

**WSR 20-18-001**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed August 20, 2020, 8:23 a.m., effective August 20, 2020, 8:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is extending the amendment of the rules listed below to assure [ensure] assisted living facilities are not significantly impeded during the hiring process due to an administrator's inability to obtain a certificate of completion of a recognized administrator training as referenced in WAC 388-78A-2521. This will help to increase the number of long-term care administrators necessary to provide essential services to some of Washington's most vulnerable adults during the outbreak of COVID-19. The current rules require administrator training prior to assuming administrator duties or within six months of beginning duties for administrators meeting additional educational requirements. Currently, applicants for assisted living facility administrator positions are unable to obtain the required training. Although the training will become available, it will not be enough to meet the backlog of administrators needing this training.

The department filed a CR-101 Preproposal statement of inquiry as WSR 20-17-085 on August 13, 2020, to begin the permanent rule-making process.

Citation of Rules Affected by this Order: Amending WAC 388-78A-2524(1), 388-78A-2525(1), and 388-78A-2526(1).

Statutory Authority for Adoption: RCW 18.20.090.

Other Authority: None.

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

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in congregate settings, such as assisted living facilities. Administrator training is part of the hiring process and must be completed within a designated timeframe. Currently, applicants for assisted living facility administrator positions are unable to obtain the required training. Although the training will become available, it will not be enough to meet the backlog of administrators needing this training. This circumstance is expected to exacerbate demand for long-term care administrators when the pandemic has already significantly reduced the availability of long-term care workers in the state in recent months.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 3, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 17, 2020.

Katherine I. Vasquez  
Rules Coordinator

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

**WAC 388-78A-2524 Administrator qualifications—Certification of training, and three years experience.** Prior to assuming duties as a boarding home administrator, the individual has ~~((met the following qualifications:~~

~~(1) Obtained certification of completing a recognized administrator training as referenced in WAC 388-78A-2521; and~~

~~(2) Has))~~ three years paid experience:

~~((a))~~ (1) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

~~((b))~~ (2) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

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

**WAC 388-78A-2525 Administrator qualifications—Associate degree, certification of training, and two years experience.** The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection ~~(1)((c))~~ or ~~(2)((c))~~ of this section:

~~(1) ((Obtains certification of completing a recognized administrator training course as referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or~~

~~(2)))~~ Has two years paid experience:

~~(a)~~ Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

~~(b)~~ Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract

with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

~~((3))~~ (2) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

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

**WAC 388-78A-2526 Administrator qualifications—Bachelor's degree, certification of training, and one year experience.** The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1)~~((7))~~ or (2) ~~((or (3)))~~ of this section.

(1) ~~((Obtains certification of completing a recognized administrator training course and referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or~~

~~(2))~~ Has one year paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

~~((3))~~ (2) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

**WSR 20-18-002  
EMERGENCY RULES  
CLOVER PARK**

**TECHNICAL COLLEGE**

[Filed August 20, 2020, 8:34 a.m., effective August 20, 2020, 8:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To adopt new Title IX grievance procedures as mandated by the United States Department of Education.

Citation of Rules Affected by this Order: Amending WAC 495C-121-200 through 495C-121-230.

Statutory Authority for Adoption: RCW 28B.50.140; WSR 14-11-070.

Other Authority: United States Department of Education 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: Per new regulations detailed in 34 C.F.R. Part 106 (Docket ID ED-2018-OCR-0064), adopting the revised Title IX grievance procedures was mandated by August 14, 2020.

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

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

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

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

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

Date Adopted: August 13, 2020.

Joyce Loveday  
President

NEW SECTION

**WAC 495C-121-240 Purpose.** Clover Park Technical College (CPTC) recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, CPTC has enacted a Title IX policy and adopted the following Title IX grievance procedure for receiving and investigating sexual harassment allegations arising during education programs and activities. Any individual found responsible for violating CPTC's Title IX policy is subject to disciplinary action up to and including dismissal from CPTC's educational programs and activities and/or termination of employment.

Application of this Title IX grievance procedure is restricted to allegations of "sexual harassment," as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts CPTC's ability to investigate and pursue discipline based on alleged violations of other federal, state, and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in CPTC's code of student conduct, employment contracts, employee handbooks, and collective bargaining agreements.

NEW SECTION

**WAC 495C-121-250 Definitions.** For purposes of this Title IX grievance procedure, the following terms are defined as follows:

(1) "**Consent**" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time

of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

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

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

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

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

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

(6) **"Grievance procedure"** is the process CPTC uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.

(7) **"Supportive measures"** are nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent regardless of whether the complainant or the Title IX coordinator has filed a formal complaint. Supportive measures restore or preserve a party's access to CPTC's education programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX coordinator and the party. Supportive measures include measures designed to protect the safety of all parties and/or the CPTC's educational environment and/or to deter sexual harassment or retaliation. Supportive measures may include, but are not limited to, (a) counseling and other medical assistance, (b) extensions of deadlines or other course-related adjustments, (c) modifications of work or class schedules, (d) leaves of absence, (e) increased security or monitoring of certain areas of campus, and (f) imposition of orders prohibiting the parties from contacting one another in housing or work situations. Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided, the Title IX coordinator must document in writing why this was clearly reasonable under the circumstances.

(8) **"Summary suspension"** means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 495C-121-190.

(9) **"Sexual harassment,"** for purposes of these Title IX grievance procedures, sexual harassment occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

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

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

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

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

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

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

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

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

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

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

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

(A) The length of the relationship;

(B) The type of relationship; and

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

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

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

(10) "**Title IX administrators**" are the Title IX coordinator, Title IX investigators, the student conduct officer, student conduct committee members, conduct review officer, and CPTC provided advisors assigned to the parties by CPTC during Title IX disciplinary proceedings.

(11) "**Title IX coordinator**" is responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this grievance procedure. Among other things, the Title IX coordinator is responsible for:

- (a) Accepting and processing all Title IX reports, referrals, and formal complaints.
- (b) Executing and submitting a formal complaint when appropriate and necessary.
- (c) Handling requests for confidentiality.
- (d) Determining during the grievance procedure:
  - (i) Whether a formal complaint should be dismissed either in whole or in part, and if so;
  - (ii) Providing notice to both parties about why dismissal was necessary or desirable; and
  - (iii) Referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.
- (e) Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.
- (f) Conducting investigations or assigning and overseeing investigations.
- (g) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation.
- (h) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.
- (i) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other CPTC administrators.

#### NEW SECTION

**WAC 495C-121-260 Principles for Title IX grievance procedure.** (1) Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.

(2) Before imposing discipline, CPTC is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation by a preponderance of the evidence.

(3) CPTC shall treat both the complainant and respondent equitably by providing complainant with remedies

against respondent who has been found responsible for sexual harassment through application of the institution's Title IX grievance and applicable Title IX disciplinary procedures and by providing respondent with Title IX procedural safeguards contained in this Title IX grievance procedures and in the applicable Title IX disciplinary procedures.

(4) The investigator shall base investigation results on all relevant evidence, including both exculpatory and inculpatory evidence.

(5) Formal and informal resolutions will be pursued within reasonably prompt time frames with allowances for temporary delays and extensions for good cause shown. Grounds for temporary delay include, but are not limited to, school breaks, illness/health concerns, timing in the quarter (finals, registration, etc.), and other reasonable scheduling issues. Good cause supporting a request for an extension includes, but is not limited to: A party, a party's advisor, or a witness being unavailable, concurrent law enforcement activity, and the need for language assistance or accommodation of disabilities. Both parties will receive written notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.

(6) A respondent found responsible for engaging in sexual harassment may receive discipline up to and including dismissal from CPTC. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 495C-121-060.

An employee found responsible for sexual harassment may receive discipline up to and including dismissal from employment. A description of possible disciplinary sanctions and conditions that may be imposed against employees can be found in the applicable collective bargaining agreement, the applicable college policy, and/or the employee handbook.

(7) In proceedings against a student respondent, the parties may appeal the student conduct committee's ruling to the president pursuant to WAC 495C-121-110 and supplemental Title IX student conduct code procedures, WAC 495C-121-230.

In proceedings against an employee respondent, the parties may appeal the employee disciplinary decision to the president within fourteen calendar days.

(8) Title IX administrators may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:

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

NEW SECTION

**WAC 495C-121-270 Title IX administrators—Free from bias—Training requirements.** (1) Title IX administrators shall perform their duties free from bias or conflicts.

(2) Title IX administrators shall undergo training on the following topics:

- (a) The definition of sexual harassment under these procedures;
  - (b) The scope of CPTC's educational programs and activities;
  - (c) How to conduct an investigation;
  - (d) How to serve impartially without prejudgment of facts, conflicts of interest, or bias;
  - (e) Use of technology used during an investigation or hearing;
  - (f) The relevance of evidence and questions; and
  - (g) Effective report writing.
- (3) All Title IX administrator training materials shall be available on CPTC's Title IX webpage.

NEW SECTION

**WAC 495C-121-280 Filing a complaint.** Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to CPTC's Title IX coordinator identified below. If the complaint is against the Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

Name: Kirk Walker  
 Title: Director HR, Title IX Coordinator  
 Office: 253-589-5533

NEW SECTION

**WAC 495C-121-290 Confidentiality.** (1) CPTC will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as CPTC policies and procedures. Although CPTC will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(2) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged sexual harassment. If a complainant asks that their name not be revealed to the respondent or that CPTC not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit CPTC's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that CPTC not investigate, the Title IX coordinator will determine whether CPTC can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the CPTC community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- (a) The seriousness of the alleged sexual harassment;
  - (b) The age of the complainant;
  - (c) Whether the sexual harassment was perpetrated with a weapon;
  - (d) Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;
  - (e) Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and
  - (f) Whether relevant evidence about the alleged incident can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).
- (3) If CPTC is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this grievance procedure.

If CPTC decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 495C-121-200 Supplemental definitions.
- WAC 495C-121-210 Supplemental sexual misconduct procedures.
- WAC 495C-121-220 Supplemental complaint process.
- WAC 495C-121-230 Supplemental appeal rights.

**WSR 20-18-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**

[Filed August 20, 2020, 9:35 a.m., effective August 20, 2020, 9:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-834-050 Examination requirements for licensure as a midwife, 246-834-060 Initial application requirements for licensure as a midwife, and 246-834-160 Student midwife permit. This is the second emergency rule for these amendments. This emergency rule continues without change [changing] the amendments filed in the first emergency rule, filed on April 22, 2020, under WSR 20-10-001. In response to the coronavirus disease 2019 (COVID-19) pandemic the department of health (department) is amending requirements for examination for midwifery applicants. In the permanent rule, applicants must take and pass three examinations to become a licensed midwife: (1) The national examination given by the North American Registry of Midwives (NARM); (2) the jurisprudence given by the depart-

ment; and (3) the state licensing examination given by the department. This emergency rule removes the requirement for the NARM since it is not currently administered. Also, the department is amending the passing score for the Washington state licensure exam from eighty percent to seventy-five percent.

Citation of Rules Affected by this Order: Amending WAC 246-834-050, 246-834-060, and 246-834-160.

Statutory Authority for Adoption: RCW 18.50.135.

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 of emergency in Washington state due to the COVID-19 pandemic, continues to lead to a shortage of midwives as expectant families are moving away from planned hospital births. Washington midwives have seen a significant uptick, both in late transfers and planned out of hospital births, as the population shifts toward midwifery care.

The NARM examination is given at testing sites that are closed due to shelter in place and social distancing practices. Attempts by NARM to provide remote proctoring are proving to be difficult or impossible for applicants. Maintaining the NARM as a licensing requirement would essentially put a stop to licensing midwives when that profession is greatly needed.

Using social distancing practices, the midwifery program will maintain the requirement of the paper-based Washington state licensure examination. Amending the passing score for the Washington state licensure examination to seventy-five percent will allow a greater number of candidates to successfully pass the examination on the first attempt. Approximately sixty-five percent of candidates pass the Washington state licensure examination on the first attempt. Amending the passing score to seventy-five percent would allow for approximately eighty percent of candidates to successfully pass the Washington state licensure examination on their first attempt, reducing the number of times they must go to the testing site. Even though the passing score is temporarily being lowered, the exam is still rigorous and ensures public safety by testing the scientific and practical fitness of candidates to practice midwifery.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 13, 2020.

Jessica Todorovich

Chief of Staff

for John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 17-15-024, filed 7/7/17, effective 8/7/17)

**WAC 246-834-050 Examination requirements for licensure as a midwife.** An applicant for midwifery licensure shall successfully pass:

(1) ~~((The midwifery examination offered by the North American Registry of Midwives (NARM);~~

~~((2)))~~ The Washington state licensure examination with a minimum passing score of ~~((eighty))~~ seventy-five percent; and

~~((3)))~~ (2) The midwifery jurisprudence examination with a passing score of one hundred percent, as offered by the department.

AMENDATORY SECTION (Amending WSR 19-15-005, filed 7/5/19, effective 8/5/19)

**WAC 246-834-060 Initial application requirements for licensure as a midwife.** (1) An applicant for a midwife license shall submit to the department the following:

(a) Initial application on forms provided by the department.

(b) Fees required in WAC 246-834-990.

(c) Proof of high school graduation, or its equivalent.

(d) Proof of at least three years of midwifery training, per RCW 18.50.040 (2)(a), unless the applicant qualifies for a reduced academic period.

(e) Proof of completion of seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8.

(f) Proof of successful completion of the midwifery jurisprudence exam, as offered by the department.

(2) In addition to the requirements in subsection (1) of this section, an applicant for a midwife license shall also ~~((a)))~~ have transcripts sent directly to the department from the applicant's midwifery school demonstrating that the applicant has received a certificate or diploma in midwifery. An applicant applying under WAC 246-834-065 or 246-834-066 may be exempted from this requirement.

~~((b))~~ Have verification of passing the North American Registry of Midwives (NARM) examination. Results must be sent directly to the department from NARM.

(3) Once all application requirements in this section are met, and additional requirements in WAC 246-834-065 or 246-834-066 if applicable, the department will schedule the applicant for the Washington state specific component exam.

