamefish seasons through the end of October for Blue Lake, Deep Lake, and Park Lake in Grant County. This rule is interim until permanent rules take effect.

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

Number of Sections Adopted at the Request of a 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: September 25, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-05000Z Freshwater exceptions to statewide rules—Eastside.** Effective October 1 through October 31, 2024, the following provisions of WAC 220-312-050, regarding gamefish seasons for Blue Lake, Deep Lake, and Park Lake in Grant County shall be modified as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

- (1) **Blue Lake (Grant County):** Gamefish open.
- (2) **Deep Lake (Grant County):** Gamefish open.
- (3) **Park Lake (Grant County):** Gamefish open.

**WSR 24-20-056**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-207—Filed September 25, 2024, 3:19 p.m., effective September 25, 2024, 3:19 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

Reasons for this Finding: This rule sets the 2024 Columbia River treaty fall season commercial fisheries for nontreaty buyers. This rule is consistent with actions of the Columbia River Compact on July 18, August 14, September 4, September 10, September 18, and September 25, 2024. 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 ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at the Request of a 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: September 25, 2024.

Amy H. Windrope  
for Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000J 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 1F, 1G, 1H (Zone 6)

(a) Season: Immediately through 6:00 PM September 28

6:00 AM September 30 through 6:00 PM October 4

6:00 AM October 7 through 6:00 PM October 11

(b) Gear: Set and Drift Gill nets with an 8-inch minimum mesh size through September 28. Effective September 30 through October 11, no 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 may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard sanctuaries applicable to gillnet gear. The small Spring Creek Hatchery sanctuary (150-feet around the hatchery ladder) is in place effective immediately through October 4.

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

(a) Season: Immediately, until further notice.

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

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

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

(3) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: Immediately, until further notice. Only during days and times opened under tribal rule.

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

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

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

(a) Season: Immediately, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

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

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

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

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

**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 immediately:

WAC 220-359-02000I Columbia River salmon seasons above Bonneville Dam. (24-193)

**WSR 24-20-057**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-208—Filed September 25, 2024, 3:23 p.m., effective September 25, 2024, 3:23 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule sets an additional nine periods for the late fall nontreaty commercial gill net fishery upstream of the Lewis River confluence. These fisheries are consistent with the 2024 non-treaty fall fisheries plan that was developed in conjunction with the annual North of Falcon management process, the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with Compact Action of July 18, August 14, September 4, September 10, September 18, and September 25, 2024. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

Number of Sections Adopted at the Request of a 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: September 25, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000J Columbia River seasons below Bonneville.**

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220 335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**(1) Mainstem Gillnet:**

Open Dates	Open Days	Open Time	Open Duration
September 26 - September 27	Thursday (night)	8:00 pm - 6:00 am	10 hrs
September 29 - October 18	Sunday, Tuesday, Thursday (nights)	7:00 pm - 7:00 am	12 hrs

(a) **Area:** Catch Reporting Areas 1E and 1D (Zones 4-5). The deadline at the lower end of Area 1E (Zone 4) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy River.

(b) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. 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. Lighted buoys required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

**(2) Emerging Commercial Fishery - Mainstem Seine:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday - Friday	6:00 am - 5:00 pm	11 hrs

(a) **Area:** Catch Reporting Areas 1A, 1B, and 1C (Zones 1-3). The deadline at the upper end of Area 1C (Zone 3) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Elokomina-B, Cowlitz, Kalama-B, Lewis-B and Select Area commercial fishing sites.

(b) **Gear:** Beach seines or purse seines only. Only one seine net per primary vessel. Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure). Net material to consist of 3-strand nylon; twine size ≥#12. Seines may include a bunt of 1.0-2.0 inch knotless mesh. Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet). Seine and lead lines may not be connected. Lead nets must be retrieved daily. No restrictions on corkline, leadline or use of stringers and slackers. A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline. Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net. Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size ≥#12, ≤3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size ≥14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

(c) **Allowable Possession and Sales:** Subject to IFQs as defined on individual permits. Except as noted below, allowable sales limited to adipose fin-clipped Chinook, adipose fin-clipped Coho, sockeye, and pink salmon and shad. All legal adult Chinook and legal adult Coho caught must be kept and sold. Adult salmon defined in WAC 220 300-010. Retained Chinook and Coho must have a healed scar at the location of the adipose-clipped fin.

(d) **Handling of Catch:** Hand sorting or use of a knotless dip net is required when sorting fish. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

(e) **Sort time not to exceed 75 minutes:**

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.

(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(f) **Observer Program:** Agency observers must be present during all fishing operations.

**(3) Mainstem Tangle Net:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Mondays, Tuesdays, Wednesdays, Thursdays	4:00 am - 10:00 pm	18 hrs
September 20 - October 25	Fridays	4:00 am - 6:00 pm	14 hrs

(a) **Area:** SMCRA 1A ,1B, and 1C. Upper deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries include Elokomina-A, Cowlitz River, Kalama-A and Lewis-A.

(b) **Gear:** Drift nets only. Maximum mesh size is 3.75 inches. Un-slackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(c) **Allowable Sales:** Salmon (except chum), and shad; all coho must be adipose fin-clipped.

(d) **Regulations:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

(e) **Soak times,** defined as the time elapsed from when the first of the net web is deployed into the water until the web is fully retrieved from the water, must not exceed 30 minutes.

(f) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(g) **Measuring mesh size:** Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(h) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(i) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A prop-



erly 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.

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

(k) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

**(4) Tongue Point/South Channel Select Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be on-board.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

**(5) Blind Slough/Knappa Slough Select Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 10:00 am	16 hrs

(a) **Area:** The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge. The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

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

(c) **Allowable Sales:** Salmon (except Chum) and shad.

**(6) Deep River Select Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 11	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 14 - October 31	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 4 - November 28	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

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

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

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

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(7) **24-hour quick reporting** is in effect for Washington buyers WAC 220-352-315. Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

(8) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

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

#### REPEALER

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

WAC 220-358-03000I Columbia River seasons below  
Bonnevillle. (24-208)

**WSR 24-20-060**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-206—Filed September 25, 2024, 4:04 p.m., effective September 26, 2024]

Effective Date of Rule: September 26, 2024.

Purpose: This emergency rule extends Chinook retention seasons in the Columbia River from Buoy 10 to the Highway 395 Bridge at Pasco.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000U; and amending WAC 220-312-060.

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

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

Reasons for this Finding: The Columbia River technical advisory committee (TAC) recently updated the upriver Chinook return to the Columbia River mouth. Current in-season catch and stock composition projections indicate that sufficient Chinook Endangered Species Act (ESA) impacts remain available which allows for additional Chinook retention in these areas. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowable ESA impact rate and per Washington Fish and Wildlife Policy C-3630. This rule conforms Washington state rules with Oregon state rules and is consistent with Compact Action on September 10, September 18, and September 25, 2024.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

There is insufficient time to promulgate 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: September 25, 2024.

Amy H. Windrope  
Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River.** Effective September 26 through October 31, 2024, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a true north-south line through Buoy 10 upstream to Highway 395 Bridge at Pasco, shall be modified during the dates listed and as described below. All year-round Closed Waters areas remain in effect. Other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) From a true north-south line through Buoy 10 upstream to a line from Rocky Point on the Washington Bank through red buoy 44 to red navigation marker 2 at Tongue Point on the Oregon bank.**

(a) Effective immediately, through September 30, 2024: Salmon and steelhead: Daily limit 3 including no more than 1 Chinook. Chinook minimum size 24 inches. Coho minimum size 16 inches. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective October 1 through October 13, 2024: Salmon and steelhead. Daily limit 6. Up to 3 adult salmon including no more than 1 Chinook. Release all salmon and steelhead other than Chinook and hatchery coho.

(c) Effective October 14 through October 31, 2024: Salmon and steelhead: Daily limit 6 including no more than 3 adults. Release all salmon and steelhead other than hatchery coho.

**(2) From a line from Rocky Point on the Washington Bank through red buoy 44 to red navigation marker 2 at Tongue Point on the Oregon bank upstream to a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank:**

(a) Effective immediately through October 13, 2024: Salmon and steelhead: Daily limit 6. Up to 3 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective October 14 through October 31, 2024: Salmon and steelhead: Daily limit 6 including no more than 3 adults. Release all salmon and steelhead other than hatchery coho.

**(3) From a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank upstream to a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line):**

Effective immediately through Oct 13, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

**(4) From a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line) upstream to a point 600 feet below the fish ladder at the new Bonneville Dam Powerhouse:**

Effective immediately through October 13, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

**(5) From Bonneville Dam upstream to the Hood River Bridge:**

Effective immediately through October 13, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho. Anti-snagging rule in effect. Only fish hooked inside the mouth may be retained.

**(6) From Hood River Bridge upstream to the Highway 395 Bridge at Pasco:**

Effective immediately through October 13, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and coho. Anti-snagging rule in effect. Only fish hooked inside the mouth may be retained.

#### REPEALER

The following section of Washington Administrative Code is repealed, effective September 26, 2024:

WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia River. (24-192)

**WSR 24-20-061**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-191—Filed September 25, 2024, 4:19 p.m., effective October 1, 2024]

Effective Date of Rule: October 1, 2024.

Purpose: This emergency rule will close fishing around the temporary weir at Beaver Creek Hatchery when the weir rack is installed.

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

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

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

Reasons for this Finding: This emergency rule is necessary to close fishing around the temporary weir at Beaver Creek Hatchery when the weir rack is installed.

Installation and operation of the Beaver Creek hatchery weir is needed to support broodstock collection for hatchery programs and to minimize the number of hatchery origin spawners in the Elochoman River.

There is insufficient time to file 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: September 25, 2024.

Amy H. Windrope  
for Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-03000X Freshwater exceptions to statewide rules—Southwest.** Effective October 1 through December 31, 2024, the provisions of WAC 220-312-030 regarding Elochoman River fishing seasons shall be modified during times and in areas as described below. All other provisions of WAC 220-312-030, not addressed herein, remain in effect unless otherwise amended by emergency rule:



Elochoman River (Wahkiakum Co.), from boundary markers posted approximately 200 feet downstream to boundary markers posted approximately 200 feet upstream of the temporary weir at Beaver Creek Hatchery:

All Species: Closed Waters while weir rack is installed in the river.

