

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

[Order 20-201—Filed September 24, 2020, 12:31 p.m., effective September 24, 2020, 12:31 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule provides additional commercial salmon harvest opportunity in the late fall 2020 season. The fall Chinook is coming in above forecast, and the second phase of the fall harvest plan is being implemented, which includes managing fisheries to not exceed the allowable ESA impact rates for Chinook and coho. 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, September 10, and September 23, 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

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

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

Date Adopted: September 24, 2020.

Kelly Susewind
 Director

NEW SECTION

WAC 220-358-03000T 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:

(a)

Open Dates	Open Days	Open Time	Open Duration
September 24	Thursday (night)	8:00 pm-6:00 am	10 hrs
September 30	Wednesday (night)	8:00 pm-6:00 am	10 hrs

(i) **Area:** SMCRA 1D and 1E. The deadline at the lower end of SMRCA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the

Washington shore. Sanctuaries: Washougal and Sandy Rivers.

(ii) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. Multiple net rule in effect beginning September 30 which means nets not specifically authorized for the fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Lighted buoys required.

(iii) **Allowable Sales:** Salmon (except chum) and shad. Sturgeon may not be possessed or sold.

(b)

Open Dates	Open Days	Open Time	Open Duration
September 30	Wednesday	5:00 am-6:00 pm	13 hrs
October 2	Friday	5:00 am-6:00 pm	13 hrs
October 5	Monday	5:00 am-6:00 pm	13 hrs
October 7	Wednesday	5:00 am-6:00 pm	13 hrs
October 9	Friday	5:00 am-6:00 pm	13 hrs
October 12	Monday	5:00 am-6:00 pm	13 hrs
October 14	Wednesday	5:00 am-6:00 pm	13 hrs
October 16	Friday	5:00 am-6:00 pm	13 hrs
October 19	Monday	5:00 am-6:00 pm	13 hrs
October 21	Wednesday	5:00 am-6:00 pm	13 hrs
October 23	Friday	5:00 am-6:00 pm	13 hrs

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

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

(iii) **Allowable Sales:** Salmon (except chum) and shad; all coho must be adipose fin-clipped. Sturgeon may not be possessed or sold.

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

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

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

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

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

(iv) **Additional Rules:**

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

(ii) **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

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

(2) Tongue Point/South Channel Select Area:

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

(a) Area:

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

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

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

(ii) The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

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

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

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

(3) Blind Slough/Knappa Slough Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 30	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm-10:00 am	18 hrs

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

(b) Gear: Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 6, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

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

(c) Permanent transportation rules in effect. In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate 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 unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000S Columbia River seasons below
Bonnevill Dam. (20-188)

WSR 20-20-012 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 20-204—Filed September 24, 2020, 3:19 p.m., effective September 24, 2020, 3:19 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: Allowable harvest of Columbia River salmonids remains available to provide additional fishing opportunity to the previously planned tribal commercial fishery period in areas SMCRA 1F, 1G, 1H. This rule is consistent with actions of the Columbia River Compacts on June 8, 30, July 8, 15, 30, August 13, September 3, 10, and 24, 2020. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

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

Date Adopted: September 24, 2020.

Kelly Susewind
Director

NEW SECTION

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

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

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

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

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

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

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

(a) Season: 6:00 AM September 28 through 6:00 PM October 1

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

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

(d) Standard sanctuaries applicable to gillnet gear. The standard Spring Creek Hatchery Sanctuary is in place. The Spring Creek Hatchery Sanctuary will be reduced to 150 feet around the hatchery ladder.

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

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

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in the fisheries downstream of Bonneville Dam.

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000H Columbia River salmon seasons.
(20-196)

WSR 20-20-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-202—Filed September 24, 2020, 3:28 p.m., effective September 26, 2020]

Effective Date of Rule: September 26, 2020.

Purpose: The purpose of this rule is to open additional white sturgeon retention seasons on September 26, September 29, and October 3, 2020.

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

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

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

Reasons for this Finding: This rule is needed to open additional white sturgeon seasons on September 26, September 29, and October 30. Due to lower-than-expected effort, catches were seventy-eight percent of expectations for the first open period with an estimated four hundred twelve fish kept from approximately one thousand eight hundred fifty angler trips. Angler success decreased well below expectations for the second period with approximately two hundred thirty fish kept from about two thousand nine hundred angler trips. Based on these observations, four hundred eighty-four remain available for harvest under the harvest guideline. This action is consistent with decisions made by the states of Washington and Oregon during compact actions of September 23, 2020.

There is insufficient time to adopt permanent regulations.

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

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

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

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

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

Date Adopted: September 24, 2020.

Kelly Susewind
 Director

NEW SECTION

WAC 220-312-06000Y Freshwater exceptions to statewide rules—Columbia River. Effective September 19 through December 31, 2020, the provisions of WAC 220-312-060 regarding recreational sturgeon seasons in the Columbia River downstream of Bonneville Dam and the Cowlitz River and Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to the Hwy. 395 Bridge at Pasco, shall be as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

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

(a) It is permissible to retain white sturgeon on September 26, September 29, and October 3, 2020.

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

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

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

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

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

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

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

(3) From the Rocky Point/Tongue Point line to Bonneville Dam:

(a) Effective immediately through October 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(b) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook and up to 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(4) From Bonneville Dam to Hood River Bridge: salmon and steelhead:

(a) Effective immediately through October 15: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and hatchery coho. Release all steelhead. Anti-Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) October 16 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(c) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook and up to 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(5) From the Hood River Bridge to the Dalles Dam: salmon and steelhead:

(a) Effective immediately through October 15: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and coho. Release all steelhead. Anti-Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) October 16 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and coho. Release all steelhead.

(c) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook and up to 1 may be a hatchery steelhead. Release all salmon other than Chinook and coho. Release wild steelhead.

(6) From the Dalles Dam to Hwy. 395 Bridge at Pasco;

(a) Effective immediately through October 15: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and coho. Release all steelhead. Anti-Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) October 16 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which up to 1 may be a Chinook. Release all salmon other than Chinook and coho. Release all steelhead.

REPEALER

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

WAC 220-312-06000X Freshwater exceptions to statewide rules—Columbia River. (20-198)

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

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

Purpose: This rule closes trawl nonspot shrimp harvest in Shrimp Management Area (SMA) 1B and pot nonspot shrimp harvest in Region 1 due to the attainment of quota.

In addition, this regulation includes previous emergency regulation amendments:

1. Defines the SMAs and regions open to nonspot shrimp commercial harvest;

2. Sets the harvest and gear limitations for the Puget Sound shrimp trawl fishery;

3. Requires purchase of shrimp harvested by designated fisheries to be done by appropriately licensed dealers.

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

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This rule does the following:

(1) Closes the nonspot pot fishery within SMAs 1A, 1B, and 1C on September 27, 2020, or when the remaining 289 lbs. of quota are harvested, whichever comes first; and

(2) Closes SMA 1B to trawl harvest of nonspot shrimp due to the attainment of quota.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 24, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000B 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.

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

[Order 20-205—Filed September 24, 2020, 5:31 p.m., effective September 24, 2020, 5:31 p.m.]

Effective Date of Rule: Immediately upon filing.

All other provisions of WAC 220-340-520 not addressed herein, and unless otherwise amended, remain in effect:

(1) Shrimp Pot Harvests:

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

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

(b) It is unlawful to harvest shrimp in more than one SMA per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

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

(b) It is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from SMA's 1A, 1B, 1C, 2W combined. SMA 3 does not have a weekly landing limit.

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

(d) Effective September 27 at 11:59 p.m. or when the remaining 289 lbs. of quota is landed, whichever comes first, SMA's 1A, 1B, and 1C are closed to pot harvest of non-spot shrimp.

(3) Shrimp trawl gear:

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

(b) Effective immediately, SMA 1B is closed.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000A Puget Sound shrimp pot and trawl fishery—Season. (20-193)

**WSR 20-20-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-208—Filed September 29, 2020, 8:05 a.m., effective September 29, 2020, 8:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule closes the nonspot pot fishery in Shrimp Managements Areas (SMA) 2W and 3 on October 15 due to agreed-to management plan provisions. This rule also

closes the nonspot trawl fishery in SMA 3 on September 30 and closes SMA 1C to trawl harvest of nonspot shrimp on October 15 or when the quota is attained due to agreed-to management plan provisions.

In addition, this regulation includes previous emergency regulation amendments:

1. Defines the SMAs and regions open to nonspot shrimp commercial harvest;

2. Sets the harvest and gear limitations for the Puget Sound shrimp trawl fishery;

3. Requires purchase of shrimp harvested by designated fisheries to be done by appropriately licensed dealers.

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

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This rule does the following:

(1) Closes the nonspot pot fishery in SMAs 2W and 3 on October 15 due to agreed-to management plan provisions;

(2) Closes the nonspot trawl fishery in SMA 3 on September 30 due to agreed-to management plan provisions; and

(3) Closes SMA 1C to trawl harvest of nonspot shrimp on October 15 or when the quota is attained due to agreed-to management plan provisions.

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 29, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000C Puget Sound shrimp pot and trawl fishery—Season. Effective immediately until further notice, 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 (SMAs) 1C, 2W, and 3 are open to the harvest of all non-spot shrimp species, effective immediately until further notice, except as provided for in this section:

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

(b) It is unlawful to harvest shrimp in more than one SMA per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

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

(b) It is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from SMA 2W. SMA 3 does not have a weekly landing limit.

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

(d) Effective immediately SMA 1C is closed to pot harvest of non-spot shrimp.

(e) Effective October 15 at 11:59 p.m. SMAs 2W and 3 are closed to the pot harvest of non-spot shrimp.

(3) Shrimp trawl gear:

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

(b) Effective September 30, 2020 at 11:59 p.m. SMA 3 is closed to trawl harvest of non-spot shrimp.

(c) Effective October 15, 2020 at 11:59 p.m. SMA 1C or when the remaining quota is attained, whichever comes first, is closed to trawl harvest of non-spot shrimp.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000B Puget Sound shrimp pot and trawl fishery—Season. (20-205)

WSR 20-20-029

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed September 29, 2020, 2:37 p.m., effective September 29, 2020, 2:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-335-510 Definitions—Home health, the department of health (department) is continuing the emer-

gency rule amendment to WAC 246-335-510(3) to include physician assistants in the list of practitioners authorized to order home health services and to sign plans of care, consistent with federal and state regulation changes due to the coronavirus disease (COVID-19) pandemic.

These rules continue the initial emergency rules filed on June 1, 2020, as WSR 20-12-075. There are no changes to these emergency rules from the initial emergency rule filing. These rule amendments are consistent with the change authorizing physician assistants to certify the need for home health services that was enacted by the 116th U.S. Congress in Section 3708 of H.R. 748 "Coronavirus Aid, Relief and Economic Security (CARES) Act." The CARES Act requires that this become a permanent federal regulation change effective no later than six months after the signing of the CARES Act.

Citation of Rules Affected by this Order: Amending WAC 246-335-510.

Statutory Authority for Adoption: RCW 70.127.120.

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

Reasons for this Finding: The immediate continuation of this emergency rule is necessary for the preservation of public health, safety, and general welfare. By extending the emergency rule amendments, the department aligns with other state and federal actions that assist facilities to meet the needs of more patients on a more expedient timeline. Expanding the types of authorizing practitioners to include physician assistants allows facilities to more quickly discharge appropriate stable patients by ordering home health services, rather than have a delayed stay in a hospital or other facility during the continuing public health emergency during 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 federal guidelines.

The department is in the process of filing a notice of expedited adoption (CR-105) to permanently adopted [adopt] the amendments in this emergency rule.

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

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

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

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

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

Date Adopted: September 28, 2020.

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

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-510 Definitions—Home health. The definitions in the section apply throughout WAC 246-335-505 through 246-335-560 unless the context clearly indicates otherwise:

(1) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, a respiratory therapist licensed under chapter 18.89 RCW, an occupational therapist licensed under chapter 18.59 RCW, a speech therapist licensed under chapter 18.35 RCW, a dietitian or nutritionist as defined in subsection (5) of this section, or social worker licensed under chapter 18.320 RCW to assess health status and progress.

(2) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's needs.

(3) "Authorizing practitioner" means the individual practitioners licensed in Washington state, or another state according to the exemption criteria established in chapters 18.57, 18.71, and 18.79 RCW, and authorized to approve a home health plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW;

(b) A podiatric physician and surgeon licensed under chapter 18.22 RCW; ~~((c))~~

(c) A physician assistant licensed under chapter 18.71A or 18.57A RCW; or

(d) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW.

(4) "Cardiopulmonary resuscitation" or "CPR" means a procedure to support and maintain breathing and circulation for a person who has stopped breathing (respiratory arrest) or whose heart has stopped (cardiac arrest).

(5) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

(6) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health aide" means an individual who is a nursing assistant certified or nursing assistant registered under chapter 18.88A RCW.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(11) "Home medical supplies or equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(12) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

(13) "Licensed nurse" means a licensed practical nurse or registered nurse under chapter 18.79 RCW.