AMENDATORY SECTION (Amending WSR 17-15-024, filed 7/7/17, effective 8/7/17)

**WAC 246-834-160 Student midwife permit.** (1) A student midwife permit may be issued to any individual who has:

(a) Successfully completed an accredited midwifery program as specified in WAC 246-834-135, or is foreign trained as specified in WAC 246-834-065(1);

(b) Obtained a minimum period of midwifery training of at least three academic years as required by WAC 246-834-140;

(c) Met the minimum education requirements required in WAC 246-834-140 (2)(a) and (b);

(d) Documentation of undertaking the care of not less than fifty women in each of the prenatal, intrapartum and early postpartum periods as required by RCW 18.50.040 (2) (c); and

(e) ~~((Satisfactorily completed the NARM examination required by WAC 246-834-050; and~~

(f)) Filed a completed application for student midwife permit under WAC 246-834-060 and accompanied by a non-refundable fee as specified in WAC 246-834-990.

(2) The student midwife permit authorizes the individuals to practice and observe women in the intrapartum period under the supervision of a licensed midwife under 18.50 RCW, an allopathic physician under chapter 18.71 RCW, an osteopathic physician under chapter 18.57 RCW or certified nurse midwife under chapter 18.79 RCW.

(3) Once all application requirements including clinical components are completed the applicant may be eligible to sit for the Washington state licensure examination.

**WSR 20-18-007**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 20-162—Filed August 20, 2020, 2:06 p.m., effective August 30, 2020]

Effective Date of Rule: August 30, 2020.

Purpose: The purpose of this rule is to adjust commercial gillnet and purse seine fisheries in Salmon Management and Catch Reporting Area 7C, from August 30 through September 4, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000D, 220-354-16000E and 220-354-12000V; and amending WAC 220-354-120 and 220-354-160.

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

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

Reasons for this Finding: This emergency rule is needed to adjust commercial gillnet and purse seine salmon fisheries

in Puget Sound Salmon Management and Catch Reporting Area 7C beginning August 30, 2020. The reason for the closure is to avoid gear conflicts with a tribal crab opening. This action is undertaken through comanager agreement.

Immediate adoption of these rules is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 3.

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

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

Date Adopted: August 20, 2020.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-354-16000E Puget Sound salmon—Gillnet—Open periods.** Effective 7 p.m. August 30 through 7 a.m. September 4, 2020 the following provisions of WAC 220-354-160 regarding commercial gillnet open periods and mesh size for Salmon Management and Catch Reporting Areas 7B and 7C shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/ Closed	Time	Date	Mesh Size
7B, 7C:	Open	7 PM - 8 AM	Nightly 8/30, 8/31	7"
7C:	Closed	8 AM 9/1 - 7 AM 9/4		
7B	Open	7 AM 9/1 - 7 AM 9/4		5"

NEW SECTION

**WAC 220-354-12000V Puget Sound salmon—Purse seine—Open periods.** Effective 6 a.m. through 8 p.m. September 2, 2020 the following provisions of WAC 220-354-120 regarding commercial purse seine open periods for Salmon Management and Catch Reporting Area 7C shall be as described below. All other provisions of WAC 220-354-120 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date
7C:	Closed	6 AM - 8 PM	9/2

**REPEALER**

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

WAC 220-354-16000D Puget Sound salmon—Gillnet—Open periods.

The following section of the Washington Administrative Code is repealed effective September 5, 2020:

WAC 220-354-16000E Puget Sound salmon—Gillnet—Open periods.

The following section of the Washington Administrative Code is repealed effective September 3, 2020:

WAC 220-354-12000V Puget Sound salmon—Purse seine—Open periods.

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

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

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

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

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

Date Adopted: August 21, 2020.

Kelly Susewind  
Director

**NEW SECTION**

**WAC 220-312-04000R Freshwater exceptions to statewide rules—Puget Sound.** Effective August 27, 2020 through September 12, 2020, the following provisions of WAC 220-312-040 regarding recreational salmon seasons for Whatcom Creek (Whatcom County), shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Whatcom Creek (Whatcom Co.); from the mouth (a line from the flashing light at the southwest end of the Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond) to the markers downstream of the footbridge that is downstream of Dupont Street: Salmon:

(a) Daily limit 1 hatchery Chinook only; release all other salmon.

(b) Night Closure in effect.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective September 13, 2020:

WAC 220-312-04000R Freshwater exceptions to statewide rules—Puget Sound.

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

[Order 20-162—Filed August 21, 2020, 10:39 a.m., effective August 27, 2020]

Effective Date of Rule: August 27, 2020.

Purpose: The purpose of this rule is to open a retention season for hatchery Chinook in Whatcom Creek.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000R; and amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is needed to open seasons for hatchery Chinook salmon in Whatcom Creek. In 2017 comanagers released summer Chinook fry spawned at Skookum Creek that came from parents that were not genetically suitable for the Skookum program into Whatcom Creek. More fish survived than forecast. The release was intended to result in additional Chinook returning for southern resident killer whales and marine harvest programs. Because these fish have passed through from both southern resident killer whale foraging areas and marine fisheries and returned to the terminal area, they are available for harvest.

Immediate adoption of this rule is necessary for the preservation of public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. There is insufficient time to adopt permanent rules.

**WSR 20-18-011**

**EMERGENCY RULES**

**WESTERN WASHINGTON UNIVERSITY**

[Filed August 21, 2020, 12:45 p.m., effective August 21, 2020, 12:45 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: New WAC 516-21-291, 516-21-292, 516-21-293, 516-21-294, 516-21-295, 516-21-296, 516-21-297, 516-21-298 and 516-21-299; and amending WAC 516-21-240 and 516-21-270.

Statutory Authority for Adoption: RCW 28B.35.120 (12); 20 U.S.C. 1681-1688 (Title IX Education Amendments of 1972).

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 21, 2020.

Jennifer Sloan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

**WAC 516-21-240 Student conduct system.** (1) The vice president for enrollment and student services is responsible for administration of the code. Supervision of the code has been delegated by the vice president to the dean of students.

(2) A conduct officer(s) shall be appointed and supervised by the dean of students or their authorized designee. A conduct officer has the authority to consider complaints, make findings, and administer sanctions for violations of the code. In complaints alleging ~~((discrimination or sexual violence, which includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, an investigation and written report of findings from Western Washington University's equal opportunity office (or their designee) will be provided to a conduct officer in lieu of the conduct officer's investigation))~~ a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes nonconsensual sexual intercourse, nonconsensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance.

A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a finding as to whether the code was violated and impose sanction(s).

(3) Appeal board members shall be appointed to consider appeals of a conduct officer's findings and sanctions. Appeal board members shall include a pool of the following:

(a) Four faculty members, appointed by the faculty senate;

(b) Six student members, appointed by the associated students board of directors and/or residence hall association. Student board members must:

(i) Have a cumulative grade point average above 2.0;

(ii) Not currently be under an active sanction of the conduct code or have had previous conduct violations during the current academic year; and

(iii) Be confirmed by the dean of students; and

(c) Four staff members, generally but not exclusively from the division of enrollment and student services, confirmed by the dean of students.

(4) An appeals board shall be composed of five members and any three persons constitute a quorum of a board. Generally an appeals board will be comprised of faculty, staff, and students, but in some instances may only be comprised of members from two of the three groups. The dean of students, or their designee, will appoint a chair from this pool for each board. Board members may not have been involved in consideration of the complaint, or involved in the complaint. Board members must be properly trained in accordance with state and/or federal guidance. The dean of students or their designee will have final authority to approve all of those serving on a board. The dean of students, or their designee, will work to ensure that any board is balanced and representative.

(5) A staff member appointed by the dean of students may advise the board on technical details of the code and its procedures.

(6) Conduct officers, the appeals board, and the dean of students or authorized designees have full authority to administer a decision under the code.

AMENDATORY SECTION (Amending WSR 17-05-100, filed 2/15/17, effective 3/18/17)

**WAC 516-21-270 Proceedings for violations of the code.** (1) Any member of the university community may file a complaint against a student for a violation of the student conduct code. A complaint should be made in writing to the office of student life. Additionally, information received from any source (police report, third party, online, etc.) may be considered a complaint.

(2) After a consideration of the complaint, a conduct officer may take any of the following actions:

(a) Review the complaint, investigate and make a finding whether the code was violated and impose sanction(s);

(b) Terminate the proceeding and enter a finding that there is no violation of the code and/or that the respondent is not responsible for the alleged conduct violation; or

(c) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises.

(3) In complaints alleging ~~((discrimination and/or sexual violence, including sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, complaints should be made to Western Washington University's equal opportunity office. An investigation and written report of findings from Western Washington University's equal opportunity office))~~ a violation of any type of sexual misconduct or gender-based discrimination including Title IX sexual harassment which encompasses quid pro quo harassment, hostile environment, domestic violence, dating violence, stalking or sexual assault which includes nonconsensual sexual intercourse, nonconsensual sexual contact, incest or statutory rape, complaints should be made to Western Washington University's office of civil rights and Title IX compliance. A final investigation report from Western Washington University's office of civil rights and Title IX compliance (or their designee) will be provided to the conduct officer in lieu of the conduct officer's investigation. The conduct officer will then consider this report and make a finding as to whether the code was violated and impose sanction(s).

(4) Any student charged by a conduct officer with a violation of the student code is provided at least three days written notice of the student's meeting date, time and location. Any request to extend the time and/or date of the conduct officer meeting should be addressed to the conduct officer. The written notice shall include:

(a) A brief summary of the complaint, including the sections of the code allegedly violated;

(b) The approximate time and place of the alleged behavior that forms the factual basis for the charge of violation;

(c) The time, date, and place of the meeting;

(d) A copy of, or link to, the code.

(5) The respondent and complainant (if applicable) are notified in writing of the determination made by the conduct officer, including the basis for any findings and sanctions. The notice includes information regarding the right to request an appeal.

(6) All notifications under the code are delivered by electronic mail to the students' university email account. Any notifications sent via regular U.S. mail (for instance, to students not currently enrolled) may be sent to the party's last known address or the address on file with the university registrar. Students are responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in the code begin the date the notification is sent via electronic means.

(7) Upon written request to the dean of students office, staff will be available to the respondent and complainant (if applicable) to assist in understanding the student conduct process.

(8) A conduct officer's determinations and findings are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the respondent violated the code.

(9) Evidence is relevant if it tends to make existence of a fact more or less probable. A conduct officer, appeal board

chair, or dean of students shall have the discretion to determine admissibility of evidence.

(10) If respondent or complainant (if applicable) to whom notice of a meeting or hearing has been sent does not appear before a conduct officer or appeals board, the complaint may be considered in their absence, and the conduct officer or appeals board may issue a decision based upon that information.

#### NEW SECTION

**WAC 516-21-291 Order of precedence under Title IX.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R Part 106. To the extent these supplemental hearing procedures conflict with Western Washington University's standard disciplinary procedures, WAC 516-21-240 and 516-21-270, these supplemental procedures shall take precedence.

#### NEW SECTION

**WAC 516-21-292 Jurisdiction under Title IX.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Western Washington University educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a), (b), and (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Western Washington University from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Western Washington University's student conduct code, chapter 516-21 WAC.

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

#### NEW SECTION

**WAC 516-21-293 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Western Washington University may impose disciplinary sanctions

against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

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

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

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

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

- (a) The length of the relationship;
- (b) The type of relationship; and
- (c) The frequency of interaction between the persons involved in the relationship.

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

#### NEW SECTION

**WAC 516-21-294 Initiation of discipline under Title IX.** (1) Upon receiving the Title IX final investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

#### NEW SECTION

**WAC 516-21-295 Prehearing procedure under Title IX.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 516-21-250. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the student conduct officer.

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

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

NEW SECTION**WAC 516-21-296 Rights of parties under Title IX.** (1)

Western Washington University's student conduct procedures, WAC 516-21-250 and 516-21-270 and this supplemental procedure shall apply equally to all parties.

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

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

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

NEW SECTION

**WAC 516-21-297 Evidence under Title IX.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION**WAC 516-21-298 Initial conduct order under Title IX.** (1) In addition to complying with WAC 516-21-250 and 516-21-270, the student conduct committee will be responsible for conferring and drafting an initial conduct order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Western Washington University's educational programs or activities; and

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

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

NEW SECTION

**WAC 516-21-299 Appeals under Title IX.** (1) The parties shall have the right to request a review from the initial conduct order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to request a review will be subject to the same procedures and time frames set forth in WAC 516-21-290 (5)(c). Appeals of initial conduct orders under Title IX move directly to the review stage of the student conduct code's proceedings.

(2) The vice president of enrollment and student services or their delegate will determine whether the grounds for a request for review have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial conduct order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) The vice president of enrollment and student services or their delegate shall serve the final decision on the parties simultaneously.

**WSR 20-18-017**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 24, 2020, 3:19 p.m., effective August 24, 2020, 3:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to temporarily suspend the requirement that all students in grades K-8 receive at least one hundred instructional minutes per week, per year of physical education.

Citation of Rules Affected by this Order: Suspending [Amending] WAC 392-410-135(1).

Statutory Authority for Adoption: RCW 28A.230.040.

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: Immediate suspension of part of WAC 392-410-135(1) is necessary to provide flexibility for school districts to adopt and implement a COVID-19 reopening plan that keeps students and staff safe and provides students with the opportunity to access educational services. A school district's decision to operate a hybrid or fully remote learning model and to practice social distancing will directly impact the district's ability to offer one hundred minutes per week of face-to-face instructional time for all students in grades 1-8. This change does not remove the requirement for all students in grades 1-8 to receive instruction in physical education, per RCW 28A.230.040.

Date Adopted: August 24, 2020.

Chris P. S. Reykdal  
 State Superintendent of Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

**WAC 392-410-135 Physical education—Grade school and high school requirement.** (1) Grades 1-8. Pursuant to RCW 28A.230.040, ~~((an average of at least one hundred instructional minutes per week per year in))~~ physical education shall be required of all pupils in the common schools in the grade school program (grades 1-8) unless waived pursuant to RCW 28A.230.040.

(2) Grades 9-12. Pursuant to RCW 28A.230.050, a one credit course or its equivalent shall be offered in physical education for each grade in the high school program (grades 9-12).

**WSR 20-18-021**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-164—Filed August 25, 2020, 3:50 p.m., effective August 26, 2020]

Effective Date of Rule: August 26, 2020.

