

WSR 21-12-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-59—Filed May 19, 2021, 12:25 p.m., effective May 19, 2021,
12:25 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open hatchery Chinook salmon seasons in a portion of the Skagit River.

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

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

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

Reasons for this Finding: This rule is necessary to open salmon seasons in the Skagit River as agreed to with comanagers during the 2021 North of Falcon proceedings. Harvestable numbers of hatchery spring Chinook are forecast to return to Marblemount Hatchery. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: May 19, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Y Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through May 31, 2021 the following provisions of WAC 220-312-040 regarding salmon seasons for the Skagit River the Hwy. 536 Bridge in Mt. Vernon to Gilligan Creek, 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 the Hwy. 536 (Memorial Hwy.) Bridge in Mt. Vernon to Gilligan Creek: Salmon:

- (a) Daily limit 2. Release all salmon other than hatchery Chinook.
- (b) Night Closure in effect.
- (c) Selective Gear Rules are not in effect.

WSR 21-12-002
EMERGENCY RULES
STATE BOARD OF EDUCATION

[Filed May 19, 2021, 2:10 p.m., effective May 19, 2021, 2:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The state board of education is reviewing chapter 180-111 WAC to implement recently passed legislation, make changes as necessary to align rule to current policy or practice, correct references to law, improve readability of the rule, or make other changes identified during the review. The purpose of this chapter is to establish an emergency waiver program to allow school districts as defined in WAC 180-111-020, and private schools, to waive certain graduation requirements on an individual student basis and emergency waiver of certain requirements for private schools in WAC 180-111-060. The intent is to help prevent students from being unduly impacted by unforeseen disruptions to coursework and assessments resulting from an "emergency or disaster" as defined in RCW 38.52.010. "Emergency" may also include a national declaration of emergency by an authorized federal official.

Citation of Rules Affected by this Order: New WAC 180-111-060; and amending WAC 180-111-010, 180-111-020, 180-111-030, 180-111-040, and 180-111-050.

Statutory Authority for Adoption: Chapter 7, Laws of 2021 (EHB 1121); RCW 28A.195.040, 28A.195.010, 28A.230.090, 28A.150.220(7).

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: Chapter 7, Laws of 2021 (EHB 1121) and RCW 28A.195.040 authorize the state board of education to engage in rule making to provide flexibility in response to the novel coronavirus (COVID-19) emergency. Immediate adoption and amendment of rule is necessary for the preservation of the public health, safety, and general welfare during the public health crisis due to continued disruptions caused by the COVID-19 pandemic, 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. There is an immediate need for an emergency waiver program to prevent students from being unduly impacted by the unforeseen disruptions to coursework and assessments that are beyond the students' control. Public health and safety responses to COVID-19 have caused disruptions to student coursework to complete graduation requirements. This waiver preserves the general welfare of graduating cohorts who were affected by disruptions due to those public health and safety responses to the COVID-19 pandemic.

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 5, 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 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, 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: May 19, 2021.

Dr. Randy Spaulding
Executive Director

Chapter 180-111 WAC

EMERGENCY WAIVER OF CERTAIN REQUIREMENTS ~~((IN RESPONSE TO NOVEL CORONAVIRUS))~~

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-010 Authority and purpose. (1) ~~((The authority for this chapter is sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965) which authorizes the state board of education to administer an emergency waiver program.~~

~~(2))~~ The purpose of this chapter is ~~((~~

~~((a))~~ to establish an emergency waiver program to ~~((grant local education agencies and private schools flexibility so that students in the graduating class of 2020 or earlier who were on track to graduate before the gubernatorial declaration of emergency of February 29, 2020, the proclamation of statewide school closures on March 13, 2020, and any subsequent amendments to these proclamations, are not negatively impacted by measures taken by the local education agency or private school in response to the novel coronavirus (COVID-19); and~~

~~((b))~~ To allow flexibility from instructional hour or school day requirements for the 2019-20 school year for private schools that close due to the novel coronavirus.

~~((3))~~ This chapter expires July 31, 2020)) allow school districts as defined in WAC 180-111-020, and private schools, to waive certain graduation requirements on an individual student basis and emergency waiver of certain requirements for private schools in WAC 180-111-060. The intent is to help prevent students from being unduly impacted by unforeseen disruptions to coursework and assessments resulting from an "emergency or disaster" as defined in RCW 38.52.010. "Emergency" may also include a national declaration of emergency by an authorized federal official.

(2) These emergency rules are for the novel coronavirus emergency, in response to the gubernatorial declaration of emergency on February 29, 2020. They apply to the classes

of 2020 and 2021 in the 2020-21 school year, and certain students in subsequent classes, as specified in WAC 180-111-050(3).

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-020 Definitions. The definitions in this section apply throughout this chapter.

(1) ~~((("Good faith effort" means the local education agency or private school considered and implemented options, determined appropriate by the local education agency or private school, to support individual students in meeting credit requirements. Options for helping students meet credit requirements or waive credit requirements include, but are not limited to:~~

~~((a))~~ Recommendations provided by the office of the superintendent of public instruction in its published guidance on supporting seniors during long-term school closures, as outlined in Bulletin Number 022-20 issued on March 20, 2020, and Bulletin Number 024-20 issued on March 23, 2020, and any related subsequent bulletins.

~~((b))~~ Awarding or waiving of credits through existing authority of local education agencies and private schools:

~~((i))~~ Local graduation requirements under WAC 180-51-020 may be waived at local discretion without approval of the state board of education.

~~((ii))~~ Local education agencies and private schools that have implemented state credit requirements under WAC 180-51-068 (the twenty-four credit graduation requirement framework) have the authority to award a two-credit waiver of flexible credits for individual student circumstances.

~~((iii))~~ Students may be excused from physical education, provided they demonstrate competency/mastery in the knowledge portion of the required one and one-half credits, as articulated in WAC 180-51-056 (1)(e), 180-51-067(6), and 180-51-068(6).

~~((iv))~~ Per WAC 180-51-056 (1)(e)(ii), 180-51-067 (4)(b), and 180-51-068 (4)(b)(i) and (ii), the noncredit requirement of Washington state history can be waived for students who either have completed a state history course in another state, or for eleventh or twelfth grade students who have not completed the course because of previous residence in another state.

~~((v))~~ Credits may be awarded based on the student's demonstrated proficiency/competency of the state's learning standards under WAC 180-51-050.

~~((2))~~ "Local education agency" means a school district, charter school established under chapter 28A.710 RCW, or tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW. References within this chapter to local education agency shall also apply to community and technical college colleges per WAC 180-51-015.

~~((3))~~ "On track to graduate" means the individual student's earned credits and current or planned enrollment as of the gubernatorial declaration of emergency of February 29, 2020, would have been sufficient, as determined by the student's local education agency or private school, for the student to meet the applicable state minimum graduation requirements

(as defined in WAC 180-51-056, 180-51-067, and 180-51-068) by the end of the 2019-20 school year as defined by RCW 28A.150.203.) "Demonstrated postsecondary preparation" means the student has demonstrated skills and knowledge indicating preparation for the next steps identified in their high school and beyond plan under RCW 28A.230.090 and for success in postsecondary education, gainful employment, and civic engagement.

(a) The school district shall review the individual student's completed and planned coursework and other information applicable to the individual student and determine if the student has demonstrated postsecondary preparation.

(b) This individual student review may include, but is not limited to, whether the following considerations apply to that student:

(i) The student has completed a graduation pathway option in accordance with RCW 28A.655.250 and WAC 180-51-230.

(ii) The student has completed activities consistent with the criteria for "career prep" or has participated in an approved "career launch" program through career connect Washington.

(iii) The student has completed a preparatory career and technical education course or a course that meets the preparatory standards as defined in RCW 28A.700.030.

(iv) The student has developed and practiced leadership and employability skills through a job, volunteer position, or a career and technical student organization that would enable them to advance in their chosen career field and has obtained external validation from an employer, tribal elder, CTE business or industry advisory committee member, or other community member that can attest to the student's preparation for their next steps.

(v) The student is a participant in a recognized apprenticeship preparation program or registered apprenticeship program or has signed an apprenticeship agreement with an employer.

(vi) The student has earned college credit in a core subject area.

(vii) The student has earned an industry recognized credential.

(viii) The student has completed minimum college admission standards for four-year institutions of higher education, in accordance with RCW 28B.77.020 (7)(a).

(ix) The student placed into a college-level math or English course at an institution of higher education.

(x) The student completed a summer bridge program or a senior transition course (bridge to college).

(xi) The student has completed an option permissive under RCW 28A.655.065 (5)(c)(i), including:

(A) A college-level class in the relevant subject area;

(B) Admission to a higher education institution or career preparation program;

(C) Award of a scholarship for higher education; or

(D) Enlistment in a branch of the military.

(2) "Eligible student" means:

(a) The student was reasonably expected to graduate in the school year when the emergency waiver is being considered;

(b) The student has demonstrated postsecondary preparation as defined in subsection (1) of this section; and

(c) The student experienced a significant disruption to their ability to complete graduation requirements due to the emergency, which could include, but is not limited to: Inability for the student to access the school building or other education facility due to closure or, if online learning is a part of the school program, the student did not have a reliable internet connection or sufficient technology within their household, had to support their family by working during the emergency, had to care for family members during the emergency, illness of the student or student's household member, or other circumstances that directly compromised the student's ability to complete the credit requirements or a graduation pathway option.

(3) "Emergency" means the same as the definition for "emergency or disaster" in RCW 38.52.010. "Emergency" may also include a national declaration of emergency by an authorized federal official.

(4) "Good faith effort" means the school district considered and implemented options, determined appropriate by the school district, to support each individual student in meeting credit and pathway requirements.

(a) For each student who is being considered for the emergency waiver, school districts shall provide individual student advising to help each student determine: What supports they need to be successful; how they might meet the graduation requirements, including the feasibility of summer or a partial or full additional year of high school enrollment; and whether the emergency waiver is appropriate for the individual student.

(b) Options for supporting students to meet credit and course-based graduation pathway requirements include, but are not limited to:

(i) Provision of additional academic supports to aid student completion.

(ii) Awarding credits based on the student's demonstrated proficiency/mastery of the state's learning standards under WAC 180-51-050, 180-51-051, and 392-410-300, including credits, grades, and courses transcribed on the high school transcript.

(iii) Awarding credit through expanded learning opportunities, dual credit programs, work-based learning (WAC 392-410-315), traditional online, summer learning, CTE course equivalencies, and other local credit options for awarding credit outside of school.

(c) Options for supporting students to meet the exam-based graduation pathway requirement include, but are not limited to: Efforts to ensure students are aware of, and can access, online or by other alternative access options, the SAT, ACT, ASVAB, AP, IB, Cambridge International, and state assessments (if applicable). School districts are encouraged to reduce or eliminate any cost to students in using these options.

(5) "Reasonably expected to graduate" means the individual student's earned credits and current or planned enrollment would have been sufficient, as determined by the school district, for the student to meet the applicable state minimum graduation requirements (as defined in WAC 180-51-056, 180-51-067, 180-51-068, and 180-51-210) by the end of the

school year when the emergency waiver is granted if not for the impact of the novel coronavirus disruption.

(6) "School district" means any school district, charter school established under chapter 28A.710 RCW, tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW, state schools established under chapter 72.40 RCW, and community and technical colleges granting high school diplomas.

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-030 Application and approval process for public school districts. (1) ~~((Beginning no later than April 15, 2020,))~~ The state board of education ((shall)) will make an application available to ((local education agencies)) school districts seeking ((this waiver. A local education agency)) the emergency waiver of certain graduation requirements for the novel coronavirus emergency. A school district may apply to the state board of education for the authority to waive pathway and credit-based graduation requirements for individual students. The state board of education will accept applications through a deadline to be determined by the state board of education.

~~(2) ((In order)) To be granted the waiver authority, the ((local education agency must certify the following:~~

~~(a) The local education agency has considered equity in applying for the waiver and will consider equity in administering the waiver. This may include, but is not limited to, an equity analysis, community outreach, or other means to assess and mitigate potential disparate impacts of this waiver.~~

~~(b) The local education agency will grant waivers on an individual student basis to eligible students in accordance with WAC 180-111-040.~~

~~(c) Prior to granting a waiver, the local education agency will make a good faith effort, as defined in WAC 180-111-020, to help individual students address credit deficiencies and meet core course requirements.~~

~~(d) The local education agency will administer the waiver in accordance with program rules as outlined)) school district must certify it will administer the waiver in accordance with program rules as stated in this chapter.~~

(3) The application must be certified by the school district superintendent or equivalent personnel with authority to sign on behalf of the ~~((local education agency))~~ school district.