(14) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. Maintenance care consists of periodic monitoring by a licensed nurse, therapist, dietitian or nutritionist, or social worker to assess a patient's health status and progress.

(15) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide home health services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW and 246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

(16) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

(17) "Patient" means an individual receiving home health services.

(18) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist

licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietitian or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

(19) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(20) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

(21) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

(22) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

(23) "Therapist" means an individual who is:

(a) A physical therapist licensed under chapter 18.74 RCW;

(b) A respiratory therapist licensed under chapter 18.89 RCW;

(c) An occupational therapist licensed under chapter 18.59 RCW;

(d) A speech therapist licensed under chapter 18.35 RCW; or

(e) A massage therapist licensed under chapter 18.108 RCW.

(24) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

WSR 20-20-031

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-206—Filed September 29, 2020, 4:20 p.m., effective October 1, 2020]

Effective Date of Rule: October 1, 2020.

Purpose: The purpose of this rule is to open coho retention seasons on the Icicle River and upper Columbia River from Priest Rapids Dam to Rocky Reach Dam.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000T, 220-312-06000Z and 220-312-05000J; and amending WAC 220-312-060 and 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 rule is needed to open coho retention seasons in Icicle River and the upper Columbia River from Priest Rapids Dam to Rocky Reach Dam. Returns of upper Columbia River bound coho salmon are sufficient to meet broodstock needs and to provide for sport angler harvest.

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: September 29, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000Z Freshwater exceptions to statewide rules—Columbia Effective October 1 through October 15, 2020, provisions of WAC 220-312-060 and 220-220-160 regarding Columbia River salmon seasons and the use of the Two-pole Endorsement from Priest Rapid Dam upstream are modified as described below. All other provisions of WAC 220-312-060 and WAC 220-220-160 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

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

(a) Salmon: Effective October 1 through October 15, 2020: Daily limit is 6; of which, up to 2 adult Chinook and up to 2 coho may be retained. Release sockeye.

(b) Effective October 1 through October 15: Anglers who possess a valid two-pole endorsement may fish with two lines.

(2) From Rock Island Dam to Rocky Reach Dam:

(a) Salmon: Effective October 1 through October 15, 2020: Daily limit is 6; of which, up to 2 adult hatchery Chinook, up to 2 coho, and up to 4 sockeye may be retained. Release wild adult Chinook.

(b) Effective October 1 through October 15: Anglers who possess a valid two-pole endorsement may fish with two lines.

NEW SECTION

WAC 220-312-05000J Freshwater exceptions to statewide rules—Eastside. Effective 1 hour before official sunrise October 1 through 1 hour after official sunset November 30, 2020, provisions of WAC 220-312-050 regarding salmon seasons for the Icicle River shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

Icicle River:

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

- (i) Daily limit 2. Release all salmon other than coho.
- (ii) Bait prohibited.
- (iii) Night closure in effect.

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

- (i) Daily limit 2. Release all salmon other than coho.
- (ii) Bait prohibited.
- (iii) Night closure in effect.

REPEALER

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

WAC 220-312-06000T Freshwater exceptions to statewide rules—Columbia. (20-143)

The following section of the Washington Administrative Code is repealed effective October 16, 2020:

WAC 220-312-06000Z Freshwater exceptions to statewide rules—Columbia. (20-206)

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

WAC 220-312-05000J Freshwater exceptions to statewide rules—Eastside. (20-206)

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

**WSR 20-20-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-209—Filed September 29, 2020, 4:28 p.m., effective October 1, 2020]

Effective Date of Rule: October 1, 2020.

Purpose: The purpose of this rule is to open recreational winter crab seas in Marine Areas 4 East of the Bonilla-Tatoosh line, 5, 6, 7, 9, and 12, beginning October 1 and through December 31, 2020.

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

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational crab harvest in the marine areas listed. Preliminary summer harvest estimates indicate that these areas can open on October 1 and contribute to achieving 50/50 harvest goal with the treaty tribes. A further update of recreational harvest estimates is required to determine whether Marine Areas 8-1 and 8-2 can open for winter recreational harvest. 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 29, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000P Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective immediately through December 31, 2020, Puget Sound recreational crab seasons are as listed below. All other provisions of WAC 220-330-040 not addressed herein remain in effect unless otherwise amended by emergency rule:

It is permissible to crab for personal use in the following Marine Areas: 4 East of the Bonilla-Tatoosh line, 5, 6, 7, 9, and 12.

REPEALER

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

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

WSR 20-20-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-203—Filed September 29, 2020, 5:02 p.m., effective September 29, 2020, 5:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to add an additional day to the commercial salmon season in Willapa Bay Catch Areas 2N, 2M, 2T, and 2U.

Citation of Rules Affected by this Order: Repealing WAC 220-354-25000G and 220-354-25000F; and amending WAC 220-354-250.

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

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

Reasons for this Finding: This emergency rule is needed to add an additional day to the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Area[s] 2N, 2M, 2U and 2T in the week of September 28 through October 3, 2020. To accommodate this additional day of fishing, the scheduled opening days have been changed from October 1, 2020, to September 30 and October 2, 2020.

The marine fisheries are currently still within the pre-season predicted number of unmarked Chinook salmon impacts to attain the conservation objective of a fourteen percent impact rate cap to natural origin Willapa River and Naselle River Chinook salmon. The harvest of coho, both hatchery and natural origin, in the commercial fishery has far exceeded pre-season predictions.

The department utilizes a modeling tool to evaluate the runsize of coho in-season that is based on the catch per unit effort of the commercial fisheries. This in-season update model (ISU) has been applied in the last few years and it becomes statistically significant in statistical week thirty-eight (mid-September). The significance improves as more data are added through time. Currently, we are in statistical week forty (Sept. 27 - Oct. 3, 2020) and the ISU model is predicting a natural origin coho runsize between 35,788 to 69,656 fish. This prediction is much higher than the pre-season forecasted runsize of 16,074 natural origin coho.

The department also utilizes a model to plan fisheries pre-season, the Willapa Bay Terminal Area Management Model (TAMM). This model will estimate catch, impacts, escapements, and harvest rates for each fishery by species. Adding the predicted coho natural origin runsize from the ISU to the TAMM finalized from our 2020 North of Falcon process, the TAMM model predicts a natural origin coho escapement of 38,335 fish. This is 21,735 fish above the escapement goal of 13,600 for natural origin coho.

Early indications from the ISU and TAMM models suggests the pre-season management objectives would still be attained for all three species; Chinook salmon (fourteen percent impact rate cap), coho (13,600 natural origin spawners), and chum (ten percent impact rate cap).

In addition, the commercial fishery lost opportunity early in the season to conserve unmarked Chinook salmon impacts and with minimal Chinook salmon impacts likely to occur in successive weeks, coupled with the predicted increased harvest potential of hatchery coho, the department has decided to make additional changes to the upcoming commercial schedule for statistical week forty. The commercial fishing opportunity in statistical week forty (Sept. 27 - Oct. 3, 2020) will be increased from two days (Monday and Thursday) to three days (Monday, Wednesday, and Friday).

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 29, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000G Willapa Bay salmon fall fishery. Effective September 29 through October 3, 2020, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except during the times and dates in the Willapa Bay Catch Reporting Areas listed below, using only gear with mesh size listed below. All other provisions of WAC 220-354-250 not addressed herein remain in effect unless otherwise amended by emergency rule:

Fishing periods:

Area	Time	Date(s)	Gear type	Maximum mesh size
2N, 2M, 2T, 2U	7:00 a.m. through 7:00 p.m.	9/30, 10/2	Small mesh gillnet gear	6.5"

REPEALER

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

WAC 220-354-25000F Willapa Bay salmon fall fishery. (20-194)

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

WAC 220-354-25000G Willapa Bay salmon fall fishery. (20-203)

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.

gibility standards, as revised October 1st of each year; and make annual adjustments to standard utility allowances reflecting changes in costs.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 4, 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 4, Repealed 0.

Date Adopted: September 29, 2020.

Katherine I. Vasquez
Rules Coordinator

**WSR 20-20-035
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**
(Economic Services Administration)

[Filed September 30, 2020, 9:06 a.m., effective October 1, 2020]

Effective Date of Rule: October 1, 2020.

Purpose: The department is amending WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food? to implement annual adjustments to standards for the Basic Food program.

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

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

Other Authority: 7 C.F.R. §§ 273.9 (a)(3), (d)(6)(iii), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard Utility Allowance approval letter (August 4, 2020)."

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: Under federal Supplemental Nutrition Assistance Program law (7 C.F.R. §§ 273.9), the department is required to use federally prescribed income eli-

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

(1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
3 or less	\$167
4	(\$178) <u>\$181</u>
5	(\$209) <u>\$212</u>
6 or more	(\$240) <u>\$243</u>

(b) Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of one hundred (~~(fifty-two)~~) fifty-seven dollars. If the homeless AU has shelter costs in excess of one hundred (~~(fifty-two)~~) fifty-seven dollars, the AU has the option to claim either:

- (i) The homeless shelter deduction; or
- (ii) Actual shelter costs.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of five hundred (~~(sixty-nine)~~) eighty-six dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~(sixty-nine)~~) eighty-six dollars.

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASH-

CAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~(thirty-seven)~~) forty-nine dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred (~~(thirty-seven)~~) forty-nine dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred (~~(forty-three)~~) fifty-two dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~(fifty-eight)~~) fifty-nine dollars.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 20-04-021, filed 1/27/20, effective 2/27/20)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section. The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE 10/1/2019

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	(\$1,354) <u>\$1,383</u>	(\$1,041) <u>\$1,064</u>	(\$194) <u>\$204</u>	(\$1,718) <u>\$1,755</u>
2	(1,832) <u>1,868</u>	(1,410) <u>1,437</u>	(355) <u>374</u>	(2,326) <u>2,371</u>
3	(2,311) <u>2,353</u>	(1,778) <u>1,810</u>	(509) <u>535</u>	(2,933) <u>2,987</u>
4	(2,790) <u>2,839</u>	(2,146) <u>2,184</u>	(646) <u>680</u>	(3,541) <u>3,603</u>
5	(3,269) <u>3,324</u>	(2,515) <u>2,557</u>	(768) <u>807</u>	(4,149) <u>4,219</u>
6	(3,748) <u>3,809</u>	(2,883) <u>2,930</u>	(921) <u>969</u>	(4,757) <u>4,835</u>
7	(4,227) <u>4,295</u>	(3,251) <u>3,304</u>	(1,018) <u>1,071</u>	(5,364) <u>5,451</u>
8	(4,705) <u>4,780</u>	(3,620) <u>3,677</u>	(1,164) <u>1,224</u>	(5,972) <u>6,067</u>
9	(5,184) <u>5,266</u>	(3,989) <u>4,051</u>	(1,310) <u>1,377</u>	(6,580) <u>6,683</u>
10	(5,663) <u>5,752</u>	(4,358) <u>4,425</u>	(1,456) <u>1,530</u>	(7,188) <u>7,299</u>
Each Additional Member	(+479) <u>+486</u>	(+369) <u>+374</u>	(+146) <u>+153</u>	(+608) <u>+616</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

Purpose: These rules are necessary to implement the terms of SSB 6152 (2020), regarding the prohibition on political spending by foreign nationals.

Citation of Rules Affected by this Order: New WAC 390-16-330 and 390-16-335.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.240, 42.17A.250, 42.17A.260, 42.17A.305.

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

Reasons for this Finding: Emergency rules were adopted June 11, 2020, to implement SSB 6152. These emergency rules expire on October 9, 2020. RCW 42.17A.110(1) does not allow the public disclosure commission (PDC) to promulgate new rules before the November general election. Therefore, these rules must be extended to remain in effect through the general election period, after which the PDC will promulgate permanent rules.

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

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

WSR 20-20-037

EMERGENCY RULES

PUBLIC DISCLOSURE COMMISSION

[Filed September 30, 2020, 10:55 a.m., effective October 9, 2020]

Effective Date of Rule: October 9, 2020.

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

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

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

Date Adopted: September 24, 2020.

Sean Flynn
General Counsel

NEW SECTION

WAC 390-16-330 Prohibited financing and involvement by foreign nationals. (1) Prohibited financing by foreign nationals.

(a) For purposes of section 9, chapter 152, Laws of 2020 (SSB 6152), a contribution, expenditure, political advertising, or electioneering communication is "financed in any part by a foreign national" if the person making the contribution or expenditure, or sponsoring the advertisement or communication, uses a funding source that includes, in whole or in part, anything of value received from a foreign national for less than full consideration. Such value may include, but is not limited to, a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds, or goods and services.

(b) Anything of value received from a foreign national for less than full consideration must be segregated, using reasonable accounting methods, from the funding source used by the entity to finance a contribution, expenditure, advertisement, or communication. Funding from a foreign national may not be used to supplant, replace, or replenish the funding source or any of the resources or activities funded by that source.

(2) Prohibited decision-making involvement by foreign nationals.

(a) For purposes of section 9, chapter 152, Laws of 2020 (SSB 6152), a foreign national is "involved in making decisions regarding the contribution, expenditure, political advertising, or electioneering communication in any way" if the foreign national directs, dictates, controls, or directly or indirectly participates in the decision-making process regarding any such contribution, expenditure, advertisement, or communication.