Purpose: Amend commercial shrimp rules in Puget Sound.

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

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) defines the shrimp management areas and regions open to spot and non-spot commercial harvest; (2) sets harvest restrictions for the nonspot commercial pot fishery; (3) sets harvest restrictions for the spot commercial pot fishery; (4) sets the harvest and gear limitations for the Puget Sound shrimp trawl fishery; (5) requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers; (6) closes Shrimp Management Area 1A to state commercial harvest of spot shrimp due to the attainment of quota (7137 pounds); (7) sets the catch limit and dates for the third spot shrimp accounting period to allow 600 pounds of spot shrimp harvest between August 16, 2020, and September 15, 2020; and (8) sets area-based sub-limits if 250 pounds from 23A-C or 23A-W and 150 pounds from 1C or 25A to meter and disperse effort. This additional catch accounting period will provide an opportunity to target the remaining commercial portion of the resource before the end of the season on September 15, 2020. Additionally, this adjustment streamlines the Washington department of fish and wildlife staff workflow and optimizes the economic utility of the commercial share of the resource.

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

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

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

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

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

Date Adopted: August 25, 2020.

Kelly Susewind  
 Director

Emergency

NEW SECTION

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

## (1) Shrimp Pot Harvests:

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

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Areas) 23A-E, 23A-W, 23A-C, and 23A-S are closed to the harvest of non-spot shrimp until the spot quota is attained in all sub-areas of 23A. Catch Areas 23A-E, 23A-W, 23A-C, and 23A-S AE are within Shrimp Management Area 3 and comprise Catch Area 23A.

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

(iii) Effective immediately it is unlawful to harvest spot shrimp from Shrimp Management Area 1A.

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

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

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

(vii) Shrimp Management Areas 1B, 2E, and 2W are closed to the harvest of spot shrimp.

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

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

## (2) Shrimp Non-spot Pot Harvest Restrictions

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

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

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

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

## (3) Shrimp Spot Pot Harvest Restrictions:

(a) It is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 2500 pounds for the second catch accounting period from Shrimp Management Areas 1A, 1C, and 3 combined.

(b) The third spot shrimp catch accounting period is from August 26, 2020 through 11:59 p.m. on September 15, 2020.

(c) It is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds for the third catch accounting period from Shrimp Management Areas 1A, 1C, and 3 combined.

(d) It is unlawful for harvest to exceed 250 lbs. in either Shrimp Quota Area 23A-W or Shrimp Quota Area 23-A C. See Section 1, subsection (a) part (i) for a description of Catch Area 23A.

(e) It is unlawful for harvest to exceed 150 lbs. in either Shrimp Management Area 1C or Catch Area 25A. Shrimp Management Area 1C is a Portion of Region 1 comprised of Catch Areas 20A, 21A, 21B, and 22B. Catch Area 25A is within Shrimp Management Area 3 which is comprised of Catch Areas 23A, 23B, 23C, 23D, 25A, and 29.

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

## (4) Shrimp trawl gear:

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

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

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

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

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

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

REPEALER

The following section of Washington Administrative Code is repealed effective August 26, 2020:

WAC 220-340-52000T Puget Sound shrimp pot and trawl fishery—Season. (20-155)

**WSR 20-18-022****EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed August 26, 2020, 8:21 a.m., effective August 26, 2020, 8:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is extending the amendment of the rules listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will continue to align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow physicians to delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist. Current state rules specify physicians must perform some tasks. The amendment will permit delegation of those tasks as long as the task is within the scope of practice of the delegate, and the delegate works under the supervision of the physician.

The department filed a CR-101 Preproposal statement of inquiry as WSR 20-17-133 on August 18, 2020, to begin the permanent rule-making process.

Citation of Rules Affected by this Order: Amending WAC 388-97-1260.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Current nursing home rules require physicians perform certain tasks. The rules also restrict the frequency of delegation from a physician to a registered nurse practitioner or a physician assistant, depending on the payor source of the resident and whether the bed the resident occupies is certified for medicare, medicaid, or both. The amendment will permit the physician to delegate tasks, even if it is required to be performed by the physician in regulation and regardless of the frequency of the delegation. The amendment does not change the required frequency of physician visits or the requirement for the physician to supervise the delegate. This amendment aligns state rules with federal rules recently amended to permit increased delegation of physician tasks to a registered nurse practitioner or a physician assistant. This amendment provides flexibility for physicians to better prioritize their time and will help to ensure nursing home residents receive assessment and care by a qualified healthcare provider in a timely manner.

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

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

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

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

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

Date Adopted: August 20, 2020.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-1260 Physician services.** (1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided twenty-four hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in ~~((subsections))~~ subsection (6)((, (7), and (9)) of this section, a physician may delegate tasks, including tasks that, under state law, must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law; ~~((and))~~

(c) Under the supervision of, and working in collaboration with the physician; and

(d) Not an employee of the facility, if caring for a resident whose payor source is medicaid.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

~~(7) ((If the resident's primary payor source is medicare, the physician may:~~

~~(a) Alternate federally required physician visits between personal visits by:~~

~~(i) The physician; and~~

~~(ii) An advanced registered nurse practitioner or physician's assistant; and~~

~~(b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first thirty days of admission to the facility.~~

~~(8) If the resident's payor source is medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an~~

employee of the facility but who is working in collaboration with a physician.

~~(9) If the resident's payor source is not medicare or medicaid:~~

~~(a) In the medicare only certified facility or in the medicare certified area of a medicare/medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.~~

~~(b) In the medicaid only certified facility or in the medicaid certified area of a medicare/medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.~~

~~(10) The following table describes the physician visit requirements related to medicare or medicaid certified area and payor type:~~

	Beds in medicare only certified area	Beds in medicare/medicaid certified area	Beds in medicaid only certified area
Payor source:	Initial by physician	Initial by physician	N/A
medicare	Physician may delegate alternate visits	Physician may delegate alternate visits	
Payor source:	N/A	Delegate all tasks	Delegate all tasks
medicaid		Nonemployee	Nonemployee
Payor source:	Initial by physician	Initial by physician	Delegate all tasks
Others: such as insurance, private pay, Veteran Affairs	Physician may delegate alternate visits	Physician may delegate alternate visits	Nonemployee

~~((11))~~ The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

~~((12))~~ (8) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

ing to establish rules to clarify inactive status and reactivation processes.

All rule changes are approved and recommended to the director by the real estate appraiser commission.

Citation of Rules Affected by this Order: New WAC 308-125-250; and amending WAC 308-125-010, 308-125-080, 308-125-090, and 308-125-120.

Statutory Authority for Adoption: RCW 18.140.030 (1) and (15).

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 department has already filed for permanent adoption of these rules. However, the legislative effective date is September 1, 2020. Appraisers have been awaiting the implementation of this legislation and are set to register for an inactive license on September 1, 2020. If these rules are not in place at that time, appraisers in this group with licenses set to expire may be required to reapply using all new education and experience. The department believes this has the potential to impact these licensees financially and would impact their general welfare. This emergency rule is being filed to ensure the rules are effective on September 1, 2020, before the permanent rules go into effect on September 26, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 4, Repealed 0.

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

**WSR 20-18-023**

**EMERGENCY RULES**

**DEPARTMENT OF LICENSING**

[Filed August 26, 2020, 10:03 a.m., effective September 1, 2020]

Effective Date of Rule: September 1, 2020.

Purpose: Rule changes are necessary to update the WAC to incorporate changes required by ESSB 5480 to establish an inactive status, establish rules for inactive status, and establish rules for reactivation process for real estate appraisers. ESSB 5480 is effective September 1, 2020, and was passed by the 2019 legislature which requires the ability for an appraiser license to go inactive and the department of licens-

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 1, Amended 4, 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 26, 2020.

Ellis Starrett  
Rules and Policy Manager

AMENDATORY SECTION (Amending WSR 08-17-016, filed 8/8/08, effective 9/8/08)

**WAC 308-125-010 Definitions.** (1) Words and terms used in these rules shall have the same meaning as each has in the Certified Real Estate Appraiser Act, (chapter 18.140 RCW) and the Uniform Standards of Professional Appraisal Practice (USPAP).

(2) "Appraisal foundation" means a private association of appraiser professional organizations. The appraisal foundation develops appraisal standards which the regulatory agencies must use as minimum standards for federally related transactions and it develops qualification criteria for appraisers.

(3) "Appraisal subcommittee" means a committee created by Title XI. It monitors all activities related to the implementation of Title XI.

(4) "Appraisal standards board" means a board established by the appraisal foundation for the purpose of developing, publishing, interpreting and amending the *Uniform Standards of Professional Appraisal Practice*.

(5) "The *Uniform Standards of Professional Appraisal Practice* (USPAP)" means the current edition of the publication in force of the appraisal standards board (ASB) of the appraisal foundation. USPAP is the applicable standard for all appraisal practice in the state of Washington regulated under the provisions of chapter 18.140 RCW.

(6) "Appraiser qualifications board" means a board of the appraisal foundation for the purpose of developing, publishing, interpreting and amending the real property appraiser qualification criteria.

(7) "Real property appraiser qualification criteria" means the minimum criteria establishing the minimum education, experience and examination requirements for real property appraisers to obtain a state certification as established by the appraiser qualifications board (AQB) of the appraisal foundation under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989, and any additional qualifying criteria established by the director in accordance with chapter 18.140 RCW.

(8) "Classroom hour" means fifty minutes out of each sixty minute hour.

(9) "Full-time" means the equivalent twelve-month period in which an applicant works at least one thousand hours in real estate appraisal.

(10) "Required core curriculum" means a set of appraiser subject matter areas (known as "modules") that require a

specified number of educational hours at each credential level as established by the appraiser qualifications board.

(11) "Module" means an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum.

(12) "Residential properties" means one to four single family residential units and lots where the highest and best use is for one to four family purposes.

(13) "Significant professional appraisal assistance" shall include but not be limited to the work contributed or performed toward the completion of an appraisal report by either a trainee, state-licensed, or state-certified appraiser, while under the direct supervision of a certified residential appraiser or certified general appraiser as required by the department as qualifying appraisal experience for licensing. Significant professional appraisal assistance shall consist of identifying and analyzing the scope of work, collection of data, analyzing data to derive an opinion of value, or writing the appraisal report in accordance with the *Uniform Standards of Professional Appraisal Practice*.

(14) "Inactive status" means the status of an appraiser license or certification that is not expired and is eligible for reinstatement or renewal. An appraiser license in inactive status is not eligible to provide real estate appraisal services.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

**WAC 308-125-080 Application for certification.** (1) Upon receipt of notice of passage of the examination, applicants must submit a complete original certification application with the certification fee to the department of licensing, business and professions division, at its official address. The department will verify qualifications under chapter 18.140 RCW and the rules promulgated thereunder.

(2) Each original and renewal and reinstated certificate issued under RCW 18.140.130 shall expire on the applicant's second birthday following issuance of the certificate.

AMENDATORY SECTION (Amending WSR 13-17-002, filed 8/7/13, effective 9/7/13)

**WAC 308-125-090 Continuing education required.**

(1) As a prerequisite to renewal of an active or inactive certification, licensure, or registration, the holder of a certificate, license, or registration shall present evidence satisfactory to the director of successful completion of the continuing education requirements of this section.

(2) The continuing education requirements for renewal of an active or inactive certification, licensure, or registration shall be the completion by the applicant of twenty-eight hours of instruction in courses or seminars which have received the approval of the director. Courses must be completed within the term of certification, licensure, or registration immediately preceding renewal. An applicant shall not receive credit in consecutive renewals for courses that have the same or very similar content and are deemed comparable by the department. The holder of a certificate, license, or registration will present evidence of successful completion of the seven-hour National USPAP update course or its equivalent.

(3) In order for courses or seminars to be accepted under subsection (2) of this section, the course or seminar must be a minimum of two hours in length and be directly related to real estate appraising. However, a maximum of one-half of the continuing education hours required for renewal can be in two-hour seminars or courses.

(4) An examination is not required for courses or seminars taken for continuing education classroom hours.

(5) Up to one-half of the requirement under subsection (2) of this section may be met by participation other than as a student in educational process and programs approved by the director including teaching, program development, and authorship of textbooks and other written instructional materials. A licensee or certificate holder may receive continuing education credit for teaching an approved real estate appraisal course. Once a licensee or certificate holder has received credit for teaching an approved real estate appraiser course, the credential holder shall not receive credit for teaching that course or any substantially similar course on any subsequent occasion, with the exception of the Uniform Standards of Professional Appraisal Practice, USPAP, 7-hour update.

(6) Courses or seminars taken to satisfy the continuing education requirement for real estate appraisers, should include coverage of real estate appraisal related topics, such as:

- (a) Ad valorem taxation.
- (b) Arbitrations, dispute resolution.
- (c) Business courses related to practice of real estate appraisal and consulting.
- (d) Construction estimating.
- (e) Ethics and standards of professional practice, USPAP.
- (f) Land use planning, zoning, and taxation.
- (g) Management, leasing, brokerage, timesharing.
- (h) Property development, partial interests.
- (i) Real estate appraisal (valuations/evaluations).
- (j) Real estate financing and investment.
- (k) Real estate law, easements and legal interests.
- (l) Real estate litigation, damages and condemnation.
- (m) Real estate related computer applications.
- (n) Real estate securities and syndication.
- (o) Real property exchange.
- (p) Appraisal and consulting report writing.
- (q) Green buildings.
- (r) Seller concessions.
- (s) Developing opinions of real property value in appraisals that also include personal property and/or business value.

(t) Such other presentations approved by the director.

(7) The director may approve continuing education credit for attendance at one real estate appraiser commission meeting of no more than seven hours.

(8) The director may defer completion of continuing education for the holder of a certificate, license, or registration returning from military service active duty and place the registration, license, or certificate in an active status for a period of ninety days pending completion of education. If the holder of a certificate, license, or registration fails to comply with the continuing education requirement within said ninety

days, the registration, license, or certificate will revert to an expired status.

(9) A licensee or certificate holder may receive continuing education credit for teaching an approved real estate appraisal course. One hour of education credit for each hour of teaching an approved real estate appraisal course shall be given. Once a licensee or certificate holder has received credit for teaching an approved real estate appraisal course, the credential holder shall not receive credit for teaching that course or any substantially similar course on any subsequent occasion.