**WSR 24-20-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-211—Filed September 27, 2024, 9:06 a.m., effective September 27, 2024, 9:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to clarify the section of Columbia River from Wells Dam to Highway 173 at Brewster is open for sockeye retention only. Maintains seasons opening recreational coho retention in the Columbia River upstream of Priest Rapids Dam.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000V; and amending WAC 220-312-060.

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

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

Reasons for this Finding: This rule is necessary to clarify that the section of Columbia River from Wells Dam to Highway 173 at Brewster is open for sockeye retention only, through September 30. This stems from a previous rule (WSR 24-17-052) closing Chinook retention since the nontreaty harvest share had been met, and had unintentionally been left off of the most recent filing (WSR 24-20-015) opening coho seasons in surrounding areas of the Columbia River.

There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: September 27, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-06000X Freshwater exceptions to statewide rules—Columbia River.** Effective immediately, through October 15, 2024, the provisions of WAC 220-312-060 regarding recreational salmon seasons from Priest Rapids Dam to Chief Joseph Dam, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC

220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) Priest Rapids Dam to Rock Island Dam:** Immediately through October 15, 2024:

Salmon: Daily limit 6, including no more than 2 adult Chinook and no more than 2 coho. Release all salmon other than Chinook and coho.

**(2) Rock Island Dam to Wells Dam:** Immediately through October 15, 2024:

Salmon: Daily limit 2. Release all salmon other than coho.

**(3) Wells Dam to Highway 173 Bridge at Brewster:** Immediately, through September 30, 2024:

Salmon: Daily limit 4. Release all salmon other than sockeye.

**(4) Highway 173 Bridge at Brewster to the rock jetty at the upstream shoreline of Foster Creek (Douglas County side):** Immediately through October 15, 2024:

Salmon: Daily limit 2. Release all salmon other than coho.

#### REPEALER

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

WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia River. (24-196)

## WSR 24-20-071

## EMERGENCY RULES

## CENTRAL WASHINGTON UNIVERSITY

[Filed September 27, 2024, 9:34 a.m., effective September 27, 2024, 9:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To comply with the new Title IX regulations that are effective August 1, 2024, Central Washington University (CWU) has updated their process for receiving and responding to concerns involving students engaging in discrimination, discriminatory harassment, and sexual violence. CWU has updated the student conduct code to comply with these changes.

Citation of Rules Affected by this Order: Repealing WAC 106-125-045, 106-125-200, 106-125-201, 106-125-205, 106-125-210, 106-125-215, 106-125-220, 106-125-225, 106-125-230, 106-125-235, 106-125-240, and 106-125-245.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Other Authority: 34 C.F.R. Part 106.

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: Revised definitions and procedures, including procedures for responding to complaints of discrimination against students, are required to comply with updated Title IX regulations, 34 C.F.R. Part 106. The Title IX regulations went into effect on August 1, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 12; 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 0.

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

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

Date Adopted: September 27, 2024.

Thomas Pedersen  
Coordinator of Policy and Risk

## OTS-5878.1

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-005 Authority (~~(—Jurisdiction)~~).** (~~((+1))~~) This student conduct code is adopted by the governing board of Central Washington University as authorized under RCW 28B.35.120. Authority is hereby delegated to the university president and administrative officers to administer and enforce the provisions of this code.

~~((2) The student conduct code shall apply to student conduct that occurs on university premises and to conduct that occurs at or in connection with university sponsored events, programs, or activities. This code may also apply to other student conduct occurring off campus (or in nonuniversity electronic environments) when the university deems such conduct to threaten safety or security or otherwise adversely impact the university community. Students shall be responsible for their conduct from the time of acceptance for admission or registration through the actual awarding of a degree or other certificate of completion. The university shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate. Student organizations affiliated with the university may also be sanctioned under this code for the conduct of their student members.~~

~~(3) The university shall not be required to stay disciplinary action under this student code pending any criminal or civil proceeding arising from the same conduct that would constitute a violation of this code. Nor shall the disposition of any such criminal or civil proceeding control the outcome of any student disciplinary proceeding.~~

~~(4) Nothing in this student code shall be construed as authorizing the university to prohibit or to discipline protected speech or other conduct that is protected by law or constitutional right.))~~

#### NEW SECTION

**WAC 106-125-006 Jurisdiction.** (1) The student conduct code shall apply to conduct by students or student groups that occurs:

- (a) On university premises;
- (b) At or in connection with university-sponsored events, programs, or activities; or
- (c) Off campus (or in nonuniversity electronic environments) when the university deems such conduct to threaten safety or security or otherwise adversely impact the university community.

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

(3) Students shall be responsible for their conduct from the time of acceptance for admission or registration through the last day of enrollment or actual awarding of a degree or other certificate of completion. The university shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate.

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

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

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

(7) The university shall not be required to stay disciplinary action under this student code pending any criminal or civil proceeding arising from the same conduct that would constitute a violation of this code. Nor shall the disposition of any such criminal or civil proceeding control the outcome of any student disciplinary proceeding.

(8) Nothing in this student code shall be construed as authorizing the university to prohibit or to discipline protected speech or other conduct that is protected by law or constitutional right.

#### NEW SECTION

**WAC 106-125-007 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the university community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and university policy, which are deemed necessary to achieve the educational goals of the university:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly, subject to reasonable time, place, and manner regulations as set forth in WAC 106-141-040.

(b) Students are free to pursue appropriate educational objectives from among the university's curricula, programs, and student affairs, subject to the limitations of RCW 28B.35.120.

(c) Students shall be protected from academic evaluation that is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sex discrimination.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-010 Definitions.** The following definitions shall apply for purposes of this student conduct code:

(1) **Advisor of choice.** The "advisor of choice" is the person selected by a complainant or respondent to provide informal advice and support at any stage of a disciplinary proceeding under this student code. Except as otherwise provided in these rules, the role of the advisor of choice does not include representation of a party.

(2) **Complainant.** A "complainant" (~~for purposes of this student code means any person who is the alleged victim or target of prohibited student conduct, whether or not such person has made an actual complaint~~) means the following individuals who are alleged to have been subjected to conduct that would constitute discriminatory harassment or sex discrimination:

(a) A student or employee; or

(b) A person other than a student or employee who was participating or attempting to participate in the university's education program or activity at the time of the alleged discrimination.

(3) **Conduct officer.** The "conduct officer" or "student conduct officer" is the university official designated by the university to be responsible for (~~initiating disciplinary action for alleged violations of this code~~) implementing and enforcing the student conduct code.

(4) **Conduct review officer.** The "conduct review officer" is the university official designated by the university to (~~hear appeals of disciplinary action conducted as brief adjudicative proceedings and to enter final decisions in proceedings heard by the student conduct council.~~

~~(5) **Consent.** The term "consent" for purposes of this code means knowing, voluntary, and clear permission and agreement, by actual words or conduct, to engage (or to continue engaging) in sexual activity. A person may be incapable of giving consent, or of diminished capacity to consent, by reason of age, threat or intimidation, lack of opportunity to consent, physical or mental impairment, drug or alcohol consumption, unconsciousness, or other cause. A person engages in non-consensual sexual activity if the person knows, or reasonably should know, that the other person is of diminished capacity to consent or has in any way manifested lack of consent. Intoxication is not a defense against allegations of nonconsensual sexual activity.~~

~~(6-))~~ be responsible for reviewing or referring appeals of student disciplinary actions as specified in this code.

(5) **Day.** The term "day," unless otherwise qualified, means "calendar day." The qualified term "instructional day" means (~~any day within an academic term that the university is open for business, excluding weekends and holidays.~~

~~(7) **Dean of student success.** The term "dean" or "dean of student success" means the chief student affairs officer of the university and includes any acting or interim dean designated by the president to perform the functions and duties of the dean under this student code.~~

~~(8-))~~ a weekday, excluding weekends and university holidays.

(6) **Disciplinary action.** The term "disciplinary action" means the (~~decision of the designated university official regarding alleged violations of the student code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include a summary suspension~~) process by which the student conduct officer im-

poses discipline against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

(7) **Disciplinary appeal.** The term "disciplinary appeal" means the process by which an aggrieved party can appeal the discipline imposed or recommended by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or a dismissal from the university are heard by the student conduct council. Appeals of all other disciplinary action shall be reviewed by a conduct review officer through brief adjudicative proceedings.

~~((9))~~ (8) **Filing and service.**

(a) **Filing.** The term "filing" means the delivery to the designated university official of any document that is required to be filed under this code. A document is filed by hand delivering it or by mailing it to the university official (or the official's assistant) at the official's office address. Filing is complete upon actual receipt during office hours at the office of the designated official.

(b) **Service.** The term "service" means the delivery to a party of any document that is required to be served under this code. A document is served by hand delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand delivered or actually deposited in the mail.

(c) **Electronic filing and service.** Unless otherwise provided, filing or service may be accomplished by electronic mail.

~~((10) **Party.** A "party" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment.~~

~~((11))~~ (9) **Pregnancy or related conditions.** The term "pregnancy or related conditions" means:

(a) **Pregnancy, childbirth, termination of pregnancy, or lactation;**

(b) **Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or**

(c) **Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.**

(10) **Preponderance of evidence.** The term "preponderance of the evidence" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

~~((12))~~ (11) **President.** The "president" is the president of the university. The president is authorized to:

(a) **Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and**

(b) **Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.**

(12) **Program.** "Programs" or "programs and activities" means all operations of the university.

(13) **Relevant.** The term "relevant" means related to the allegations of discrimination under investigation. Questions and evidence are relevant when they may aid in showing whether the alleged discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged discrimination occurred.

(14) **Remedies.** The term "remedies" means measures provided to a complainant or other person whose equal access to the university's educational programs and activities has been limited or denied by discrimination. These measures are intended to restore or preserve that



person's access to educational programs and activities after a determination that discrimination has occurred.

(15) **Respondent.** A "respondent" is a student (~~(against whom disciplinary action is initiated)~~) who is alleged to have violated the student conduct code.

~~((13))~~ (16) **Service.** See "Filing and service."

~~((14))~~ (17) **Student.** The term "student" includes all persons taking courses at or through the university, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

~~((15))~~ (18) **Student employee.** The term "student employee" means an individual who is both a student and an employee of the university. When a complainant or respondent is a student employee, the university must make a fact-specific inquiry to determine whether the individual's primary relationship with the university is to receive an education; and whether any alleged student conduct code violation including, but not limited to, sex-based discrimination, harassment, and/or retaliation occurred while the individual was performing employment-related work.