(b) If any entity is a subsidiary, branch, unit, or division of a foreign national, or otherwise established, financed, maintained or controlled by a foreign national, under the criteria provided in WAC 390-16-309(3), the decision-making authority of such entity regarding the contribution, expenditure, advertisement, or communication, must be clearly established to be comprised exclusively of United States citizens or legal permanent residents, in order to exclude involvement by any foreign national.

NEW SECTION

WAC 390-16-335 Certification for contributions from entities—Prohibited activity by foreign nationals.

(1) The certification required for a candidate or political committee to accept each contribution from a partnership, association, corporation, organization, or other combination of persons must be received in writing, either:

(a) By the date the report including the contribution is due, or within ten business days, whichever is later; or

(b) Within thirty days from the date the contribution is received, so long as the candidate or committee keeps any uncertified contributions in a separate bank account, to prevent commingling with other contributions, until the certification is received.

(2) Any uncertified contribution must be refunded or returned by the applicable deadline in subsection (1) of this section. The failure to timely refund or return an uncertified contribution constitutes a violation of chapter 42.17A RCW.

(3) Entities may use a certification that conforms to the suggested format below or provide a different format, so long as it provides the following information:

(a) The name of the entity making the contribution and the authorized agent;

(b) A statement that the entity is not a foreign national, as defined in RCW 42.17A.005(24);

(c) A statement that the contribution is not financed in any part by a foreign national;

(d) A statement that foreign nationals were not involved in making decisions regarding the contribution in any way;

(e) The amount of the contribution and the date it was made; and

(f) The date the certification was submitted.

Certification that Contribution Is Not From a Foreign National

I certify that the entity _____
(name of entity) making this contribution is not organized under the laws of, and does not have its principal place of business in, a foreign country. This contribution is not financed in any part by a foreign national, and foreign nationals were not involved in making decisions regarding the contribution in any way.

Amount of Contribution:

Date of Contribution:

Name of Authorized Agent:

Date Submitted:

**WSR 20-20-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-207—Filed September 30, 2020, 11:32 a.m., effective September 30, 2020, 11:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open commercial harvest of green sea urchins, beginning October 5, 2020, within the areas of the Sea Urchin Districts listed in the rule, which includes areas of Sea Urchin Districts 1, 2, 3, 4, 6, and 7. This rule also sets size restrictions for possessing, delivering, or otherwise controlling sea urchins.

Citation of Rules Affected by this Order: Amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule opens listed Sea Urchin Districts on October 5 to harvest of green sea urchins only. This emergency rule is also needed to clarify size restrictions for possessing, delivering, or otherwise controlling sea urchins.

Green sea urchins are passively managed, and a technical committee periodically reviews the total allowable catch regarding sustainability. Several areas closed to harvest have been established within the primary harvest districts. Harvestable surpluses of green sea urchins exist in Districts 1, 2, 3, 4, 6, and 7 under current management guidelines.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 30, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000X Commercial sea urchin fishery. Effective immediately, until further notice or until this rule expires on January 28, 2021, the provisions of WAC 220-340-750 regarding the size restrictions, open periods and seasons, and landing periods of commercially harvested sea urchins shall be as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Effective immediately, until further notice, it is unlawful for any person to fish for, take, or possess for com-

mercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) Effective October 5, 2020, until further notice, the following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1, District 2, District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(3) Effective October 5, 2020, until further notice, the maximum cumulative landings for green sea urchins for each weekly fishery opening period is 1,500 pounds per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

**WSR 20-20-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-211—Filed September 30, 2020, 12:31 p.m., effective October 1, 2020]

Effective Date of Rule: October 1, 2020.

Purpose: The purpose of this rule is to increase the Chinook daily limit during the month of October from the mouth of the Columbia River to the Hwy. 395 Bridge at Pasco.

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

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

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

Reasons for this Finding: This rule is needed to increase the Chinook daily limit to two adults. The fall Chinook run continues coming in above forecast and balance in the recreational allocation remains to enable a bag limit increase. This action is consistent with the preseason plan for salmon fisheries and decisions made by the states of Washington and Oregon during compact actions on September 3, 9, 17, and 23, 2020.

There is insufficient time to adopt permanent regulations.

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

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

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

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

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

Date Adopted: September 30, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000A Freshwater exceptions to statewide rules—Columbia River. Effective October 1 through December 31, 2020, the provisions of WAC 220-312-060 regarding recreational sturgeon seasons in the Columbia River downstream of Bonneville Dam and the Cowlitz River and Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to the Hwy. 395 Bridge at Pasco, shall be as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

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

(a) It is permissible to retain white sturgeon on October 3, 2020.

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

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

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

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

(a) Effective October 1 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained. Coho minimum size 16 inches. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(b) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which 1 may be a steelhead. Coho minimum size 16 inches. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(3) From the Rocky Point/Tongue Point line to Bonneville Dam: Salmon and steelhead:

(a) Effective October 1 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(b) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(4) From Bonneville Dam to Hood River Bridge: Salmon and steelhead:

(a) Effective October 1 through October 15: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and hatchery coho. Release all steelhead. Anti-Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(c) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(5) From the Hood River Bridge to the Dalles Dam: Salmon and steelhead:

(a) Effective October 1 through October 15: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and coho. Release all steelhead. Anti-Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and coho. Release all steelhead.

(c) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which 1 may be a hatchery steelhead. Release all salmon other than Chinook and coho. Release wild steelhead.

(6) From the Dalles Dam to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

(a) Effective October 1 through October 15: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and coho. Release all steelhead. Anti-Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and coho. Release all steelhead.

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

REPEALER

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

WAC 220-312-06000Y Freshwater exceptions to statewide rules—Columbia River. (20-202)

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

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

WSR 20-20-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-212—Filed September 30, 2020, 3:18 p.m., effective October 1, 2020]

Effective Date of Rule: October 1, 2020.

Purpose: The purpose of this rule is [to] open salmon season on the Yakima River from the Hwy. 240 Bridge in Richland (river mile 2.1) to the Grant Avenue Bridge in Prosser (river mile 47.0) approximately one thousand feet downstream of Prosser Dam, beginning October 1 through 18, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000J; 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: Fall Chinook are returning to the Yakima River in higher numbers than forecasted. Fall Chinook and coho are expected to be sufficient in numbers to provide a limited sport fishery. 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 30, 2020.

Kelly Susewind
 Director

NEW SECTION

WAC 220-312-05000J Freshwater exceptions to statewide rules—Eastside. Effective October 1 through October 18, 2020, provisions of WAC 220-312-050 regarding salmon seasons for the Yakima 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:

Yakima River, from the Hwy. 240 Bridge in Richland (river mile 2.1) to the Grant Avenue Bridge in Prosser

(river mile 47.0) approximately 1,000 feet downstream of Prosser Dam: Salmon:

(a) Daily limit 2 adult salmon. No daily limit for jack salmon. Release all salmon other than Chinook and coho.

(b) Barbless hooks required.

(c) All salmon not kept as part of the daily limit may not be removed from the water and must be immediately release unharmed.

(d) Night closure in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective October 19, 2020:

WAC 220-312-05000J Freshwater exceptions to statewide rules—Columbia.

WSR 20-20-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-213—Filed September 30, 2020, 4:53 p.m., effective October 1, 2020]

Effective Date of Rule: October 1, 2020.

Purpose: Amends rules for Puget Sound commercial crab fishery.

Citation of Rules Affected by this Order: Amending WAC 220-340-420, 220-340-455, and 220-352-340.

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

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

Reasons for this Finding: There is sufficient allocation available in Regions 1, 2 West, 3-1, 3-2, and 3-3 to accommodate this opening. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. Further adjustment of season structure may be made pending updated harvest data. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 30, 2020.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective October 1, 2020 until further notice it is illegal to deploy Dungeness crab pots for commercial purposes in Crab Management Region 2 East.

(2) Effective October 1, 2020 at 12:00 a.m. until October 5, 2020 at 7:59 a.m. it is illegal to deploy Dungeness crab pots for commercial purposes in Crab Management Regions 1, 2 West, 3-1, 3-2, and 3-3.

(3) Effective 8:00 a.m. October 5, 2020 until 7:59 a.m. October 7, 2020 it is permissible to deploy Dungeness crab pots for commercial purposes in Crab Management Regions 1, 3-1 and 3-3 from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and prior notice has been given as provided below. Crab pots may only be deployed during daylight hours. Crab Management Region 1 includes Marine Fish-Shellfish (MFSF) Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B. Crab Management Region 3-1 includes MFSF Catch Reporting Areas 23A and 23B. Crab Management Region 3-3 includes MFSF Catch Reporting Areas 23C and 29.

(4) Barging is not allowed in Crab Management Regions 2 West and 3-2. Crab Management Region 2 West includes MFSF Catch Reporting Areas 25B, 25D, and 26A West. Crab Management Region 3-2 includes MFSF Catch Reporting Areas 23D, 25A, and 25E.

(5) The licensed owner must leave a telephone message at, (360) 302-3030 ext. 321, or send an email to crab.report@dfw.wa.gov, detailing the following information:

(a) Name and license number of licensed owner.

(b) Name of designated primary operator if different from licensed owner.

(c) Name of alternate operator if used to deploy pots from a non-designated vessel.

(d) Buoy brand number and number of pots to be deployed from a non-designated vessel.

(e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(6) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use,

maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

NEW SECTION

WAC 220-340-45500J Commercial fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-450:

(1) Effective October 1, 2020 at 12:00 a.m. until further notice it is illegal to harvest Dungeness crab for commercial purposes in Crab Management Region 2 East.

(2) Effective October 1, 2020 at 12:00 a.m. until October 5, 2020 at 7:59 a.m. it is illegal to harvest Dungeness crab for commercial purposes in Crab Management Regions 1, 2 West, 3-1, 3-2, and 3-3.

(3) Effective October 5, 2020 at 12:00 a.m. until further notice it is permissible to harvest Dungeness crab for commercial purposes in Crab Management Regions 1, 2 West, 3-1, 3-2, and 3-3.

(4) Effective 8:00 a.m. October 5, 2020, until further notice, it is permissible to harvest Dungeness crab for commercial purposes in the following areas in Region 1:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(5) Effective 8:00 a.m. October 5, 2020, until further notice, it is permissible to harvest Dungeness crab for commercial purposes in the following areas in Region 2 West:

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

(6) Effective 8:00 a.m. October 5, 2020, until further notice, it is illegal to harvest Dungeness crab for commercial purposes in the following areas in Region 2 East:

(e) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(f) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at

Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(g) That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(7) Effective 8:00 a.m. October 5, 2020, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(8) Effective 8:00 a.m. October 5, 2020, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 35 pots per license per buoy tag number in Crab Management Region 1.

(9) Effective 8:00 a.m. October 5, 2020, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 2 West, 3-1, 3-2, or 3-3.

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

NEW SECTION

WAC 220-352-34000F Puget Sound crab—Additional reporting requirements. Notwithstanding the provisions of WAC 220-352-340, effective 8:00 am, October 5, 2020, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following day. Reports must be made by fax to (360) 302-3031 or by e-mail at crab.report@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

WSR 20-20-051

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed October 1, 2020, 8:19 a.m., effective October 1, 2020, 8:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-296-100 DWSRF loan eligibility and application requirements, under the current rule, an applicant for a drinking water state revolving fund (DWSRF) loan must have a current (through the close of the funding application period) department of health (department) approved water system plan which includes the proposed project needing funding. The department has amended the existing rule to allow a Group A public water system to submit a water system plan to the department for review prior to the close of the application cycle and receive department approval within one hundred twenty days after the close of the application cycle. The coronavirus disease 2019 (COVID-19) pandemic has created a number of issues with water systems updating existing or preparing new water system planning documents to include the proposed project needing funding because staff have been redeployed to respond to the pandemic. Water systems are needing more time to prepare or update their planning document, with the public meeting requirements being very challenging under current circumstances. Department staff are also having challenges with reviewing and approving planning documents in a timely manner due to many staff being activated to COVID-19 response duties. Not being able to approve loans for the improvement and remediation of drinking water systems is against the general welfare of state citizens. Given these constraints, this emergency rule provides more flexibility for submittal and approval for the water system planning requirement.

Citation of Rules Affected by this Order: Amending WAC 246-296-100.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: Federal Safe Drinking Water Act 40 C.F.R. Part 35 Subpart L.

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 rule amendment is necessary for the preservation of the public health, safety, and general welfare of state citizens so that Group A public water systems can immediately apply for a drinking water state revolving fund loan and allow the department to review and approve a water system plan during the loan application cycle instead of requiring a current department-approved water system plan prior to application. By amending DWSRF loan application requirements so that more time is provided to water systems and the department for reviewing and approving water system plans, making this change will protect public health when water systems experience infrastructure challenges such as replacing aging infrastructure, installing treatment to remove contaminants, restructuring failing water systems, and responding to public health emergency events.

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

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

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

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

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

Date Adopted: September 28, 2020.