AMENDATORY SECTION (Amending WSR 11-19-103, filed 9/21/11, effective 10/22/11)

**WAC 308-125-120 Fees and charges.** The following fees shall be paid under the provisions of chapter 18.140 RCW:

<b>Title of Fee</b>	<b>Fee</b>
(1) Application for examination	\$370.00
(2) Examination	120.00**
(3) Reexamination	120.00**
(4) Original certification	250.00*
(5) <del>((Certification))</del> <u>Active license renewal</u>	530.00*
(6) <u>Inactive license renewal</u>	<u>110.00</u>
(7) <u>Reinstatement</u>	<u>530.00</u>
(8) <del>Late renewal ((penalty))</del>	38.00
<del>((7)) Duplicate certificate</del>	<del>30.00</del>
<del>((8)) Certification history record</del>	<del>30.00</del>
<del>(9)</del>	
<del>((9)) Application for reciprocity</del>	370.00
<del>(10)</del>	
<del>((10)) Original certification via reciprocity</del>	250.00*
<del>(11)</del>	
<del>((11)) Temporary practice</del>	150.00
<del>(12)</del>	
<del>((12)) Trainee registration</del>	200.00
<del>(13)</del>	
<del>((13)) Trainee registration renewal</del>	200.00
<del>(14)</del>	
(15) <u>DOL license print</u>	<u>5.00</u>

\* Fees for these categories marked with an asterisk include a national registry fee in an amount determined by the appraisal subcommittee to be submitted by the state. Title XI, SEC. 1109 requires each state to submit a roster listing of state licensed and certified appraisers to the Appraiser Subcommittee.

\*\* Charges for categories marked with a double asterisk are determined by contract with an outside testing service.

NEW SECTION

**WAC 308-125-250 Inactive licenses.** (1) Any license issued under this chapter and not otherwise revoked is deemed "inactive" at any time it is delivered to the director. Until reinstated under this chapter, the holder of an inactive license is prohibited from conducting real estate appraisal services.

(2) An inactive license may be renewed on the same terms and conditions as an active license, except that a person with an inactive license shall pay a reduced renewal fee. Failure to renew shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon submission of a reinstatement application to include proof of successful completion within one hundred eighty days of application of a fifteen hour course in the uniform standards of professional appraisal practice.

(4) If an appraiser license is inactive for more than eight years, the license shall be canceled in the same manner as an active license.

**WSR 20-18-025****EMERGENCY RULES****DEPARTMENT OF HEALTH**

[Filed August 26, 2020, 10:42 a.m., effective August 26, 2020, 10:42 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-310-806 Kidney disease treatment facilities—Concurrent review cycles, the department of health (department) is adopting an emergency rule to amend WAC 246-310-806(1) as it relates to special and nonspecial circumstances 1 concurrent review cycle. This is the second emergency rule for these amendments and it continues the initial emergency rule without change that was filed on April 28, 2020, under WSR 20-10-032. The amendment extends deadlines for kidney disease treatment facility applicants who are submitting applications during concurrent review cycle 1. This extension grants flexibility in meeting deadlines during the current public health emergency created by the coronavirus disease 2019 (COVID-19) pandemic.

This emergency rule adopts the waived application deadlines for the special circumstances 1 concurrent review cycle originally outlined by Governor Inslee in Proclamation 23-06. In addition, it will also waive the application deadlines for nonspecial circumstances during the first review cycle.

Citation of Rules Affected by this Order: Amending WAC 246-310-806.

Statutory Authority for Adoption: RCW 70.38.135.

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

Reasons for this Finding: As the state of emergency in Washington state due to the COVID-19 pandemic continues, the amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare.

Allowing flexibility for the kidney disease treatment facility concurrent review start cycle will allow additional time for kidney disease treatment facility applicants to fulfill their obligations during the current public health emergency created by the COVID-19 pandemic. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order. This allows kidney disease treatment facilities to focus on immediate needs of patients during the COVID-19 response as well as time and capacity to submit quality applications that satisfy regulatory requirements. Failure to extend deadlines would result in potentially less applicants for additional kidney dialysis stations in communities of need.

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

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

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

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

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

Date Adopted: August 25, 2020.

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

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

**WAC 246-310-806 Kidney disease treatment facilities—Concurrent review cycles.** The department will review kidney dialysis facility applications using the concurrent review cycles described in this section, unless the application was submitted as described in subsection (9) of this section. There are four concurrent review cycles each year.

(1) Applicants must submit applications for review according to the following table:

Concurrent Review Cycle	Letters of Intent Due	Application Submission Period			Department Action	Application Review Period		
		Receipt of Initial Application	End of Screening Period	Applicant Response	Beginning of Review	Public Comment Period (includes public hearing if requested)	Rebuttal Period	Exparte Period
Special Circumstances 1	First working day of <del>((April))</del> <b>May</b> of each year.	First working day of <del>((May))</del> <b>June</b> of each year.	<del>((May))</del> <b>June 15</b> or the first working day thereafter.	<del>((June))</del> <b>July 15</b> or the first working day thereafter.	<del>((June))</del> <b>July 22</b> or the first working day thereafter.	<b>30-Day</b> Public comment period (including public hearing).  Begins <del>((June))</del> <b>July 23</b> or the first working day thereafter.	<b>7-Day</b> Rebuttal period.  Applicant and affected party response to public comment.	<b>15-Day</b> Exparte period.  Department evaluation and decision.
Nonspecial Circumstance Cycle 1	First working day of <del>((May))</del> <b>June</b> of each year.	First working day of <del>((June))</del> <b>July</b> of each year.	Last working day of <del>((June))</del> <b>July</b> .	Last working day of <del>((July))</del> <b>August</b> .	<del>((August))</del> <b>September 5</b> or the first working day thereafter.	<b>30-Day</b> Public comment period (including public hearing).  Begins <del>((August))</del> <b>September 6</b> or the first working day thereafter.	<b>30-Day</b> Rebuttal period.  Applicant and affected party response to public comment.	<b>75-Day</b> Exparte period.  Department evaluation and decision.
Special Circumstances 2	First working day of <b>October</b> of each year.	First working day of <b>November</b> of each year.	<b>November 15</b> or the first working day thereafter.	<b>December 15</b> or the first working day thereafter.	<b>December 22</b> or the first working day thereafter.	<b>30-Day</b> Public comment period (including public hearing).  Begins <b>December 23</b> or the first working day thereafter.	<b>7-Day</b> Rebuttal period.  Applicant and affected party response to public comment.	<b>15-Day</b> Exparte period.  Department evaluation and decision.
Nonspecial Circumstances Cycle 2	First working day of <b>November</b> of each year.	First working day of <b>December</b> of each year.	Last working day of <b>December</b> .	Last working day of <b>January</b> .	<b>February 5</b> or the first working day thereafter.	<b>30-Day</b> Public comment period (including public hearing).  Begins <b>February 6</b> or the first working day thereafter.	<b>30-Day</b> Rebuttal period.  Applicant and affected party response to public comment.	<b>75-Day</b> Exparte period.  Department evaluation and decision.

(2) The department should complete a nonspecial circumstance concurrent review cycle within nine months, which begins the first day after letters of intent are due for that particular review cycle. The department should complete the regular review process within six months, which begins the first day after the letters of intent are due for that particular review cycle.

(3) The department will notify applicants fifteen days prior to the scheduled decision date if it is unable to meet the decision deadline on the applications. In that event, the department will establish and commit to a new decision date.

(4) When two or more applications are submitted for the same planning area, the department will first evaluate each application independently for meeting the applicable standards described in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240. If two or more applications independently meet those four standards, the department will apply the superiority criteria in WAC 246-310-827 to determine the superior application under WAC 246-310-240(1).

(5) An applicant receiving points for the purposes of the superiority criteria under WAC 246-310-827 (3)(e), (f), or (g) may only apply for station need in one planning area per review cycle.

(6) An applicant receiving points for purposes of the superiority criteria under WAC 246-310-827 (3)(e), (f), or (g) must operate the newly awarded stations for a period of time long enough to have a full year of data reporting medicare cost report worksheets and a full year of data reporting the dialysis facility report prior to any future applications.

(7) The department will not accept new nonspecial circumstance applications for a planning area if there are any nonspecial circumstance applications for which the certificate of need program has not made a decision in that planning area filed under a previous concurrent review cycle. This restriction does not apply if the department has not made a decision on the pending applications within the review timelines of nine months for a concurrent review and six months for a regular review. This restriction also does not apply to special circumstance applications.

(8) The department may convert the review of a nonspecial circumstance application that was initially submitted under a concurrent review cycle to a regular review process if the department determines that the nonspecial circumstance application does not compete with another nonspecial circumstance application.

(9) Pending certificate of need applications. Kidney dialysis facility applications submitted prior to the effective date of these rules will be reviewed and action taken based on the rules that were in effect on the date the applications were received.

### WSR 20-18-026

#### EMERGENCY RULES

#### SECRETARY OF STATE

[Filed August 26, 2020, 10:54 a.m., effective August 26, 2020, 10:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To direct county election offices to use only First Class Mail when mailing ballots to voters during the period from fifteen days before the election to election day.

Citation of Rules Affected by this Order: New WAC 434-250-210.

Statutory Authority for Adoption: RCW 29A.04.611.

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 preserves the effective and timely conduct of mail-in voting in Washington state. Recent communication from the United States Postal Service general counsel concerning mail delivery standards and transit times for the various classes of mail during the COVID-19 emergency indicate voters registered close to election day may not have sufficient time to receive and return their ballots. As a result, it is necessary to require the use of First Class Mail for all ballots being mailed by county election departments, whether directly or through their vendors, during the period from fifteen days prior to election day to election day. The general election takes place on Novem-

ber 3, 2020, and there is insufficient time to promulgate permanent rules prior to that date.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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 26, 2020.

Mark Neary

Assistant Secretary of State

### NEW SECTION

**WAC 434-250-210 Postage for ballot packets mailed to voters.** Beginning at least the fifteenth day before an election, county election offices, whether directly or through contracted vendors, must use only first class mail when mailing ballots to voters.

### WSR 20-18-027

#### EMERGENCY RULES

#### DEPARTMENT OF HEALTH

[Filed August 26, 2020, 4:07 p.m., effective August 26, 2020, 4:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-72-020 Certificate requirements and 246-72-080 Renewals and updating license information, current certificate requirements for medical marijuana certified consultants (MMCC) under WAC 246-72-020 require an initial applicant to have obtained a cardiopulmonary resuscitation (CPR) card from a training course that includes both a written examination and skills demonstration test in order to receive a MMCC credential from the department of health (department). The department is amending this section of rule to temporarily suspend the skills demonstration portion of the CPR requirement to allow initial applicants to move forward in the department's application process during the coronavirus disease (COVID-19) response. WAC 246-72-080 Renewals does not specify CPR requirements include a skills demonstration test to be compliant; however, the department interprets this requirement to be the same as defined in WAC 246-72-020. Therefore, the department is also revising WAC 246-72-080 in this rule making to clarify that the in-person CPR requirement suspension applies to renewing applicants as well as initial applications. This emergency rule is the same as the rules filed under WSR 20-12-077, however these rules expand upon the original rules to include WAC 246-72-

080 which will allow individuals to renew their license without requiring the in-person CPR skill demonstration portion.

Citation of Rules Affected by this Order: Amending WAC 246-72-020 and 246-72-080.

Statutory Authority for Adoption: RCW 69.51A.290.

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: RCW 69.51A.290 provides the department authority to adopt rules and requirements for licensing and regulating MMCC. Under the COVID-19 pandemic restrictions, in-person CPR training programs have been suspended making it impossible for current and new applicants to obtain licensure and continue providing services allowed under WAC 246-72-030 to patients in Washington during the COVID-19 pandemic. The skills demonstration portion of the CPR requirement was adopted in rule back in 2017 to address patient concerns relating to certified consultant trainings. A consultant's role includes spending a significant amount of time assisting patients (some with acute or chronic health conditions) with getting registered and product selection.

The immediate amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare. Licensees have shared that they are struggling to meet the CPR requirements to gain or maintain their MMCC. Furthermore, retailers are required to have an MMCC on staff in order to serve patients from the medical marijuana community. If licensees are not able to gain or renew their certification, not only will the MMCC be unable to provide care, but the retail store itself may no longer be able to provide services to medical patients at all, making it very difficult or impossible for patients to access their medication. By temporarily suspending the skills demonstration portion of the CPR training requirement under WAC 246-72-020 and 246-72-080, both new and renewing applicants will be able to continue with certification and provide the necessary health care services to patients in need. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 26, 2020.

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

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

**WAC 246-72-020 Certificate requirements.** An applicant for a medical marijuana consultant certificate must submit to the department:

- (1) A completed initial application on forms provided by the department;
- (2) Fees required under WAC 246-72-110;
- (3) Certificate of successful completion from an approved training program;
- (4) Proof of being age twenty-one or older. Acceptable forms of proof are a copy of the applicant's valid driver's license or other government-issued identification card, United States passport, or certified birth certificate;
- (5) Proof of current CPR certification from a course requiring completion of ~~((both))~~ a written ~~((and skills demonstration))~~ test; and
- (6) Any other documentation required by the secretary.

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

**WAC 246-72-080 Renewals and updating license information.** (1) Certificates must be renewed every year on the certificate holder's birthday. Initial certificates issued within ninety days of the certificate holder's birthday do not expire until the person's next birthday.

(2) Renewals:

(a) Prior to the certificate expiration date, courtesy renewal notices are mailed to the address on file. Certificate holders must return the renewal notice when renewing their credential. Failure to receive a courtesy renewal notice does not relieve or exempt the renewal requirement.

(b) The certificate holder must attest to completion of annual certification requirements, including current CPR certification as outlined in WAC 246-72-020.

(c) Renewal fees are accepted by the department no sooner than ninety days prior to the expiration date.

(3) Duplicate certificate: A certificate holder may obtain a duplicate certificate by submitting a written request to the department and paying the fee as required in WAC 246-72-990.

(4) Name changes: It is the responsibility of each certificate holder to maintain his or her correct name on file with the department. Requests for name changes must be submitted in writing to the department along with documentation showing the name was legally changed.