(19) **Student group.** The term "student group" means 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.

(20) **Supportive measures.** The term "supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the university to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the university's educational program or activity, including measures that are designed to protect the safety of the parties or the university's educational environment; or providing support during the university's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

(21) **Title IX coordinator.** The "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, and overseeing investigations and informal resolution processes in accordance with university policy.

(22) **University premises.** "University premises" shall include all campuses and electronic presences of the university, wherever located, and includes all land, buildings, facilities, vehicles, equipment,

computer systems, websites, and other property owned, used, or controlled by the university.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-020 Prohibited student conduct.** Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this section means "without limitation."

(1) **Academic dishonesty.** The term "academic dishonesty" for purposes of this student code includes cheating, plagiarism, and fabrication. Nothing in this student code shall be construed as limiting the authority of faculty and academic administrators to assign academic consequences for these or other forms of academic misconduct.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, including collaboration without authority.

(b) **Plagiarism.** Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of ~~((another person))~~ others in completing an academic assignment, including the unapproved use of artificial intelligence generated content. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** 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 academic assignment.

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

(2) ~~((Alcohol, drug, and tobacco violations.~~

~~((a))~~ **Alcohol.** An "alcohol violation" includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable university policies.

~~((b))~~ **(3) Cannabis (/marijuana).** A "cannabis violation" ~~((or "marijuana violation"))~~ includes using, possessing, growing, delivering, selling, or being visibly under the influence of cannabis or the psychoactive compounds found in cannabis and intended for human consumption, regardless of form, or the possession of cannabis paraphernalia on university premises or university-sponsored events. While state law permits the recreational use of ~~((marijuana))~~ cannabis, federal law prohibits any possession or use of ~~((marijuana))~~ cannabis on university premises or in connection with university activities.

~~((c) Drug.~~ A "drug violation" includes using, possessing, delivering, selling, or being under the influence of any legend drug, 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. The abuse, misuse, or unlawful sale or distribu-

~~tion of prescription or over-the-counter medications may also constitute a drug violation.~~

~~(d) **Tobacco.** A "tobacco violation" means smoking or using tobacco products, electronic smoking devices (including e-cigarettes and vape pens), or other smoking devices in any area of university premises where smoking or tobacco use is prohibited in accordance with public law and university policy.~~

~~(3-)) (4) **Cyber misconduct.** The term "cyber misconduct" includes the use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, 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 email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, nonconsensual distribution of a recording of sexual activity, possession and/or distribution of pornographic material involving minors, and the creation and/or distribution of artificial intelligence generated pornographic material depicting the likeness of another member of the university community without that individual's consent.~~

~~(5) **Disruptive or obstructive conduct.** The term "disruptive or obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the university. The term includes disorderly conduct, breach of the peace, violation of local or university noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of university investigations or disciplinary proceedings, including interfering with (~~or retaliating against~~) any witness, party, or other participant.~~

~~((4)) (6) **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 university'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 university 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; 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.~~

~~(7) **Drugs.** A "drug violation" includes the use, possession, production, delivery, sale, or being observably under the influence of~~

any legend drug, 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.

(8) **Ethics violations.** An "ethics violation" includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or university policy relating to the ethical use of university resources.

((+5)) (9) **Failure to comply.** The term "failure to comply" means refusing to obey the lawful directive of a university official or authorized university body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

((+6)) (10) **False or deceptive conduct.** The term "false or deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of university records, furnishing false or misleading information to the university, falsely claiming an academic credential, or falsely accusing any person of misconduct.

((+7)) (11) **Harassment or bullying.** The term "harassment" (~~or "discriminatory harassment"~~) means unwelcome and objectively 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 severe, pervasive, or persistent as to have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s). Protected status includes a person's actual or perceived race, color, national origin, gender, disability, or other status protected by law. See "Sexual misconduct" for the definition of "sexual harassment."

(+8)) means 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 university'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, context, and duration of the comments or actions.

(12) **Harm of others.** Assault, physical abuse, verbal abuse, threat(s), intimidation, reckless endangerment, invasion of privacy, 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.

~~(13)~~ **Hazing.** "Hazing" includes 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 the destruction or removal of public or private property or))~~ act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a university-sponsored 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 ((mental)) psychological or emotional harm, to any student or other person, 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. Consent is not a valid defense against hazing.

~~(14)~~ **Indecent exposure.** The term "indecent exposure" means the intentional or knowing exposure of a person's genitals or other private body parts when done in a public place. Breastfeeding or expressing breast milk is not indecent exposure.

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

(a) Unauthorized use of such resources or 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 or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the university'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 university's electronic information resources without authorization; or

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

~~((9))~~ **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

~~(10))~~ ~~(16)~~ **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of university property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential

personal information, intellectual property, and university trademarks.

~~((11) Relationship violence.~~ The term "relationship violence" includes "domestic violence" and "intimate partner violence."

~~(a) Domestic violence.~~ The term "domestic violence" means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated against a current or former spouse or intimate partner, current or former cohabitant, a person with whom one shares a child in common, or a person with whom one resides, including roommates.

~~(b) Intimate partner violence.~~ The term "intimate partner violence," also known as dating violence, means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated by a person against another with whom one is or has been in a social relationship of a romantic or intimate nature. The existence of such a relationship will be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

~~(12)) (17) Retaliation.~~ The term "retaliation" means harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person ~~((because such person reported an alleged violation of this code or other university policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a university investigation or disciplinary proceeding))~~ for reporting, providing information, exercising one's rights or responsibilities, participating, or refusing to participate, in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or university policies.

~~((13)) (18) Safety violations.~~ The term "safety violation" includes any nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any university policy, equipment, or procedure relating to the health, safety, or security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((14) Sexual misconduct.~~ The term "sexual misconduct" includes "sexual harassment," "sexual exploitation," and "sexual violence."

~~(a) Sexual harassment.~~ The term "sexual harassment" means unwelcome and objectively offensive 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 directed at a person because of such person's sex or gender and that is sufficiently severe, pervasive, or persistent as to have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s).))

(19) Sex discrimination. The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) Quid pro quo harassment. A student, employee, agent, or other person authorized by the university to provide an aid, benefit, or service under the university's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) Hostile environment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the university's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the university's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the university's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

(A) Nonconsensual sexual intercourse is 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.

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

(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) Domestic violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, or any other conduct prohibited under RCW 10.99.020 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.

(F) Dating violence is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and 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.

(G) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Sexual exploitation.** The term "sexual exploitation" means taking sexual advantage of another, without consent, for the gratification of oneself or any third person(s). The term includes voyeurism, indecent exposure, the nonconsensual recording of nudity or sexual activity where there is a reasonable expectation of privacy (or the nonconsensual distribution of such recording), inducing another person to engage in sexual activity for payment or other benefit, and knowingly exposing another to a sexually transmitted infection.

(c) ~~((**Sexual violence.** The term "sexual violence" includes "non-consensual sexual contact" and "nonconsensual sexual intercourse."~~

~~(i) **Nonconsensual sexual contact.** The term "nonconsensual sexual contact" means any nonaccidental touching (including touching with any object) of the intimate parts of another person's body, clothed or unclothed, including a person's mouth, breasts, genital area, and buttocks, without the consent of the other person. The term also includes nonconsensual touching in a sexual manner of one's own intimate body parts, nonconsensual touching of another with one's own intimate body parts, removing another person's clothing without consent, or inducing a person without consent to touch their own or another person's intimate body parts.~~

~~(ii) **Nonconsensual sexual intercourse.** The term "nonconsensual sexual intercourse" includes any penetration, however slight, with any body part or object, of another person's mouth, vagina, or anus without the consent of the other person. The term also includes nonconsensual oral sex, with or without penetration.~~

~~(15) **Stalking.** The term "stalking," including cyberstalking, means a course of conduct, directed at a specific person, that involves repeatedly contacting, harassing, or following the person for no legitimate purpose, causing the person to have the same fear for the person's safety, the safety of others, or the security of property that a reasonable person in the same situation would experience under all the circumstances.~~

~~(16)) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.~~

~~(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.~~

~~(ii) 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.

(iii) 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.

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

(20) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

(21) **Tobacco.** A "tobacco violation" includes the use of tobacco, electronic smoking devices (included e-cigarettes and vape pens), and related products in any building owned, leased or operated by the university or in any location where such use is prohibited, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the university. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(22) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the university or the property of another person, including any facility, computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

~~((17) **University policy violations.** The term "policy violation" means))~~ (23) **Violation of other laws or policies.** This includes the violation of any university policy or applicable law governing the conduct of students as members of the university community, including university policies governing nondiscrimination, alcohol and drugs, computer use, copyright, campus health and safety, and parking and traffic.

~~((18))~~ (24) **Weapons ((violations)).** A "weapons violation" includes the possession, display, storage, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on university premises of any firearm or other dangerous weapon in violation of public law or university policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-030 Corrective action, disciplinary sanctions, terms, and conditions.** ((The university may impose any of the following disciplinary sanctions for violations of this student code. Violations must be proved by a preponderance of the evidence.

(1) ~~**Conduct reprimand.**~~ A "conduct reprimand" is a written notice formally censuring a student for a student code violation and providing notice that a repeated violation will subject the student to more severe disciplinary action.