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

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-100 DWSRF loan eligibility and application requirements. To be eligible for a DWSRF loan, an applicant shall:

(1) Document that the public water system has the system capacity to stay in compliance with applicable federal, state, and local drinking water requirements, unless:

(a) The funding will bring the public water system into compliance; and

(b) The owner of the public water system agrees to reasonable and appropriate changes to stay in compliance.

(2) ~~((Before applying for a DWSRF loan,))~~ Have a ~~((current department approved))~~ WSP or SWSMP that:

(a) Is department-approved and current through the close of the application cycle; or

(b) Is submitted to the department for review prior to the close of the application cycle and receive department approval within one hundred twenty days after the close of the application cycle;

(c) Includes the proposed project; and

~~((b))~~ (d) Addresses any difficulties with system capacity;

(3) Comply with federal, state, and local drinking water requirements or a variance under WAC 246-290-060, unless the DWSRF loan will fund projects that result in public water system compliance;

(4) Comply with any department or EPA orders;

(5) Install a source meter on each source if meters are not already installed;

(6) Install service meters on all service connections if meters are not already installed within the project area, unless:

(a) The project is for a transient noncommunity public water system;

(b) The project is for a mobile home park with a source or master meter;

(c) The project is for an apartment building or complex with a source or master meter; or

(d) The department determines that installing meters is:

(i) Prohibitive for the DWSRF project as a whole; and

(ii) Waiving the meter requirement is necessary to award a DWSRF loan for a project to resolve high priority public health problems.

(7) Have no outstanding fees or penalties owed to the department((-));

(8) Provide documentation that the project has sufficient water rights as determined by ecology((-));

(9) Comply with the requirements of WAC 246-296-120(1).

WSR 20-20-057

RECISSION OF EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed October 1, 2020, 10:48 a.m.]

The department of children, youth, and families requests to withdraw [rescind] WSR 20-16-043 filed on July 27, 2020.

Please contact Brenda Villarreal at 360-522-3691 if you have any questions or need anything further.

Brenda Villarreal
Rules Coordinator

WSR 20-20-058

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed October 1, 2020, 10:55 a.m., effective October 1, 2020, 10:55 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: For working connections and seasonal child care: Relieve families who participate in working connections and seasonal child care from copayments through December 2020.

Citation of Rules Affected by this Order: Amending WAC 110-15-0030 and 110-15-0034.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-

person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. The emergency amendment to WAC 110-15-0034 address these challenges by making child care more accessible for families through December 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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: October 1, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0030 Consumers' responsibilities.

When a person applies for or receives WCCC benefits, as a condition of receiving those benefits, the applicant or consumer must:

(1) Give (~~(DSHS)~~) DCYF correct and current information so (~~(DSHS)~~) DCYF can determine eligibility and authorize child care payments correctly;

(2) Choose a provider who meets the requirements of WAC 110-15-0125;

(3) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider, except the copayment is not required for the months of October, November, and December, 2020;

(4) If the consumer or a third-party acting on behalf of the consumer fails to make a copayment when due, the consumer must do one or more of the following:

(a) Pay the child care provider the past due copayments;

(b) Provide (~~(DSHS)~~) DCYF with a signed copy of a payment agreement between the consumer and child care provider that includes, but is not limited to, the following information:

(i) A description of the agreed payment plan;

(ii) If applicable, a description of any collection agency action that may be taken by the provider if the consumer fails to comply with the agreed payment plan;

(iii) If applicable, a description of in-kind services in lieu of paying the copayment; and

(iv) If applicable, payment forgiveness from the provider.

(c) Provide (~~(DSHS)~~) DCYF proof that the consumer attempted to make a copayment to the provider, but the licensed provider is no longer in business or the license-exempt in-home/relative provider no longer provides child care. "Proof" includes, but is not limited to, a return receipt associated with a payment that was mailed to the provider that indicates the mailed payment was signed for but not picked up, or a returned, previously mailed payment that was not signed for or accepted.

(5) Pay the provider for child care services when the consumer requests additional child care beyond the current authorization;

(6) Pay the provider for optional child care programs that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

(7) Pay the provider the same late fees that are charged to other families, if the consumer makes a late copayment or picks up the child late;

(8) Cooperate (provide the information requested) with the child care subsidy audit process. If the consumer does not provide the information requested:

(a) A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation;

(b) The consumer remains ineligible until he or she meets child care subsidy audit requirements;

(c) The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter and cooperates;

(d) Care can begin on or after the date the consumer cooperated and meets WCCC requirements in part II of this chapter.

(9) Provide the information requested by the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it may affect the consumer's benefits;

(10) Document the child's attendance in child care, or have a person authorized by the consumer to document the child's attendance, by:

(a) Signing the child in on arrival and out at departure, using a full signature and writing the time of arrival and departure, if the provider uses a paper attendance record; or

(b) Electronically recording the child's attendance as instructed, if an electronic system is used by the provider.

(11) Ensure that the consumer's children who receive child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(a) A department of health (DOH) medical exemption form signed by a health care professional; or

(b) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization.

(12) Ensure that care is provided in the correct home as required by WAC 110-16-0015(3) if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;

(13) Provide the in-home/relative provider with the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care; and

(14) Provide other information and resources as necessary for the consumer's in-home/relative provider to be in compliance with the requirements of chapter 110-16 WAC including, but not limited to, WAC 110-16-0030 and 110-16-0035.

AMENDATORY SECTION (Amending WSR 19-12-058, filed 10/11/19 [5/31/19], effective 7/1/19)

WAC 110-15-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Licensed or certified child care providers who accept child care subsidies must comply with all child care licensing or certification requirements contained in this chapter, chapter 43.216 RCW and chapters 110-06, 110-300, (~~110-300A, 110-300B, and~~) 110-305, and 110-310 WAC.

(2) In-home/relative child care providers must comply with the requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(3) In-home/relative child care providers must not submit an invoice for more than six children for the same hours of care.

(4) All child care providers must use DCYF's electronic attendance recordkeeping system or a DCYF-approved electronic attendance recordkeeping system as required by WAC 110-15-0126. Providers must limit attendance system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(a) Providers using DCYF's electronic recordkeeping system must submit monthly attendance records prior to claiming payment. Providers using a DCYF-approved electronic recordkeeping system must finalize attendance records prior to claiming payment.

(b) Providers must not edit attendance records after making a claim for payment.

(5) All child care providers must complete and maintain accurate daily attendance records. If requested by DCYF or DSHS, the provider must provide to the requesting agency the following records:

(a) Attendance records must be provided to DCYF or DSHS within twenty-eight calendar days of the date of a written request from either department.

(b) Pursuant to WAC 110-15-0268, the attendance records delivered to DCYF or DSHS may be used to determine whether a provider overpayment has been made and may result in the establishment of an overpayment and in an immediate suspension of the provider's subsidy payment.

(6) All child care providers must maintain and provide receipts for billed field trip/quality enhancement fees as follows. If requested by DCYF or DSHS, the provider must provide the following receipts for billed field trip/quality enhancement fees:

(a) Receipts from the previous twelve months must be available immediately for review upon request by DCYF;

(b) Receipts from one to five years old must be provided within twenty-eight days of the date of a written request from either department.

(7) All child care providers must collect copayments directly from the consumer or the consumer's third-party (~~payer~~) payer, and report to DCYF if the consumer has not paid a copayment to the provider within the previous sixty days, except for the months of October, November, and December, 2020.

(8) All child care providers must follow the billing procedures required by DCYF.

(9) Child care providers who accept child care subsidies must not:

(a) Claim a payment in any month a child has not attended at least one day within the authorization period in that month; however, in the event a ten-day notice terminating a provider's authorization extends into the following month, the provider may claim a payment for any remaining days of the ten calendar day notice in that following month;

(b) Claim an invoice for payment later than six months after the month of service, or the date of the invoice, whichever is later; or

(c) Charge consumers the difference between the provider's customary rate and the maximum allowed state rate.

(10) Licensed and certified providers must not charge consumers for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) Days for which the child is scheduled and authorized for care but absent;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

(11) Providers who care for children in states bordering Washington state must verify they are in compliance with their state's licensing regulations and notify DCYF within ten days of any suspension, revocation, or changes to their license.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 20-20-060

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 20-125—Filed October 1, 2020, 11:30 a.m., effective October 1, 2020, 11:30 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington department of fish and wildlife is repealing the target practice and burn ban, which went into effect on July 1, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-500-03000C, 220-500-04000D, 220-500-11000C, and 220-500-14000C.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, and 77.04.055.

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 Washington department of fish and wildlife is repealing the target practice and burn ban. Cooler, damp weather conditions have reduced the risk of wildfire eliminating the emergency need to restrict activities to prevent new and multiple wildfires.

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 4.

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

Date Adopted: October 1, 2020.

Kelly Susewind
Director

REPEALER

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

WAC 220-500-03000C Behavior and conduct. (20-125)

WAC 220-500-04000D Regulating public access. (20-125)

WAC 220-500-11000C Fires and campfires. (20-125)

WAC 220-500-14000C Firearms and target practicing. (20-125)

WSR 20-20-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-216—Filed October 1, 2020, 1:58 p.m., effective October 1, 2020, 1:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close recreational crab [fishing] in the area of Marine Area 12 south of Ayock Point.

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

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

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

Reasons for this Finding: This emergency rule is needed to correct the previous filing of WSR 20-20-032, that inadvertently opened the portion of Marine Area 12 south of Ayock Point. This rule will close that area and is consistent with Washington department of fish and wildlife management plans and with how comanagers have structured [structured] their crab fisheries this year. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 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: October 1, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000Q Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective immediately through December 31, 2020, Puget Sound recreational crab seasons are as listed below. All other provisions of WAC 220-330-040 not addressed herein remain in effect unless otherwise amended by emergency rule:

It is permissible to crab for personal use in the following Marine Areas: 4 East of the Bonilla-Tatoosh line, 5, 6, 7, 9, and 12 north of Ayock point.

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

REPEALER

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

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

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

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

WSR 20-20-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-214—Filed October 1, 2020, 3:12 p.m., effective October 3, 2020]

Effective Date of Rule: October 3, 2020.

Purpose: The purpose of this rule is to increase the adult Chinook daily limit for the Green, Toutle, North Fork Toutle, and Washougal rivers. This rule will also allow retention of hatchery steelhead in Drano Lake.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000R; and amending WAC 220-312-030.

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

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

Reasons for this Finding: This rule is needed to increase the adult Chinook daily limit for the Green River, Toutle River, North Fork Toutle River, and Washougal River and to allow retention of hatchery steelhead in Drano Lake, for the following reasons:

The current return of fall Chinook to the Washougal River has exceeded preseason expectations. Collection of adult fall Chinook is on track to meet the hatchery broodstock goal and surplus fish are available for harvest.

Chinook and coho salmon returns to the Toutle Hatchery have been above levels needed to meet broodstock collection goals for the Toutle Hatchery Chinook and coho programs. Modifying Chinook and coho fisheries on these rivers will provide additional fishing opportunities while still meeting program goals.

Summer 2020 steelhead fisheries in Drano Lake were closed through the North of Falcon rule-making process based on low preseason forecasts and the need to limit ESA-listed steelhead impacts in nontreaty fisheries. The estimated return of B-index summer steelhead, the primary stock currently passing Bonneville Dam, was recently increased from preseason forecasts. Mainstem Columbia River temperatures have also decreased, likely reducing the number of ESA-listed summer steelhead occupying Drano Lake. Reopening hatchery steelhead retention at this time will provide added sport fishing opportunity for anglers, while also meeting conservation objectives for ESA-listed steelhead stocks.

There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: October 1, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000R Freshwater exceptions to statewide rules—Southwest. The provisions of WAC 220-312-030 regarding salmon seasons for Drano Lake, Green River, Toutle River, North Fork Toutle River, and the Washougal River shall be modified during the dates and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

1) Drano Lake (Skamania County): Salmon and steelhead: Effective October 3 through October 31, 2020:

Daily limit 6. Up to 1 adult salmon **or** up to 1 hatchery steelhead may be retained.

2) Green River (Cowlitz Co.): From the mouth to Miner's Creek: Salmon: Effective October 3 through November 30, 2020:

Daily limit 6. Up to 2 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

3) Toutle River (Cowlitz Co.): From the mouth to the forks: Salmon: Effective October 3 through November 30, 2020:

Daily limit 6. Up to 2 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

4) North Fork Toutle River (Cowlitz Co.): From the mouth to the posted markers below the Fish Collection Facility: Salmon: Effective October 3 through November 30, 2020:

Daily limit 6. Up to 2 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

5) Washougal River (Clark Co.): From the mouth to the bridge at Salmon Falls: Salmon: Effective October 3 through December 31, 2020:

Daily limit 6. Up to 2 adults may be retained, of which no more than 1 may be a coho. Release all salmon other than hatchery Chinook and hatchery coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2020 [2021]:

WAC 220-312-03000R Southwest—Freshwater exceptions to statewide rules.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

[Order 20-215—Filed October 1, 2020, 3:13 p.m., effective October 1, 2020, 3:13 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: Allowable harvest of Columbia River salmonids remains available to provide additional fishing opportunity to the previously planned tribal commercial fishery period in areas SMCRA 1F, 1G, 1H. This rule is consistent with actions of the Columbia River Compacts on June 8, 30, July 8, 15, 30, August 13, September 3, 10, 24, and October 1, 2020. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel

regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

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

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

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

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

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

Date Adopted: October 1, 2020.