(5) Address changes: It is the responsibility of each certificate holder to maintain his or her current address on file with the department. Requests for address changes must be made in writing. The mailing address on file with the department will be used for mailing of all official matters to the certificate holder.

**WSR 20-18-029**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed August 27, 2020, 8:56 a.m., effective August 28, 2020]

Effective Date of Rule: August 28, 2020.

Purpose: The department is extending emergency WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic, to continue adjustments to food assistance benefit issuances implemented under the Families First Coronavirus Response Act (H.R. 6201, Section 2302).

This subsequent emergency adoption amends the emergency rule adopted as WSR 20-10-048. The department filed a CR-101 Preproposal statement of inquiry as WSR 20-17-124 and is actively undertaking appropriate procedures to adopt the rule as a permanent rule.

Citation of Rules Affected by this Order: Amending WAC 388-437-0005.

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, 74.08A.120.

Other Authority: H.R. 6201.

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 required to extend provisions of the Families First Coronavirus Response Act (H.R. 6201, Section 2302) related to the Supplemental Nutrition Assistance Program that support preservation of the public health, safety, or general welfare through access to food assistance.

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

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

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

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

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

Date Adopted: August 25, 2020.

Katherine I. Vasquez  
Rules Coordinator

**NEW SECTION**

**WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic.** Starting March 2020, assistance units (AUs) eligible for either federal or

state-funded food assistance, or both, will receive emergency allotments that bring the AU up to the maximum benefit for their household size.

(1) The amount is the maximum food assistance benefit allotment for your AU size under WAC 388-478-0060(1) less the amount received under WAC 388-450-0162 (4)(b).

(2) Emergency allotments will continue each month until:

(a) The secretary for health and human services rescinds the public health emergency declaration that was issued on January 27, 2020, under section 319 of the Public Health Service Act;

(b) The state-issued emergency or disaster declaration expires; or

(c) The food and nutrition service directs otherwise.

(3) Emergency allotments for state-funded food assistance will continue each month, contingent on the availability of state funds.

**WSR 20-18-032**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 27, 2020, 12:12 p.m., effective August 27, 2020, 12:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule amendment to chapter 392-380 WAC is to clarify the procedural and substantive due process requirements governing the exclusion of children from schools pursuant to RCW 28A.210.120 and 28A.210.320 for the 2020-21 school year.

Citation of Rules Affected by this Order: Amending chapter 392-380 WAC.

Statutory Authority for Adoption: RCW 28A.210.160 and 28A.210.320(3).

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: Recent rules adopted by the Washington state board of health that went into effect August 1, 2020, regarding school immunization requirements increase the possibility that students may be excluded from school due to noncompliance with these requirements at the start of the 2020-21 school year. This, coupled with the current lack of clarity in chapter 392-380 WAC regarding procedural and substantive due process safeguards for students who are excluded from school due to noncompliance with immunization requirements, create an urgent need to immediately amend chapter 392-380 WAC to preserve public health, safety, and the general welfare.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, 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 27, 2020.

Chris P.S. Reykdal  
Superintendent of Public Instruction

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

**WAC 392-380-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(~~(6)~~).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(~~(4)~~).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(~~(2)~~).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for school attendance when a child is not fully immunized, as prescribed by the state board of health (WAC (~~246-100-166(5)~~) 246-105-060(2)).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the school, on a form prescribed by the department of health, which complies with RCW 28A.210-090.

(6) "Life-threatening condition" shall mean a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(7) "Medication or treatment order" shall mean the authority a registered nurse obtains under RCW 18.79.260 (2). The order shall be signed by a licensed health care practitioner listed under RCW 18.79.260(2).

(8) "Nursing plan" shall mean a plan of care developed for the student consistent with the standards of nursing conduct or practice set out in department of health regulations, WAC 246-840-700 et seq. The nursing plan implements the medication or treatment order.

(9) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance:

(a) Due to failure to:

(i) Submit a schedule of immunization(~~(7)~~) or a certificate of exemption as prescribed in WAC 246-105-050; or

(ii) Maintain the conditions for conditional status attendance prescribed in WAC 246-105-060; or

(b) In the case of a life-threatening health condition, due to failure to submit a medication or treatment order and any medication or equipment identified in the order, unless the

school district is required to provide the medication or equipment as a related service under federal law.

(10) "School day" shall mean the same as in RCW 28A.150.030 and shall be inclusive of school or district sponsored field trip experiences and extracurricular activities and summer school.

(11) "Parent" shall (~~mean parent, legal guardian, or other adult in loco parentis~~) have the same meaning as in WAC 392-172A-01125.

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

**WAC 392-380-045 School attendance conditioned upon presentation of proofs.** (1) The initial attendance of every student at every public school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each public school shall prohibit the further presence at school of each student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210.080(1). Such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by (~~(a)~~) the student's parent(~~(, guardian or other adult in loco parentis)~~).

(3) The initial attendance of every student at every public school who has a life-threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life-threatening health condition the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life-threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

**WAC 392-380-050 Written notice prior to exclusions from school.** ~~((1) Schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 392-380-045.~~

(2) The written notice for public school students shall:

(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.

(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.

(c) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.

(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.

(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or treatment plan is received, or until a hearing officer determines that the student is no longer excluded from school.) **(1) Written notice.** Before excluding a student from school for failure to comply with WAC 392-380-045, a school must provide written notice of the exclusion to the student's parents in person, by mail, or by email. The written notice must include:

(a) The school's decision to exclude the student from school, effective immediately upon the parents' receipt of the notice.

(b) The duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with RCW 28A.210.080, a medication or treatment plan in accordance with RCW 28A.210.320, or until a chief administrator determines that the student is no longer excluded from school.

(c) Notice of the applicable laws, including a copy of the applicable laws.

(d) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.210.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(e) The student's and parents' right to a hearing to challenge the decision under WAC 392-380-080, including where and to whom the hearing must be requested and a description of the hearing process.

**(2) Language assistance.** The school must ensure the written notice is provided 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 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

**WAC 392-380-080 Prehearing and hearing process.**

~~((1) If a request for hearing is received by the school district, it shall schedule a hearing. The hearing must be scheduled within three school days of receiving the request. The hearing may be continued to a later date if the parent requests a longer period.~~

~~(2) The school district shall establish a hearing process consistent with the procedures set forth for disciplinary cases under chapter 392-400 WAC.)~~

**(1) Requesting a hearing.** A student or the parent may request a hearing to the chief administrator orally or in writing.

**(2) Notice.** Within one school day after receiving the hearing request, unless otherwise agreed to by the parents, the chief administrator must provide the parents written notice in person, by mail, or by email of the time, date, and location of the hearing.

**(3) Hearing.** The school must hold a hearing within three school days from the date the school's chief administrator received the hearing request, unless otherwise agreed to by the parents. At the hearing, the chief administrator must provide the parents an opportunity to explain how their student is in compliance with school attendance requirements under WAC 392-380-045.

**(4) Hearing decision.** The chief administrator must deliver a written hearing decision to the parents in person, by certified mail, or by email within two school business days after the hearing. The written decision must include:

(a) The decision to affirm or reverse the exclusion;

(b) If the decision to exclude the student is affirmed, the duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with WAC 392-380-045(1) or a medication or treatment plan in accordance with WAC 392-380-045(3); and

(c) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.219.080(1), information regarding immunization services that are available through the local health department and other public agencies.

**(5) Language assistance.** The school must ensure the notice, hearing proceedings, and written hearing decision are 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 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

**WSR 20-18-037**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-165—Filed August 27, 2020, 4:55 p.m., effective August 27, 2020, 4:55 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

As noted in WSR 20-15-135, if catch is slower than anticipated, additional days could be added to the season. This is the case, catch has been slower than anticipated. As of August 23, 2020, a little over forty-three percent of catch quota remains available in Marine Area 2, (or 27,313 of 62,896 pounds of quota); and a little over eighty-five percent of catch quota remains in Marine Area 1, (or 15,305 of 17,950 pounds of quota). The recreational halibut quota is sufficient to provide for these additional days in Marine Areas 1 and 2. Halibut catch will continue to be closely monitored by Washington department of fish and wildlife staff, the season could close earlier if quotas are achieved.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: August 27, 2020.

Kelly Susewind  
 Director

NEW SECTION

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

**(1) Catch Record Card Area 1:**

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

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

**(2) Catch Record Card Area 1 (Nearshore fishery);**

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

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

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

**(3) Catch Record Card Area 2:**

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

**(4) Card Areas 3 and 4:**

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

**(5) Catch Record Card Area 5 through 10:**

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000Z Halibut—Seasons—Daily and possession limits. (20-139)

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

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

**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.

**WSR 20-18-046**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-166—Filed August 28, 2020, 11:31 a.m., effective September 1, 2020]

Effective Date of Rule: September 1, 2020.

**Purpose:** The purpose of this rule is to close recreational oyster harvest on the beaches of Belfair State Park, Potlatch State Park, Potlatch DNR, and Twanoh State Park due to observations of continued closed season clam harvest. Closing oyster seasons will reduce closed season clam harvest and impacts to future clam seasons at these beaches. These beaches were closed to the harvest of clam and mussel on August 14 after the Washington department of fish and wildlife (WDFW) managed harvest shares were achieved and in an effort to limit impacts to future seasons.

**Citation of Rules Affected by this Order:** Repealing WAC 220-330-11000K and 220-330-14000I; and amending WAC 220-330-110 and 220-330-140.

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

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

**Reasons for this Finding:** This regulation is needed to ensure an orderly fishery and manage the fishery within court-ordered sharing requirements. This rule is needed to close recreational oyster harvesting opportunities at Belfair State Park, Potlatch State Park, Potlatch DNR, and Twanoh State Park beaches due to continued closed season clam harvest as WDFW managed portion of 2020 clam harvest quotas have already been achieved. Observations and analysis demonstrating significantly higher than anticipated effort at these and several other Puget Sound beaches. Current harvest projections necessitate this management action to comply with agreed-to comanagement plans.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

**Date Adopted:** August 28, 2020.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-330-11000L Clams other than razor clams, mussels—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-110, effective September 1, 2020, the following provisions of WAC 220-330-110 shall be as described below until further notice or until this emergency regulation expires on October 6, 2020. All other provisions of 220-330-110 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Ala Spit: All public tidelands of Ala Spit are open through August 31, 2020 only.

(2) Belfair State Park: Closed.

(3) Dosewallips State Park: The area defined by boundary markers and signs posted on the beach is open through September 30, 2020 only.

(4) Eagle Creek: Open through September 15, 2020 only.

(5) Frye Cove County Park: Open through August 31, 2020 only.

(6) Hope Island State Park (South Puget Sound): Open through August 31, 2020 only.

(7) Potlatch DNR tidelands: Closed.

(8) Potlatch State Park: Closed.

(9) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open September 1 through September 30, 2020 only.

(10) Triton Cove Tidelands: Open through September 15, 2020 only.

(11) Twanoh State Park: Closed.

NEW SECTION

**WAC 220-330-14000J Oysters—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-140, effective August 3, 2020, the following provisions of WAC 220-330-140 shall be as described below until further notice or until this emergency regulation expires on October 6, 2020. All other provisions of 220-330-140 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Ala Spit: All public tidelands of Ala Spit are open through August 31, 2020 only.

(2) Belfair State Park: Closed.

(3) Frye Cove County Park: Open through August 31, 2020 only.

(4) Hope Island State Park (South Puget Sound): Open through August 31, 2020 only.

(5) Point Whitney Lagoon: Open through August 31, 2020 only.

(6) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open through August 31, 2020 only.

(7) Potlatch DNR tidelands: Closed.

(8) Potlatch State Park: Closed.

(9) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open September 1 through September 30, 2020 only.

(10) Twanoh State Park: Closed.

### REPEALER

The following sections of the Washington Administrative Code are repealed effective September 1, 2020:

WAC 220-330-11000K Clams other than razor clams, mussels—Areas and seasons.

WAC 220-330-14000I Oysters—Areas and seasons.

**WSR 20-18-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-168—Filed August 28, 2020, 5:28 p.m., effective August 30, 2020]

Effective Date of Rule: August 30, 2020.

Purpose: Amend commercial shrimp rules in Puget Sound.

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

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) defines the shrimp management areas and regions open to spot and non-spot commercial harvest; (2) sets harvest restrictions for the nonspot commercial pot fishery; (3) sets harvest restrictions for the spot commercial pot fishery; (4) sets the harvest and gear limitations for the Puget Sound shrimp trawl fishery; (5) requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers; (6) opens Shrimp Management Areas 1A and 1B for harvest of spot shrimp with a specified catch limit; (7) changes the catch limits and dates for the third spot shrimp accounting period to allow harvest in specific areas between August 26, 2020, and

September 8, 2020; and (9) sets area-based sublimits to meter and disperse effort. This additional catch accounting period will provide an opportunity to target some of the remaining available resource[s] before the end of the season on September 15, 2020. Additionally, this adjustment streamlines the Washington department of fish and wildlife staff workflow and optimizes the economic utility of the commercial share of the resource.

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

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

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

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

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

Date Adopted: August 28, 2020.

Kelly Susewind  
Director

### NEW SECTION

**WAC 220-340-52000V Puget Sound shrimp pot and trawl fishery—Season.** Effective August 30, 2020, pursuant to RCW 34.05.350, the following provisions of WAC 220-340-520 regarding Puget Sound commercial shrimp pot harvest, non-spot shrimp harvest, spot shrimp harvest, trawl shrimp harvest and sales shall be described below. All other provisions of WAC 220-340-520 not addressed herein, and unless otherwise amended, remain in effect:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W and 3 are open to the harvest of all shrimp species, August 30, 2020, until further notice, except as provided for in this section:

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Areas) 23A-E, 23A-W, 23A-C, and 23A-S are closed to the harvest of non-spot shrimp until the spot quota is attained in all sub-areas of 23A. Catch Areas 23A-E, 23A-W, 23A-C, and 23A-S AE are within Shrimp Management Area 3 and comprise Catch Area 23A.

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

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

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

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

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

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

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

(2) Shrimp Non-spot Pot Harvest Restrictions

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

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

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

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

(3) Shrimp Spot Pot Harvest Restrictions:

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

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

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

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

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

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

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

(1) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south

of a line projected west from Travis Spit on the Miller Peninsula.