(4) The state board of education may approve applications that meet the criteria ~~((outlined))~~ stated in subsections (2) and (3) of this section. The board may delegate this authority to its executive director for efficiency per RCW 28A.305.130(7).

(5) The state board of education ~~((shall))~~ will promptly post on its public website ~~((the information collected on the application,))~~ a list of all approved applications ~~((received, and the decision to approve or deny each application)).~~

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-040 School district implementation of the emergency waiver of ((credit-based)) certain graduation requirements. (1) Before granting any emergency waivers, the school district board or equivalent governing body shall adopt by resolution a plan that describes the school district's process for granting and declining emergency waivers for students. The plan must include:

(a) A process for school district staff to initiate a waiver and a process for students to request a waiver if not initiated by the district;

(b) A school district process if an initial decision is made to decline a waiver for an individual student, for further review and recommendations by a panel with at least one counselor and educators with expertise in trauma-informed instruction and culturally responsive education, and if appropriate, special education, instruction for multilingual/English language learners, and a migrant graduation specialist or migrant student advocate;

(c) A process for students to appeal within the school district a decision to not grant an emergency waiver; and

(d) Culturally responsive ways, based on the school district's local community, to communicate with students and families about the waiver and the process to request, appeal, or decline the waiver.

~~(2) Beginning from the date of approval of its waiver, in accordance with WAC 180-111-030, through ((July 31, 2020, in accordance with the establishing legislation, a local education agency)) August 31, 2021, a school district may waive subject area credit and pathway graduation requirements ((outlined in subsection (2) of this section for individual students)) stated in WAC 180-111-050 for eligible students on an individual student basis after completing all of the following requirements:~~

~~(a) ((The local education agency)) Before use of this waiver for graduation credit requirements, school districts shall consider using their existing authority to waive credits through the following ways:~~

~~(i) Local graduation requirements under WAC 180-51-020 may be waived at local discretion without approval of the state board of education.~~

~~(ii) Two-credit waiver of flexible credits may be granted for individual student circumstances, in accordance with WAC 180-51-068(13) and 180-51-210(2).~~

~~(iii) Students may be excused from physical education in accordance with the applicable requirements in WAC 180-51-067(6), 180-51-068(6), and 180-51-210 (4)(f).~~

~~(iv) The noncredit requirement of Washington state history may be waived in accordance with WAC 180-51-067 (4)(b), 180-51-068 (4)(b)(i) and (ii), and 180-51-210 (4)(d) (iv)(A) and (B).~~

~~(b) The school district shall review the individual student's completed and planned coursework and determine that the student was ((on track)) reasonably expected to graduate((s)) as defined in WAC 180-111-020 and that the student has demonstrated postsecondary preparation as defined in WAC 180-111-020.~~

~~((b) The local education agency)) (c) The school district shall demonstrate a good faith effort, as defined in WAC 180-~~

111-020, to help the individual student ~~((meet credit-based graduation requirements through other options))~~ complete coursework, address credit deficiencies, and meet core course and graduation pathway option requirements through other options that align with their high school and beyond plan. The school district shall document the steps taken to demonstrate this good faith effort in the individual student record.

~~((e) The local education agency))~~ (d) The school district shall consult with the individual student, and make a reasonable effort to consult with a parent or guardian of the student, and shall make a reasonable effort to provide information about this waiver in the preferred languages of the student, and of the parent or guardian of the student if applicable. The information ~~((shall))~~ must include, but is not limited to:

(i) ~~((What is being waived for the individual student;))~~ In the consideration of whether waiver(s) are appropriate for an individual student, and if so what waiver(s), the school district shall advise the student to waive only those credit(s) that are least applicable to the student's postsecondary plans as articulated in the student's high school and beyond plan;

(ii) ~~The potential benefits and limitations that could result from receiving the waiver including impacts on ((high school graduation and)) postsecondary plans((;)) and, if applicable to their high school and beyond plan, the recommendation to contact the student's intended postsecondary institutions or apprenticeship provider regarding potential impacts; and~~

(iii) The option for the individual student to decline the waiver and for the student to be provided with the opportunity to earn the credits needed or meet their intended pathway option to complete graduation requirements ~~((through))~~ which may include continued enrollment beyond the planned graduation date.

~~((2) Waived credit graduation requirements:~~

~~(a) Waived credit graduation requirements are limited to credits a student would have had the opportunity to earn by the end of the 2019-20 school year including:~~

~~(i) Courses and other credit earning opportunities the student was enrolled in as of February 29, 2020; and~~

~~(ii) Credits that the student planned to complete by the end of the 2019-20 school year as defined in RCW 28A.150-203 for terms not yet started as of February 29, 2020, that were scheduled to occur during the period of school closure due to the novel coronavirus. These planned credits must be indicated on the student's high school and beyond plan, in course registration records, or in the student's credit attainment or recovery plan.~~

~~(b) Waived graduation requirement credits may include both core credit graduation requirements and flexible credit graduation requirements, as defined in WAC 180-51-210.~~

~~(3) This waiver may apply to individual students participating in the international baccalaureate diploma programme as defined in RCW 28A.230.122 to enable these students to earn a Washington high school diploma.~~

~~(4) Schools operating under the waiver defined in WAC 180-18-055 may waive graduation requirements in a manner consistent with this section.~~

~~(5) Each local education agency shall maintain a record of courses and requirements waived as part of the individual~~

~~student record and shall report to the state board of education in a manner determined by the state board of education.~~

~~(6) The local education agency shall consider equity in administering the emergency waiver under this section. This consideration should be designed to identify and mitigate potential disparate impacts of the emergency waiver and to determine if any changes to the local education agency's approach in administering the emergency waiver are needed before the conclusion of the 2019-20 school year.)~~ (3) The school district shall ensure equity in administering the emergency waiver. The school district shall disaggregate waiver data by student subgroups as referenced in RCW 28A.300-042(3) and shall conduct further disaggregation of subgroups if data are available to do so. If disproportionality is found, the school district shall take appropriate actions to ensure equitable administration. This consideration must further be designed to identify and mitigate potential disparate impacts of the emergency waiver and to determine if any changes to the school district's approach in administering the emergency waiver, including supports under WAC 180-111-020(4) to help students meet the requirements, are needed before the conclusion of the school year.

(4) The school district shall:

(a) Maintain a record of the following in the individual student record: Actions taken under the good faith effort to help the student meet the graduation requirements, courses (including the term and amount of credit) and requirements waived, and how the student demonstrated postsecondary preparation;

(b) Include a notation of waived credits and graduation pathway on the student's high school transcript in accordance with RCW 28A.230.125;

(c) Keep a record of the number of waivers requested and not granted;

(d) Report on administration of the emergency waiver to the state board of education in a manner determined by the state board of education; and

(e) Report student level emergency waiver data to the office of the superintendent of public instruction in a manner determined by the superintendent of public instruction in consultation with the state board of education.

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-050 Emergency waiver ~~((for private schools))~~ of certain requirements in response to novel coronavirus. ~~((1) This section applies to private schools approved to operate in Washington for the 2019-20 school year under chapter 180-90 WAC.~~

~~(2) Private schools may waive credit based graduation requirements for individual students who were on track to graduate, as defined in WAC 180-111-020, in a manner consistent with the provisions of WAC 180-111-040.~~

~~(3) Private schools that have implemented an online education program consistent with the provisions of RCW 28A.195.090 that provide the remaining curriculum will be considered to have the instructional hour requirements met. Private schools have discretion to determine whether the curriculum has been adequately satisfied.~~

~~(4) The state board of education waives the instructional hours and days requirement under RCW 28A.195.010 for the 2019-20 school year. The number of hours or days offered after February 29, 2020, will not be considered for continued approval of private schools.~~

~~(5) Each private school shall notify the state board of education in a format provided by the board whether the private school is waiving requirements under this section.)~~ (1) Waived credit graduation requirements are limited to the student's classes impacted by the novel coronavirus disruption. The school district shall prioritize student completion of core coursework and coursework related to the student's high school and beyond plan under RCW 28A.230.090. Beginning in the 2020-21 school year, school districts may waive credits for eligible students in the classes of 2020 and 2021:

(a) In addition to existing waiver authorities as described in WAC 180-111-040 (2)(a), school districts may waive up to two additional credits under this emergency waiver, provided that students graduate with no fewer than a total of twenty credits.

(b) The emergency waiver in (a) of this subsection may be applied to core credits or flexible credits as defined in WAC 180-51-210, provided that no more than one credit in each core subject area is waived.

(2) A student's graduation pathway requirement may be waived for eligible students in the classes of 2020 and 2021 after a school district has made a good faith effort to help the student meet their pathway requirement, as defined in WAC 180-111-020.

(3) The graduation pathway requirement may also be waived for a student so that the student may earn a diploma before their planned graduation year, provided that:

(a) The student may not be granted an emergency waiver of credit requirements in the 2020-21 school year; and

(b) The student must meet all other state graduation requirements, including credit requirements under WAC 180-51-210.

(4) This waiver may apply to individual students participating in the international baccalaureate diploma programme as defined in RCW 28A.230.122 to enable these students to earn a Washington high school diploma.

(5) Schools operating under the waiver defined in WAC 180-18-055 may waive graduation requirements in a manner consistent with this section.

NEW SECTION

WAC 180-111-060 Emergency waiver of certain requirements in response to novel coronavirus for private schools. (1) This section applies to private schools approved to operate in Washington for the 2020-21 school year under chapter 180-90 WAC.

(2) Private schools may waive credit-based graduation requirements for individual students who have demonstrated postsecondary preparation as defined in WAC 180-111-020, in a manner consistent with the provisions of WAC 180-111-040 and 180-111-050. Private schools are exempt from the reporting requirements listed in WAC 180-111-040 (4)(d) and (e).

(3) Private schools that have implemented an online education program consistent with the provisions of RCW 28A.195.090 will be considered to have met the instructional hour requirements. Private schools have discretion to determine whether the curriculum has been adequately satisfied.

(4) For the 2020-21 school year, the state board of education will maintain a private school's status as an approved private school if, due to a significant disruption caused by the novel coronavirus, the school is unable to fulfill the requirements of RCW 28A.195.010 of a full school year of one hundred eighty days or are unable to fulfill the annual average total instructional hours requirements.

(5) Each private school shall notify the state board of education in a format provided by the board whether the private school is waiving requirements under this section.

WSR 21-12-005

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed May 19, 2021, 2:30 p.m., effective June 1, 2021]

Effective Date of Rule: June 1, 2021.

Purpose: The department continues to amend WAC 388-482-0005 How does being a student of higher education affect my eligibility for the Washington basic food program?, under emergency rule to implement changes to student eligibility for basic food as provided in the Consolidated Appropriation Act, 2021 (H.R. 133, Section 702) due to the coronavirus (COVID-19) pandemic.

This filing extends the original emergency rule under WSR 21-04-110 filed on February 1, 2021. The department filed a supplemental proposed rule-making notice under WSR 21-11-046 to incorporate this amendment and is actively undertaking appropriate procedures to adopt the rule as permanent.

Citation of Rules Affected by this Order: Amending WAC 388-482-0005.

Statutory Authority for Adoption: RCW 43.20A.760, 74.04.500, 74.04.510, and 74.08A.120.

Other Authority: H.R. 133.

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 second emergency rule is required to continue to implement provisions under H.R. 133, Section 702 related to the Supplemental Nutrition Assistance Program (administered as basic food in Washington). These provisions support preservation of the public health, safety, or general welfare through access to basic food assistance.