(2) ~~**Conduct probation.**~~

(a) ~~The term "conduct probation" means a specified period of time during which a student's continued enrollment will be conditioned on the student's compliance with specified requirements or restrictions. The probation may be for a limited term or may extend for the duration of the student's attendance at the university, depending on the nature and seriousness of the code violation(s). The sanction of conduct probation may be imposed in the form of a deferred suspension.~~

(b) ~~Conditions placed on a student's continued enrollment may include, without limitation, any one or more of the following requirements or restrictions:~~

(i) ~~Compliance with applicable standards of conduct under the student code and university policies;~~

(ii) ~~Restitution, defined as payment of compensation for damage or loss caused to the university or any person as a result of the student's misconduct, or the assessment of such fines as may be authorized under specific university policies for violations of those policies;~~

(iii) ~~Restrictions on the student's contact with specified individuals or groups, which may include an order that the student refrain from having any communication with the specified persons;~~

(iv) ~~Restrictions on the student's access to specified university premises and/or limitations on the student's participation in university activities, which may include removal from or reassignment of student housing or denial of eligibility to participate in intercollegiate athletics;~~

(v) ~~A requirement that the student receive education or participate in training relating to the student's misconduct, which may include other educational sanctions assigned for the purpose of facilitating student development and learning as deemed appropriate to the offense;~~

(vi) ~~A requirement that the student be professionally evaluated by a qualified health care provider who is approved by the university and who is authorized by the student to discuss the evaluation with designated university officials, together with a requirement that the student comply with treatment recommendations relating to the student's ability to maintain appropriate standards of conduct.~~

(c) ~~A student's failure to comply with the conditions of the conduct probation may result in further disciplinary action including, but not limited to, disciplinary suspension or permanent dismissal.~~

(3) ~~**Conduct suspension.**~~ A "conduct suspension" means a temporary dismissal from the university and the suspension of student status for a specified period of time with no refund of tuition or fees. Reenrollment following a disciplinary suspension may be conditioned on any of the requirements or restrictions that may apply to a conduct probation.

~~(4) **Conduct dismissal.** The term "conduct dismissal" means permanent expulsion from the university with no refund of tuition or fees and may include an order trespassing the student from university premises. A sanction of conduct dismissal shall be recorded on the student's academic transcript.~~

~~(5) **Other sanctions.** The following additional sanctions for student code violations may be imposed as required or permitted by law or university policy.~~

~~(a) **Athletics eligibility.** A student athlete found in violation of WAC 106-125-020 (2) (c), relating to drug violations, shall be ineligible to participate in university athletics pursuant to RCW 69.41.340. Eligibility to participate in intercollegiate athletics may be denied based on violations of other student conduct prohibited under WAC 106-125-020.~~

~~(b) **Parent/guardian notification.** The university reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.) (1) The following corrective actions or disciplinary sanctions may be imposed upon students or upon university-sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.~~

(a) **Warning.** A verbal or written statement to a student that there is a violation and that continued violation may be cause for disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any university rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the university, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the university. The sanction of conduct probation may be imposed in the form of a deferred suspension.

(d) **Disciplinary suspension.** Dismissal from the university and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the suspension is imposed.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the university community and exclusion from the campus and university-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the dismissal is imposed.

(2) **Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:**

(a) **Education.** Participation in or successful completion of an educational assignment designed to create an awareness of the student's misconduct.

(b) Loss of privileges. Denial of specified privileges for a designated period of time.

(c) Not in good standing. A student deemed "not in good standing" with the university shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the university or to hold any elected or appointed office of the university.

(ii) Ineligible to represent the university to anyone outside the university community in any way, including representing the university at any official function, or any forms of intercollegiate competition or representation.

(d) No contact directive. An order directing a student to have no contact with a specified student, university employee, a member of the university community, or a particular university facility.

(e) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the university. The student will sign all necessary releases to allow the university access to any such evaluation. The student's return to university may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the university community, the student will remain suspended until future evaluation recommends that the student is capable of re-entering the university and complying with the rules of conduct.

(f) Restitution. Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the university in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(g) Trespass or restriction. Restrictions on the student's access to specified university premises and/or limitations on the student's participation in university activities, which may include removal from or reassignment of student housing or denial of eligibility to participate in intercollegiate athletics.

(h) Parent/guardian notification. The university reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.

(3) More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

(4) If a student withdraws from the university or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the university.

#### NEW SECTION

**WAC 106-125-031 Hazing sanctions.** (1) 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 non-

profit, the individual directors of the corporation may be held individually liable for damages.

(2) 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 university.

(3) 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 university.

(4) Student groups found responsible for violating the code of student conduct, university anti-hazing 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 university 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 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-040 Disciplinary action—Initiation.** (~~((1) The student conduct officer will initiate disciplinary action by serving the student respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations or the issues involved, the specific conduct code provision(s) the respondent is alleged to have violated, and the range of possible sanctions for such violations(s).~~

~~(2) At the disciplinary meeting, the student conduct officer will review the allegations with the respondent and will afford the respondent an opportunity to respond. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.~~

~~(3) In a proceeding involving allegations of sexual misconduct or discriminatory harassment, the student conduct officer prior to taking disciplinary action will afford the complainant an opportunity to discuss the results of any investigation and the possible sanctions and/or conditions that could be imposed for the complainant's protection if the sexual misconduct or discriminatory harassment allegations are found to be substantiated.~~

~~(4) The student conduct officer may take any of the following disciplinary actions:~~

~~(a) The conduct officer may dismiss the proceeding upon finding the allegations to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review, except as provided in proceedings involving allegations of sexual misconduct or discriminatory harassment.~~

~~(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 106-125-030. Such sanction(s) shall be subject to review on appeal as provided in this student code.~~

~~(c) The conduct officer may refer the matter for disciplinary action by the student conduct council. Such referral shall be in writ-~~

~~ing, to the attention of the dean of student success, with a copy served on the respondent (and any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment). The decision to refer shall not be subject to appeal or further review.~~

~~(5) Within 10 days of the initial disciplinary meeting, the conduct officer will serve the respondent (and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) with a written decision either dismissing or referring the matter or imposing disciplinary sanctions. If sanctions are imposed, the written decision will specify the conduct code provision(s) found to have been violated, will describe the facts and conclusions supporting the sanction(s), and will provide notice of any appeal rights.~~

~~(6) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether such allegations were substantiated and will describe any sanctions or conditions imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.)~~ (1) The 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) Discriminatory harassment and sex discrimination, including sex-based harassment. The university's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of discriminatory harassment or sex discrimination, including sex-based harassment. Allegations of discriminatory harassment or sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the university will be handled in accordance with university policies.

(b) 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 university. 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.

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

(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 discriminatory harassment or sex discrimination, including sex-based harassment, complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, 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 informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(5) Both the respondent and the complainant in cases involving allegations of discriminatory harassment or sex discrimination, including sex-based harassment, shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

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

(7) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(8) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(9) Within 10 calendar 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 their 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 at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

(10) The 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 conditions, as described in WAC 106-125-030; or

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

(11) In cases involving allegations of discriminatory harassment or sex-based harassment, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five instructional days of receiving the investigation report, serve respondent, complainant, and the Title IX coordina-

tor with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct council decision maker.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct council decision maker.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving discriminatory harassment or sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The university is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the university's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The university determines that, even if proven, the conduct alleged by the complainant would not constitute discriminatory harassment or sex discrimination; or

(v) The conduct alleged by the complainant falls outside the university's disciplinary jurisdiction.

(f) In cases involving allegations of discriminatory harassment or sex-based harassment, the university must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the university's Title IX grievance procedure.

(i) If the respondent is found responsible for engaging in discriminatory harassment or sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that the discrimination does not recur and that complainant has equal access to the university's programs and activities.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-050 Disciplinary action—Appeals.** ~~((1) Respondent.~~  
~~The student respondent may appeal the disciplinary action of the student conduct officer in accordance with the following rules:~~

~~(a) The respondent may appeal disciplinary action imposing a conduct reprimand, conduct probation, conduct suspension not in excess of~~



~~10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics by filing a written notice of appeal with the conduct review officer within 10 days of service of the disciplinary decision.~~

~~(b) The respondent may appeal disciplinary action imposing a conduct suspension in excess of 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within 20 days of service of the disciplinary decision.~~

~~(2) **Complainant.** The complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations may appeal the disciplinary action of the student conduct officer with respect to such allegations in accordance with the following rules:~~

~~(a) The complainant may appeal disciplinary action dismissing the proceeding or imposing a conduct reprimand, conduct probation, or conduct suspension not in excess of 10 days by filing a written notice of appeal with the conduct review officer within 10 days of service of the disciplinary decision.~~

~~(b) The complainant may appeal disciplinary action imposing a conduct suspension in excess of 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within 20 days of service of the disciplinary decision.~~

~~(3) If no appeal is filed within the applicable time period, the disciplinary action of the student conduct officer shall be final.)~~

(1) Except as specified for cases involving allegations of discriminatory harassment or sex-based harassment, as set forth in WAC 106-125-075(11), the respondent may appeal a disciplinary action by filing a written notice of appeal with the student conduct officer within 21 calendar 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, complainant if any, and the student conduct officer.

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

(5) On appeal, the university 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 respondent has been summarily suspended.

(7) A conduct review officer shall conduct a brief adjudicative proceeding for appeals of:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation; and

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) The student conduct council shall hear appeals from:

(a) Disciplinary suspensions in excess of 10 instructional days;

(b) Dismissals;

(c) Discriminatory harassment or sex discrimination, including sex-based harassment cases; and

(d) Disciplinary cases referred to the council by the student conduct officer or a conduct review officer.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-055 Conduct review hearings—Initial decision.**

~~((1) **Conduct review officer – Authority.**~~

~~(a) The conduct review officer will hear a respondent's appeal of disciplinary action imposing a conduct reprimand, conduct probation, conduct suspension not in excess of 10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics.~~

~~(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the conduct review officer will hear a complainant's appeal of disciplinary action dismissing the sexual misconduct or discriminatory harassment allegations or imposing, with respect to such allegations, a conduct reprimand, conduct probation, or conduct suspension not in excess of 10 days.~~

~~(c) The conduct review officer shall have the same authority as the student conduct officer to dismiss a proceeding, to impose a disciplinary sanction of conduct reprimand, conduct probation, or conduct suspension not in excess of 10 days, or to refer the matter for disciplinary action by the student conduct council.~~

~~(2) **Appeal hearing.** Appeals heard by the conduct review officer will be conducted as informal administrative hearings consistent with the rules for "brief adjudicative proceedings" under RCW 34.05.482 and WAC 106-08-050. The review officer shall provide each party an opportunity to explain the party's view of the matter.~~

~~(3) **Initial decision – Service.**~~

~~(a) Within 10 days of consideration of the appeal, the conduct review officer will serve an initial decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The initial decision will explain the reasons for the decision and will provide notice of any right to request further administrative review.~~

~~(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the initial decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.~~

~~(c) A decision by the conduct review officer to refer the appeal to the student conduct council is not subject to further administrative review.~~

~~(4) **Initial decision – Request for review.** The respondent (or any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) may request administrative review of the initial decision by filing a written request for review with the dean of student success within 21 days of service of the initial decision. If no request for review is filed, the initial decision of the conduct review officer shall be final.) (1) Appeals shall be conducted by a conduct review officer as brief adjudicative hearings. The conduct re-~~

view officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the conduct review officer's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within 10 calendar days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 10 days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension in excess of 10 instructional days or expulsion, the matter shall be referred to the student conduct council for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-060 Conduct review hearings—Review of initial decision.** ~~((1) Requests for review of the initial decision of the conduct review officer will be heard by the dean of student success (or designee). The dean shall have the same authority on review as the conduct review officer to take disciplinary action.~~

~~(2) The dean will review the hearing record and will afford the parties the opportunity to file written statements explaining their views of the matter. The dean may make any inquiries necessary to ascertain whether the proceeding should be referred to the student conduct council for a formal hearing.~~

~~(3) Within 20 days of the date for the parties to submit written statements, the dean will serve a written review decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The review decision will explain the reasons for the decision and will provide a notice that judicial review may be available.~~

~~(4) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.~~

~~(5) The review decision of the dean (or designee) shall be final.)~~ (1) An initial decision is subject to review by the conduct review officer, provided a party files a written request for review with

the conduct review officer within 21 calendar days of service of the initial decision.