Kelly Susewind
Director

NEW SECTION

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

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

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

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

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

sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

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

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

(a) Season: 6:00 AM Monday, October 5 through 6:00 PM Wednesday October 7

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

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

(d) Standard sanctuaries applicable to gillnet gear. The standard Spring Creek will be reduced to 150 feet around the hatchery ladder.

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

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

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in the fisheries downstream of Bonneville Dam.

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000I Columbia River salmon seasons.
(20-204)

WSR 20-20-067 EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 1, 2020, 3:56 p.m., effective October 1, 2020, 3:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule amendment is to address how student enrollment will be reported as schools reopen for the 2020-21 school year through both the remote continuous learning and hybrid models.

Citation of Rules Affected by this Order: Amending WAC 392-121-106, 392-121-107, 392-121-108, 392-121-119, 392-121-122, 392-121-138, 392-121-182, and 392-121-187.

Statutory Authority for Adoption: RCW 28.150.290, 28A.150.305, 28A.710.220.

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

Reasons for this Finding: Due to the coronavirus pandemic, the immediate adoption of this emergency rule-making order is necessary in order to provide a method for school districts to claim remote learning for state funding as students learn from home or attend in-person classes on a rotating schedule. To that end, these rules change the September count day; provide extended time for student participation from September 2020 until September 30, as schools reopen and students receive access to instruction; amend alternative learning experience requirements for the October 2020 count; and provide that the running start count day for December can be the last school day in November if the fall 2020 quarter does not have a December count day.

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 8, Repealed 0.

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

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

Date Adopted: October 1, 2020.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-106 Definition—Enrolled student. As used in this chapter, "enrolled student" means a person residing in Washington state who:

(1) Is eligible to enroll in the school district's education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.-215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250);

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.-260; or

(g) Will be attending a public charter school, as defined by RCW 28A.710.010, located within Washington state.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's or charter school's appropriate official to be entered on the school district's or charter school's rolls for the purpose of attending school in grades kindergarten through twelve;

(3) Is under twenty-one years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year or prior to the date being counted, in a course of study offered by the school district or charter school as defined in WAC 392-121-107. For the 2020-21 school year, a student who has actually participated in a course of study offered by the school district or charter school as defined in WAC 392-121-107 at any point from the start of the school year until September 30th shall be considered an enrolled student for the month; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

AMENDATORY SECTION (Amending WSR 16-11-104, filed 5/18/16, effective 6/18/16)

WAC 392-121-107 Definition—Course of study. As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction ((-)).

(i) Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, or teaching/learning experiences conducted by charter school staff as directed by the charter school administration and charter school board, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district or charter school for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(ii) For the 2020-21 school year, instruction may include daily learning activities delivered through remote learning modalities including, but not limited to, distance learning, hybrid classrooms, rotating schedules, and other methods that allow for the delivery of basic education services during the COVID-19 epidemic. Remote learning activities may be synchronous and asynchronous.

(b) Alternative learning experience - Alternative learning experience provided by the school district or charter school in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188 or 392-121-1885.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district or charter school staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district or charter school, certificated contact time pursuant to RCW 28A.225.010 (4)(a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts and charter schools report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Work based learning - Training provided pursuant to WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.-400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district or charter school.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(j) Dropout reengagement program - Enrollment in a state approved dropout reengagement program pursuant to RCW 28A.175.100 and chapter 392-700 WAC.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188 or 392-121-1885;

(h) Enrollment for residents of the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

AMENDATORY SECTION (Amending WSR 16-18-031, filed 8/26/16, effective 9/1/16)

WAC 392-121-108 Definition—Enrollment exclusions. A person who qualifies for any of the exclusions set forth in this section shall not be counted as an enrolled student pursuant to WAC 392-121-106.

(1) Absences - Except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence from school exceed twenty school days, or a part-time student that has not attended school at least once within a time period consisting of twenty consecutive school days, shall not be counted as an enrolled student until attendance is resumed. School days are defined as the regularly scheduled instruc-

tional days for the general population of the school or district the student is enrolled in, regardless of the student's individualized schedule. Students are not required to be withdrawn from enrollment after twenty consecutive days of absences, only that the district cannot claim these students for state funding. For 2020-21 school year, "absence" means a student absence from in-person learning or remote learning as defined in chapter 392-401A WAC.

(a) If there is a written agreement between the appropriate school official and a student's parent or guardian pursuant to RCW 28A.225.010 that the student's temporary absence is not deemed to cause a serious adverse effect upon the student's educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC 392-172A-02100 shall be counted as an enrolled student as provided in WAC 392-122-145.

(2) Dropouts - A student for whom the school district or charter school has received notification of dropping out of school by the student or the student's parent or guardian shall not be counted as an enrolled student until attendance is resumed.

(3) Transfers - A student who has transferred to another public or private school and for whom the school district or charter school has received notification of transfer from the school to which the student has transferred, from the student, or from the student's parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district or charter school.

(4) Graduates - A student who has met the high school graduation requirements of chapter 180-51 WAC by the beginning of the school year.

(5) Tuition - A student paying tuition including, but not limited to, students on an F-1 visa or students enrolled in a tuition-based summer school program.

(6) An institution student who is claimed as a 1.0 FTE by any institution as an enrolled student eligible for state institutional education support pursuant to chapter 392-122 WAC where the institution's count date occurs prior to the school district count date for the month. Where the count dates occur on the same date, the institution shall have priority for counting the student.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-119 Definition—Enrollment count dates. As used in this chapter, "enrollment count dates" means the fourth school day of September and the first school day of each of the nine subsequent months of the school year for all school districts and charter schools including districts and charter schools which commence basic education programs prior to September 1st. Exceptions are limited to the following:

(1) In school districts where not every school or grade follows the same calendar of school days, the calendar of an individual school or an entire grade level within a school may determine the monthly enrollment count date for that school or grade level within the school.

(2) The nine count dates for running start enrollment shall be the first school day of each month of October through June. For the fall 2020 college quarter, the last college or university day of November is the December count day when the fall quarter ends before December.

(3) When the school calendar ends before June, the June count day is the last day of May.

(4) For the 2020-21 school year only, there is no defined count day for the month of September. If a student meets the definition of an enrolled student and participates in a school day at any point during the month of September, they can be claimed for state funding.

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

WAC 392-121-122 Definition—Full-time equivalent student. As used in this chapter, "full-time equivalent student" means each enrolled student in the school district or charter school as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of meal intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts and charter schools which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall be construed as annual average hours for the purposes of compliance with this chapter.

(1)(a) Prior to the 2018-19 school year, the minimum hours for each grade are as follows:

(i) Kindergarten: 20 hours each week, or 4 hours (240 minutes) for each scheduled school day;

(ii) Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;

(iii) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;

(iv) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.

(b) Beginning with the 2018-19 school year, the minimum hours for all grades are 27 hours and 45 minutes each week (1,665 weekly minutes), or 5 hours and 33 minutes (333 minutes) for each scheduled school day.

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student.

(a) Prior to the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled hours divided by the minimum hours for the student's grade level set forth in subsection (1)(a) of this section.

(b) Beginning with the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled minutes divided by 1,665. For the 2020-21 school year, enrollment in remote learning shall be included to determine a student's full-time equivalent enrollment. A student's

weekly enrolled minutes is calculated using the published example student schedule during a school day as defined in WAC 392-121-108.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district or charter school and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

AMENDATORY SECTION (Amending WSR 08-04-011, filed 1/24/08, effective 2/24/08)

WAC 392-121-138 Full-time equivalent enrollment of vocational education students. For the purpose of enhanced funding for vocational education, full-time equivalent enrollment in vocational and skills center programs shall be based upon the actual hours of enrollment in state approved vocational courses. Vocational full-time equivalent enrollment shall be determined pursuant to WAC 392-121-122 and shall be reported on the same monthly basis as the enrollment for students eligible for basic support. For the 2020-21 school year, enrollment in remote learning may be included to determine a student's full-time equivalent enrollment. A student's weekly enrolled minutes is calculated using the published example student schedule for the student's school during a school day as defined in WAC 392-121-108.

AMENDATORY SECTION (Amending WSR 20-15-062, filed 7/10/20, effective 8/10/20)

WAC 392-121-182 Alternative learning experience requirements. (1) **Scope.** This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience.

(2) **Requirements.** A school district or charter school must meet the requirements of this section and chapter 392-550 WAC to count an alternative learning experience as a course of study pursuant to WAC 392-121-107.

(3) **Student eligibility.** A student enrolled in an alternative learning experience course must meet the following conditions:

(a) The student must meet the definition of an enrolled student under WAC 392-121-106;

(b) The student must not meet any of the enrollment exclusions in WAC 392-121-108;

(c) The student's residence must be in Washington state as provided in WAC 392-137-115; and

(d) For students whose residence is not located in the school district providing an alternative learning experience course (nonresident student), the district must:

(i) Document the school district in which the nonresident student's residence is located;

(ii) Establish procedures that address, at a minimum, the coordination of student counting for state funding so that no enrolled student is counted for more than one full-time equivalent in the aggregate. The procedure must include, but not be limited to, the following:

(A) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts must execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(B) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC, the district may not claim funding for the student until after a release transfer is completed by the resident district and the nonresident serving district.

(4) Enrollment count dates.

(a) Alternative learning experience enrollment is claimed based on the monthly count dates as defined in WAC 392-121-119.

(b) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan pursuant to WAC 392-550-025(1) has an ending date that is the last school day in May.

(c) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May; and

(ii) The student's written student learning plan pursuant to WAC 392-550-025(1) includes an end date that is the last day of school for graduating students in May.

(5) Reporting of student enrollment.

(a) For the first time a student's alternative learning experience enrollment is claimed for state funding and for the October 2020 count, the following requirements must be met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place with a start date that is before the monthly count day; and

(ii) There is documented evidence of student participation as required by WAC 392-121-106(4).

(b) On subsequent monthly count dates excluding the October 2020 count day, a student's alternative learning experience course(s) can be claimed for state funding if the following requirements are met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place on the monthly count date;

(ii) The contact requirement pursuant to WAC 392-550-025(2) was met in the prior month;

(iii) The monthly progress evaluation requirement pursuant to WAC 392-550-025(3) was met in the prior month; and

(iv) If the monthly progress evaluation showed unsatisfactory progress, the intervention plan requirement pursuant to WAC 392-550-025(4) is met.

(c) Students must be excluded from the monthly count including students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must be excluded from the monthly count until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107.

(d) The student count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date.

(6) Student full-time equivalency.

(a) The full-time equivalency of students enrolled in alternative learning experiences is based on the estimated average weekly hours of learning activity described in the written student learning plan.

(b) Pursuant to WAC 392-121-122, twenty-seven hours and forty-five minutes each week (one thousand six hundred sixty-five weekly minutes) equal one full-time equivalent.

(c) Enrollment of part-time alternative learning experience students is subject to the provisions of chapter 392-134 WAC and generates a pro rata share of full-time funding based on the estimated average weekly minutes of learning activity described in the written student learning plan divided by one thousand six hundred sixty-five weekly minutes.

(d) Kindergarten students claimed for more than a 0.50 full-time equivalent must meet the state-funded full-day kindergarten requirements, as provided for in RCW 28A.150.-315.

(e) The full-time equivalent limitations outlined in WAC 392-121-136 and the nonstandard school year limitations outlined in WAC 392-121-123 apply to alternative learning enrollment.

AMENDATORY SECTION (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

WAC 392-121-187 Technical college direct-funded enrollment. Enrollment in a technical college pursuant to an interlocal agreement with a school district as provided in RCW 28B.50.533 may be counted as course of study generating state moneys payable directly to the technical college as provided in this section.

(1) The technical college shall submit a written request to the superintendent of public instruction and for each school district whose students are to be claimed by the college shall provide a copy of the interlocal agreement signed by the school district superintendent and the technical college president or authorized officials of the school district and college.

(2) The technical college shall report enrolled students monthly (September through June) to the superintendent of public instruction pursuant to this chapter and instructions provided by the superintendent. A separate report shall be

submitted for each school district whose students are reported. Reports of students eligible for state basic education support shall show the total number of students served and total nonvocational and vocational FTE students on the monthly count date. Reports shall also show the name of each student, hours of enrollment per week on the monthly count date, and the nonvocational and vocational full-time equivalent reported for the student on the count date. Technical colleges claiming direct state handicapped funding under the interlocal agreement shall also report the number of enrolled handicapped students by handicapping category on the count dates of October through June pursuant to WAC 392-122-160 and chapter 392-172A WAC. For the 2020-21 school year, enrollment in remote learning can be included to determine a student's full-time equivalent enrollment. A student's weekly enrolled minutes is calculated using the published example student schedule for the student's school as defined in WAC 392-121-108.