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

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

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Date Adopted: May 19, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-047, filed 2/13/20, effective 3/15/20)

WAC 388-482-0005 How does being a student of higher education affect my eligibility for the Washington basic food program? (1) For basic food, we consider you a student of higher education if you are:

- (a) Age eighteen through forty-nine;
 - (b) Physically and mentally able to work (we determine if you are unable to work);
 - (c) Enrolled in an institution of higher education at least half-time as defined by the institution; and
 - (d) Enrolled in coursework considered to be higher education.
- (2) An institution of higher education is:
- (a) Any educational institution that requires a high school diploma or high school equivalency certificate;
 - (b) A business, trade, or vocational school that requires a high school diploma or high school equivalency; or
 - (c) A two-year or four-year college or university that offers a degree but does not require a high school diploma or high school equivalency.
- (3) If you are a student of higher education, you must also meet one of the following conditions to be eligible for basic food:

- (a) You have paid employment and work an average of at least twenty hours per week each month;
- (b) You are self-employed, work, and earn at least the amount you would earn working an average of twenty hours per week at the federal minimum wage each month; or
- (c) You were participating in a state or federal work study program during the regular school year.
 - (i) To qualify under this condition, you must:
 - (A) Have approval for work study at the time of application for basic food;
 - (B) Have work study that is approved for the school term; and
 - (C) Anticipate actually working during that time.
 - (ii) The work study exemption begins:
 - (A) The month in which the school term starts; or
 - (B) The month work study is approved, whichever is later.

(ii) Once begun, the work study exemption shall continue until:

(A) The end of the month in which the school term ends; or

(B) We find out you refused a work study assignment.

(d) Starting January 16, 2021, you are determined eligible to participate in state or federal work study by your institution of higher education during the regular school year. Requirements under subsections (3)(c)(i)-(iii) of this section are suspended until the COVID-19 federal public health emergency ends as described under subsection (4) of this section.

(e) You are responsible for more than half the care of a dependent person in your assistance unit (AU) who is age five or younger;

~~((e))~~ (f) You are responsible for more than half the care of a dependent person in your AU who is between age six and eleven, if we have determined that there is not adequate child care available during the school year to allow you to:

(i) Attend class and satisfy the twenty-hour work requirement; or

(ii) Take part in a work study program.

~~((f))~~ (g) You are a single parent responsible for the care of your natural, step, or adopted child who is eleven or younger;

~~((g))~~ (h) You are an adult who has the parental responsibility of a child who is age eleven or younger if none of the following people live in the home:

(i) The child's parents; or

(ii) Your spouse.

~~((h))~~ (i) You participate in the WorkFirst program under WAC 388-310-0200;

~~((i))~~ (j) You receive TANF or SFA benefits;

~~((j))~~ (k) You attend an institution of higher education through:

(i) The Workforce Investment Act (WIA);

(ii) The basic food employment and training program under chapter 388-444 WAC;

(iii) An approved state or local employment and training program; or

(iv) Section 236 of the Trade Act of 1974.

(l) Starting January 16, 2021, you have an expected family contribution (EFC) of zero dollars in the current academic year as determined by part F of Title IV of the Higher Education Act of 1965.

(4) The conditions in subsection (3)(d) and (l) will continue as follows:

(a) For initial applications, until thirty days after the COVID-19 federal public health emergency ends.

(b) For recertifications, no earlier than your first recertification thirty days after COVID-19 federal public health emergency ends.

(5) If you are a student of higher education, your status as a student:

(a) Begins the first day of the school term; and

(b) Continues through vacations. This includes the summer break if you plan to return to school for the next term.

~~((5))~~ (6) We do not consider you a student of higher education if you:

(a) Graduate;

- (b) Are suspended or expelled;
- (c) Drop out; or
- (d) Do not intend to register for the next normal school term other than summer school.

WSR 21-12-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-70—Filed May 19, 2021, 4:46 p.m., effective May 21, 2021]

Effective Date of Rule: May 21, 2021.

Purpose: The purpose of this emergency rule is to open retention seasons for spring Chinook salmon in the lower Columbia River.

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

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

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

Reasons for this Finding: The *U.S. v. Oregon* technical advisory committee recently updated the 2021 Columbia River spring Chinook return to 87,000, which was previously forecasted to be 75,200. The upriver Skamania stock steelhead passage at Bonneville Dam is currently the lowest cumulative count to-date. Additional spring Chinook directed angling opportunities are available while providing additional protection for steelhead with a reduced steelhead daily limit. This action also applies summer fishery regulations developed through the 2021 North of Falcon season setting process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 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: May 19, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000M Freshwater exceptions to statewide rules—Columbia River. Effective May 21 through July 31, 2021, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Megler-Astoria Bridge 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 the Megler-Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), and including Youngs Bay: Salmon and steelhead:

(a) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(b) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(2) From the Rocky Point/Tongue Point line to a line starting from a point on the Washington shore projected through Dolphin Marker J (near Shipping Terminal 9), southerly across the Columbia River to Columbia Park Boat Ramp in Rainier, Oregon: Salmon and steelhead:

(a) Effective May 21 through May 23, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective May 24 through May 31, 2021: Daily limit 6: Up to 1 steelhead may be retained. Release all salmon other than hatchery jack Chinook. Release wild steelhead.

(c) Effective June 1 through June 15, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(d) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(e) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(3) From line starting from a point on the Washington shore projected through Dolphin Marker J (near Shipping Terminal 9), southerly across the Columbia River to Columbia Park Boat Ramp in Rainier, Oregon upstream to a line projected from a point on the Washington shore projected through Cottonwood Island Dike Light "31", southerly across the Columbia River to a deadline marker on the Oregon shore and including the waters of Carrolls Channel (waters beginning at the

upstream end of Cottonwood Island downstream to the confluence of the Cowlitz River): Salmon and steelhead:

(a) Effective May 21 through May 23, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead. Fishing from a vessel is prohibited.

(b) Effective May 24 through May 31, 2021: Daily limit 6: Up to 1 steelhead may be retained. Release all salmon other than hatchery jack Chinook. Release wild steelhead.

(c) Effective June 1 through June 15, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead. Fishing from a vessel is prohibited.

(d) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(e) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(4) From a line starting from a point on the Washington shore projected through Cottonwood Island Dike Light "31", southerly across the Columbia River to a deadline marker on the Oregon shore and including the waters of Carrolls Channel (waters beginning at the upstream end of Cottonwood Island downstream to the confluence of the Cowlitz River) upstream to the I-5 Bridge: Salmon and steelhead:

(a) Effective May 21 through May 23, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective May 24 through May 31, 2021: Daily limit 6: Up to 1 steelhead may be retained. Release all salmon other than hatchery jack Chinook. Release wild steelhead.

(c) Effective June 1 through June 15, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(d) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(e) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(5) From the I-5 Bridge to Bonneville Dam: Salmon and steelhead:

(a) Effective May 21 through May 23, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective June 1 through June 15, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(c) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(d) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(6) From Bonneville Dam to The Dalles Dam: Salmon and steelhead:

(a) Effective May 22 through May 23, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective May 29 through May 30, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(c) Effective June 16 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(7) From The Dalles Dam to a line starting from a fishing boundary sign on the Washington northern shore located approximately 1000' upstream of The Dalles Dam and Lock boat ramp projected southeasterly across the Columbia River to a boundary sign on the Washington southern shore located approximately 200' above the fish ladder exit: Salmon and steelhead:

Effective May 22, 2021, until further notice: Closed to fishing for and retention of salmon and steelhead.

(8) From a line starting from a fishing boundary sign on the Washington north shore located approximately 1000' upstream of The Dalles Dam and Lock boat ramp projected southeasterly across the Columbia River to a boundary sign on the Washington south shore located approximately 200' above the fish ladder exit to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

(a) Effective May 22 through May 23, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective May 29 through May 30, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(c) Effective June 16 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(9) From Hwy. 730 at the Washington/Oregon border to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

Effective June 16 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

REPEALER

The following section of Washington Administrative Code is repealed, effective May 21, 2021:

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

WSR 21-12-011

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed May 20, 2021, 10:51 a.m., effective May 20, 2021, 10:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-841-405, 246-841-420, 246-841-470, 246-841-490, 246-841-500, 246-841-510, and 246-841-555, specific training requirements for nursing assistant certified (NAC) and nursing assistant registered (NAR). The nursing care quality assurance commission (commission) is continuing and amending emergency rules in response to the coronavirus disease (COVID-19) pandemic. The rules in chapter 246-841 WAC provide regulatory requirements for NAC and NAR. These amendments allow additional pathways to comply with current standards. This is the fourth emergency rule and it continues and updates the emergency rule that was filed on January 20, 2021, under WSR 21-04-004. Prior filings on October 23, 2020, under WSR 20-22-023 and June 26, 2020, under WSR 20-14-066. The new amendments are technical changes to the numbering and language removal to match changes made due to the repeal of AIDS education and training requirements.

Citation of Rules Affected by this Order: Amending WAC 246-841-405, 246-841-420, 246-841-470, 246-841-490, 246-841-500, 246-841-510, and 246-841-555.

Statutory Authority for Adoption: RCW 18.88A.060.

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 amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare. Essential functions including the increased availability of health care professionals must continue while taking necessary measures to help treat and prevent the spread of COVID-19. The state of emergency in Washington state due to the COVID-19 pandemic has led to a demand for more health care professionals, especially qualified nursing assistants. COVID-19 has created barriers for nursing assistant training. The amendments elim-

inate barriers for these essential providers to participate in the health care workforce during the COVID-19 pandemic by providing additional opportunities to comply with current standards. Amendments are necessary to continue to increase the quantity of professionals able to respond to current demands. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

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 7, 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 7, Repealed 0.

Date Adopted: May 19, 2021.

Paula R. Meyer, MSN, RN, FRE
Executive Director

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-841-405 Nursing assistant delegation. Provision for delegation of certain tasks.

(1) Nursing assistants perform tasks delegated by a registered nurse for patients in community-based care settings or in-home care settings each as defined in RCW 18.79.260 (3)(e).

(2) Before performing any delegated task:

(a) Nursing assistants-registered must show the certificate of completion of ~~((both the basic caregiver training and))~~ core delegation training from the department of social and health services to the registered nurse delegator.

(b) Nursing assistants-certified must show the certificate of completion of the core delegation training from the department of social and health services to the registered nurse delegator.

(c) All nursing assistants must comply with all applicable requirements of the nursing care quality assurance commission in WAC 246-840-910 through 246-840-970.

(d) All nursing assistants, registered and certified, who may be completing insulin injections must give a certificate of completion of diabetic training from the department of social and health services to the registered nurse delegator.

(e) All nursing assistants must meet any additional training requirements identified by the nursing care quality assurance commission. Any exceptions to additional training requirements must comply with RCW 18.79.260 (3)(e)(v).

(3) Delegated nursing care tasks described in this section are:

(a) Only for the specific patient receiving delegation;

(b) Only with the patient's consent; and

(c) In compliance with all applicable requirements in WAC 246-840-910 through 246-840-970.

(4) A nursing assistant may consent or refuse to consent to perform a delegated nursing care task. The nursing assistant is responsible for their own actions with the decision to consent or refuse to consent and the performance of the delegated nursing care task.

(5) Nursing assistants shall not accept delegation of, or perform, the following nursing care tasks:

(a) Administration of medication by injection, with the exception of insulin injections;

(b) Sterile procedures;

(c) Central line maintenance;

(d) Acts that require nursing judgment.

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-420 Requirements for approval of nursing assistant-certified training programs. To qualify as a nursing assistant-certified training program, an institution or facility must:

(1) Submit a completed application packet provided by the department of health. The packet will include forms and instructions to submit the following:

(a) Program objectives.

(b) Curriculum content outline.

(c) Qualifications of program director and additional instructional staff.

(d) Contractual agreements related to providing this training. For any program that uses another facility to provide clinical training, this includes an affiliation agreement between the training program and the facility. The affiliation agreement must describe how the program will provide clinical experience in the facility. The agreement must specify the rights and responsibilities of both parties, students and clients or residents.

(e) Sample lesson plan for one unit.

(f) Skills checklist.

(g) Description of classroom facilities.

(h) Declaration of compliance with administrative guidelines signed by the program director.

(i) Verification that the program director has completed a course on adult instruction as required by WAC 246-841-470(3) or has one year of experience in the past three years teaching adults. Acceptable experience does not include in-service education or patient teaching. A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(j) Verification that the nursing assistant-certified training program or school is approved to operate in the state of Washington by:

(i) The state board for community and technical colleges;

(ii) The superintendent of public instruction; or

(iii) The workforce training and education coordinating board.