(2) The review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the review officer shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct council for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within 20 calendar days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available.

(5) If the review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student conduct council for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-070 Student conduct council.** (1) The student conduct council shall consist of ~~((three))~~ a pool of university employees appointed by the university president or president's designee. The conduct council ~~((members))~~ decision maker will be selected ~~((by the council advisor))~~ subject to availability and qualification in accordance with WAC 106-125-045(6). ~~((Additional university employees may be selected to serve as alternate council members.))~~ Any party may petition the council for disqualification and appointment of a different decision maker.

(2) The student conduct council decision maker shall ~~((elect a chair to))~~ preside over the hearing ~~((, and the dean of student success shall appoint a nonvoting staff member as council advisor to convene and otherwise advise and assist the council))~~.

(3) The student conduct council will hear appeals of disciplinary action imposing a conduct suspension in excess of 10 days or a conduct dismissal. The council decision maker will hear such other matters as may be referred to the council by the student conduct officer ~~((7))~~ or conduct review officer ~~((7 or dean of student success))~~. The council decision maker shall have the authority to dismiss a proceeding or to impose any of the disciplinary sanctions under WAC 106-125-030.

(4) Proceedings of the student conduct council shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and by the model rules of procedure (chapter 10-08 WAC), as supplemented by these rules.

(5) For cases involving allegations of discriminatory harassment or sex discrimination, including sex-based harassment, members of the student conduct council must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, bias. The decision maker must also receive training on the student conduct process for discriminatory harassment and sex discrimination cases, as

well as the meaning and application of the term, "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The university may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct council and/or council decision maker.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-075 Student conduct council—Prehearing procedure.**

(1) The conduct council (~~(chair or advisor)~~) decision maker shall cause all parties to be served with written notice of the hearing not less than seven calendar days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The (~~chair or advisor~~) decision maker may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown. The notice shall include:

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

(2) The conduct council (~~(chair, assisted by the council advisor,~~) decision maker is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.

(3) The council (~~(chair or advisor)~~) decision maker may direct the parties prior to the hearing to exchange lists of potential witnesses and copies of exhibits that the parties reasonably expect to present to the council. Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.

(4) The council (~~(chair or advisor)~~) decision maker in advance of the hearing may (~~provide council members with~~) review copies of:

- (a) Any notice of disciplinary action (or referral to the council); and
- (b) Any notice of appeal filed by the respondent (or any complainant). However, such "pleadings" shall not be regarded as evidence of any facts they may allege.

(5) The parties may agree before the hearing to designate specific exhibits as admissible without objection.

(6) The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of university students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three instructional days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective

witnesses to procure their appearance at the hearing. The council decision maker will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.

(7) Communications between the council decision maker and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(8) Any party may be accompanied at the hearing by an advisor of the party's choice. A respondent (or any complainant) may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four instructional days before the hearing, the attorney files and serves a notice of appearance. Failure to do so may, at the discretion of the council decision maker, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student. If the respondent (or complainant) is represented by an attorney, the student conduct officer may be represented by the university's assistant attorney general.

((+6)) (9) The student conduct council decision maker may ((itself)) themselves be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.

(10) In cases involving allegations of discriminatory harassment or sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals.

(a) **Notice.** The university must provide a notice that includes all information required in subsection (1) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The council decision maker may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date, in accordance with the procedures set forth in subsection (11)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the university's control.

(e) **Confidentiality.** The university shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or council decision maker issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(11) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged discriminatory harassment or sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial student conduct council;

(iii) They may have an advisor of their choice, who may be an attorney, assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The council decision maker may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the decision maker in any prehearing conference. The written request must be served simultaneously by email to all parties and the decision maker. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The decision maker will serve a written decision upon all parties, to include the reasons for granting or denying any request. The decision maker's decision shall be final. In exceptional circumstances, for good cause shown, the decision maker may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The university shall provide an advisor to the respondent and any complainant, if the respondent or complainant has not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the university's control.

(e) **Confidentiality.** The university shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or decision maker issuing directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The decision maker may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the council and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the university in writing before a case can be dismissed.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-080 Student conduct council—Hearing procedure.** (1)

Upon the failure of any party to attend or participate in a hearing, the student conduct council may either:

- (a) Proceed with the hearing; or
- (b) Serve an order of default in accordance with RCW 34.05.440.

(2) Council hearings shall be closed to the public, unless all parties (including any complainant) agree on the record that all or parts of the proceeding may be open. The council (~~(chair)~~) decision maker shall determine any extent to which the hearing will be open. The (~~chair~~) decision maker may exclude from the hearing any person who disrupts the proceeding.

(3) The council (~~(advisor)~~) decision maker shall cause the hearing to be recorded (~~(pursuant to)~~) by a method that they select, in accordance with RCW 34.05.449 (~~(by a method the advisor selects)~~). Other recording shall be permitted in accordance with WAC 10-08-190. The (~~advisor~~) council decision maker shall maintain the official record of the proceeding that is required by RCW 34.05.476. Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.

(4) The council (~~(chair)~~) decision maker shall preside at the hearing and shall decide procedural questions that arise during the hearing (~~(, except as overridden by a majority vote of the council)~~).

(5) The student conduct officer (or assistant attorney general) shall present the case for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) (~~The respondent and a complainant in any proceeding involving sexual misconduct or discriminatory harassment allegations shall not directly question or cross-examine one another. All questions shall be directed to the council chair, who will act as an intermediary and pose questions on behalf of the parties. The council chair may reframe questions as to form or exclude questions on the grounds of relevance or privilege.~~) In cases involving allegations of discriminatory harassment or sex-based harassment, the complainant and respondent may not directly question one another. In such circumstances, the decision maker will determine whether questions will be submitted to the decision maker, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The council decision maker may revise this process if, in the decision maker's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the decision maker must determine whether any proposed question is relevant and not otherwise impermissible prior to the question being posed; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The decision maker will retain for the record copies of any written questions provided by any party.



(b) The decision maker must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The decision maker shall exclude and not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client communications and attorney work product privilege;

(iii) Clergy privileges;

(iv) Medical or mental health providers and counselor privileges;

(v) Sexual assault and domestic violence advocate privileges; and

(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The decision maker shall exclude and not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The council decision maker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decision maker must not draw an inference about whether discriminatory harassment or sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of discriminatory harassment or sex-based harassment, the decision maker has the discretion in all cases to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the decision maker to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-085 Student conduct council—Initial decision.** (1)

At the conclusion of the hearing, the student conduct council decision maker shall permit the parties to make closing arguments in whatever form the council wishes to receive them. The council decision maker may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within 20 days following the later of the conclusion of the hearing or the receipt of closing arguments, the student conduct council decision maker shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The decision shall contain findings on relevant issues of fact, conclusions concerning which, if any, provisions of the student code were found to be violated, and any sanc-

tion(s) imposed. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

~~(3) ((The council chair shall cause the initial decision to be served on the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether such allegations were substantiated and will describe any sanctions or conditions imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.~~

~~(4) The council advisor, upon receipt of a timely filed appeal, shall promptly transmit the council's initial decision and the record of the proceedings for review by the conduct review officer who shall enter a final decision. If no appeal is timely filed, the initial decision of the student conduct council shall be the final decision.))~~ The council decision maker's initial decision shall also include a determination of appropriate sanctions, if any. If the matter was referred to the council by the student conduct officer, the council decision maker shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by a party, the council decision maker may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The council decision maker shall cause copies of its decision to be served on the parties and their attorney, if any. The notice will inform all parties of their appeal rights. The council decision maker shall also promptly transmit a copy of the decision and the record of the council's proceedings to the review officer.

(5) In cases involving discriminatory harassment or sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.

AMENDATORY SECTION (Amending WSR 22-06-018, filed 2/22/22, effective 3/25/22)

**WAC 106-125-090 Student conduct council—Appeal of initial decision.** (1) Any party, including a complainant in discriminatory harassment or sex-based harassment cases, may appeal the council decision maker's decision by filing a written appeal within 21 calendar days of service of the council's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The initial decision of the student conduct council decision maker will be reviewed on appeal by the conduct review officer. The conduct review officer shall have the same authority on review as the student conduct officer to take disciplinary action.

~~((2))~~ (3) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(4) Upon receiving a timely appeal, the conduct review officer will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 instructional days from the date of service to submit a written response addressing the issues raised in the appeal, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(5) The review by the conduct review officer will be limited to the hearing record made before the student conduct council. The conduct review officer will afford all parties the opportunity to file written statements explaining why they agree or disagree with the council's initial decision. The conduct review officer may notify the parties that the review will be limited to reviewing the specific issues raised by the parties.

~~((3))~~ (6) The conduct review officer will serve a written decision upon all parties (including the complainant and Title IX coordinator in any proceeding involving ~~((sexual misconduct))~~ sex-based harassment or discriminatory harassment allegations) within 20 days of the date for the parties to submit written statements. The decision will adopt or modify the conduct ~~((council's))~~ council decision maker's initial decision and will provide a notice that reconsideration and/or judicial review may be available pursuant to chapter 34.05 RCW, Part V.