(3) The technical college shall report monthly to each school district whose students are served pursuant to this section. The report shall include at a minimum the data reported to the superintendent of public instruction pursuant to subsection (2) of this section.

(4) The technical college shall report only students who:

(a) Were under twenty-one years of age at the beginning of the school year;

(b) Are enrolled tuition-free;

(c) Are enrolled in a school district with which the technical college has a signed interlocal agreement on file with the superintendent of public instruction pursuant to subsection (1) of this section;

(d) Are enrolled in the school district for the purpose of earning a high school diploma or certificate; and

(e) Have actually participated in instructional activity at the technical college during the current school year.

(5) Enrollments claimed for state basic education funding by the technical college:

(a) Shall be for courses for which the student is earning high school graduation credit through the school district or the technical college; and

(b) Shall not include:

(i) Enrollment which is claimed by the school district for state funding; or

(ii) Enrollment which generates state or federal moneys for higher education, adult education, or job training for the technical college.

(6) Full-time equivalent students reported by the technical college for state basic education funding shall be determined pursuant to WAC 392-121-106 through 392-121-183 except that the enrollment count dates shall be for the months of September through June. If a student is enrolled in courses provided by the school district as well as courses provided by the technical college, the combined full-time equivalents reported by the school district and the technical college are limited by WAC 392-121-136.

(7) The superintendent of public instruction shall make quarterly payments to the technical college as follows:

(a) Basic education allocations shall be determined pursuant to chapter 392-121 WAC based on average enrollments reported by the technical college for each school district

times the average allocation per full-time equivalent high school student of the school district: Provided, That allocations for students enrolled in school districts with no more than two high schools with enrollments of less than three hundred annual average full-time equivalent students shall be at the incremental rate generated by students in excess of sixty annual average full-time equivalent students. Allocations for nonvocational and vocational full-time equivalent enrollments shall be calculated separately.

(b) Handicapped allocations shall be determined pursuant to WAC 392-122-100 through 392-122-165 based on average handicapped enrollments and the school district's average allocation per handicapped student in each handicapping category.

(c) Quarterly payments shall provide the following percentages of the annual allocation:

December	30%
March	30%
June	20%
August	20%

WSR 20-20-068

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 1, 2020, 4:17 p.m., effective October 1, 2020]

Effective Date of Rule: October 1, 2020.

Purpose: The developmental disabilities administration is enacting these changes to align chapter 388-845 WAC with home and community based services waiver amendments approved by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: New WAC 388-845-0920, 388-845-0930, 388-845-0940, 388-845-1101, 388-845-1161, 388-845-1162, 388-845-1163, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2145, 388-845-2150 and 388-845-2155; repealing WAC 388-845-0300, 388-845-0305, 388-845-0310, 388-845-0400, 388-845-0405, 388-845-0410, 388-845-0700, 388-845-0705, 388-845-0710, 388-845-1300, 388-845-1305, 388-845-1310, 388-845-1400, 388-845-1405, 388-845-1410, 388-845-1900, 388-845-1905, 388-845-1910, 388-845-2160, 388-845-2165 and 388-845-2170; and amending WAC 388-845-0001, 388-845-0055, 388-845-0060, 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0510, 388-845-0515, 388-845-0520, 388-845-0525, 388-845-0650, 388-845-0800, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0905, 388-845-0910, 388-845-1100, 388-845-1105, 388-845-1110, 388-845-1150, 388-845-1155, 388-845-1160, 388-845-1505, 388-845-1607, 388-845-1700, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-2000, 388-845-2005, 388-845-2010, and 388-845-3070.

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

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: Filing these amendments on an emergency basis is necessary to ensure federal compliance and maintain federal funding for the state.

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 13, Amended 38, Repealed 21.

Date Adopted: September 25, 2020.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 20-21 issue of the Register.

WSR 20-20-070

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed October 2, 2020, 7:37 a.m., effective October 2, 2020, 7:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule making is required to comply with the requirements in 2ESHB 1388 which changed the designation of the state behavioral health services, effective July 1, 2018. The single bed certification rules were previously filed under Preproposal statement of inquiry WSR-18-14-080 and Emergency rule-making order WSR 19-13-057, as WAC 182-538D-0526.

The rule making under WSR 18-14-080 was finalized under WSR 19-24-063. Rule making for single bed certification continued through a separate rule-making progress as the agency develops the program. Single bed certification rules are renumbered from WAC 182-538D-0526 to 182-100-0200 to reflect that it is not solely a service under medicaid.

Since the emergency rule making filed under WSR 20-13-011, health care authority (HCA) filed the Proposed rule making (CR-102) under WSR 10-15-147 on July 21, 2020. HCA held a public hearing for the proposed rule on August 25, 2020. HCA is reviewing stakeholder comments and anticipates filing the rule-making order (CR-103P) soon.

Citation of Rules Affected by this Order: New WAC 182-100-0200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 2ESHB [2ESHB] 1388 (chapter 201, Laws of 2018).

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: 2ESHB 1388 directs the transfer of the behavioral health authority to HCA, effective July 1, 2018.

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

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

Date Adopted: October 2, 2020.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-100-0200 Single bed certification. At the discretion of the health care authority, an exception may be granted to allow timely and appropriate treatment in a facility that is not certified under chapter 246-341 WAC to a person on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment. An exception may also be granted for a maximum of thirty days to allow a community facility to provide treatment to a person on a ninety- or one hundred eighty-day inpatient involuntary commitment order or to a person who has been revoked from a less restrictive alternative order or conditional release. For involuntarily detained or committed children, the exception may be granted to allow timely and appropriate treatment in a facility not certified under chapter 246-341 WAC until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The behavioral health administrative services organization (BH-ASO) or a designee must submit a written request for a single bed certification to the health care authority. In the case of a child, the facility must submit the written request to the health care authority. The request must be submitted and approved by the health care authority for a facility to accept a person for timely and appropriate treatment under this section. If the health care authority has assumed the duties assigned to a nonparticipating BH-ASO, an entity des-

igned by the health care authority will perform the functions described in this section.

(2) A single bed certification may be issued to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for a person:

(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the person for whom the single bed certification is sought; and

(b) The request for single bed certification describes why the person meets at least one of the following criteria:

(i) The person is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the person's individual treatment needs;

(ii) The person can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility; or

(iii) The person can receive appropriate mental health treatment in a hospital with a psychiatric unit, or a hospital that is willing and able to provide timely and appropriate mental health treatment, or a psychiatric hospital, and the single bed certification will apply only to that facility.

(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certification, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:

(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, and licensed physicians are available for consultation and communication with both the person and the direct patient care staff;

(b) Use a plan of care/treatment. The medical or clinical record must contain documentation that:

(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the person. If the person is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, or collaboration with members of the person's support system as identified by the person.

(ii) A mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, has had contact with each involuntarily detained person at least daily for the purposes of:

(A) Observation and evaluation; and

(B) Assessing whether the person is appropriate for release from involuntary commitment to accept treatment on a voluntary basis.

(c) Have standards for administration and monitoring of medication, including psychiatric medications. A person has a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a person requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section, a single bed certification may be issued to that facility for the person as follows:

(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under this chapter, a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section;

(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and

(c) The facility has documented that one of the following has been met:

(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures, the BH-ASO assigns a mental health professional to provide the person appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the person is provided medical services; or

(ii) The hospital provides medical services and a plan that addresses the person's mental health treatment needs until the person is medically stable and the BH-ASO or a designee identifies an appropriate facility for the person that is one of the following:

(A) The hospital providing services;

(B) A facility that is certified as an evaluation and treatment (E&T) facility; or

(C) A facility that can meet the person's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the person is not clinically indicated, the requirements in (c) of this subsection do not apply. When the person is determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met.

(5) The health care authority makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal or state law.

(6) A person who receives services under a single bed certification under this section must be transferred:

(a) To an evaluation and treatment facility if on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment; or

(b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, or if the person's less restrictive alternative order or conditional release was revoked, as soon as the attending physician considers the person medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the person.

(7) The health care authority may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the health care authority

determines that the violation places people in imminent jeopardy, immediate revocation of this exception can occur.

(8) The BH-ASO retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

(9) Neither a person nor a facility has fair hearing rights as defined under chapter 182-526 WAC regarding single bed certification decisions by the health care authority staff.

WSR 20-20-075

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed October 2, 2020, 10:44 a.m., effective October 2, 2020, 10:44 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is establishing chapter 182-521 WAC, Public health emergency rules; and creating new WAC 182-521-0100 Disregarded income, to identify income that the agency does not count when determining apple health eligibility.

Since the previous emergency rule making filed under WSR 20-13-013, the health care authority (HCA) revised the emergency text and is working through the review steps for the permanent rule-making process. HCA revised the rule text in subsection (1) to remove the word "Economic" from Federal Pandemic Unemployment Compensation and added the acronym FPUC. HCA added a new subsection (3) which disregards all unemployment compensation issued as a result of the federal Disaster Relief Fund [Fund] authorized for states to offset lost wages due to the COVID-19 pandemic, known as lost wage assistance. This additional language aligns with the state plan. HCA also clarified in subsection (7) that any income received as unemployment compensation not described within this section is otherwise countable and the agency counts it when determining MAGI-based apple health eligibility. MAGI-based was missing from the previous revision.

Citation of Rules Affected by this Order: New WAC 182-521-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: In response to the current public health emergency surrounding the outbreak of the coronavirus disease (COVID-19), along with the governor of Washington's emergency proclamations related to COVID-19, this rule making is necessary to preserve the public health, safety, and general welfare by identifying income that the agency does not count when determining apple health eligibility.

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 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 1, Amended 0, Repealed 0.

Date Adopted: October 2, 2020.

Wendy Barcus
Rules Coordinator

Chapter 182-521 WAC

PUBLIC HEALTH EMERGENCY RULES

NEW SECTION

WAC 182-521-0100 Disregarded income. (1) The health care authority (agency) does not count as income when determining apple health eligibility any Federal Pandemic Unemployment Compensation (FPUC) or Recovery Rebates authorized under the CARES Act or other needs-based assistance authorized as a result of the COVID-19 emergency as described in this section.

(2) The agency disregards an emergency increase in unemployment compensation benefits of an additional six hundred dollars per week issued as compensation for the period of March 18, 2020, through July 31, 2020, as income for medicaid determinations and post-eligibility cost-sharing calculations.

(3) The agency disregards all unemployment compensation issued as a result of the federal Disaster Relief Fund authorized for states to off-set lost wages due to the COVID-19 pandemic, known as Lost Wage Assistance (LWA). This income is intended for weeks ending August 1, 2020, forward until funds are exhausted. The weekly benefit amount for this benefit is three hundred dollars per week.

(4) The agency considers Pandemic Recovery Rebates (stimulus checks) to be exempt as income and does not count them as a resource for twelve months after receipt.

(5) The agency considers needs-based assistance from other agencies or tribal entities to be exempt as income.

(6) The agency excludes income described in this section from the post-eligibility treatment of income (PETI) calculation.

(7) Any income received as unemployment compensation not described within this section is otherwise countable and the agency counts it when determining MAGI-based apple health eligibility.

(8) These rules are in effect until the later of:

(a) The date the client is receiving any benefits described in this rule; or

(b) The date on which the Secretary of the U.S. Department of Health and Human Services declares the COVID-19 public health emergency to be over.

WSR 20-20-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-217—Filed October 2, 2020, 5:00 p.m., effective October 3, 2020]

Effective Date of Rule: October 3, 2020.

Purpose: Opens coho salmon fishing in Willapa Bay tributaries.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000D; and amending WAC 220-312-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.045 [77.12.045], and 77.12.047.

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

Reasons for this Finding: This emergency rule is needed to open the retention of wild coho in freshwater recreational fisheries within Willapa Bay effective October 3, 2020.

The marine fisheries are currently still within the preseason predicted number of unmarked Chinook salmon impacts to attain the conservation objective of a fourteen percent impact rate cap to natural origin Willapa River and Naselle River Chinook salmon. The harvest of coho, both hatchery and natural origin, in the commercial fishery has far exceeded preseason predictions.

The department utilizes a modeling tool to evaluate the runsize of coho in season that is based on the catch per unit effort (CPUE) of the commercial fisheries. This in-season update model (ISU) has been applied in the last few years and it becomes statistically significant in statistical week thirty-eight (mid-September). The significance improves as more data are added through time. Currently, we are in statistical week forty (Sept. 27-Oct. 3, 2020) and the ISU model is predicting a natural origin coho runsize between 47,731 to 56,265 fish. This prediction is much higher than the preseason forecasted runsize of 16,074 natural origin coho.

The department also utilizes a model to plan fisheries preseason, the Willapa Bay Terminal Area Management Model (TAMM). This model will estimate catch, impacts, escapements, and harvest rates for each fishery by species. Adding the predicted coho natural origin runsize from the ISU to the TAMM finalized from our 2020 North of Falcon process, the TAMM model predicts a natural origin coho escapement of 39,487 fish. This is 25,887 fish above the escapement goal of 13,600 for natural origin coho.