(2) Agree to on-site survey of the training program(;) or online survey of the approved online classes as requested by

the commission. This on-site will be coordinated with other on-site review requirements when possible.

(3) Participate in the renewal process every two years. Failure to renew results in automatic withdrawal of approval of the program.

(4) Comply with any changes in training standards and guidelines in order to maintain approved status.

(5) Notify the commission and any other approving agency of any changes in overall curriculum plan or major curriculum content changes prior to implementation.

(6) Notify the commission and any other approving agency of changes in program director or instructors.

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-470 Program directors and instructors in approved nursing assistant-certified training programs. (1) The program director must hold a current license in good standing as a registered nurse (RN) in the state of Washington.

(2) The commission may deny or withdraw a program director's approval if there is or has been any action taken against the director's health care license or any license held by the director which allows him or her to work with vulnerable populations.

(3) The program director must complete a training course on adult instruction or have demonstrated that he or she has one year experience teaching adults.

(a) Acceptable experience does not include in-service education or patient teaching.

(b) The training course on adult instruction must provide instruction in:

(i) Understanding the adult learner.

(ii) Techniques for teaching adults.

(iii) Classroom methods for teaching adults.

(iv) Audio visual techniques for teaching adults.

(c) A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(4) The program director will have a minimum of three years of experience as an RN, of which at least one year will be in direct patient care.

(5) The program director must meet the requirements for additional staff under subsection (7)(b) of this section if the program director will also be acting as an instructor.

(6) Program director responsibilities:

(a) Develop and implement a curriculum which meets as a minimum the requirements of WAC 246-841-490. The program director is responsible for all classroom and clinical training content and instruction provided by the training program. The clinical experience may occur in a health care facility or it may occur through planned simulation in the training program's skills lab in accordance with the requirements included in WAC 246-841-490.

(b) Assure compliance with and assume responsibility for meeting the requirements of WAC 246-841-490 through 246-841-510.

(c) Assure that all student clinical experience is directly supervised. Direct supervision means that an approved program director or instructor is observing students performing

tasks. As an alternative, the program director may also award clinical hours' credit for nursing assistant-registered (NAR) employment or volunteer experience completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with the commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission. It is the program director's responsibility to verify that each student's employment or volunteer experience meets the qualifying standards included in WAC 246-841-490.

(d) Assure that the clinical instructor has no concurrent duties during the time he or she is instructing students.

(e) Create and maintain an environment conducive to teaching and learning.

(f) Select and supervise all other instructors involved in the course, including clinical instructors and guest lecturers.

(g) Assure that students are not asked to, nor allowed to, perform any clinical skill with patients or clients or in simulation activities until first demonstrating the skill satisfactorily to an instructor in a ((practice setting)) skills lab setting. As an alternative, a program director may provide students with instruction regarding the NAR employment or volunteer pathway and how to demonstrate competency and have competency documented under the supervision of a licensed nurse in a care facility in accordance with WAC 246-841-470 (6)(c).

(h) Assure evaluation of knowledge and skills of students before verifying completion of the course.

(i) Assure that students receive a verification of completion when requirements of the course have been satisfactorily met.

(7) The program director may select instructional staff to assist in the teaching of the course.

(a) Instructional staff must teach in their area of expertise.

(b) Instructional staff must have a minimum of one year experience within the past three years in caring for the elderly or chronically ill of any age or both.

(c) All instructional staff must hold a current Washington state license to practice as a registered or licensed practical nurse. The commission may deny or withdraw an instructor's approval if there is or has been any action taken against a health care license or any license held by the applicant which allows him or her to work with vulnerable populations.

(d) Instructional staff may assist the program director in development of curricula, teaching modalities, and evaluation. The instructor will be under the supervision of the program director at all times.

(e) A guest lecturer, or individual with expertise in a specific course unit may be used in the classroom setting for teaching without commission approval, following the program director's review of the currency of content. The guest lecturer, where applicable, must hold a license, certificate or registration in good standing in their field of expertise.

AMENDATORY SECTION (Amending WSR 21-04-016, filed 1/22/21, effective 2/22/21)

WAC 246-841-490 Core curriculum in approved nursing assistant-certified training programs. (1) The curriculum must be competency based. It must be composed of learning objectives and activities that will lead to knowledge and skills required for the graduate to demonstrate mastery of the core competencies as provided in WAC 246-841-400.

(2) The program director will determine the amount of time required in the curriculum to achieve the objectives. The time designated may vary with characteristics of the learners and teaching or learning variables. There must be a minimum of eighty-five hours total, with a minimum of thirty-five hours of classroom training and a minimum of fifty hours of clinical training.

(a) Of the fifty hours of clinical training, at least forty clinical hours must be in the ((practice setting)) a health care facility or completed through planned simulation in the training program's skills lab.

(b) Training to orient the student to the health care facility ((and)), facility policies and procedures, planned simulation, and simulation policies and procedures are not to be included in the minimum hours above.

(c) Planned simulation as used in this section means a technique to replace or amplify real experiences with guided experiences evoking or replicating substantial aspects of the real world in a fully interactive manner. The requirements for training programs to offer planned simulation include:

(i) Nursing assistant training programs may use planned simulation activities as a substitute for traditional clinical experiences in health care facilities after submitting a request on a form provided by the commission and receiving approval from the commission.

(ii) For the purposes of planned simulation activities, the skills lab of the training program represents a health care facility with students acting in a variety of roles in predeveloped scenarios that provide opportunities for students to demonstrate nursing assistant competencies as they would in a traditional clinical experience in a health care facility. Examples of roles students may play include: The nursing assistant providing care; another member of the health care team; a client or resident; a client's or resident's loved one. Simulated health care facility scenarios include, at a minimum: Policies and procedures for students to follow; a cadre of diverse clients or residents and their care plans; and opportunities to participate in shift reports, respond to and communicate status changes to the nurse, and document appropriately.

(iii) A written plan exists for each planned simulation activity and includes specific nursing assistant competencies identified as objectives. The written plan also includes a summary of the care situation or scenario and the various roles students will play in the scenario; and the time allotted for the planned simulation activity, including time for debriefing.

(iv) Debriefing is a critical component of planned simulation activities that helps students to learn from their clinical experiences. Debriefing is facilitated by the program instructor or director in a way that encourages active discussion and reflective thinking by students and provides relevant instruc-

tor and peer feedback regarding simulation events and participants' performance.

(v) Planned simulation activities reflect an array of objectives and care scenarios to support adequate evaluation of each student's competency in the nursing assistant role as reflected in WAC 246-841-400.

(vi) Documentation exists as a record of the evaluation of each student's performance in planned simulation activities.

(vii) The nursing assistant training program shall have adequate human and material resources to implement planned simulation activities, including adequate space, equipment, and supplies.

(viii) An approved program instructor or the program director must supervise and evaluate planned simulation activities. A guest lecturer may not supervise or evaluate planned simulation activities.

(ix) The nursing assistant training program obtains anonymous written student evaluations of the planned simulation activities at the end of each class and demonstrates use of student feedback for ongoing quality improvement efforts as needed.

(3) Each unit of the core curriculum will have:

(a) Behavioral objectives, which are statements of specific observable actions and behaviors that the learner is to perform or exhibit.

(b) An outline of information the learner will need to know in order to meet the objectives.

(c) Learning activities such as lecture, discussion, readings, film, or clinical practice designed to enable the student to achieve the stated objectives.

(d) To meet qualifying standards to count as clinical hours' credit, the NAR employment or volunteer experience must:

(i) Be performed under an active NAR credential during enrollment in the class;

(ii) Include a background check prior to contact with clients or residents;

(iii) Occur in a care facility where a licensed nurse is present to supervise throughout the clinical experience and verify competency for tasks assigned;

(iv) Include opportunities for the NAR to successfully demonstrate the competencies of a nursing assistant as identified in WAC 246-841-400;

(v) Be supervised by a licensed nurse who is not a friend or relative;

(vi) Include care of clients or residents who are not friends or relatives; and

(vii) Be verifiable with the care facility.

(4) Clinical teaching in a competency area is closely correlated with classroom teaching to integrate knowledge with manual skills.

(a) Students must wear name tags clearly identifying them as students when interacting with patients, clients or residents, ~~(and)~~ families, and in planned simulation activities.

(b) An identified instructor(s) will supervise clinical teaching or learning at all times. At no time will the ratio of students to instructor exceed ten students to one instructor in the clinical setting whether the clinical setting is a health care

facility or represented through planned simulation in the training program's skills lab. As an alternative, the program director may award clinical hours' credit for NAR employment or volunteer experience as described in WAC 246-841-470 (6)(c).

(5) The curriculum must include evaluation processes to assess mastery of competencies. Students cannot perform any clinical skill on clients or residents or in planned simulation activities until first demonstrating the skill satisfactorily to an instructor in ~~((the practice setting))~~ a skills lab setting; as an alternative, students can demonstrate skills satisfactorily to a licensed nurse who is supervising a student employed or volunteering as an NAR and assuring competency for tasks assigned in accordance with WAC 246-841-470 (6)(c).

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-500 Physical resources required for approved nursing assistant-certified training programs.

(1) Classroom facilities must provide adequate space, lighting, comfort, and privacy for effective teaching and learning.

(2) Adequate classroom resources, such as white board or other writing device, audio visual materials, and written materials must be available.

(3) Appropriate equipment must be provided for teaching and practicing clinical skills and procedures before implementing the skills with clients or residents or in planned simulation in the training program's skills lab.

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-510 Administrative procedures for approved nursing assistant-certified training programs.

(1) The program must establish and maintain a file for each student enrolled. The file must include:

(a) Dates attended.

(b) Test results.

(c) A skills evaluation checklist with dates of skills testing and signature of instructor. If the program grants clinical hours' credit for students employed or volunteering as nursing assistants-registered in accordance with WAC 246-841-470 (6)(c), the student file must also include a fully completed commission-approved student form to verify student clinical hours and competency "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission.

(d) Documentation of successful completion of the course, or documentation of the course outcome.

(2) Each student file must be maintained by the program for a period of five years, and copies of documents made available to students who request them.

(3) Verification of successful completion of the course of training will be provided to the commission on forms provided by the commission.

(4) For those programs based in a health care facility: Verification of program completion and the application for state testing will not be withheld from a student who has successfully met the requirements of the program. Successful

completion will be determined by the training program director separately from other employer issues.

AMENDATORY SECTION (Amending WSR 11-16-042, filed 7/27/11, effective 8/27/11)

WAC 246-841-555 Responsibilities of the program director in alternative programs. The program director of an alternative program is responsible for:

- (1) Development and use of a curriculum which:
 - (a) Meets the requirements of WAC 246-841-545; or
 - (b) Meets the requirements of WAC 246-841-550.
- (2) Ensuring compliance with the requirements of WAC 246-841-500 and 246-841-510.
- (3) Verifying home care aides-certified have a valid certification before admission to the alternative program.
- (4) Verifying medical assistants-certified have certification before admission to the alternative program.
- (5) Direct supervision of all students during clinical experience in a health care facility or during planned simulation in the training program's skills lab. Direct supervision means an approved program director or instructor observes students performing tasks. As an alternative, the program director may also award clinical hours' credit for nursing assistant-registered (NAR) employment or volunteer experience completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission. In addition, to meet qualifying standards to count as clinical hours' credit, the NAR employment or volunteer experience must:
 - (a) Be performed under an active NAR credential during enrollment in the class;
 - (b) Include a background check prior to contact with clients or residents;
 - (c) Occur in a care facility where a licensed nurse is present to supervise throughout the clinical experience and verify competency for tasks assigned;
 - (d) Include opportunities for the NAR to successfully demonstrate the competencies of a nursing assistant as identified in WAC 246-841-400;
 - (e) Be supervised by a licensed nurse who is not a friend or relative;
 - (f) Include care of clients or residents who are not friends or relatives; and
 - (g) Be verifiable with the care facility.
- (6) Ensuring the clinical instructor has no concurrent duties during the time he or she is instructing students.
- (7) Maintaining an environment acceptable to teaching and learning.
- (8) Supervising all instructors involved in the course. This includes clinical instructors and guest lecturers.
- (9) Ensuring students are not asked to, or allowed to perform any clinical skill with patients or clients or in planned simulation activities until the students have demonstrated the skill satisfactorily to an instructor in a practice setting; or, as an alternative, providing students with instruction regarding the NAR employment or volunteer pathway and how to

demonstrate competency and have competency documented under the supervision of a licensed nurse in a care facility in accordance with WAC 246-841-555(5).