~~((4))~~ In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any disciplinary action imposed with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

~~(5))~~ (7) The conduct review officer shall not engage in ex parte communication with any of the parties regarding an appeal.

(8) The decision of the conduct review officer shall be final.

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-100 Summary suspension.** (1) A summary suspension is the temporary exclusion of a student from all or specified portions of university premises, programs, or activities pending an investigation and/or disciplinary proceeding relating to alleged student code violations.

(2) The ~~((dean of student success (or designee)))~~ student conduct officer may summarily suspend a student when ~~((the dean has))~~ they have cause to believe that the student (a) has violated any provision of the student code and (b) presents an immediate danger to the health, safety, or ~~((security))~~ welfare of the campus community and/or poses an ongoing threat of ~~((serious))~~ substantial disruption or interference with university operations.

(3) Notice of a summary suspension, if given orally, must be followed by service of a written notice within two instructional days of the oral notice. The written notice shall include:

(a) The duration and scope of the suspension, including any conditions under which the student may access university premises or contact members of the ~~((campus))~~ university community;

(b) The reasons for the suspension, including reference to the student code provisions allegedly violated, together with notice of any resulting or pending disciplinary action; and

(c) Notice of a summary suspension hearing to be held within three instructional days before a reviewing officer not otherwise involved in any pending disciplinary proceeding relating to the student.

(4) The reviewing officer will conduct the summary suspension hearing as an emergency proceeding under RCW 34.05.479. The issue before the reviewing officer shall be whether probable cause exists to continue the summary suspension. The student shall be afforded an opportunity at the hearing to explain why the suspension should not be continued or why the suspension should be less restrictive in scope. If the student fails to appear or to participate in the hearing, the reviewing officer may order that the suspension continue pending the conclusion of disciplinary proceedings.

(5) The reviewing officer, within two instructional days of the hearing, shall issue a written decision either terminating the summary suspension or explaining the immediate danger and policy reasons justifying the continuation and/or modification of the summary suspension. The reviewing officer will provide a copy of the decision to all persons who may be bound or protected by it.

(6) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(7) In cases involving allegations of discriminatory harassment or sex discrimination, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The university will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

(8) The student may request review of the reviewing officer's decision before the student conduct council. Such review will be scheduled promptly and shall be consolidated with any pending disciplinary proceeding arising from the same conduct.

~~( (SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES) )~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 106-125-045      Appeal and review procedures—General.

WAC 106-125-200	Order of precedence.
WAC 106-125-201	Revocation by operation of law.
WAC 106-125-205	Prohibited conduct under Title IX.
WAC 106-125-210	Title IX jurisdiction.
WAC 106-125-215	Initiation of discipline.
WAC 106-125-220	Student conduct council.
WAC 106-125-225	Prehearing procedure.
WAC 106-125-230	Rights of parties.
WAC 106-125-235	Evidence.
WAC 106-125-240	Initial decision.
WAC 106-125-245	Appeal of initial decision.

**WSR 24-20-073**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-210—Filed September 27, 2024, 9:53 a.m., effective October 1, 2024]

Effective Date of Rule: October 1, 2024.

Purpose: This emergency rule opens Puget Sound recreational winter crab seasons.

Citation of Rules Affected by this Order: Amending WAC 220-330-040.

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational crab harvest in many areas of Puget Sound for winter seasons. This opens the marine areas listed to achieve the 50/50 harvest defined by the federal court order. Marine Area 12 south of a line projected due east from Ayock Point and Marine Areas 10, 11, and 13 will remain closed until further notice. 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: September 27, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-330-04000Q Crabs—Areas and seasons—Personal use.** Notwithstanding the provisions of WAC 220-330-040, effective October 1 through December 31, 2024, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein:

(1) **Marine areas 4 east of the Bonilla-Tatoosh line, 5, 6, 8-1, 8-2, and 9:** Effective 12:01 a.m. October 1, through 11:59 p.m. Decem-

ber 31, 2024, it is permissible to fish for crab for personal use seven days a week.

(2) **Those waters of Marine Area 7 south** and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence true west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective 12:01 a.m. October 1, through 11:59 p.m. December 31, 2024, it is permissible to fish for crab for personal use seven days a week.

(3) **Those waters of Marine Area 7 north** and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island true west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective 12:01 a.m. October 1, through 11:59 p.m. December 31, 2024, it is permissible to fish for crab for personal use seven days a week.

(4) **Marine Area 10:** Closed until further notice.

(5) **Marine Area 11:** Closed until further notice.

(6) **The portion of Marine Area 12 north of a line projected due east from Ayock Point:** Effective 12:01 a.m. October 1, through 11:59 p.m. December 31, 2024, it is permissible to fish for crab for personal use seven days a week.

(7) **The portion of Marine Area 12 south of a line projected due east from Ayock Point:** Closed until further notice.

(8) **Marine Area 13:** Closed until further notice.

**WSR 24-20-074**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-209—Filed September 27, 2024, 10:01 a.m., effective October 1, 2024]

Effective Date of Rule: October 1, 2024.

Purpose: The purpose of this emergency rule is to open commercial crab fishing in Puget Sound;

**WAC 220-340-45500I** opens Puget Sound commercial crab harvest in Crab Management Regions 1, 2-East, 2-West, 3-1, 3-2, 3-3, and 3-4 at 8:00 a.m. on October 1, 2024, until further notice; and closes Port Angeles Harbor to commercial crab harvest due to public health decrees.

**WAC 220-340-47000F** sets reduced pot limits by area for Puget Sound commercial crab harvest effective the dates listed in the amended section of WAC 220-340-455.

**WAC 220-340-43000C** restricts Puget Sound Dungeness fishery license holders from using gear with identifiers reserved for any other fishery.

Citation of Rules Affected by this Order: Amending WAC 220-340-455, 220-340-470, and 220-340-430.

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 state has remaining share to catch after accounting for recreational seasons in Regions 1, 2-East, 2-West, 3-1, 3-2, 3-3, and 3-4. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules. 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 3, Amended 0, Repealed 0.

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

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

Date Adopted: September 27, 2024.

Kelly Susewind  
Director



NEW SECTION

**WAC 220-340-45500I Commercial crab fishery—Seasons and areas—Puget Sound.** Notwithstanding the provisions of WAC 220-340-455, effective October 1, 2024, until further notice:

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

<b>Geographical Management Unit (WAC 220-320-110)</b>	<b>Open Period</b>
Region 1, MFSF Catch Areas 21A, 21B, and 22B	October 1, until further notice.
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	October 1, until further notice.
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	October 1, until further notice.
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	October 1, until further notice.
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	October 1, until further notice.
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	October 1, until further notice.
Subregion 3-1	October 1, until further notice.
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)).	October 1, until further notice.
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	October 1, until further notice.
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	October 1, until further notice.
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Closed, due to on-going public health concerns.
Subregion 3-3	October 1, until further notice.
Subregion 3-4	October 1, until further notice.

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

NEW SECTION

**WAC 220-340-47000F Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas**

Notwithstanding the provisions of 220-340-470, effective October 1, 2024, until further notice:

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".

<b>Geographical Management Unit (WAC 220-320-110)</b>	<b>Pot limit</b>
Region 1, MFSF Catch Areas 21A, 21B, and 22B	40
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	40
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	25
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	25
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	25
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	20
Subregion 3-1	50

Geographical Management Unit (WAC 220-320-110)	Pot limit
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)).	35
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	20
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	20
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	0
Subregion 3-3	50
Subregion 3-4	50

NEW SECTION

**WAC 220-340-43000C Commercial crab fishery—Gear requirements.**

Notwithstanding the provisions of WAC 220-340-430,

It is unlawful for a Puget Sound Dungeness crab fishery license holder, or designated operator, to use gear that has one or more line marks or to use multicolor line consistent with requirements for the Washington coastal Dungeness crab fishery or any other state or federally managed commercial fishery operating in the U.S. West Coast Exclusive Economic Zone, or in the state waters of Washington, Oregon, or California.

**WSR 24-20-081**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed September 27, 2024, 1:58 p.m., effective October 1, 2024]

Effective Date of Rule: October 1, 2024.

Purpose: The department of social and health services (department) is adopting emergency amendments to WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, 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?

These amendments are necessary to implement Supplemental Nutrition Assistance Program (SNAP) cost-of-living adjustments received from the United States Department of Agriculture, Food and Nutrition Service and must take effect October 1, 2024.

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

Statutory Authority for Adoption: RCW 74.04.050 and 74.08.090.

Other Authority: New standards issued by United States Department of Agriculture, Food and Nutrition Service.

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

Reasons for this Finding: The United States Department of Agriculture, Food and Nutrition Services has issued annual updates to standards for the upcoming federal fiscal year, effective October 1, 2024. These updates affect the standard deduction, shelter deduction, homeless shelter deduction, utility deduction, and minimum and maximum allotments for the basic food program. The department is concurrently proceeding with the permanent rule-making process.

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

Date Adopted: September 25, 2024.

Katherine I. Vasquez  
Rules Coordinator

## SHS-5054.2

AMENDATORY SECTION (Amending WSR 24-06-065, filed 3/4/24, effective 4/4/24)

**WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?** (1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
3 or fewer	<del>(\$198)</del> \$204
4	<del>(\$208)</del> \$217
5	<del>(\$244)</del> \$254
6 or more	<del>(\$279)</del> \$291

(b) ~~(20%)~~ Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over \$35 a month owed or anticipated by an elderly or disabled person as defined in WAC 388-400-0040 in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 24-06-065, filed 3/4/24, effective 4/4/24)

**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 (~~(\$179)~~) \$190. 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 (~~(\$672)~~) \$712 if no one in your AU is elderly or disabled as defined in WAC 388-400-0040; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over (~~(\$672)~~) \$712.

AMENDATORY SECTION (Amending WSR 24-06-065, filed 3/4/24, effective 4/4/24)

**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 in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of (~~(\$483)~~) \$502.

(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 (~~(\$483)~~) \$502.

(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 (~~(\$383)~~) \$396.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~(\$58)~~) \$56.

(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)~~) LIHEAP, you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 23-24-007, filed 11/27/23, effective 2/1/24)

**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 \$12,000.

(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) (~~(\$4,250)~~) \$4,500 if your AU has either an elderly or disabled individual as defined in WAC 388-400-0040; or

(b) (~~(\$2,750)~~) \$3,000 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.