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

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

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

**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 Washington Administrative Code is repealed effective August 30, 2020:

WAC 220-340-52000U Puget Sound shrimp pot and trawl fishery—Season. (20-165)

**WSR 20-18-055  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 20-167—Filed August 28, 2020, 7:43 p.m., effective August 28, 2020, 7:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close the mainstem Columbia River commercial fishery scheduled for the night of August 31, 2020, in WSR 20-17-052.

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 220-358-03000Q; 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 the mainstem commercial fishery scheduled for the night of August

31, 2020. Harvest of fall Chinook is greater than expected at this point in the season; therefore, the previously scheduled August 31 fishery needs to be rescinded to prevent harvest from exceeding preseason allocation. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact actions of July 30 and August 27, 2020. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of

fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 28, 2020.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000R 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: Closed.**
- (2) **Tongue Point/South Channel Select Area:**

Open Dates	Open Days	Open Time	Open Duration
August 31 - September 4	Monday, Tuesday, Wednesday, Thursday (night)	7:00 pm-7:00 am	12 hrs
September 7 - October 30	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm-10:00 am	18 hrs

(a) **Area:**

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

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

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

(ii) The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeast-

erly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

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

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically

authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted\_buoys on both ends of the net. If the net is attached to the boat, then one lighted\_buoy on the end of the net opposite the boat is required.

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

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

Open Dates	Open Days	Open Time	Open Duration
August 31 - September 4	Monday, Tuesday, Wednesday, Thursday (night)	7:00 pm-7:00 am	12 hrs
September 7 - October 30	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm-10:00 am	18 hrs

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

(b) **Gear:** Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 6, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no

lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

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

(c) **Permanent transportation rules in effect.** In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon.

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

Open Dates	Open Days	Open Time	Open Duration
September 28 - October 29	Monday, Wednesday (night)	6:00 pm-9:00 am	15 hrs
November 2 - December 3	Monday, Wednesday (night)	5:00 pm-8:00 am	15 hrs

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

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

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

(c) **Permanent transportation rules in effect.** In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in

Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon.

(5) **24-hour quick reporting** is in effect for Washington buyers (WAC 220-352-315)). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

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

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

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

#### REPEALER

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

WAC 220-358-03000Q Columbia River seasons below Bonneville Dam. (20-156)

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

[Order 20-144—Filed August 31, 2020, 8:58 a.m., effective September 1, 2020]

Effective Date of Rule: September 1, 2020.

Purpose: The purpose of this rule is to correct the boundary descriptions for Game Management Units 506 (Willapa Hills) and 673 (Williams Creek).

Citation of Rules Affected by this Order: Amending WAC 220-410-050 and 220-410-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Other Authority: None.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These rule amendments are needed to correct the description of the boundary between Game Management Units (GMUs) 506 (Willapa Hills) and 673 (Williams Creek), which were incorrectly specified during the setting of the 2020 hunting seasons earlier this year.

The error was brought to the Washington department of fish and wildlife's (WDFW) attention by local constituents who hunt these areas. This emergency rule reverts the boundary between these GMUs back to the description that has been in place for prior hunting seasons, and WDFW has communicated our intent to adopt this change prior to the opening of the fall hunting seasons, so hunters are aware of the revision and can plan accordingly.

Upon receiving notice of the error, WDFW staff conducted a site visit and confirmed the erroneous description. Harvest season recommendations are set at the GMU-level and the seasons for GMUs 506 and 673 are not the same. Making these corrections will align harvest levels for these GMUs with local black-tailed deer and elk populations and ensure long-term conservation goals are achieved.

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

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

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

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

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

Date Adopted: August 31, 2020.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-410-05000A Game management units (GMUs) boundary descriptions—Region five.** Effective September 1, 2020, the following provisions of WAC 220-410-050 regarding game management unit boundary descriptions in Region five for GMU 506 (Willapa Hills) shall be as described below. All other provisions of WAC 220-410-050 not addressed herein, or otherwise amended by emergency rule, remain in effect:

**GMU 506-WILLAPA HILLS (Wahkiakum, Pacific and Lewis counties):**

Beginning at State Route (SR) 6 and 3rd St S at the town of Pe Ell; S on 3rd St S to Muller Rd; S on Muller Rd to Weyerhaeuser (Weyco) 1000 line; S on Weyco 1000 line to Weyco 1800 line; S on Weyco 1800 line to Weyco 500 line; SE on Weyco 500 line to SR 407 (Elochoman Valley Rd) at

Camp 2; S on SR 407 to the Elochoman River; down the Elochoman River to Foster Rd; N on Foster Rd to Risk Rd; W and N along Risk Rd to SR 4; W on SR 4 to Skamokawa Creek; SW down Skamokawa Creek to the Columbia River; W along Columbia River to the mouth of the Deep River (including all islands in the Columbia River which are both north of the Washington state line and between Skamokawa Creek and Deep River); N along the Deep River to SR 4; NW on SR 4 to the Salmon Creek Rd; NE on Salmon Creek Rd to Weyco 5000 line; N on Weyco 5000 line (Deep River main line) to Weyco 5800 line; NE on Weyco 5800 line to power transmission line (Section 21, T11N, R8W); E, NE, then N on the power transmission line to the Trap Creek A Line; E and N on the Trap Creek A Line to SR 6; E on SR 6 to the town of Pe Ell and the point of beginning.

#### NEW SECTION

**WAC 220-410-06000A Game management units (GMUs) boundary descriptions—Region six.** Effective September 1, 2020, the following provisions of WAC 220-410-060 regarding game management unit boundary descriptions in Region six for GMU 673 (Williams Creek) shall be as described below. All other provisions of WAC 220-410-060 not addressed herein, or otherwise amended by emergency rule, remain in effect:

##### **GMU 673-WILLIAMS CREEK (Pacific County):**

Beginning at US Hwy (US) 101 bridge crossing the Willapa River at the town of Raymond; S on US 101 to State Route (SR) 6; SE on SR 6 to the Trap Creek A line; S and W on the Trap Creek A line to power transmission lines; S and SW on the power transmission lines to Weyerhaeuser (Weyco) 5800 line (Section 22, T11N, R8W); SW along the Weyco 5800 line to Weyco 5000 line (Deep River main line); SW on the Weyco 5000 line to the Salmon Creek Rd; SW along the Salmon Creek Rd to SR 4; W on SR 4 to US 101 at Johnson's Landing; W on US 101 to the Naselle River bridge; W down the Naselle River to Willapa Bay; N along the east shore of Willapa Bay to the Willapa River; SE and NE up the Willapa River to the US 101 bridge and the point of beginning.

#### **WSR 20-18-057**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 20-145—Filed August 31, 2020, 8:58 a.m., effective August 31, 2020, 8:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to divide each of the special permit hunts for the Centralia Mine for the categories of senior (age sixty-five and older) and hunters with disabilities into two separate seasons. Specifically:

For Centralia Mine, WF, Antlerless, Elk Area 6011, Sept. 5-6 in the 65+ Senior category, split this hunt into two separate hunts such that three permits will be available for the original Sept. 5-6 hunt dates and two permits with newly established season dates of Sept. 12-13.

For Centralia Mine, WF, Antlerless, Elk Area 6011, Oct. 10-11 in the Hunters with Disabilities category, split this hunt into two separate hunts such that three permits will be available for the original Oct. 10-11 hunt dates and two permits with newly established season dates of Oct. 17-18.

Citation of Rules Affected by this Order: Amending WAC 220-415-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Other Authority: None.

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

Reasons for this Finding: These hunts occur on the TransAlta Centralia Mine property, which is a privately owned active surface coal mine. Although a large elk herd resides on the property, hunting access is extremely limited because the landowner requires hunters to be escorted by a TransAlta mine employee who is certified in providing mine safety.

After these special permit seasons were adopted in permanent rule, the landowner informed the Washington department of fish and wildlife (WDFW) that they had encountered a problem with employee availability to provide an adequate number of escorts to accommodate the number of permits being issued. As such, the landowner requested that WDFW extend each of these special permit hunts to include hunter access to an additional weekend not initially included in the permanent regulations.

Additionally, prior to participating in the hunt, each participant must attend a safety briefing that is conducted in TransAlta's conference room. In response to COVID-19, TransAlta has adopted a policy that limits the number of people allowed to gather in their conference room at one time.

Therefore, this emergency rule is needed to accommodate the landowner's requests related to ensuring the safety of TransAlta employees and hunters during the briefing and in the field during the special hunt. They have also contacted the successful permit applicants and they are amenable to this change and have rescheduled their hunt dates accordingly.

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

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

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

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

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

Date Adopted: August 31, 2020.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-415-06000A 2020 Elk special permits.**

Effective September 5, 2020, the following provisions of WAC 220-415-060 regarding elk special permit seasons for the Centralia Mine (Elk Area 6011) shall be as described below. All other provisions of WAC 220-415-060 not addressed herein, or otherwise amended by emergency rule, remain in effect:

It is unlawful to fail to comply with the bag, possession, and season limits described below. A violation of this section is punishable under RCW 77.15.410 Unlawful hunting of big game—Penalty.

**Special Elk Permit Hunting Seasons (Open to Permit Holders Only)**

Hunters must purchase an elk hunting license prior to purchasing a permit application. Hunters may only apply for permits consistent with the tag required for the hunt choice; however, Multiple Season Permit holders may apply for Eastern or Western Washington archery, muzzleloader, or modern firearm permit hunts. Applicants must have purchased the proper tag for these hunts. The elk tag prefixes required to apply for each hunt are shown in the following table. Hunters drawn for a special permit hunt must comply with weapon restrictions, dates, and other conditions listed for the hunt. Hunters drawn for a special permit designated "**Any tag**" under the "**Weapon/Tag**" restriction must use equipment consistent with the requirements of their transport tag and license.

**Bag Limit:** One (1) elk per hunter during the license year except where otherwise permitted by department rule, even if permits are drawn for more than one elk hunt category. Any combination of seasons, tags, and permits set by the department will not exceed a maximum of two (2) elk per hunter during the license year.

<b>65+ Senior - Only hunters 65 and older may apply. Weapon must be consistent with weapon/tag restriction noted for hunt.</b>						
<b>Hunt Name</b>	<b>Weapon/Tag</b>	<b>Hunters</b>	<b>Hunt Dates</b>	<b>Special Restrictions</b>	<b>Boundary</b>	<b>Permits</b>
Centralia Mine	WF	65+	Sept. 5-6 or Sept. 12-13	Antlerless	Elk Area 6011	5

<b>Hunters with Disabilities - Only hunters with disabilities may apply. Weapon must be consistent with weapon/tag restriction noted for hunt.</b>						
<b>Hunt Name</b>	<b>Weapon/Tag</b>	<b>Hunters</b>	<b>Hunt Dates</b>	<b>Special Restrictions</b>	<b>Boundary</b>	<b>Permits</b>
Centralia Mine	WF	Hunters w/ Disabilities	Oct. 10-11 or Oct. 17-18	Antlerless	Designated Areas in Elk Area 6011	5

**WSR 20-18-064  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 20-171—Filed August 31, 2020, 2:31 p.m., effective September 1, 2020]

Effective Date of Rule: September 1, 2020.

Purpose: Amends freshwater fishing rules for the Snake River.

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

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

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

Reasons for this Finding: This emergency rule is needed to open salmon seasons in the Snake River, effective September 1, 2020. The 2020 Columbia River forecasted return for Upriver Bright adult Chinook is 233,400 fish, with 18,150 of these fish expected to return to the Snake River. This forecast is large enough to allow for Chinook harvest in the Snake River. The Upriver Bright stock primarily returns to the Hanford Reach and Snake River sections of the Columbia River and the *US v. OR* Management Agreement reaches only to the confluence of the Snake River. There is no Endangered Species Act component in this section of the Columbia River, and Washington has its own Fisheries Management and Evacuation Plan with Idaho for the Snake River itself. Because of these factors, management and the opening of this fishery by emergency rule is needed to maintain concurrency with Idaho's salmon rules and season openings for the Snake River. There is insufficient time to adopt permanent rules.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 31, 2020.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-05000H Freshwater exceptions to statewide rules—Eastside.** Effective September 1 through October 31, 2020 the following provisions of WAC 220-312-050 regarding salmon seasons for the Snake 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:

**Snake River (Franklin/Walla Walla Counties):**

**(1) from the mouth of the Snake River (Burbank to Pasco railroad bridge at Snake River mile 1.25) to Lower Granite Dam: Salmon:**

- (a) Adult daily limit is 3 hatchery Chinook.
- (b) No daily limit for jack Chinook. Jack Chinook may be wild or hatchery.
- (c) Release all salmon other than jack Chinook and hatchery adult Chinook.
- (d) Salmon that are not to be kept as part of the daily limit may not be removed from the water and must be released immediately and unharmed.

**(2) from the downstream edge of the large power lines crossing the Snake River (just upstream from West Evans Road on the south shore, approximately 3 miles below Clarkston) upstream to the Oregon state line: Salmon:**

- (e) Adult daily limit is 3 Chinook of which no more than 1 may be wild.
- (f) No daily limit for jack Chinook. Jack Chinook may be wild or hatchery.
- (g) Release all salmon other than Chinook.
- (h) Salmon that are not to be kept as part of the daily limit may not be removed from the water and must be released immediately and unharmed.

#### REPEALER

The following section of the Washington Administrative code is repealed effective September 1, 2020:

WAC 220-312-05000F Freshwater exceptions to statewide rules—Eastside.

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

WAC 220-312-05000H Freshwater exceptions to statewide rules—Eastside.

**WSR 20-18-065**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-169—Filed August 31, 2020, 3:34 p.m., effective August 31, 2020, 3:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends freshwater fishing rules for Voight Creek.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000S; and amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency closure of a portion of Voight Creek is needed to ensure orderly fisheries and protect returning adult Chinook salmon broodstock in order to meet the egg take goals at Voight Creek hatchery needed for future production. Previously, in the department's permanent rule, the lower creek below the hatchery intake had been closed; however, through the permanent sportfishing rule simplification process, this closure was accidentally removed. There have been a few anglers observed snagging fish in the area and, with the opening of the Carbon tomorrow, such activities could increase as overall fishing activity in the area increases, which would potentially jeopardize our ability to ensure egg take goals at Voight Creek hatchery are met. The department intends to address this problem through its permanent rule-making process for next year.