(10) Evaluating knowledge and skills of students before verifying completion of the course.

(11) Providing students a verification of completion when requirements of the course have been satisfied.

(12) Providing adequate time for students to complete the objectives of the course. The time may vary with skills of the learners and teaching or learning variables.

(13) Establishing an evaluation process to assess mastery of competencies.

WSR 21-12-012

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed May 20, 2021, 11:19 a.m., effective May 20, 2021, 11:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-840-010, 246-840-125, 246-840-210, 246-840-240, 246-840-361, 246-840-365, 246-840-367, 246-840-533, 246-840-534, 246-840-840, and 246-840-930, licensed practical nurse (LPN), registered nurse (RN), and advanced registered nurse practitioner (ARNP) specific credential and license requirements. The nursing care quality assurance commission (commission) is continuing the adoption of emergency rules in response to the coronavirus disease (COVID-19). This is the fifth emergency rule for these amendments and it continues, without change, the emergency rule that was filed on January 20, 2021, under WSR 21-04-005.

This emergency rule retains the amendments adopted as WSR 20-10-014, 20-14-065, 20-22-024, and 21-04-005. The rules in chapter 246-840 WAC are the licensing requirements for LPNs, RNs, and ARNPs. The emergency rules amend training program options, delegation requirements, and remove additional continuing education hours for specific ARNP credentials. Additionally, the rules waive the requirements for an ARNP to submit evidence of completing continuing education in order to return to active status when holding an inactive license, or when returning to active status from expired status.

Citation of Rules Affected by this Order: Repealing WAC 246-840-210, 246-840-240 and 246-840-361; and amending WAC 246-840-010, 246-840-125, 246-840-365, 246-840-367, 246-840-533, 246-840-534, 246-840-840, and 246-840-930.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.050, 18.79.110, 18.79.260, and 18.79.340.

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 amendment of these rules is necessary for the preservation of public health,

safety, and general welfare. Essential functions including increasing and maintaining the availability of health care professionals must continue while taking necessary measures to help treat and prevent the spread of COVID-19. The amendments remove specific barriers that nurses face to providing care in response to COVID-19. Waiving the requirement for continuing education removes a barrier for nurses with a retired active license and will allow them to immediately begin working. Waiving the restriction that ARNPs with an inactive or expired license must complete clinical practice hours and the newly amended continuing education requirements removes barriers to rejoining the health care workforce. Allowing LPN students to practice as nursing technicians addresses the demand for more health care professionals in the workforce. Amending language to add clarification to the preceptor rules and simulation rules eliminates current obstacles in nursing education to address the demand for more health care professionals. Amending the requirements for nurse delegation to waive requirements and streamline the process will remove barriers for nurses to complete high demand duties. More health care professionals will be available to continue responding to current demands because of these changes. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

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 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 8, Repealed 3.

Date Adopted: May 19, 2021.

Paula R. Meyer, MSN, RN, FRE
Executive Director

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-010 Definitions. The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Advanced clinical practice" means practicing at an advanced level of nursing in a clinical setting performing direct patient care.

(2) "Advanced nursing practice" means the delivery of nursing care at an advanced level of independent nursing practice that maximizes the use of graduate educational preparation, and in-depth nursing knowledge and expertise in such roles as autonomous clinical practitioner, professional and clinical leader, expert practitioner, and researcher.

(3) "Advanced registered nurse practitioner (ARNP)" is a registered nurse (RN) as defined in RCW 18.79.050, 18.79.240, 18.79.250, and 18.79.400 who has obtained formal graduate education and national specialty certification through a commission approved certifying body in one or more of the designations described in WAC 246-840-302, and who is licensed as an ARNP as described in WAC 246-840-300. The designations include the following:

- (a) Nurse practitioner (NP);
- (b) Certified nurse midwife (CNM);
- (c) Certified registered nurse anesthetist (CRNA); and
- (d) Clinical nurse specialist (CNS).

(4) "Associate degree registered nursing education program" means a nursing education program which, upon successful completion of course work, that includes general education and core nursing courses that provide a sound theoretical base combining clinical experiences with theory, nursing principles, critical thinking, and interactive skills, awards an associate degree in nursing (ADN) to prepare its graduates for initial licensure and entry level practice as an RN.

(5) "Bachelor of science degree registered nursing education program" means a nursing education program which, upon successful completion of course work taught in an associate degree nursing education program, as defined in subsection (28) of this section, plus additional courses physical and social sciences, nursing research, public and community health, nursing management, care coordination, and the humanities, awards a bachelor of science in nursing (BSN) degree, to prepare its graduates for a broader scope of practice, enhances professional development, and provides the nurse with an understanding of the cultural, political, economic, and social issues that affect patients and influence health care delivery.

(6) "Certifying body" means a nongovernmental agency using predetermined standards of nursing practice to validate an individual nurse's qualifications, knowledge, and practice in a defined functional or clinical area of nursing.

(7) "Client advocate" means a licensed nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and choices by providing the client with adequate information about their care and options.

(8) "Commission" means the Washington state nursing care quality assurance commission.

(9) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(10) "Conditional approval" is the approval given a nursing education program that has not met the requirements of the law and the rules of the commission. Conditions are specified that must be met within a designated time to rectify the deficiency.

(11) "Dedicated education unit" means a clinical learning experience within a health care facility, as part of the curriculum of a nursing education program.

(12) "Delegation" means the licensed nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The nurse delegating the task is responsible and accountable for the nursing care of the client. The nurse delegating the task supervises the performance of

the unlicensed person. Nurses must follow the delegation process following the RCW 18.79.260. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(13) "Distance education" or "distance learning" means instruction offered by any means where the student and faculty are in separate physical locations. Teaching methods may be synchronous, where the teacher and student communicate at the same time, or asynchronous, where the student and teacher communicate at different times, and shall facilitate and evaluate learning in compliance with nursing education rules.

(14) "Full approval" of a nursing education program is the approval signifying that a nursing program meets the requirements of the law and the rules of the commission.

(15) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own; receipt of the examination results after thirty days after the nurse technician's date of graduation; or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(16) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program approved by the commission and is successfully meeting all program requirements.

(17) "Health care professional" means the same as "health care provider" as defined in RCW 70.02.010(18).

(18) "Home state" is defined as where the nursing education program has legal domicile.

(19) "Host state" is defined as the state jurisdiction outside the home state where a student participates in clinical experiences or didactic courses.

(20) "Immediately available" as applied to nursing technicians, means that an RN who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed which may include the use of two-way communication devices which allow conversation between the nursing technician and an RN who has agreed to act as supervisor.

(a) In a hospital setting, the RN who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, an RN who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(21) "Initial approval" of nursing education program is the approval status conferred by the commission to a new nursing program based on its proposal prior to the graduation of its first class.

(22) "Licensed practical nurse (LPN)" is a nurse licensed as defined in RCW 18.79.030(3), with a scope of practice defined in RCW 18.79.020 and 18.79.060.

(23) "Limited educational authorization" is an authorization to perform clinical training when enrolled as a student

through a commission approved refresher course. This authorization does not permit practice for employment.

(24) "Minimum standards of competency" means the knowledge, skills, and abilities that are expected of the beginning practitioner.

(25) "National nursing education accreditation body" means an independent nonprofit entity, approved by the United States Department of Education as a body that evaluates and approves the quality of nursing education programs within the United States and territories.

(26) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching and learning component in clinical settings.

(27) "Nursing education program administrator" is an individual who has the authority and responsibility for the administration of the nursing education program.

(28) "Nursing education program" means a division or department within a state supported educational institution or other institution of higher learning, charged with the responsibility of preparing nursing students and nurses to qualify for initial licensing or higher levels of nursing practice.

(29) "Nursing faculty" means an individual employed by a nursing education program who is responsible for developing, implementing, evaluating, updating, and teaching nursing education program curricula.

(30) "Nursing technician" means a nursing student preparing for RN or LPN licensure who meets the qualifications for licensure under RCW 18.79.340 who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic. The nursing student must be in a nursing educational program in the United States or its territories that is approved by the state or territorial nursing regulatory authority and recognized in the list of approved nursing education programs using the National Council Licensure Examination-RN or National Council Licensure Examination-PN. Approved nursing education programs do not include nontraditional schools as defined in subsection ((27)) (26) of this section.

(31) "Philosophy" means the beliefs and principles upon which a nursing education program curriculum is based.

(32) "Practical nursing education program" means a nursing education program which, upon successful completion of course work that includes core nursing course to provide a sound theoretical base combining clinical experiences with nursing principles, critical thinking, and interactive skills for entry level practical nursing, awards a certificate that the graduate is prepared for interdependent practice to prepare a practical nurse for interdependent practice as an LPN.

(33) "Registered nurse" or "RN" is a licensed nurse as defined in RCW 18.79.030(1), 18.79.040, 18.79.240, and 18.79.260.

(34) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nurs-

ing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

(35) "Traditional nursing education program" means a program that has a curriculum which includes a faculty supervised teaching and learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 16-04-097, filed 2/1/16, effective 3/3/16)

WAC 246-840-125 Retired active credential. (1) A registered or licensed practical nurse may place their credential in "retired active" status by meeting the requirements of this section.

(2) A registered or licensed practical nurse who holds a retired active credential may only practice in intermittent or emergent circumstances.

(a) Intermittent means the registered or licensed practical nurse will practice no more than ninety days a year.

(b) Emergent means the registered or licensed practical nurse will practice only in emergency circumstances such as earthquakes, floods, times of declared war, or other states of emergency.

(3) To obtain a retired active credential a registered or a licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-120.

(b) Pay the appropriate fee in WAC 246-840-990.

(4) To renew a retired active credential the registered nurse or licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-130. The retired active credential fee is in WAC 246-840-990.

(b) ~~((Have completed forty-five hours of continuing nursing education every three years in compliance with WAC 246-840-220 (2)(b). Education may include CPR and first aid.~~

~~(c) Demonstrate they have practiced at least ninety-six hours every three years. Practice may be paid or volunteer, but must require nursing knowledge or a nursing license.~~

~~((d)) Renew their retired active credential every year on their birthday.~~

(5) To return to active status the registered or licensed practical nurse must((:

~~((a)) meet the requirements in WAC 246-12-140. The active renewal fee is in WAC 246-840-990.~~

~~((b) Meet the continuing competency requirements in WAC 246-840-230 (5)(d).~~

~~(6) A registered or licensed practical nurse who holds a retired active credential is subject to a continuing compe-~~

~~tenency audit as outlined in WAC 246-840-220, 246-840-230, and 246-840-240.)~~

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-365 Inactive and reactivating an ARNP license. To apply for an inactive ARNP license, an ARNP shall comply with WAC 246-12-090 or 246-12-540, if military related.

(1) An ARNP may apply for an inactive license if he or she holds an active Washington state ARNP license without sanctions or restrictions.

(2) To return to active status the ARNP:

(a) Shall meet the requirements identified in chapter 246-12 WAC, Part 4;

(b) Must hold an active RN license under chapter 18.79 RCW without sanctions or restrictions;

(c) Shall submit the fee as identified under WAC 246-840-990; and

(d) Shall submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(1)((:

~~(e) Shall submit evidence of thirty contact hours of continuing education for each designation within the past two years; and~~

~~(f) Shall submit evidence of two hundred fifty hours of advanced clinical practice for each designation within the last two years.~~

~~(3) An ARNP applicant who does not have the required practice requirements, shall complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(4) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5)).~~

~~((5)) (3) To regain prescriptive authority after inactive status, the applicant must meet the prescriptive authority requirements identified in WAC 246-840-410.~~

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-367 Expired license. When an ARNP license is not renewed, it is placed in expired status and the nurse must not practice as an ARNP.