AMENDATORY SECTION (Amending WSR 24-06-065, filed 3/4/24, effective 4/4/24)

**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 ((10/1/2023)) 10/1/2024

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income (130% of Poverty Level)	Column C Maximum Net (Countable) Monthly Income (100% of Poverty Level)	Column D Maximum Allotment	Column E 165% of Poverty Level
1	(((\$1,580)) <u>\$1,632</u>	(((\$1,215)) <u>\$1,255</u>	(((\$291)) <u>\$292</u>	(((\$2,005)) <u>\$2,071</u>
2	((2,137)) <u>2,215</u>	((1,644)) <u>1,704</u>	((535)) <u>536</u>	((2,712)) <u>2,811</u>
3	((2,694)) <u>2,798</u>	((2,072)) <u>2,152</u>	((766)) <u>768</u>	((3,419)) <u>3,551</u>
4	((3,250)) <u>3,380</u>	((2,500)) <u>2,600</u>	((973)) <u>975</u>	((4,125)) <u>4,290</u>
5	((3,807)) <u>3,963</u>	((2,929)) <u>3,049</u>	((1,155)) <u>1,158</u>	((4,832)) <u>5,030</u>
6	((4,364)) <u>4,546</u>	((3,357)) <u>3,497</u>	((1,386)) <u>1,390</u>	((5,539)) <u>5,770</u>
7	((4,921)) <u>5,129</u>	((3,785)) <u>3,945</u>	((1,532)) <u>1,536</u>	((6,246)) <u>6,510</u>
8	((5,478)) <u>5,712</u>	((4,214)) <u>4,394</u>	((1,751)) <u>1,756</u>	((6,952)) <u>7,249</u>
9	((6,035)) <u>6,295</u>	((4,643)) <u>4,843</u>	((1,970)) <u>1,976</u>	((7,659)) <u>7,989</u>
10	((6,592)) <u>6,878</u>	((5,072)) <u>5,292</u>	((2,189)) <u>2,196</u>	((8,366)) <u>8,729</u>
Each Additional Member	+ ((557)) <u>583</u>	+ ((429)) <u>449</u>	+ ((219)) <u>220</u>	+ ((707)) <u>740</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.



**WSR 24-20-084**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-212—Filed September 27, 2024, 2:52 p.m., effective September 30, 2024]

Effective Date of Rule: September 30, 2024.

Purpose: This rule is needed to return Hoh River, including South Fork and all tributaries, to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000L.

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: Flows in the Hoh River have increased to levels that are not impeding upstream fish movement. Flows are still of concern, river conditions and salmon abundance and distribution will be monitored, and fishing may be closed again if conditions change.

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: September 27, 2024.

Kelly Susewind  
Director

REPEALER

The following section of Washington Administrative Code is repealed, effective September 30, 2024:

WAC 220-312-02000L Freshwater exceptions to statewide rules—Coast. (24-195)

WSR 24-20-088  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 24-213—Filed September 27, 2024, 4:15 p.m., effective September 27, 2024, 4:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open razor clam harvest in Razor Clam Areas 1, 3, 4, and 5.

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

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

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

Reasons for this Finding: Survey results show that adequate clams are available for recreational harvest in Razor Clam Areas 1, 3, 4, and 5. Washington department of health has certified clams from these Razor Clam Areas 1, 3, 4, and 5 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: September 27, 2024.

Kelly Susewind  
Director

NEW SECTION

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

(1) Effective 12:01 a.m. October 3 through 11:59 p.m. October 7, 2024, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	October 3 through October 7	From 12:01 p.m. to 11:59 p.m.
Area 2	Closed	Closed

Razor Clam Area	Date	Time
Area 3	October 3 through October 7	From 12:01 p.m. to 11:59 p.m.
Area 4	October 4 and 5	From 12:01 p.m. to 11:59 p.m.
Area 5	October 3, 6, and 7	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 8, 2024:

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

**WSR 24-20-099**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-216—Filed September 30, 2024, 2:31 p.m., effective October 1, 2024]

Effective Date of Rule: October 1, 2024.

Purpose: Current emergency wildfire rules in effect for Eastern Washington need to be repealed due to the reduced threat of fire danger. However, the same rules need to remain in effect for Lincoln, Whitman, and Spokane counties. These foregoing counties need the rules to remain in effect to prevent wildfires on Washington department of fish and wildlife (WDFW) lands during the current period of high fire danger. The new rules will help reduce the threat of wildfires on WDFW lands and provide protection of human health, safety, and wildlife habitat.

Citation of Rules Affected by this Order: Repealing WAC 220-500-03000F, 220-500-04000N, 220-500-11000F and 220-500-14000F; and amending WAC 220-500-030, 220-500-040, and 220-500-110.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

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

Reasons for this Finding: Due to a reduced risk of fire danger in parts of Eastern Washington, current emergency wildlife rules need to be repealed while the same rules need to stay in effect for Whitman, Lincoln, and Spokane counties.

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 3, Amended 0, Repealed 4.

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

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

Date Adopted: September 30, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-500-03000G Behavior and conduct.** Notwithstanding the provisions of WAC 220-500-030, effective July 1, 2024, until further notice, rules regarding allowable behavior in wildlife areas and access areas in Lincoln, Whitman, and Spokane counties (as described in

WAC 220-200-020) owned or controlled by the department shall be modified as follows, other provisions of WAC 220-500-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) In wildlife areas and access areas in Lincoln, Whitman, and Spokane counties owned or controlled by the department, it is unlawful to:

(a) Operate a chainsaw without a permit or approval from the director; or

(b) Weld or operate an acetylene torch or other open flame without a permit or approval from the director.

(2) A violation of this section is an infraction punishable under RCW 77.15.1606

**Reviser's note:** The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-500-0300G is probably intended to be WAC 220-500-03000G.

#### NEW SECTION

**WAC 220-500-04000P Regulating public access.** Notwithstanding the provisions of WAC 220-500-040, effective July 1, 2024, until further notice, rules regarding operating motor vehicles off of developed roadways in department managed wildlife and access areas shall be modified as follows, other provisions of WAC 220-500-040 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful to operate a motor vehicle off developed roadways in wildlife areas and access areas owned or controlled by the department in Lincoln, Whitman, and Spokane counties. However, it is permissible to park in an area devoid of vegetation within 10 feet of the roadway, and to park overnight in developed campgrounds and at trailheads unless otherwise posted.

(2) A violation of this section is an infraction punishable under RCW 77.15.160.

#### NEW SECTION

**WAC 220-500-11000G Fire and campfires.** Notwithstanding the provisions of WAC 220-500-110, effective July 1, 2024, until further notice, rules regarding fires, campfires, and smoking in wildlife areas and access areas owned or controlled by the department shall be modified as follows, other provisions of WAC 220-500-110 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful to build, start, or maintain fires or campfires in wildlife areas and access areas owned or controlled by the department in Lincoln, Whitman and Spokane counties without a permit or approval from the director. However, it is permissible to use personal camp stoves or lanterns fueled by liquid petroleum, liquid petroleum gas, or propane.

(2) It is unlawful to smoke in wildlife areas and access areas owned or controlled by the department in Lincoln, Whitman, and Spokane counties, except in an enclosed vehicle.

(3) A violation of this section is an infraction punishable under RCW 77.15.160.

REPEALER

The following sections of Washington Administrative Code are repealed, effective October 1, 2024:

- WAC 220-500-03000F Behavior and conduct (24-107);
- WAC 220-500-04000N Regulating public access (24-107);
- WAC 220-500-11000F Fires and campfires (24-107);
- WAC 220-500-14000F Firearms and target practicing.  
(24-107).

WSR 24-20-123  
EMERGENCY RULES  
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 1, 2024, 2:19 p.m., effective October 1, 2024, 2:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of social and health services (department) is adopting emergency amendments to WAC 388-412-0040 Can I get my benefits replaced?

Effective October 1, 2024, these amendments are necessary to align with the passing of the Continuing Appropriations and Extension Act, 2025, which authorizes the replacement of SNAP benefits stolen due to skimming, cloning, or other fraudulent methods through December 20, 2024.

Citation of Rules Affected by this Order: Amending WAC 388-412-0040.

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, 74.08A.120.

Other Authority: H.R. 9747 (Continuing Appropriations and Extensions Act, 2025): Division B - Extensions, Title I - Miscellaneous Extensions, Sec. 105).

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: Effective October 1, 2024, the Continuing Appropriations and Extensions Act, 2025, authorizes continued replacement of SNAP benefits stolen through card skimming, card cloning, or other similar methods, until December 20, 2024.

The department is concurrently proceeding with the permanent rule-making process.

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 0, Repealed 0.

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

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

Date Adopted: September 30, 2024.

Katherine I. Vasquez  
Rules Coordinator

SHS-5058.1

AMENDATORY SECTION (Amending WSR 24-14-081, filed 6/28/24, effective 8/1/24)

**WAC 388-412-0040 Can I get my benefits replaced?** Under certain conditions, we may replace your benefits.

(1) You may get either your EBT cash or food assistance, or both replaced if:

(a) We make a mistake that causes you to lose benefits;

(b) The EBT card mailed to you is stolen from the mail, you never had the ability to use the benefits, and you lost benefits;

(c) You left a drug or alcohol treatment facility on or before the 15th of the month and the facility does not have enough food assistance benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake; or

(e) The food that your household purchased with food assistance benefits was destroyed in a household disaster or misfortune; and

(i) You reported the loss to the department within 10 days from the date of the loss; and

(ii) You submitted a signed statement attesting to the household's loss within 10 days from the date the loss was reported.

(iii) We replace the amount of your loss up to a one-month benefit amount.

(iv) There is no limit to the number of replacements for food destroyed in a household misfortune.

(f) Your food benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method between October 1, 2022, and ((September 30, 2024)) December 20, 2024, or on the date that the federal government ends the requirement that food benefits must be replaced, whichever is later; and

(i) The head of household of your assistance unit submitted a completed and signed claim within 30 days of discovering the loss; and

(ii) You have not already received two food replacements in the current federal fiscal year.

(iii) We replace the amount of your loss or the amount of twice your food assistance allotment that was issued immediately prior to the date of the theft, whichever is less.

(iv) Retroactive claims for food assistance stolen between October 1, 2022, and August 22, 2023, must be reported no later than October 22, 2023.