Early indications from the ISU and TAMM models suggests the preseason management objectives would still be attained for all three species; Chinook salmon (fourteen percent impact rate cap), coho (13,600 natural origin spawners), and chum (ten percent impact rate cap).

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: October 2, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000D Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-312-020, effective October 3, 2020 until further notice, the following rules apply. Unless otherwise amended, all other permanent rules remain in effect:

1. Bear River - from mouth (Hwy 101 Bridge) to Lime Quarry Road (approx. 2 river miles) - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 1. Release wild Chinook.

2. Fork Creek - from Forks Creek Hatchery rack upstream 500' at fishing boundary sign - Open for salmon October 3, 2020 through January 31, 2021. Min. size. 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

3. Naselle River - from the Hwy 101 Bridge to the Hwy 4 Bridge - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

4. Naselle River - from the Hwy 4 Bridge to the Crown Mainline (Salme) Bridge - Open to salmon October 16, 2020 through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

5. Nemah River, Middle - from mouth upstream to the Department of Natural Resources decommissioned bridge on Middle Nemah A-Line Rd. - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 1. Release Chinook.

6. Nemah River, North - from Hwy 101 Bridge upstream to bridge on Nemah Valley Road - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 1. Release Chinook.

7. Nemah River, North - from Nemah Hatchery barrier dam to N700 Rd (46°28.58N, 123°48.54W) - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 1. Release Chinook.

8. Nemah River, South - from mouth (Lynn Point 117° true to opposite shore) upstream - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 1. Release Chinook.

9. North River - from the Hwy 105 Bridge to Fall River - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 1. Release wild Chinook.

10. Smith Creek - from mouth to Hwy 101 Bridge - Open for salmon October 3, 2020 through December 31, 2020. Min. size 12". Daily limit 1. Release wild Chinook.

11. Willapa River - from mouth (City of South Bend boat launch) to Hwy 6 Bridge (near the town of Lebam) - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

12. Willapa River, South Fork - from mouth to 400' downstream of falls/fish ladder in Sec. 6 T13N R8W - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

13. Willapa River, South Fork - from falls/fish ladder in Sec. 6 T13N R8W to Pehl Rd. Bridge - Open for salmon October 3, 2020 through January 31, 2021. Min. size 12". Daily limit 3. Only 1 may be a wild coho. Release wild Chinook.

REPEALER

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

WAC 220-312-02000D Freshwater exceptions to statewide rules—Coast.

WSR 20-20-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-218—Filed October 5, 2020, 8:42 a.m., effective October 5, 2020, 8:42 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to adjust the coho minimum size from Buoy 10 to the Rocky Point/Tongue Point line to twelve inches.

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

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

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

Reasons for this Finding: This rule is needed to adjust the coho minimum size to twelve inches, from the Buoy 10 line to the Rocky Point/Tongue Point line. This action is needed to make rules concurrent with those of Oregon and as agreed to pre-season during the North of Falcon process. There is insufficient time to adopt permanent regulations.

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

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

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

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

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

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

Date Adopted: October 5, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000B Freshwater exceptions to statewide rules—Columbia River. Effective immediately through December 31, 2020, the provisions of WAC 220-312-060 regarding recreational sturgeon seasons in the Columbia River downstream of Bonneville Dam and the Cowlitz River and Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to the Hwy. 395 Bridge at Pasco, shall be as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

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

(a) It is permissible to retain white sturgeon on October 3, 2020.

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

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

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

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

(a) Effective immediately through October 31, 2020: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(b) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which 1 may be a steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(3) From the Rocky Point/Tongue Point line to Bonneville Dam: Salmon and steelhead:

(a) Effective immediately through October 31, 2020: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(b) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which 1 may

be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(4) From Bonneville Dam to Hood River Bridge: Salmon and steelhead:

(a) Effective immediately through October 15: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and hatchery coho. Release all steelhead. Anti-Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and hatchery coho. Release all steelhead.

(c) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(5) From the Hood River Bridge to the Dalles Dam: Salmon and steelhead:

(a) Effective immediately through October 15: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and coho. Release all steelhead. Anti-Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through October 31, 2020: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and coho. Release all steelhead.

(c) Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which 1 may be a hatchery steelhead. Release all salmon other than Chinook and coho. Release wild steelhead.

(6) From the Dalles Dam to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

(a) Effective immediately through October 15: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and coho. Release all steelhead. Anti-Snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained. Release all salmon other than Chinook and coho. Release all steelhead.

REPEALER

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

WAC 220-312-06000A Freshwater exceptions to statewide rules—Columbia River. (20-211)

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

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

WSR 20-20-104 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 20-219—Filed October 5, 2020, 3:30 p.m., effective October 6, 2020]

Effective Date of Rule: October 6, 2020.

Purpose: The purpose of this emergency rule is to add an additional day to the commercial salmon season in Willapa Bay Catch Areas 2N, 2M, 2T, and 2U by shifting the opening from Thursday, October 8 to Wednesday and Friday, October 7 and 9, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-354-25000H; and amending WAC 220-354-250.

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

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

Reasons for this Finding: This emergency rule is needed to add an additional day to the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2N, 2M, 2U, and 2T in the week of October 5 through 9, 2020. To accommodate this additional day of fishing, the scheduled opening days have been changed from October 8, 2020, to October 7 and 9, 2020.

The marine fishery is within the preseason predicted number of unmarked Chinook salmon impacts to attain the conservation objective of a fourteen percent impact rate cap to natural origin Willapa River and Naselle River Chinook salmon. The harvest of coho, both hatchery and natural origin, in the commercial fishery has far exceeded preseason predictions.

The department utilizes a modeling tool to evaluate the runsize of coho in-season that is based on the catch per unit effort (CPUE) of the commercial fisheries. This in-season update model (ISU) has been applied in the last few years and it becomes statistically significant in statistical week thirty-eight (mid-September). The significance improves as more data are added through time. Currently, we are in statistical week forty-one (October 4 - 10, 2020) and the ISU model is predicting a natural origin coho runsize between 47,731 to 56,265 fish. This prediction is much higher than the preseason forecasted runsize of 16,074 natural origin coho.

The department also utilizes a model to plan fisheries preseason, the Willapa Bay Terminal Area Management Model (TAMM). This model will estimate catch, impacts, escapements, and harvest rates for each fishery by species. Adding the predicted coho natural origin runsize from the ISU to the TAMM finalized from our 2020 North of Falcon process, the TAMM model predicts a natural origin coho escapement of 39,487 fish. This is 25,887 fish above the escapement goal of 13,600 for natural origin coho.

Early indications from the ISU and TAMM models suggests the preseason management objectives would still be attained for all three species; Chinook salmon (fourteen per-

cent impact rate cap), coho (13,600 natural origin spawners), and chum (ten percent impact rate cap).

In addition, the commercial fishery lost opportunity early in the season to conserve unmarked Chinook salmon impacts and with minimal Chinook salmon impacts likely to occur in successive weeks, coupled with the predicted increased harvest potential of hatchery coho, the department has decided to make additional changes to the upcoming commercial schedule for statistical week forty-one. The commercial fishing opportunity in statistical week forty-one (October 4 - 10, 2020) will be increased from two days (Monday and Thursday) to three days (Monday, Wednesday, and Friday).

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: October 5, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000H Willapa Bay salmon fall fishery. Effective October 6 through October 9, 2020, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except during the times and dates in the Willapa Bay Catch Reporting Areas listed below, using only gear with mesh size listed below. All other provisions of WAC 220-354-250 not addressed herein remain in effect unless otherwise amended by emergency rule:

Fishing periods:

Area	Time	Date(s)	Gear type	Maximum mesh size
2N, 2M, 2T, 2U	7:00 a.m. through 7:00 p.m.	10/7, 10/9	Small mesh gillnet gear	6.5"

REPEALER

The following section of the Washington Administrative Code is repealed effective October 10, 2020:

WAC 220-354-25000H Willapa Bay salmon fall fishery. (20-219)

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

**WSR 20-20-106
EMERGENCY RULES
SKAGIT VALLEY COLLEGE**

[Filed October 5, 2020, 4:38 p.m., effective December 9, 2020]

Effective Date of Rule: December 9, 2020.

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 became effective on August 14, 2020. This requires emergency updates to the college's code of student conduct to be compliant with federal regulations.

Citation of Rules Affected by this Order: New WAC 132D-150-500, 132D-150-510, 132D-150-520, 132D-150-530, 132D-150-540, 132D-150-550, 132D-150-560, 132D-150-570 and 132D-150-580; and amending WAC 132D-150-010, 132D-150-020, 132D-150-030, 132D-150-090, 132D-150-110, 132D-150-130, 132D-150-150, 132D-150-170, 132D-150-230, 132D-150-250, 132D-150-270, 132D-150-290, 132D-150-310, and 132D-150-410.

Statutory Authority for Adoption: RCW 28B.50.150.

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: Skagit Valley College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which became effective 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 9, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 15, Repealed 0.

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

Date Adopted: October 2, 2020.

Lisa Radeleff
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-010 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 for student ~~((affairs))~~ services or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-020 Statement of jurisdiction. (1)

The code of student conduct shall apply to student conduct that occurs:

- (a) On college premises ~~((; to conduct that occurs));~~
- (b) At or in connection with college sponsored activities ~~((;));~~ or
- (c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

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

(3) 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.

(4) 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.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-030 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 or vice president for student services to be responsible for implementing and enforcing the student conduct code. The president or vice president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(2) "Conduct review officer" is the vice president for 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. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(3) "The president" is the president of the college. The president is authorized to delegate any of ~~((his or her))~~ their responsibilities as set forth in this chapter as may be reasonably necessary, and reassign any and all duties or 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 via first class mail to the party's last known address; or
- (c) By sending the document by email via Skagit Valley College's online student conduct software. It is the responsibility of each student to regularly check their official Skagit Valley College email 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, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

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

(12) "Calendar day" means days on the calendar including weekends and holidays.

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132D-150-050.

Note: "Day" refers to calendar days unless otherwise specified.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-090 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 business 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.

~~((4))~~ (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 132D-150-070.

(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.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-110 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 business 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 otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-150 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 business 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 ~~((twenty-one))~~ ten calendar 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.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-170 Brief adjudicative proceedings—Review of an 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 twenty-one 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.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-230 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing no less than seven days in advance of the hearing date ~~(, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045)~~. The chair 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 pre-hearing 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) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. ~~((A respondent may elect to be represented by an attorney at his or her))~~ 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.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-250 Student conduct committee hearings—Presentations of evidence. (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, no party shall directly question or cross examine one another. Attorneys 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.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-270 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.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-290 Appeal from student conduct committee initial decision. (1) A ~~((respondent))~~ 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 ~~((twenty-one))~~ 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 ~~((forty-five))~~ 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 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) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-310 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 imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is 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) The respondent shall be afforded an 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.

(c) If the ~~((student))~~ respondent 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.

(d) 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.

(e) 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.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed in 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 132D-150-500 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Skagit Valley College's

standard disciplinary procedures, WAC 132D-150-010 through 132D-150-410, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132D-150-510 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

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

(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 132D-150-520 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Skagit Valley College educational program or activity; and

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

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132D-150-010 through 132D-150-410.

(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 132D-150-530 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) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132D-150-540 Prehearing procedure. (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 132D-150-230. 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 132D-150-550 Rights of parties. (1) The college's student conduct procedures, WAC 132D-150-010 through 132D-150-410, 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 Skagit Valley College's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132D-150-560 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 132D-150-570 Initial order. (1) In addition to complying with WAC 132D-150-270, 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 education programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

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

NEW SECTION

WAC 132D-150-580 Appeals. 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 132D-150-290.

(1) 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).

(2) President's office shall serve the final decision on the parties simultaneously.

WSR 20-20-118
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-220—Filed October 6, 2020, 11:03 a.m., effective October 7, 2020]

Effective Date of Rule: October 7, 2020.

Purpose: The purpose of this rule is to close all recreational fishing in the Skagit River, from the Highway 9 Bridge to the Baker River.

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

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

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

Reasons for this Finding: This rule is necessary to avoid gear conflicts with treaty fisheries scheduled those dates. 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: October 6, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000U Freshwater exceptions to statewide rules—Puget Sound. Effective 12:00 a.m. October 7 until 2:00 p.m. October 9, 2020, the following provisions of WAC 220-312-040 regarding recreational fishing seasons for the Skagit River from Highway 9 Bridge to the mouth of the Baker River, shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Skagit River (Skagit Co.) from Highway 9 Bridge to the mouth of the Baker River:

All species: Closed.

REPEALER

The following section of the Washington Administrative Code is repealed effective 2:01 p.m., October 9, 2020:

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

WSR 20-20-122
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 6, 2020, 11:45 a.m., effective October 6, 2020, 11:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is extending emergency amendments to WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits? to support implementation of SB 6136 (chapter 64, Laws of 2020). This second emergency rule filing is needed to extend the rule while the department completes the permanent rule-making process. The department filed a CR-102 Proposed rule making as WSR 20-16-085 on July 30, 2020, and held a public hearing on September 8, 2020.

Citation of Rules Affected by this Order: Amending WAC 388-412-0046.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.580, 74.08.090.