(1) To return to active status when the license has been expired for less than two years, the nurse shall:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Meet ARNP renewal requirements identified in WAC 246-840-360; and

(c) Meet the prescriptive authority requirements identified in WAC 246-840-450, if renewing prescriptive authority.

~~(2) ((Applicants who do not meet the required advanced clinical practice requirements must complete two hundred fifty hours of supervised advanced clinical practice for every~~

two years the applicant may have been out of practice, not to exceed one thousand hours.

~~(3) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).~~

~~(4))~~ If the ARNP license has expired for two years or more, the applicant shall:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(3);

~~(c) ((Submit evidence of thirty contact hours of continuing education for each designation within the prior two years;~~

~~(d))~~ Submit evidence of two hundred fifty hours of advanced clinical practice completed within the prior two years; and

~~((e))~~ (d) Submit evidence of an additional thirty contact hours in pharmacology if requesting prescriptive authority, which may be granted once the ARNP license is returned to active status.

~~((5))~~ (3) If the applicant does not meet the required advanced clinical practice hours, the applicant shall obtain an ARNP interim permit consistent with the requirements for supervised advanced clinical practice as defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 19-08-026, filed 3/27/19, effective 4/27/19)

WAC 246-840-533 Nursing preceptors, interdisciplinary preceptors, and proctors in clinical or practice settings for nursing students located in Washington state.

(1) Nursing preceptors, interdisciplinary preceptors, and proctors may be used to enhance clinical or practice learning experiences after a student has received instruction and orientation from program faculty who confirm the student is adequately prepared for the clinical or practice experience. For the purpose of this section:

(a) A nursing preceptor means a practicing licensed nurse who provides personal instruction, training, and supervision to any nursing student, and meets all requirements of subsection (4) of this section.

(b) An interdisciplinary preceptor means a practicing health care provider who is not a licensed nurse, but provides personal instruction, training, and supervision to any nursing student, and meets all requirements of subsection (5) of this section.

(c) A proctor means an individual who holds an active credential in one of the professions identified in RCW 18.130.040 who monitors students during an examination, skill, or practice delivery, and meets all requirements of subsection (6) of this section.

(2) Nursing education faculty are responsible for the overall supervision and evaluation of the student and must confer with each primary nursing and interdisciplinary preceptor, and student at least once during each phase of the student learning experience:

(a) Beginning;

(b) Midpoint; and

(c) End.

(3) A nursing preceptor or an interdisciplinary preceptor shall not precept more than two students at any one time.

(4) A nursing preceptor may be used in nursing education programs when the nursing preceptor:

(a) Has an active, unencumbered nursing license at or above the level for which the student is preparing;

(b) Has at least one year of clinical or practice experience as a licensed nurse at or above the level for which the student is preparing;

(c) Is oriented to the written course and student learning objectives prior to beginning the preceptorship;

(d) Is oriented to the written role expectations of faculty, preceptor, and student prior to beginning the preceptorship; and

(e) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(5) An interdisciplinary preceptor may be used in nursing education programs when the interdisciplinary preceptor:

(a) Has an active, unencumbered license in the area of practice appropriate to the nursing education faculty planned student learning objectives;

(b) Has the educational preparation and at least one year of clinical or practice experience appropriate to the nursing education faculty planned student learning objectives;

(c) Is oriented to the written course and student learning objectives prior to beginning the preceptorship;

(d) Is oriented to the written role expectations of faculty, preceptor, and student prior to beginning the preceptorship; and

(e) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(6) A proctor who monitors, teaches, and supervises students during the performance of a task or skill must:

(a) Have the educational and experiential preparation for the task or skill being proctored;

(b) Have an active, unencumbered credential in one of the professions identified in RCW 18.130.040;

(c) Only be used on rare, short-term occasions to proctor students when a faculty member has determined that it is safe for a student to receive direct supervision from the proctor for the performance of a particular task or skill that is within the scope of practice for the nursing student; and

(d) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(7) A practice/academic partnerships model may be used to permit practice hours as a nursing technician, as defined in WAC 246-840-010(30), to be credited toward direct care nursing program clinical hours, and academic credit. Use of this model must include:

(a) A nursing preceptor or nursing supervisor who has experience and educational preparation appropriate to the faculty-planned student learning experience. The nursing preceptor or nursing supervisor must be responsible for ensuring the requirements of WAC 246-840-880 are met;

(b) Nursing program faculty that work with health care facility representatives to align clinical skills and competencies with the nursing student-employee work role/responsibilities;

(c) Nursing student-employees with faculty-planned clinical practice experiences that enable the student to attain new knowledge, develop clinical reasoning/judgment abilities, and demonstrate achievement of clinical objectives and final learning outcomes of the nursing program if the nursing student-employee is in the final nursing course;

(d) The nursing student-employee use of reflection on the development or achievement of clinical objectives and final learning outcomes as designed by nursing education faculty;

(e) Nursing education faculty responsible for the overall supervision and evaluation of the nursing student-employee on a weekly basis;

(f) Evaluation by nursing education faculty to include documentation of the nursing student-employee achievement of clinical objectives and final learning outcomes and competencies of the nursing program; and

(g) Nursing technicians be enrolled in a commission-approved nursing program and be in good standing to receive academic credit.

AMENDATORY SECTION (Amending WSR 16-17-082, filed 8/17/16, effective 9/17/16)

WAC 246-840-534 Use of simulation for clinical experiences in LPN, RN, or RN to BSN nursing education programs located in Washington state. (1) An LPN, RN, or RN to BSN nursing education program may use simulation as a substitute for traditional clinical experiences, after approval by the commission, not to exceed fifty percent of its clinical hours (~~(for a particular course)~~) across the curriculum required for the program type.

(a) Simulation as used in this section means a technique to replace or amplify real experiences with guided experiences evoking or replicating substantial aspects of the real world in a fully interactive manner.

(b) The nursing education program shall have an organizing framework providing adequate fiscal, human, technological, and material resources to support the simulation activities.

(c) Simulation activities must be managed by an individual who is academically and experientially qualified and who demonstrates currency and competency in the use of simulation while managing the simulation program.

(d) The nursing education program shall have a budget sustaining simulation activities and training of the faculty.

(e) The nursing education program shall have appropriate facilities, educational and technological resources and equipment to meet the intended objectives of the simulation.

(f) All faculty involved in simulations, both didactic and clinical, shall have training in the use of simulation and shall

engage in ongoing professional development in the use of simulation.

(g) Faculty to student ratios in the simulation lab must be in the same ratio as identified in WAC 246-840-532 for clinical learning experiences.

(2) Faculty shall organize clinical and practice experiences based on the educational preparation and skill level of the student.

(3) Qualified simulation faculty must supervise and evaluate student clinical and practice experiences.

(a) The nursing education program shall demonstrate that simulation activities are linked to programmatic outcomes.

(b) The nursing education program shall have written policies and procedures on the following:

(i) Short-term and long-term plans for integrating simulation into the curriculum;

(ii) An identified method of debriefing each simulated activity; and

(iii) A plan for orienting faculty to simulation.

(c) Debriefing as used in this section means an activity following a simulation experience that is led by a facilitator, encourages reflective thinking, and provides feedback regarding the participant's performance.

(d) The nursing education program shall develop criteria to evaluate simulation activities.

(e) Students shall evaluate the simulation experience on an ongoing basis.

(f) The program shall include information about use of simulation in its annual report to the commission.

(4) The ratio of simulation hours to clinical experience hours will be calculated as follows:

(a) One clock hour of simulation may be considered equivalent up to two clock hours of clinical experience if the following conditions are met:

(i) The program holds full approval status by the commission, and is nationally accredited;

(ii) The program has received commission approval to conduct simulation, and is in alignment with the provisions of this section;

(iii) The program will collect evaluation data on simulation outcomes with tools provided by the commission.

(b) One clock hour of simulation may be considered equivalent to one clock hour of clinical experience if one or more of the following conditions are present:

(i) The program's approval status is conditional;

(ii) The program is not nationally accredited; unless the program is in pre-accreditation status, and the commission has specifically granted approval for a one-to-two ratio;

(iii) The program has not previously received commission approval to conduct simulation;

(iv) The program is not in alignment with the provisions of this section;

(v) The program is on a current plan of correction, unless the commission has specifically granted approval for a one-to-two ratio.

AMENDATORY SECTION (Amending WSR 13-15-064, filed 7/15/13, effective 8/15/13)

WAC 246-840-840 Nursing technician. The purpose of the nursing technician credential is to provide additional work related opportunities for students enrolled in an LPN, ADN or BSN program, within the limits of their education, to gain valuable judgment and knowledge through expanded work opportunities.

(1) The nursing technician is as defined in WAC 246-840-010~~((+8))~~ (30).

(2) The nursing technician shall have knowledge and understanding of the laws and rules regulating the nursing technician and shall function within the legal scope of their authorization under chapter 18.79 RCW and shall be responsible and accountable for the specific nursing functions which they can safely perform as verified by their nursing program.

(3) The nursing technician shall work directly for the hospital, clinic or nursing home and may not be employed in these facilities through a temporary agency.

AMENDATORY SECTION (Amending WSR 13-15-063, filed 7/15/13, effective 8/15/13)

WAC 246-840-930 Criteria for delegation. (1) Before delegating a nursing task, the registered nurse delegator decides the task is appropriate to delegate based on the elements of the nursing process: ASSESS, PLAN, IMPLEMENT, EVALUATE.

ASSESS

(2) The setting allows delegation because it is a community-based care setting as defined by RCW 18.79.260 (3)(e) (i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).

(3) Assess the patient's nursing care needs and determine the patient's condition is stable and predictable. A patient may be stable and predictable with an order for sliding scale insulin or terminal condition.

(4) Determine the task to be delegated is within the delegating nurse's area of responsibility.

(5) Determine the task to be delegated can be properly and safely performed by the nursing assistant or home care aide. The registered nurse delegator assesses the potential risk of harm for the individual patient.

(6) Analyze the complexity of the nursing task and determine the required training or additional training needed by the nursing assistant or home care aide to competently accomplish the task. The registered nurse delegator identifies and facilitates any additional training of the nursing assistant or home care aide needed prior to delegation. The registered nurse delegator ensures the task to be delegated can be properly and safely performed by the nursing assistant or home care aide.

(7) Assess the level of interaction required. Consider language or cultural diversity affecting communication or the ability to accomplish the task and to facilitate the interaction.

(8) Verify that the nursing assistant or home care aide:

(a) Is currently registered or certified as a nursing assistant or home care aide in Washington state without restriction;

(b) Has completed ~~((both))~~ the ~~((basic caregiver training and))~~ core delegation training before performing any delegated task;

(c) Has a certificate of completion issued by the department of social and health services indicating completion of the required core nurse delegation training;

(d) Has a certificate of completion issued by the department of social and health services indicating completion of diabetes training when providing insulin injections to a diabetic client; and

(e) Is willing and able to perform the task in the absence of direct or immediate nurse supervision and accept responsibility for their actions.

(9) Assess the ability of the nursing assistant or home care aide to competently perform the delegated nursing task in the absence of direct or immediate nurse supervision.

(10) If the registered nurse delegator determines delegation is appropriate, the nurse:

(a) Discusses the delegation process with the patient or authorized representative, including the level of training of the nursing assistant or home care aide delivering care.

(b) Obtains written or verbal consent~~((The patient, or authorized representative, must give written consent to the delegation process under chapter 7.70 RCW. Documented verbal consent of patient or authorized representative may be acceptable if written consent is obtained within thirty days;))~~ under chapter 7.70 RCW, which must be documented in the patient record. Electronic consent is an acceptable format. ~~((Written))~~ Consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse, nursing assistant, or home care aide will be participating in the process.

PLAN

(11) Document in the patient's record the rationale for delegating or not delegating nursing tasks.