(v) Replacement of benefits stolen via card skimming, cloning, or other similar method is contingent upon federal approval.

(g) Your cash benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method on or after July 1, 2024; and

(i) The head of household of your assistance unit submitted a completed and signed claim within 30 days of discovering the loss; and

(ii) You have not already received two cash replacements in the current federal fiscal year; and

(iii) You received cash benefits through one of these programs: temporary assistance for needy families (TANF), state family assistance (SFA), pregnant women assistance (PWA), refugee cash assistance (RCA), or aged, blind, or disabled (ABD) cash assistance.



(iv) We replace the amount of your loss or the amount of twice your cash assistance allotment that was issued immediately prior to the date of the theft, whichever is less.

(v) Replacement of cash benefits stolen via card skimming, cloning, or other similar method will end on (~~September 30, 2024~~) December 20, 2024, or on the date that the federal government ends the requirement that food benefits must be replaced, whichever is later.

(vi) Replacement of cash benefits stolen via card skimming, cloning, or other similar method will end if state funds appropriated for this purpose are exhausted.

(2) We will not replace your benefits if:

(a) We decided that your request is fraudulent or skimming is not validated;

(b) Your EBT card was lost, stolen, or misplaced except for (1)(b) of this section;

(c) You are pending an administrative hearing decision regarding a denial of replacement benefits. You have the right to an administrative hearing if your request for replacement benefits is denied; or

(d) You received disaster supplemental nutrition assistance program (D-SNAP) benefits for the same month you requested a replacement for food assistance.

(3) It is your responsibility to keep track of your household's EBT card.

(a) If you have multiple EBT cards replaced, we may suspect you to be trafficking benefits as described under WAC 388-412-0046 (2)(d).

(b) If we suspect trafficking, we will refer your case for investigation by the office of fraud and accountability. Persons trafficking in food assistance benefits may be subject to fines, disqualification from food assistance, and legal action including criminal prosecution.

**WSR 24-20-124**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-217—Filed October 1, 2024, 2:41 p.m., effective October 2, 2024]

Effective Date of Rule: October 2, 2024.

Purpose: The purpose of this emergency rule is to temporarily close recreational fishing in Skagit River from Gilligan Creek to Baker River.

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

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

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

Reasons for this Finding: This rule is necessary to temporarily close a portion of the Skagit River to avoid gear conflicts with treaty fisheries. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: October 1, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000X Freshwater exceptions to statewide rules—Puget Sound.** Effective October 2 through October 3, 2024, the following provisions of WAC 220-312-040 regarding fishing seasons for the Skagit River from Gilligan Creek to Baker River shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, unless otherwise amended by emergency rule, remain in effect:

**Skagit River (Skagit Co.):** From Gilligan Creek to Baker River:  
All species: Closed Waters.

**WSR 24-20-125**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-218—Filed October 1, 2024, 2:44 p.m., effective October 1, 2024, 2:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to return Stillaguamish River salmon seasons to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000W.

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: A reduction to the daily limit is no longer necessary. In-season indicators now show the number of coho returning to the river is sufficient to return to permanent rules without risking meeting conservation objectives for Stillaguamish coho.

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: October 1, 2024.

Kelly Susewind  
Director

REPEALER

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

WAC 220-312-04000W Freshwater exceptions to statewide rules—Puget Sound. (23-203)

**WSR 24-20-132**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-219—Filed October 1, 2024, 4:14 p.m., effective October 1, 2024, 4:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: (1) Allows the department of fish and wildlife (department) to continue to use contracted crop damage claim adjusters. To do so, the department must establish updated certification and experience standards for department contracted crop adjusters.

(2) Follows 2024 legislative SSB 5784, changing the value limits of an appeal.

Citation of Rules Affected by this Order: Amending WAC 220-440-150 and 220-440-180.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.240, 77.36.170, and 77.36.180.

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

Reasons for this Finding: This emergency rule is necessary: (1) Because of a change in the availability of federal crop insurance, continuing education training for crop adjusters has resulted in the department being unable to comply with existing rule. This has rendered the department unable to assess crop damage claims by current department contracted adjusters. This change will allow for substitution of experience for the federal license and allow claims to continue to be processed with only a state license.

(2) To comply with recently enacted state statutes resulting from SSB 5784.

This emergency rule was first filed on May 31, 2024, under WSR 24-12-051, and is being extended to provide coverage while the permanent rule is being developed. The permanent rule making related to this emergency rule was filed under WSR 24-16-048 on July 30, 2024.

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 2, Amended 0, Repealed 0.

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

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

Date Adopted: October 1, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-440-15000B Application for cash compensation for commercial crop damage—Procedure.** Notwithstanding the provisions of WAC 220-440-150, effective immediately, until further notice, WAC 220-440-150 subsection (7) (a) shall be modified as described below. All other provisions of WAC 220-440-150 not addressed herein remain in effect unless otherwise amended by emergency rule:

The claimant must submit a damage claim assessment prepared by a crop insurance adjustor licensed by the state of Washington and certified by the federal crop insurance service, or by a crop adjuster who is under contract with the department that has a current State of Washington insurance adjuster license and a minimum of 10 years of verifiable deer and elk caused crop damage investigation experience which may substitute for the additional federal crop insurance certification.

NEW SECTION

**WAC 220-440-18000B Application for cash compensation for livestock damage or domestic animal—Procedure.** Notwithstanding the provisions of WAC 220-440-180, effective immediately, until further notice, subsections (8) and (12) of WAC 220-440-180 shall be modified as described below. All other provisions of WAC 220-440-180 not addressed herein remain in effect unless otherwise amended by emergency rule:

(8) Subject to funds appropriated to pay for livestock or guard dog losses, undisputed claims will be paid up to the limits in RCW 77.36.130.

(12) Upon completion of an evaluation, the department will notify the claimant of its decision to either deny the claim or make a settlement offer (order). The claimant has sixty days from the date that the offer is received to accept, sign, and mail to the department the original offer for settlement of the claim. If the claimant wishes to appeal the offer, the claimant must request an informal resolution or adjudicative proceeding as described in WAC 220-440-230 up to the limit set forth in RCW 77.36.130.

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

**WSR 24-20-149**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-221—Filed October 2, 2024, 11:55 a.m., effective October 2, 2024, 11:55 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule rescinds 17 previously adopted open periods for the Knappa Slough select area nontreaty commercial fishery. Big Creek Hatchery coho broodstock collection is tracking behind schedule due to recruitment issues concerning low stream flows. Managers are taking precautionary measures to help facilitate fulfilling hatchery egg-take goals. These fisheries are consistent with the 2024 nontreaty fall fisheries plan that was developed in conjunction with the annual North of Falcon management process, the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 18, August 14, September 4, September 10, September 18, September 25, and October 1, 2024. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion un-

der 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon Management Agreement*.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

Number of Sections Adopted at the Request of a 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: October 2, 2024.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000K Columbia River seasons below Bonneville.**

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**(1) Mainstem Gillnet:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 18	Sunday, Tuesday, Thursday (nights)	7:00 pm - 7:00 am	12 hrs

(a) **Area:** Catch Reporting Areas 1E and 1D (Zones 4-5). The dead-line at the lower end of Area 1E (Zone 4) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy River.

(b) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. 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. Lighted buoys required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

**(2) Emerging Commercial Fishery - Mainstem Seine:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday - Friday	6:00 am - 5:00 pm	11 hrs

(a) **Area:** Catch Reporting Areas 1A, 1B, and 1C (Zones 1-3). The deadline at the upper end of Area 1C (Zone 3) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Elokomin-B, Cowlitz, Kalama-B, Lewis-B and Select Area commercial fishing sites.

(b) **Gear:** Beach seines or purse seines only. Only one seine net per primary vessel. Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure). Net material to consist of 3-strand nylon; twine size ≥#12. Seines may include a bunt of 1.0-2.0 inch knotless mesh. Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet). Seine and lead lines may not be connected. Lead nets must be retrieved daily. No restrictions on corkline, leadline or use of stringers and slackers. A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline. Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net. Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size ≥#12, ≤3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size ≥14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

(c) **Allowable Possession and Sales:** Subject to IFQs as defined on individual permits. Except as noted below, allowable sales limited to adipose fin-clipped Chinook, adipose fin-clipped Coho, sockeye, and pink salmon and shad. All legal adult Chinook and legal adult Coho caught must be kept and sold. Adult salmon defined in WAC 220 300-010. Retained Chinook and Coho must have a healed scar at the location of the adipose-clipped fin.

(d) **Handling of Catch:** Hand sorting or use of a knotless dip net is required when sorting fish. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

(e) **Sort time not to exceed 75 minutes:**

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.



(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(f) **Observer Program:** Agency observers must be present during all fishing operations.

**(3) Mainstem Tangle Net:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Mondays, Tuesdays, Wednesdays, Thursdays	4:00 am - 10:00 pm	18 hrs
Immediately - October 25	Fridays	4:00 am - 6:00 pm	14 hrs

(a) **Area:** SMCRA 1A ,1B, and 1C. Upper deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries include Elokomina-A, Cowlitz River, Kalama-A and Lewis-A.

(b) **Gear:** Drift nets only. Maximum mesh size is 3.75 inches. Un-slackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(c) **Allowable Sales:** Salmon (except chum), and shad; all coho must be adipose fin-clipped.

(d) **Regulations:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

(e) **Soak times,** defined as the time elapsed from when the first of the net web is deployed into the water until the web is fully retrieved from the water, must not exceed 30 minutes.

(f) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(g) **Measuring mesh size:** Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(h) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate

in this fishery. At least one fisher on each boat must have live capture certification.

(i) **Multiple 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.

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

(k) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

**(4) Tongue Point/South Channel Select Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area,

the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be on-board.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be on-board.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time be-

tween official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

**(5) Blind Slough Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	6:00 p.m. - 10:00 a.m.	16 hrs

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

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

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

(c) **Allowable Sales:** Salmon (except Chum) and shad.

**(6) Deep River Select Area:**

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 11	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 14 - October 31	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 4 - November 28	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

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

(b) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically authorized for use may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished

any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(7) **24-hour quick reporting** is in effect for Washington buyers WAC 220-352-315. Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

(8) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

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

**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 immediately:

WAC 220-358-03000J Columbia River seasons below  
Bonneville. (24-208)