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

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

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

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

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

Date Adopted: August 31, 2020.

Kelly Susewind  
Director

### NEW SECTION

**WAC 220-312-04000S Freshwater exceptions to statewide rules—Puget Sound.** Notwithstanding the provisions of WAC 220-312-040, effective immediately through October 31, 2020, it is unlawful to violate the provisions below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect.

**Voight Creek (Pierce County):** From mouth to hatchery rack: Closed

### REPEALER

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

WAC 220-312-04000S Freshwater exceptions to statewide rules—Puget Sound.

**WSR 20-18-069**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-170—Filed August 31, 2020, 5:08 p.m., effective September 1, 2020]

Effective Date of Rule: September 1, 2020.

Purpose: Amends freshwater fishing rules for the Grande Ronde, Snake, Touchet, Tucannon and Walla Walla rivers.

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

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

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

Reasons for this Finding: This emergency rule is needed to adjust steelhead daily limits for the Snake River and its tributaries. Updated forecasts indicate returns of Snake River tributary stocks, particularly Tucannon and Touchet, tracking below the preseason forecast. Reductions in daily limits to the Snake River and its tributaries are needed to ensure that broodstock needs are met and to limit impacts on wild steelhead.

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

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

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

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

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

Date Adopted: August 31, 2020.

Kelly Susewind  
Director

### NEW SECTION

**WAC 220-312-05000G Freshwater exceptions to statewide rules—Eastside.** Effective September 1, 2020 and until further notice or until this rule expires on December 30, 2020 the following provisions of WAC 220-312-050 regarding steelhead seasons for the Snake River and its tributaries, the Grande Ronde, Touchet, Tucannon, and Walla Walla rivers shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or otherwise amended by emergency rule, remain in effect:

(1) **Grande Ronde River (Asotin County):** from the mouth to the Washington/Oregon border: Steelhead:

(a) Daily limit 2 hatchery steelhead.

(b) Barbless hooks required.

(c) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(d) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

(2) **Snake River (Franklin/Walla Walla Counties):**

(a) From the Burbank to Pasco railroad bridge at Snake River mile 1.25 to Lower Granite Dam: Steelhead:

(i) Daily limit 1 hatchery steelhead.

(ii) Barbless hooks required.

(iii) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(iv) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

(b) From Lower Granite Dam to the Oregon/Idaho border: Steelhead:

(i) Daily limit 2 hatchery steelhead.

(ii) Barbless hooks required.

(iii) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(iv) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

(3) **Touchet River (Walla Walla County): from the mouth to the confluence of the North and South Forks:** Steelhead:

(a) Daily limit 1 hatchery steelhead.

(b) Barbless hooks required.

(c) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(d) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

**(4) Tucannon River (Columbia/Garfield Counties):** from the mouth to the Tucannon Hatchery Road Bridge: Steelhead:

(a) Daily limit 1 hatchery steelhead.

(b) Barbless hooks required.

(c) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(d) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

**(5) Walla Walla River (Walla Walla County):** from the mouth to the Washington/Oregon border: Steelhead:

(a) Daily limit 1 hatchery steelhead.

(b) Barbless hooks required.

(c) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(d) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

#### REPEALER

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

WAC 220-312-05000C Freshwater exceptions to statewide rules—Eastside. (20-114)

### WSR 20-18-073

#### EMERGENCY RULES

#### HEALTH CARE AUTHORITY

[Filed September 1, 2020, 10:54 a.m., effective September 1, 2020, 10:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is establishing rules to comply with ESHB 1109, section 211(47), which provides funding for services identical to those services covered by the Washington state family planning waiver program to individuals who: (1) Are age twenty and older; (2) who are at or below two hundred sixty percent of the federal poverty level; (3) who are not covered by public or private insurance; and (4) who need family planning services and are not currently covered by or eligible for another medical assistance program for family planning.

Citation of Rules Affected by this Order: Amending WAC 182-535-510.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESHB 1109, section 211(47), chapter 415, Laws of 2019, operating budget.

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

state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This emergency is necessary to continue the current emergency filed under WSR 20-10-020, which is set to expire September 3, 2020, while HCA completes the permanent rule-making process. This emergency implements the requirements in ESHB 1109, section 211(47), chapter 415. Since the last emergency filing, originally, HCA scheduled a public hearing for May 26, 2020, but this hearing was continued to a virtual public hearing on June 23, 2020, due to the governor's extended orders to Stay Home, Stay Safe. HCA is considering stakeholder comments.

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; and Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 1, 2020.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-18-024, filed 8/28/19, effective 10/1/19)

**WAC 182-532-510 Family planning only programs—Eligibility.** To be eligible for one of the family planning only programs listed in this section, a client must meet the qualifications for that program.

**(1) Family planning only - Pregnancy related program.**

(a) To be eligible for family planning only - Pregnancy related services, as defined in WAC 182-532-001, a client must be determined eligible for the Washington apple health for pregnant ((clients)) women program during the pregnancy, or determined eligible for a retroactive period covering the end of a pregnancy. See WAC 182-505-0115.

(b) A client is automatically eligible for the family planning only - Pregnancy related program when the client's pregnancy ends.

(c) A client may apply for the family planning only program in subsection (2) of this section up to sixty days before the expiration of the family planning only - Pregnancy related program.

**(2) Family planning only program.**

(a) To be eligible for family planning only services, as defined in WAC 182-532-001, a client must:

(i) ~~((Be a United States citizen, U.S. National, or "qualified alien" as described under WAC 182-503-0535;~~

~~(ii)~~) Provide a valid Social Security number (SSN), unless ineligible to receive one, or meet good cause criteria listed in WAC 182-503-0515(2);

~~((iii))~~ (ii) Be a Washington state resident, as described under WAC 182-503-0520;

~~((iv))~~ (iii) Have an income at or below two hundred sixty percent of the federal poverty level, as described under WAC 182-505-0100;

~~((v))~~ (iv) Need family planning services; and

~~((vi))~~ (v) Have been denied apple health coverage within the last thirty days, unless the applicant:

(A) Is age eighteen ~~(and)~~ or younger and seeking services in confidence;

(B) Is a domestic violence victim who is seeking services in confidence; or

(C) Has an income of one hundred fifty percent to two hundred sixty percent of the federal poverty level, as described in WAC 182-505-0100.

(b) A client is not eligible for family planning only medical if the client is:

(i) Pregnant;

(ii) Sterilized;

(iii) Covered under another apple health program that includes family planning services; or

(iv) Covered by concurrent creditable coverage, as defined in RCW 48.66.020, unless they meet criteria in (a) ~~((vi))~~ (v) of this subsection.

(c) A client may reapply for coverage under the family planning only program up to sixty days before the expiration of the twelve-month coverage period. The agency does not limit the number of times a client may reapply for coverage.

Reasons for this Finding: Students being served through reengagement programs under chapter 392-70 WAC must still be able to receive educational services, including the face-to-face interaction time required under WAC 392-700-015, as school districts begin the year by offering remote learning due to the global COVID-19 pandemic. Because face-to-face, in-person interaction is not feasible for all students participating in remote learning, this amendment is necessary to ensure students will be able to access services through different means of contact in the 2020-21 school year. The office of superintendent of public instruction is initiating rule making to make this change permanent through the remainder of the school year.

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

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

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

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

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

Date Adopted: September 1, 2020.

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

### WSR 20-18-081

#### EMERGENCY RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed September 1, 2020, 4:11 p.m., effective September 1, 2020, 4:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The current permanent rule governing high school reengagement programs, WAC 392-700-015, requires a minimum two hours a month of "face-to-face" program staff interaction with each student. The purpose of this emergency rule amendment is to provide necessary clarification regarding acceptable "face-to-face" engagements when a reengagement program is being administered in remote learning environments made necessary by the global COVID-19 pandemic.

Citation of Rules Affected by this Order: Amending WAC 392-700-015.

Statutory Authority for Adoption: RCW 28A.175.100.

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.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

**WAC 392-700-015 Definitions.** The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month. Face-to-face interaction means reciprocal communication happening in real time through in-person, telephone, email, instant messaging, interactive video communication, or other means of digital communication, and in addition to the weekly status check.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

(5) **"College"** means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

(6) "**College level class**" is a class provided by a college that is one hundred level or above.

(7) "**Consortium**" means a regional group of organizations that consist of districts, tribal compact schools, charter schools and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts, tribal compact schools, and charter schools and reduce the administrative burden.

(8) "**Consortium agreement**" means the agreement that is signed by the authorized consortium lead and all district, tribal compact school, and charter school superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts, tribal compact schools, and charter schools.

(9) "**Consortium lead**" means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

(10) "**Count day**" is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.

(11) "**Credential**" is identified as one of the following:

- (a) High school diploma; or
- (b) Associate degree.

(12) "**Enrolled student**" is an eligible student whose enrollment and attendance meets the criteria outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding. An enrolled student can be further defined as one of the following:

(a) **New student** is an enrolled student who is being claimed for state funding for the first time by the program.

(b) **Continuing student** is an enrolled student who has continuously been enrolled in the program and claimed for state funding on at least one count day.

(c) **Returning student** is an enrolled student who has returned to the program after not receiving program services for a period of at least one count day and not more than ten count days.

(d) **Reenrolling student** is an enrolled student who has reenrolled in the program after not receiving program services for a period of eleven count days or more.

(13) "**ERDC**" refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(14) "**Full-time equivalent (FTE)**" is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

(15) "**Indicator of academic progress**" means a standard academic benchmark that demonstrates academic performance which is attained by a reengagement student. These indicators will be tracked and reported by the program and district, tribal compact school, or charter school for each student and for programs as a whole using definitions and proce-

dures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

- (a) Earns at minimum a 0.25 high school credit;
- (b) Earns at minimum a whole college credit;
- (c) Receives a college certificate after completion of a college program requiring at least forty hours of instruction;
- (d) Receives an industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction;
- (e) Passes one or more tests or benchmarks that would satisfy the state board of education's graduation requirements as provided in chapter 180-51 WAC;
- (f) Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;
- (g) Makes a significant gain in a core academic subject based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);

(h) Successfully completes a grade level curriculum in a core academic subject that does not earn high school or college credit;

(i) Successfully completes college readiness course work with documentation of competency attainment;

(j) Successfully completes job search and job retention course work with documentation of competency attainment;

(k) Successfully completes a paid or unpaid cooperative work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);

(l) Enrolls in a college level class for the first time (limited to be claimed once per enrolled student);

(m) Successfully completes an English as a second language (ESL) class;

(n) Successfully completes an adult basic education (ABE) class; or

(o) Successfully completes a series of short-term industry recognized certificates equaling at least forty hours.

(16) "**Instructional staff**" means the following:

(a) For programs operated by a district, tribal compact school, charter school, or agency, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205; and

(b) For programs operated by a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college.

(17) "**Letter of intent**" means the document signed by the district, tribal compact school, charter school, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, tribal compact school, charter school, college, or agency agree to implement.

(18) "**Noninstructional staff**" is any person employed in a position that is not an instructional staff as defined under subsection (16) of this section.

(19) "**OSPI**" means the office of superintendent of public instruction.

(20) "**Program**" means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

(21) **"School year"** is the twelve-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

(22) **"Scope of work"** means the document signed by district, tribal compact school, or charter school superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district, tribal compact school, or charter school, and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district, tribal compact school, or charter school agree to implement.

(23) **"Resident district"** means the district where the student resides or a district that has accepted full responsibility for a student who lives outside of the district through the choice transfer process pursuant to RCW 28A.225.200 through 28A.225.240. For students enrolled in a tribal compact school or charter school, the tribal compact school or charter school is the student's resident district.

(24) **"Weekly status check"** means individual communication from a designated program staff to a student. Weekly status check:

(a) Can be accomplished in person or through the use of telephone, email, instant messaging, interactive video communication, or other means of digital communication;

(b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;

(c) Must be documented; and

(d) Must occur at least once every week that has at least three days of instruction.

(25) **"Tribal compact school"** means a school that is the subject of a state-tribal education compact operated according to the terms of its compact executed in accordance with RCW 28A.715.010.

(26) **"Charter school"** means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school board, and operated according to the terms of a charter contract executed under chapter 28A.710 RCW.

**WSR 20-18-082**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-175—Filed September 1, 2020, 4:36 p.m., effective September 1, 2020, 4:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is [is] to close the Puget Sound commercial sea cucumber fishery in sea cucumber Management District 2-2 (23B, 25A, 25B, 25C, 25D) and District 5 (28A, 28B, 28C, 28D) as harvest quotas have been achieved.

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

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

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

Reasons for this Finding: This emergency rule is necessary to close the Puget Sound commercial sea cucumber fishery in sea cucumber Management District 2-2 (23B, 25A, 25B, 25C, 25D) and District 5 (28A, 28B, 28C, 28D). These harvest quotas have been reached, and this closure is necessary to prevent over harvest. Harvestable surpluses of sea cucumbers remain in districts specified to remain open.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 1, 2020.

Amy H. Windrope  
for Kelly Susewind  
Director

NEW SECTION

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

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

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following catch record areas of Sea Cucumber District 2, Monday through Sunday of each week: 29, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

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

REPEALER

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

WAC 220-340-73000U Commercial sea cucumber fishery. (20-146)

**WSR 20-18-083**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-172—Filed September 1, 2020, 4:39 p.m., effective September 1, 2020, 4:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial shrimp rules in Puget Sound.

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

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

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

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

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

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

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

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

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

Date Adopted: September 1, 2020.

Amy H. Windrope  
for Kelly Susewind  
Director

NEW SECTION

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

(1) Shrimp Pot Harvests:

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

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Areas) 23A-E, 23A-W, 23A-C, and 23A-S are closed to the harvest of non-spot shrimp until the spot quota is attained in all sub-areas of 23A. Catch Areas 23A-E, 23A-W, 23A-C, and 23A-S AE are within Shrimp Management Area 3 and comprise Catch Area 23A.