(12) Provide specific, written delegation instructions to the nursing assistant or home care aide with a copy maintained in the patient's record that includes:

(a) The rationale for delegating the nursing task;

(b) The delegated nursing task is specific to one patient and is not transferable to another patient;

(c) The delegated nursing task is specific to one nursing assistant or one home care aide and is not transferable to another nursing assistant or home care aide;

(d) The nature of the condition requiring treatment and purpose of the delegated nursing task;

(e) A clear description of the procedure or steps to follow to perform the task;

(f) The predictable outcomes of the nursing task and how to effectively deal with them;

(g) The risks of the treatment;

(h) The interactions of prescribed medications;

(i) How to observe and report side effects, complications, or unexpected outcomes and appropriate actions to deal with them, including specific parameters for notifying the

registered nurse delegator, health care provider, or emergency services;

(j) The action to take in situations where medications and/or treatments and/or procedures are altered by health care provider orders, including:

(i) How to notify the registered nurse delegator of the change;

(ii) The process the registered nurse delegator uses to obtain verification from the health care provider of the change in the medical order; and

(iii) The process to notify the nursing assistant or home care aide of whether administration of the medication or performance of the procedure and/or treatment is delegated or not;

(k) How to document the task in the patient's record;

(l) Document teaching done and a return demonstration, or other method for verification of competency; and

(m) Supervision shall occur at least every ~~((ninety))~~ one hundred twenty days. With delegation of insulin injections, ~~((the supervision occurs at least weekly for the first four weeks, and may be more frequent))~~ after initial training on the task that the registered nurse considers appropriate, the registered nurse will assess the competence of the nursing assistant and determine further supervision needs as appropriate.

(13) The administration of medications may be delegated at the discretion of the registered nurse delegator, including insulin injections. Any other injection (intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) is prohibited. The registered nurse delegator provides to the nursing assistant or home care aide written directions specific to an individual patient.

IMPLEMENT

(14) Delegation requires the registered nurse delegator teach the nursing assistant or home care aide how to perform the task, including return demonstration or other method of verification of competency as determined by the registered nurse delegator.

(15) The registered nurse delegator is accountable and responsible for the delegated nursing task. The registered nurse delegator monitors the performance of the task(s) to assure compliance with established standards of practice, policies and procedures and appropriate documentation of the task(s).

EVALUATE

(16) The registered nurse delegator evaluates the patient's responses to the delegated nursing care and to any modification of the nursing components of the patient's plan of care.

(17) The registered nurse delegator supervises and evaluates the performance of the nursing assistant or home care aide, including direct observation or other method of verification of competency of the nursing assistant or home care aide. The registered nurse delegator reevaluates the patient's condition, the care provided to the patient, the capability of the nursing assistant or home care aide, the outcome of the task, and any problems.

(18) The registered nurse delegator ensures safe and effective services are provided. Reevaluation and documentation occurs at least every ~~((ninety))~~ one hundred twenty days. Frequency of supervision is at the discretion of the registered nurse delegator and may be more often based upon nursing assessment.

(19) The registered nurse must supervise and evaluate the performance of the nursing assistant or home care aide with delegated insulin injection authority ~~((at least weekly for the first four weeks. After the first four weeks the supervision shall occur at least every ninety))~~ as needed, but at least once every one hundred twenty days.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-840-210 Continuing competency definitions.

WAC 246-840-240 Extension.

WAC 246-840-361 Continuing education for ARNP license renewal.

WSR 21-12-016

EMERGENCY RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed May 21, 2021, 6:46 a.m., effective May 21, 2021, 6:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On April 19, 2021, the college received additional revisions for the Title IX section of the student conduct code that will authorize the college to contract with an administrative law judge (ALJ) or some other vendor to serve as presiding officers and/or decision makers during disciplinary proceedings. The new language is more expansive in that it provides authority for an ALJ or other vendor to replace the student conduct committee or the chair of the committee, or both, during disciplinary proceedings. Additionally, the language used to refer to the committee that oversees Title IX hearings should be the student conduct committee rather than the Title IX hearing committee, which is what is currently used. Updating this language will help ensure prompt, impartial administrative proceedings consistent with state and federal law.

Citation of Rules Affected by this Order: Amending WAC 495B-121-350, 495B-121-365, 495B-121-370, and 495B-121-385.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Under RCW 34.05.350 the agency for good cause finds that 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: If Bellingham Technical College does not update its student conduct code to include the

recommended language, it would be unable to hire ALJs and Grand River Solutions, with whom they are already contracted, to assist with Title IX cases.

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 4, 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: May 21, 2021.

Ronda Laughlin
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-350 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 Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-230 through 495B-121-345, these supplemental procedures shall take precedence. Bellingham Technical College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-365 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 ((~~Title IX hearing~~)) 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; and

(f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-370 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the ((~~Title IX hearing~~)) student conduct committee will send a hearing notice to all parties, in compliance with WAC 495B-121-315. 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.

AMENDATORY SECTION (Amending WSR 21-07-085, filed 3/18/21, effective 4/18/21)

WAC 495B-121-385 Initial order. (1) In addition to complying with WAC 495B-121-325 the ((~~Title IX hearing~~)) 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, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college educational 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.

WSR 21-12-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-72—Filed May 21, 2021, 10:03 a.m., effective May 25, 2021]

Effective Date of Rule: May 25, 2021.

Purpose: The purpose of this emergency rule is to open retention seasons for spring Chinook salmon in Snake River.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

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

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

Reasons for this Finding: The 2021 return of upriver spring Chinook salmon was upgraded by the *U.S. v. Oregon* Technical Advisory Committee to eighty-seven thousand from seventy-five thousand two hundred. This allows for additional harvest within the Snake River based on the Washington department of fish and wildlife Commission Policy C-3620. The *U.S. v. Oregon* (2018-2027) Management Agreement provides Endangered Species Act coverage for this 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 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: May 21, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000T Freshwater exceptions to statewide rules—Eastside. Effective the dates of May 25

and May 28, 2021 only, the following provisions of WAC 220-312-050, regarding salmon seasons in the Snake River shall be open as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

Snake River (Franklin/Walla Wall Counties): From Texas Rapids boat launch (south side of the river upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam and including the rock and concrete area between the juvenile bypass return pipe and little Goose Dam along the shoreline of the facility:

Salmon:

(a) Open: Tuesday May 25, 2021 and Friday May 28, 2021 only:

(b) Daily limit 4, up to 1 adult may be retained. Release all salmon other than hatchery Chinook.

(c) Night Closure.

(d) Barbless hooks required.

(e) Salmon may not be removed from the water unless retained as part of the daily limit.

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

WSR 21-12-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-73—Filed May 21, 2021, 1:18 p.m., effective May 21, 2021, 1:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for razor clams.

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

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational razor clam season. Survey results show that adequate clams are available for harvest in Razor Clam Area 5 for recreational harvest. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: May 21, 2021.

Kelly Susewind
Director

NEW SECTION

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

Effective 12:01 a.m. May 24, 2021 through 11:59 a.m. May 24, 2021 and 12:01 a.m. May 26, 2021 through 11:59 a.m. May 26, 2021 and 12:01 a.m. May 28, 2021 through 11:59 a.m. May 28, 2021 and 12:01 a.m. May 30, 2021 through 11:59 a.m. May 30, 2021, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 30, 2021:

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

WSR 21-12-027
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 24, 2021, 1:56 p.m., effective May 24, 2021, 1:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) is responding to the coronavirus disease 2019 (COVID-19) pandemic by amending WAC 296-800-14035 related to prohibited business activities and compliance with conditions for operations under emergency proclamations and their amendments issued under RCW 43.06.220.

Under the emergency rule:

- Employers must not allow employees to perform work where a business activity is prohibited by an emergency proclamation.
- Employers must comply with all conditions for operation required by emergency proclamation, including Safe Start phased reopening requirements for all business and any industry specific requirements.

L&I is monitoring the emergency proclamations, information including guidance from the Center[s] for Disease Control (CDC), and data on COVID-19 and will repeal the emergency rule if no longer needed.

Citation of Rules Affected by this Order: Amending WAC 296-800-14035.

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

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

Reasons for this Finding: This emergency rule making supersedes the emergency rule adopted on May 14, 2021, filed as WSR 21-11-065, as conditions have changed due to a new governor's proclamation being in effect (Proclamation 20-25.13).

L&I is taking action to help prevent the spread of COVID-19 and respond to the governor's proclamations allowing a phased-in reopening of businesses and establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how businesses may reopen without increasing the risk of COVID-19 spreading.

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual, and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." The "Safe Start" orders further build on these by continuing the Safe Start plan for county-by-county phased reopening where the subsequent "Stay Safe-Stay Healthy" orders rolled back the county-by-county phased reopening in response to a COVID-19 outbreak surge. The current "Healthy Washington - Roadmap to Recovery" order, Proclamation 20-25.13, takes a regional approach to easing of the rolled back restrictions and includes CDC guidance for fully vaccinated individuals. The order identifies eight regions that are largely based on the existing emergency medical services regions used for evaluating health care services given the concern for COVID-19's potential impact on the health care system. As the regions fall along county lines and are designed based on the available health care services in the area, there is a strong connection to the metrics for COVID-19 hospitalizations, case data, and general mobility of individuals.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions among individuals not fully vaccinated, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. Business operations and employee expo-

Joel Sacks
Director

asures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees. In setting the phases and conditions for businesses, statewide and county level data was considered. In setting the conditions for businesses under the "Healthy Washington - Roadmap to Recovery" order, the increase in cases and hospitalizations, evidence of how the virus is spread, and factors that increase the risk for person-to-person COVID-19 transmission was [were] considered. Under this order, the phases and conditions for business in each region are based on consideration of four metrics - two metrics that measure community disease levels and two that measure health system capacity.

The conditions of businesses reopening and operating in the governor's orders are also consistent with the social/physical distancing and health and sanitation requirements of chapter 49.17 RCW and the Center[s] for Disease Control and Prevention. Chapter 49.17 RCW and L&I rule require employers to provide a safe and healthy workplace free from recognized hazards, and an employer can be cited for a violation of the "safe place" rule where there are no specific rules to address the particular hazard. And, for COVID-19, lack of social distancing or failure to address symptomatic employees can be cited under the safe place standard. This emergency rule ensures clarity that restrictions and conditions on business under the emergency proclamations are also health and safety requirements under chapter 49.17 RCW and that employers can be subject to a citation and monetary penalties for violations.

This emergency rule is necessary for the preservation of public health, safety, and general welfare of all employees. Emergency rule making is necessary here because providing for a full notice and comment time period will allow businesses to reopen or reopen without following all conditions for reopening, endangering employees and the public during the public comment time period. The governor's proclamation has found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The governor's proclamation is currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

Date Adopted: May 24, 2021.

NEW SECTION

WAC 296-800-14035 2019 Novel coronavirus prohibited business activities and compliance with conditions for operations. (1) Where a business activity is prohibited by an emergency proclamation an employer shall not allow employees to perform work.

(2) Employers must comply with all conditions for operation required by emergency proclamation issued under RCW 43.06.220, including "Healthy Washington - Roadmap to Recovery" reopening requirements for all business and any industry specific requirements.

(3) An "emergency proclamation" means a proclamation that is in effect, including proclamation amendments and conditions, and issued under RCW 43.06.220 and is in effect at the time the emergency rule was adopted.

WSR 21-12-028 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 21-75—Filed May 24, 2021, 4:10 p.m., effective May 29, 2021]

Effective Date of Rule: May 29, 2021.

Purpose: The purpose of this emergency rule is to open retention seasons for spring Chinook salmon in the North Fork Nooksack River.

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

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

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

Reasons for this Finding: This emergency rule is needed to open a hatchery spring Chinook fishery in a portion of the North Fork Nooksack River. Sufficient numbers of hatchery spring Chinook are forecasted to return to allow for a harvest fishery. This fishery has been agreed to with comanagers during the 2021 North of Falcon season setting process and will be actively monitored. Should total encounters reach the agreed to threshold, the fishery may close earlier than scheduled. 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: May 24, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000A Freshwater exceptions to statewide rules—Puget Sound. Effective May 29 through June 30, 2021, the following provisions of WAC 220-312-040 regarding salmon seasons for the Nooksack River, North Fork, shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Nooksack River, North Fork (Whatcom Co.) from the Hwy. 9 Bridge to the yellow marker at the upstream side of Kendall Hatchery:

Salmon: Daily limit 2. Release all salmon other than hatchery Chinook. Night Closure and Anti-snagging rule in effect.

REPEALER

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

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

**WSR 21-12-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-74—Filed May 24, 2021, 4:16 p.m., effective June 1, 2021]

Effective Date of Rule: June 1, 2021.