Other Authority: Chapter 64, Laws of 2020.

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

Reasons for this Finding: This filing is necessary to extend existing emergency rules originally filed under WSR 20-13-037, reflecting changes in state law regarding restrictions on electronic benefit cards under SB 6136, effective June 11, 2020.

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

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

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

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

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

Date Adopted: October 6, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-03-054, filed 1/10/19, effective 2/10/19)

WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits? (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

- (i) Shelter;
- (ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;
- (iii) Food;
- (iv) Transportation;
- (v) Clothing;
- (vi) Household maintenance;
- (vii) Personal hygiene;

- (viii) Employment or school related items; and
 - (ix) Other necessary incidentals and items.
- (d) It is not legal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

- (i) Gamble. Gambling includes:
 - (A) The purchase of lottery tickets;
 - (B) The purchase of pull tabs;
 - (C) Use of punch boards;
 - (D) Purchase of bingo cards;
 - (E) Betting on horse racing;
 - (F) Participating in casino games; and
 - (G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.

(ii) Participate in or purchase any activities located in a tattoo, body piercing, or body art shop licensed under chapter 18.300 RCW;

(iii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(iv) Purchase any ~~((alcoholic))~~ items regulated under Title 66 RCW;

(v) Purchase or participate in any activities in any of the following locations:

- (A) Taverns licensed under RCW 66.24.330;
- (B) Beer/wine specialty stores licensed under RCW 66.24.371, except if the store is an authorized supplemental nutrition assistance program or women, infants, and children retailer;
- (C) Nightclubs licensed under RCW 66.24.600;

~~(D) ((Contract liquor stores defined under RCW 66.04.010;~~

~~(E))~~ Bail bond agencies regulated under chapter 18.185 RCW;

~~((F))~~ (E) Gambling establishments licensed under chapter 9.46 RCW;

(F) Tattoo, body piercing, or body art shops regulated under chapter 18.300 RCW;

(G) Adult entertainment venues with performances that contain erotic material where minors under the age of eighteen are prohibited under RCW 9.68A.150;

(H) Any establishments where persons under the age of eighteen are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

(i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits, including those from the basic food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and transitional food assistance (TFA), help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, or an authorized representative may use your food assistance benefits to buy food items for your household from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(c) You can use your food assistance benefits to buy items such as:

- (i) Breads and cereals;
 - (ii) Fruits and vegetables;
 - (iii) Cheese, milk, and other dairy products;
 - (iv) Meats, fish, poultry, and eggs;
 - (v) Most other food items that are not prepared hot foods; and
 - (vi) Seeds and plants that produce food.
- (d) It is not legal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household or your authorized representative.

(ii) Use food benefits for any purpose other than to buy food for eligible household members.

(iii) Exchange food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging food benefits or attempting to exchange food benefits for cash, drugs, weapons, or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate an EBT card, EBT card number, personal identification numbers (PINs), or any benefits to any person or entity.

(v) Buy, attempt to buy, or steal someone's EBT card, EBT card number, or PIN.

(vi) Sell or trade any food that was purchased using food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

(vii) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(viii) Commit any other act in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations or any Washington state administrative code relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits.

(e) If you intentionally misuse food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

WSR 20-20-129
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-221—Filed October 6, 2020, 3:54 p.m., effective October 6, 2020, 3:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule [is] to return the lower section of the Grande Ronde River (from the mouth to County Road Bridge) to a catch-and-release steelhead fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000G; 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 correct the filing of WSR 20-28-069 [20-18-069]. The previous filing inadvertently opened the lower section of the Grande Ronde River. Preseason management plans intended to keep the steelhead fishery in this section of river a catch-and-release fishery, as written in the permanent rules under WAC 220-312-050. Retention of steelhead is to be allowed upstream of the County Road Bridge located approximately 2.5 miles upstream of the mouth. 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: October 6, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000L Freshwater exception to statewide rules—Eastside. Effective immediately 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 County Rd. Bridge (about 2.5 miles upstream of 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) Release all steelhead 28 inches or greater in length.

(iii) Barbless hooks required.

(iv) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(v) 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 Couse Creek Boat Ramp: Steelhead:

(i) Daily limit 2 hatchery steelhead.

(ii) Release all steelhead 28 inches or greater in length.

(iii) Barbless hooks required.

(iv) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(v) 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.

(c) From the Couse Creek Boat Ramp 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 immediately:

WAC 220-312-05000G Freshwater exceptions to statewide rules—Eastside. (20-170)

WSR 20-20-131

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-222—Filed October 6, 2020, 4:19 p.m., effective October 6, 2020, 4:19 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000T; 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: The reasons for this finding that additional harvest opportunity is warranted are because there are sufficient nontreaty impacts remaining to add addi-

tional fishing time. 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, September 10, September 23, and October 6, 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 [2017] *U.S. v. Oregon* Management Agreement.

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

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

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

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

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

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

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

Date Adopted: October 6, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000U 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:**
- (a)

Open Dates	Open Days	Open Time	Open Duration
October 7	Wednesday (night)	7:00 pm - 7:00 am	12 hrs
October 12	Monday (night)	7:00 pm - 7:00 am	12 hrs
October 14	Wednesday (night)	7:00 pm - 7:00 am	12 hrs
October 19	Monday (night)	7:00 pm - 7:00 am	12 hrs
October 21	Wednesday (night)	7:00 pm - 7:00 am	12 hrs

(i) **Area:** SMCRA 1D and 1E. The deadline at the lower end of SMRCA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy Rivers.

(ii) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. Multiple net rule in effect, which means nets not specifically authorized for the fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Lighted buoys required.

(iii) **Allowable Sales:** Salmon (except chum) and shad. Sturgeon may not be possessed or sold.

- (b)

Open Dates	Open Days	Open Time	Open Duration
October 7	Wednesday	5:00 am - 6:00 pm	13 hrs
October 9	Friday	5:00 am - 6:00 pm	13 hrs
October 12	Monday	5:00 am - 6:00 pm	13 hrs
October 14	Wednesday	5:00 am - 6:00 pm	13 hrs
October 16	Friday	5:00 am - 6:00 pm	13 hrs
October 19	Monday	5:00 am - 6:00 pm	13 hrs
October 21	Wednesday	5:00 am - 6:00 pm	13 hrs

Open Dates	Open Days	Open Time	Open Duration
October 23	Friday	5:00 am - 6:00 pm	13 hrs

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

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

(iii) **Allowable Sales:** Salmon (except chum) and shad; all coho must be adipose fin-clipped. Sturgeon may not be possessed or sold.

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

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

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

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

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

(h) **Multiple net rule in effect:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a

drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(i) **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

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

(2) Tongue Point/South Channel Select Area:

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

(a) Area:

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

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

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

(ii) The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not

exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

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

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

(3) Blind Slough/Knappa Slough Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 30	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 10:00 am	18 hrs

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

(b) **Gear:** Gillnets with a maximum mesh size restriction of 9¼-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
Immediately - 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 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 spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000T Columbia River seasons below
Bonneville Dam. (20-201)

WSR 20-20-137 EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 7, 2020, 9:32 a.m., effective October 7, 2020, 9:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule revision provides some necessary accommodations for youth reengagement programs as a result of the ongoing coronavirus (COVID-19) pandemic. First, the emergency rule provides 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. Second, the rule extends the reengagement programs apportionment count date for the month of September 2020 to allow schools to claim apportionment for students unable to enroll and begin school until later in the month due to the impact of the pandemic and wildfires. Third, the rule removes some "prior month" requirements for October 2020 apportionment to address the impact caused by late student enrollment and participation in September 2020 due to the COVID-19 pandemic. This emergency rule supersedes the previous emergency rule filed under WSR 20-18-081.

Citation of Rules Affected by this Order: Amending WAC 392-700-015 and 392-700-160.

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.

Reasons for this Finding: Students being served through reengagement programs under chapter 392-700 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 school 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 emergency rule 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 (OSPI) is initiating rule making to make this change permanent through the remainder of the school year. The pandemic and wildfire season also created situations where students were unable to enroll or participate until later in September. OSPI's school apportionment rules have been modified for the traditional learning environment to allow for later enrollment and participation for this month. This emergency rule revision aligns with those rules and removes the impacts that late enrollment would create to October enrollment apportionment.

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

Date Adopted: October 6, 2020.

Chris P. S. Reykdal
State Superintendent of
Public Instruction

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. For the 2020-21 school year, 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 September 2020, the count day is any day of that month. 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 procedures 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.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

WAC 392-700-160 Reporting of student enrollment.

(1) For all programs, the following will apply when reporting student enrollment for each monthly count day:

(a) Met all eligibility criteria pursuant to WAC 392-700-035;

(b) Been accepted for enrollment by the reporting district, tribal compact school, charter school, or the direct-funded technical college;

(c) Enrolled in an approved program pursuant to WAC 392-700-042;

(d) For continuing students, met the attendance period requirement pursuant to WAC 392-700-015(3), except for the October 2020 count, where this requirement is waived;

(e) For continuing students, met the weekly status check requirement pursuant to WAC 392-700-015(24), except for the October 2020 count, where this requirement is waived;

(f) Has not withdrawn or been dropped from the program on or before the monthly count day;

(g) Is not enrolled in course work that has been reported by a college for postsecondary funding;

(h) Is not eligible to be claimed by a state institution pursuant to WAC 392-122-221;

(i) Is not enrolled in a high school class, including alternative learning experience, college in the high school, or another reengagement program, excluding Jobs for Washington's Graduates, special education and/or transitional bilingual instructional program;

(j) If concurrently enrolled in a special education, transitional bilingual instruction, skills center, or running start program, does not exceed the FTE limitation pursuant to WAC 392-121-136; and

(k) A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined FTE does not exceed 1.0 FTE in any month.

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2). If concurrently enrolled in Jobs for Washington's Graduates, special education or transitional bilingual instructional programs, the combined AAFTE does not exceed 1.0 AAFTE for the school year.

(2) For all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress.

(a) Satisfactory progress is defined as the documented attainment of at least one indicator of academic progress identified in WAC 392-700-015(15).

(b) Continuing students and returning students who, after being claimed for state funding for three count days excluding the September count day, have not earned an indicator of academic progress cannot be claimed for state funding until an indicator of academic progress is earned.

(i) During this reporting funding exclusion period, the program may permit the student to continue to attend;

(ii) When the student achieves an indicator of academic progress, the student may be claimed for state funding on the following count day; and

(iii) Rules governing the calculation of the three count day period are:

(A) The September count day is excluded from the three count day period for the indicator of academic attainment. Students whose enrollment spans over the September count day have an additional month to earn an indicator of academic progress.

(B) The three count days may occur in two different school years, if the student is enrolled in consecutive school years; and

(C) The three count days are not limited to consecutive months, if there is a break in the student being claimed for state funding.

(3) For below one hundred level classes, student enrollment will be reported as 1.0 FTE on each monthly count day.

Enrollment in below one hundred level classes is limited to nonvocational funding and the FTE cannot be claimed as vocational.

(4) For college level classes, student enrollment will be reported as follows:

(a) The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;

(ii) A student enrolled in more than fifteen college credits is limited to be reported as 1.0 FTE for that month; and

(iii) If a student is enrolled for less than fifteen college credits, the FTE is calculated by dividing the enrolled college credits by fifteen.

(b) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.

coho. The return is sufficient to allow for this increase in the hatchery coho daily limit. 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: October 7, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000V Freshwater exceptions to statewide rules—Puget Sound. Effective immediately through October 31, 2020 the following provisions of WAC 220-312-040 regarding salmon seasons for the Skagit River from the mouth to the Cascade River Road Bridge, shall be as described below, except through 2:00 p.m. October 9, 2020 all species from Highway 9 Bridge to the mouth of the Baker River will be closed. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Skagit River (Skagit Co.):

(1) From the mouth to Highway 9 Bridge: Salmon daily limit 2, plus 2 additional hatchery coho may be retained. Release Chinook and chum.

(2) From Highway 9 Bridge to the mouth of the Baker River:

(a) Immediately until 2:00 p.m. October 9, 2020: All species: Closed.

(b) From 2:01 p.m. October 9 through October 31, 2020: Salmon daily limit 2, plus 2 additional hatchery coho may be retained. Release Chinook and chum.

(3) From the mouth of the Baker River to the Cascade River Road Bridge (Marblemount Bridge): Salmon daily limit 2, plus 2 additional hatchery coho may be retained. Release Chinook and chum.

REPEALER

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

WAC 220-312-04000U Freshwater exceptions to statewide rules—Puget Sound. (20-220)

WSR 20-20-140
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-223—Filed October 7, 2020, 11:24 a.m., effective October 7, 2020, 11:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to increase the hatchery coho daily limit for the Skagit River, from the mouth to the Cascade River Road Bridge.

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

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

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

Reasons for this Finding: This rule is necessary to allow retention of two hatchery coho in addition to the daily salmon limit of two fish. On October 2, 2020, the Skagit comanagers agreed to an in-season run update from 40,607 to 86,887

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

WAC 220-312-04000V Freshwater exceptions to statewide rules—Puget Sound. (20-223)