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

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

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

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

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

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

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

(2) Shrimp Non-spot Pot Harvest Restrictions

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

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

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

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

(3) Shrimp Spot Pot Harvest Restrictions:

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

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

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

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

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

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

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

(4) Shrimp trawl gear:

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000V Puget Sound shrimp pot and trawl fishery—Season. (20-168)

**WSR 20-18-084  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 20-173—Filed September 1, 2020, 4:40 p.m., effective September 1, 2020, 4:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to open all-depth/all shrimp species seasons in Marine Areas 7E and 7W, from September 10 through September 14, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000C and 220-330-07000D; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. This rule opens Marine Areas 7E and 7W on specified days in September to harvest remaining spot shrimp quota in these areas. Additionally, this rule maintains areas currently open to the harvest of nonspot shrimps using half inch mesh pots with depth restrictions specific to each marine area. This emergency regulation allows spot and nonspot shrimp opportunities to take place one hour before sunrise to one hour after sunset, which is the default daily times for those areas by permanent rule. Marine Area 13 will remain closed for spot shrimp for conservation reasons.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: September 1, 2020.

Kelly Susewind  
Director

#### NEW SECTION

##### **WAC 220-330-07000D Shrimp—Areas and seasons.**

Notwithstanding the provisions of WAC 220-330-070, effective immediately until further notice, or until this rule expires on October 16, 2020, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District portion of Marine Area 6, except as provided for in this section. All other provisions of WAC 220-330-070 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Marine Area 4 (east of the Bonilla-Tatoosh line) and 5: Open daily until further notice for all species of shrimp.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open until further notice, to the harvest of all shrimp species except spot shrimp with a 200-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(3) Marine Area 6 (within the Discovery Bay Shrimp District): Closed to the harvest of all species of shrimp.

(4) Marine Area 7 East: Open September 10, 11, 12, 13, and 14 for all shrimp species with no fishing depth restriction. Open until further notice, except for September 10, 11, 12, 13, and 14, to the harvest of all shrimp species except spot shrimp with a 200-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught before September 10 or after September 14 must be immediately returned to the water unharmed.

(5) Marine Area 7 South: Closed to the harvest of all species of shrimp.

(6) Marine Area 7 West: Open September 10, 11, 12, 13, and 14 for all species of shrimp.

(7) Marine Areas 8-1 and 8-2: Open until further notice to harvest of all shrimp species except spot shrimp with a 150-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(8) Marine Area 9: Open until further notice to the harvest of all shrimp species except spot shrimp with a 150-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(9) Marine Area 10: Closed to the harvest of all species of shrimp.

(10) Marine Area 11: Open until further notice to harvest of all shrimp species except spot shrimp with a 150-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot

shrimp caught must be immediately returned to the water unharmed.

(11) Marine Area 12: Closed to the harvest of all species of shrimp.

(12) Marine Area 13: Open until further notice to harvest of all species except spot shrimp with a 200-foot maximum fishing depth restriction. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be returned to the water unharmed.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-330-07000C Shrimp—Areas and seasons. (20-152)

The following section of the Washington Administrative Code is repealed effective October 16, 2020:

WAC 220-330-07000D Shrimp—Areas and seasons.

#### **WSR 20-18-095**

##### **EMERGENCY RULES**

##### **CENTRALIA COLLEGE**

[Filed September 2, 2020, 9:39 a.m., effective September 2, 2020, 9:39 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New student rights and responsibilities code, WAC 132L-351-005, 132L-351-010, 132L-351-015, 132L-351-020, 132L-351-025, 132L-351-030, 132L-351-035, 132L-351-040, 132L-351-045, 132L-351-050, 132L-351-055, 132L-351-060, 132L-351-065, 132L-351-070, 132L-351-075, 132L-351-080, 132L-351-085, 132L-351-090, 132L-351-095, 132L-351-100, 132L-351-105, 132L-351-110, 132L-351-115, 132L-351-120, 132L-351-200, 132L-351-210, 132L-351-220, 132L-351-230, 132L-351-240, 132L-351-250, 132L-351-260, 132L-351-270 and 132L-351-280; and repealing WAC 132L-350-005, 132L-350-010, 132L-350-015, 132L-350-020, 132L-350-030, 132L-350-040, 132L-350-070, 132L-350-080, 132L-350-090, 132L-350-100, 132L-350-110, 132L-350-120, 132L-350-130, 132L-350-140, 132L-350-150, 132L-350-160, 132L-350-170, 132L-350-180, 132L-350-190, 132L-350-200, 132L-350-210, 132L-350-220, 132L-350-230, 132L-350-240, 132L-350-250, 132L-350-260, 132L-350-270, and discrimination and harassment procedure, 132L-300-015.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

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

Reasons for this Finding: Centralia College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 33, Amended 0, Repealed 28; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 25, 2020.

Bob Mohrbacher  
President

### Chapter 132L-351 WAC

#### CENTRALIA COLLEGE—STUDENT RIGHTS AND RESPONSIBILITIES CODE

##### NEW SECTION

**WAC 132L-351-005 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. Unless otherwise specified, the student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

##### NEW SECTION

**WAC 132L-351-010 Student responsibilities.** Centralia College is a dynamic learning community that promotes growth and development by offering opportunities to gain knowledge, entrance skills, examine values, and pursue learning options. The college is committed to quality life-long learning through its values of respect, responsibility, and responsiveness. To that end, Centralia College maintains a strong commitment to providing a civil and nondisruptive learning environment. Students are reminded that they assume certain responsibilities of performance and conduct which have been reasonably established in order to accomplish Centralia College's education goals. Therefore, the college expects that students will conduct themselves as responsible members of the college community, will comply with

the rules and regulations of the college, will maintain high standards of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

##### NEW SECTION

**WAC 132L-351-015 Purpose.** The purpose of these rules is to prescribe standards of conduct for students of Centralia College. Violations of these standards may be cause for disciplinary action as described in this code.

##### NEW SECTION

**WAC 132L-351-020 Definitions.** The following definitions shall apply for purpose of this student conduct code:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(2) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(3) "President" is the president of the college. 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.

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

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

(6) "Respondent" is the student against whom disciplinary action is initiated.

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

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

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

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

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

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

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

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

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

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

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

(12) "Complainant" is an alleged victim of sexual misconduct.

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132L-351-130.

#### NEW SECTION

**WAC 132L-351-025 Jurisdiction.** The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

#### NEW SECTION

**WAC 132L-351-030 General policies.** (1) Centralia College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for laws by cooperating in their enforcement.

(2) Centralia College cannot and will not establish regulations that would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions helpful to the effective function of the college, to protect individual students from unfair penalties, and to assure

due process. Centralia College is granted the right by law to adopt rules to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take that action which is in the best interest of the entire college.

(5) Centralia College reserves the right to impose the provisions of this code and provide further sanctions before or after law enforcement agencies, courts, or other agencies have imposed penalties or otherwise disposed of a case. College hearings are not subject to challenge on the grounds that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or otherwise not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

(6) The ASCC has the right to participate in the formulation and review of all policies and rules pertaining to student conduct and in the enforcement of all such rules as provided by this chapter.

(7) This code will be printed and made available to students.

#### NEW SECTION

**WAC 132L-351-035 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 college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which 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 which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(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.

#### NEW SECTION

**WAC 132L-351-040 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

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

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

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

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

(3) **Obstruction or disruption.** Conduct, not otherwise protected by law that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. 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, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college 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 college trademarks.

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

(8) **Weapons.** Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

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

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

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

(b) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits

such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, 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.

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

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132L-351-210.

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

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

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

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

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

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking.

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

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

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

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

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

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

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

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

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

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship,

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

(i) Fear for their safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(k) For purposes of this code, "**consent**" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating or hostile environment for other campus community members.

Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** 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 college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

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

- (a) Unauthorized 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 college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other

college rules or policies, including college traffic and parking rules.

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

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

#### NEW SECTION

**WAC 132L-351-045 Disciplinary sanctions.** (1) Administration of the disciplinary procedure is the responsibility of the student conduct officer. The student conduct officer shall serve as the principal investigator and prosecutor for alleged violations of this code.

(2) In situations of apparent misconduct or apparent unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from properly identified college personnel is a violation of this code and may result in a disciplinary action if the person is found to be a student. In emergency situations, cases of misconduct, or where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by college personnel that the person questioned is not a student and may result in direct civil or criminal action.

(3) The instructor is responsible for conduct in the classroom or any course-related activity or event and is authorized to take such steps as are necessary when behavior of the student disrupts the normal classroom procedure. Instructors may remove a student for the single class session in which such disruptive behavior occurs. When such behavior results in expulsion from a class session, the instructor must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return to the next class session pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior in any class session that again disrupts the normal classroom procedure, the student may be removed again for that class session by the instructor who shall again report the infraction to the student conduct officer in writing. In all cases involving classroom disruption, the student conduct officer will proceed with the investigation and/or disciplinary hearings in the quickest possible time consistent with the procedural requirements established in this code.

(4) The person in charge of any college office, department, or facility is responsible for conduct in that office, department, or facility and is authorized to take such steps as are necessary when behavior of the student disrupts the normal office procedure. The person in charge may remove a

student for the single day in which such disruptive behavior occurs. When such behavior results in expulsion from an office, department, or facility, the person in charge must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return the next day pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior at any time in the future that again disrupts the normal office procedure, the student may be removed again for a single day by the person in charge who shall again report the infraction to the student conduct officer in writing. In all cases involving office disruption, the student conduct officer will proceed with the investigation and/or disciplinary hearings in the quickest possible time consistent with the procedural requirements established in this code.

(5) The student has the right to appeal any disciplinary action of an instructor or college employee to the student conduct officer in accordance with the procedures set forth in this code.

(6) A student formally charged or under investigation for a violation of this code may not excuse himself or herself from disciplinary hearings by withdrawing from the college.

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

#### NEW SECTION

**WAC 132L-351-050 Disciplinary sanctions terms and conditions.** (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation or repetition of the same or similar may be cause for more severe disciplinary action. This sanction is not subject to appeal.

(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 college 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 college, 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 college.

(d) **Summary suspension.** Immediate exclusion from classes and other privileges or activities in accordance with this code.

(e) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(f) **Deferred suspension.** Notice of suspension from the college with the provision that the student may remain enrolled contingent on meeting any condition(s) specified. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

(g) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(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) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **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 college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college 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 college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any form of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(e) **Disqualification from athletics.** Any student found by the college to have violated this code related to the use, possession, sale, or delivery of legend drugs is subject to

additional sanctions, including disqualification from college-sponsored athletic events.

(f) **College or community service.** Assignment of labor or responsibilities to any student or student organization with the college or local community. May also include mandatory attendance at educational programs or courses or other assignments.

(g) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

#### NEW SECTION

##### **WAC 132L-351-055 Initiation of disciplinary action.**

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

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her 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. 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.

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

(4) Within ten 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 his or her 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.

(5) 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), as described in WAC 132L-351-045.

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

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

#### NEW SECTION

##### **WAC 132L-351-060 Appeal from disciplinary action.**

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent and the conduct review officer.

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

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

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

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

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

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

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

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

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions

by the student conduct officer following the same procedures as set forth above for the respondent:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

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

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

#### NEW SECTION

**WAC 132L-351-065 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is 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, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

- (a) An opportunity to be informed of the agency'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 both the parties within ten 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 ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### NEW SECTION

**WAC 132L-351-070 Brief adjudicative proceedings—Review of initial decision.** (1) An initial decision is subject to review by the president, provided the respondent

files a written request for review with the conduct review officer within ten days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is 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 president shall give each party 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 committee 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 twenty 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. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

#### NEW SECTION

**WAC 132L-351-075 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

#### NEW SECTION

**WAC 132L-351-080 Conduct committee—Procedure and evidence.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to

have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132L-351-085 Student conduct committee hearing procedures.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

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

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, neither the complainant nor the respondent shall directly question or cross examine one another. Attorneys or advisors for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

#### NEW SECTION

**WAC 132L-351-090 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee 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 committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

#### NEW SECTION

**WAC 132L-351-095 Appeal from student conduct committee initial decision.** (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within twenty days after receipt of the notice of

appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

#### NEW SECTION

**WAC 132L-351-100 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

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

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after im-

sition of the summary suspension. At the hearing the review officer:

(a) Will determine whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) Provide the respondent the opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(6) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(7) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(8) 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.

(9) In cases involving allegations of sexual misconduct, 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 college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

#### NEW SECTION

**WAC 132L-351-105 Readmission after dismissal.** A student dismissed from the college may be readmitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writing to the student within thirty days after completion of the review process.

#### NEW SECTION

**WAC 132L-351-110 Brief adjudicative proceedings—Authorized.** Student conduct appeals involving the following disciplinary actions:

- (1) Suspensions of ten instructional days or less;
- (2) Disciplinary probation;
- (3) Written reprimands;
- (4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
- (5) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

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

(b) Issues a verbal warning to respondent.

#### NEW SECTION

**WAC 132L-351-115 Brief adjudicative proceedings—Agency record.** The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

#### NEW SECTION

**WAC 132L-351-120 Review of rules.** These rules will be reviewed annually by the student conduct officer. The student conduct officer, upon determining a need to revise this code shall convene a review committee to make recommendations for change in the code.

### **SUPPLEMENTAL PROCEDURES FOR TITLE IX GRIEVANCES**

#### NEW SECTION

**WAC 132L-351-200 Title IX supplemental procedures—Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Centralia College's standard disciplinary procedures in WAC 132L-351-005 through 132L-351-095, these supplemental procedures shall take precedence.

#### NEW SECTION

**WAC 132L-351-210 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the Centralia College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

#### NEW SECTION

**WAC 132L-351-220 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Centralia College educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

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

a student organization that is officially recognized by the Centralia College.

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

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

#### NEW SECTION

**WAC 132L-351-230 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) Centralia College will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

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

#### NEW SECTION

**WAC 132L-351-240 Prehearing procedures.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132L-351-080. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files

a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

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

#### NEW SECTION

**WAC 132L-351-250 Rights of parties.** (1) The Centralia College's student conduct procedures, this chapter and this supplemental procedure shall apply equally to all parties.

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

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

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

#### NEW SECTION

**WAC 132L-351-260 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

#### NEW SECTION

**WAC 132L-351-270 Initial order.** (1) In addition to complying with WAC 132L-351-090, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's educational programs or activities; and

(h) Describes the process for appealing the initial order to the college's president.

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

#### NEW SECTION

**WAC 132L-351-280 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132L-351-095.

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

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