Purpose: The purpose of this emergency rule is to close recreational fishing seasons for two days per week in a portion of the Cascade River.

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

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

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

Reasons for this Finding: This emergency rule is needed to close fishing on a portion of the Cascade River on days of the week that tribal fishing gear is scheduled to be deployed

in the river. These closures have been agreed to with comanagers during the 2021 North of Falcon proceedings and are necessary to avoid gear conflicts between tribal and recreational fishers. 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: May 24, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Z Freshwater exceptions to statewide rules—Puget Sound. Effective June 1 through July 15, 2021, the following provisions of WAC 220-312-040 regarding recreational fishing seasons for gamefish and salmon on the Cascade River, shall be open as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Cascade River (Skagit Co.) from the mouth to Rockport-Cascade Rd. Bridge:

Open June 1 through July 15, except closed to all recreational fishing on Sundays and Mondays of each week.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 16, 2021:

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

**WSR 21-12-043
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed May 25, 2021, 3:15 p.m., effective May 25, 2021, 3:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is extending emergency amendments to the following rules to implement annual

adjustments to standards for the Washington basic food program: 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?, and 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?

The department is also extending emergency amendments to the following WAC to implement annual adjustments to standards and to include a fifteen percent increase to maximum allotments allowed by H.R. 133 Consolidated Appropriations Act 2021: WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food?

The department has completed the following steps of the permanent rule filing process: CR-101 Preproposal statement of inquiry on October 5, 2020, as WSR 20-20-102; CR-102 Proposed rule making as WSR 20-24-056 on November 24, 2020, Public rule-making hearing on January 5, 2021; Supplemental CR-102 Proposed rule making as WSR 21-07-071 on March 16, 2021, and a second public rule-making hearing based on amendments to WAC 388-478-0060 on April 27, 2021.

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), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R. 133 Consolidated Appropriations Act 2021.

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

Reasons for this Finding: The department is required to use federally prescribed income eligibility standards, which are revised effective October 1 of each year, as stated in 7 C.F.R. § 273.9. Additionally, H.R. 133 Consolidated Appropriations Act 2021 increased maximum food assistance allotments by fifteen percent January 1 through September 30, 2021.

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: May 24, 2021.

Katherine I. Vasquez
Rules Coordinator

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.

- (a) The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.
- (b) From January 1, 2021 through June 30, 2021, the maximum monthly food assistance benefit your AU could receive is listed in column E of this subsection.

EFFECTIVE (~~(10/1/2019)~~) 10/1/2020

Column A	Column B	Column C	Column D	Column E 115% Max Allotment	Column (E) E 165% of Poverty Level
Number of Eligible AU Members	Maximum Gross Monthly Income	Maximum Net Monthly Income	Maximum Allotment		
1	(\$1,354) <u>\$1,383</u>	(\$1,041) <u>\$1,064</u>	(\$194) <u>\$204</u>	<u>\$234</u>	(\$1,718) <u>\$1,755</u>

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 115% Max Allotment	Column (E) E 165% of Poverty Level
2	((1,832)) <u>1,868</u>	((1,410)) <u>1,437</u>	((355)) <u>374</u>	<u>430</u>	((2,326)) <u>2,371</u>
3	((2,311)) <u>2,353</u>	((1,778)) <u>1,810</u>	((509)) <u>535</u>	<u>616</u>	((2,933)) <u>2,987</u>
4	((2,790)) <u>2,839</u>	((2,146)) <u>2,184</u>	((646)) <u>680</u>	<u>782</u>	((3,541)) <u>3,603</u>
5	((3,269)) <u>3,324</u>	((2,515)) <u>2,557</u>	((768)) <u>807</u>	<u>929</u>	((4,149)) <u>4,219</u>
6	((3,748)) <u>3,809</u>	((2,883)) <u>2,930</u>	((921)) <u>969</u>	<u>1,114</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>	<u>1,232</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>	<u>1,408</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>	<u>1,584</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>	<u>1,760</u>	((7,188)) <u>7,299</u>
Each Additional Member	((+479)) <u>+486</u>	((+369)) <u>+374</u>	((+146)) <u>+153</u>	<u>+176</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.

WSR 21-12-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-76—Filed May 25, 2021, 3:49 p.m., effective May 29, 2021]

Effective Date of Rule: May 29, 2021.

Purpose: The purpose of this emergency rule is to close gamefish seasons in Nisqually River tributaries downstream of Alder Dam.

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

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

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

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

Reasons for this Finding: This emergency rule is needed to close recreational fishing seasons in Nisqually River tributaries downstream of Alder Dam that are not otherwise listed in WAC 220-312-040. These closures have been agreed to with comanagers during the 2021 North of Falcon season setting process and is necessary to protect adult steelhead and juvenile salmon. 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: May 25, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000B Freshwater exceptions to statewide rules—Puget Sound. Effective May 29 through June 30, 2021, the following provisions of WAC 220-312-040 regarding recreational fishing seasons for gamefish in Nisqually River tributaries downstream of Alder Dam, shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Nisqually River (Pierce/Thurston Co.) tributaries downstream of Alder Dam, unless otherwise listed in WAC 220-312-040: Closed waters.

WSR 21-12-046
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 26, 2021, 9:07 a.m., effective May 26, 2021, 9:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule revision is to allow the office of superintendent of public instruction (OSPI) flexibility to disburse state funding assistance for school district projects which are also receiving small district modernization grant funds to assist school districts in minimizing project financing costs and provide additional time for a school district to secure sufficient local funding to meet its local funding obligations.

Citation of Rules Affected by this Order: Amending WAC 392-344-130 Disbursements of moneys—Sequence of payments.

Statutory Authority for Adoption: RCW 28A.525.020.

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

Reasons for this Finding: The immediate adoption of this emergency rule-making order is necessary to allow districts who receive the small district modernization grants additional time to secure the local funding required and complete the projects on time.

On March 3, 2021, OSPI initiated permanent rule making to amend WAC 392-344-130 (WSR 21-06-116). The CR-102 was filed on April 21, 2021 (WSR 21-09-091). The public hearing will be May 27, 2021, with comments due the same 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 1, Repealed 0.

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

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

Date Adopted: May 26, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-344-130 Disbursement of moneys—Sequence of payments. The order in which funds shall be disbursed for school facility construction shall be as follows:

(1) Prior to payment of state funding assistance, the school district shall make payments on all claims submitted until such time as the total amount of local funds obligated by the district have been expended.

(2) When local funds have been expended as in subsection (1) of this section, payments of state funding assistance shall then be made: Provided, That for projects authorized for state funding assistance pursuant to WAC 392-344-115(2) after June 30, 1993, payment shall be made after receipt of written certification by the school district board of directors that the school facility project authorized for state funding assistance has been or will be completed according to the purposes for which the state funding assistance is being provided.

(3) Payment of state funding assistance for projects receiving small district modernization grant funds authorized under RCW 28A.525.159 may receive payment prior to the expenditure of local funds obligated by the district with the approval of the superintendent of public instruction. The maximum amount of state funding assistance a district may receive prior to the expenditure of local funds obligated by the district is ninety percent.

WSR 21-12-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-77—Filed May 26, 2021, 9:30 a.m., effective June 2, 2021]

Effective Date of Rule: June 2, 2021.

Purpose: To prevent the spread of disease (*Mycoplasma ovipneumoniae*) to bighorn sheep from domestic goats and sheep on department lands.

Citation of Rules Affected by this Order: Amending WAC 220-500-040.

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

Other Authority: None.

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

Reasons for this Finding: There is an existing and imminent threat on department land where pack goats are in close vicinity to wild bighorn sheep. The current threat of disease transmission could have dire impacts on state bighorn sheep populations during the upcoming recreational and hunting seasons. The Washington department of fish and wildlife plans to start permanent rule making to address this issue for the long-term and with additional public input within the next month.

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

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

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

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

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

Date Adopted: May 26, 2021.

Kelly Susewind
 Director

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-500-040 Regulating public access. (1) The director may close or restrict access to department lands by an emergency or other permanent regulation on a seasonal, emergent, or permanent basis to protect human safety, vulnerable fish and wildlife resources or habitats, and department or other infrastructures from damage or abuse.

(2) The director may control public access on department lands to increase wildlife use in order to improve hunter success or manage wildlife viewing opportunities. Public access may be controlled by limiting the number of users in the areas and/or limiting the days of the week or hours of the day that the public can access the area.

(3) It is unlawful to enter or remain on department lands or portions thereof when such restrictions are in place or are established by department posted notice. This does not apply during the administration of authorized activities.

(4) It is unlawful for any person to cause or allow goats or sheep to be untethered or unattended on the following department of wildlife area units, unless otherwise permitted by the director to do so.

• Colockum Wildlife Area: Colockum Unit

• Wenas Wildlife Area: Wenas Unit

• Chelan Wildlife Area: Chelan Butte, Swakane, and Entiat Units

• LT Murray Wildlife Area: Quilomene and Whiskey Dick Units

• Oak Creek Wildlife Area: Oak Creek and Rock Creek Units

• Scotch Creek Wildlife Area: Scotch Creek, Charles and Mary Eder, Similkameen-Chopaka, and Tunk Valley Units

• Sinlahekin Wildlife Area: Sinlahekin, Driscoll Island, McLoughlin Falls, and Carter Mountain Units

• Asotin Creek Wildlife Area: Asotin Creek, Weatherly, and George Creek Units

• Chief Joseph Wildlife Area: Chief Joseph, 4-O Ranch, and Shumaker Units

(5) Goats or sheep that have tested positive for *Mycoplasma ovipneumoniae* or that are displaying signs of pneumonia or other illness will not be permitted. Goats or sheep showing signs of pneumonia or other illness while on department lands must be removed within forty-eight hours.

(6) If a goat or sheep becomes lost, the owner must make every effort to locate and recover it. If the goat or sheep cannot be recovered, the owner shall contact the department by telephone as soon as possible.

WSR 21-12-049

EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed May 26, 2021, 10:13 a.m., effective May 26, 2021, 10:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is enacting WAC 388-845-2019 on an emergency basis to make temporary modifications to the developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers in order to control the spread of the COVID-19 virus and to meet immediate health and safety needs. This is the fifth filing on WAC 388-845-2019; however, language in this filing differs substantively from the fourth because the Centers for Medicare and Medicaid Services (CMS) approved addi-

tional Appendix K waiver amendments. This emergency cancels and supersedes the CR-103E filed as WSR 21-06-036.

Citation of Rules Affected by this Order: New WAC 388-845-2019.

Statutory Authority for Adoption: RCW 34.05.350.

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: Enacting this rule on an emergency basis is necessary to address effects of the COVID-19 pandemic and it is in the public interest to do so as following notice and comment requirements in the permanent rule-making process would delay temporary changes aimed to help clients avoid disruptions in service. The changes in this emergency filing are necessary to implement temporary changes to the HCBS waivers as approved by CMS in an Appendix K. The changes in this rule address the effects of COVID-19 on clients, providers, and DDA staff by temporarily: Suspending limits on respite services; permitting the state to exceed the budget for some DDA waivers; allowing assistive technology to be available on all waivers; permitting waiver services to be provided remotely when needed; expanding settings where some services can be provided to clients who are quarantined or hospitalized; and other changes.

An Appendix K is a standalone appendix that may be utilized by states during emergency situations to request amendment to approved 1915(c) waivers. It includes actions that states can take under the existing Section 1915(c) home and community-based waiver authority in order to respond to an emergency. DDA's currently-approved Appendix K expired February 28, 2021. CMS approved an additional Appendix K. This fifth emergency filing reflects the changes approved in that Appendix K waiver.

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 1, Amended 0, Repealed 0.

Date Adopted: May 26, 2021.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-845-2019 What modifications to waiver services apply during the COVID-19 outbreak? (1) Notwithstanding any contrary requirement under this title, changes under this section to DDA's home and community-based waivers are effective immediately and necessary to respond to managing the COVID-19 outbreak. All changes, except the provision of remote waiver services, require prior approval by the DDA field services director or designee and will be assessed on a case-by-case basis. Once the emergency declaration regarding COVID-19 is expired, this rule will no longer be applicable, and allowances approved in this rule must end.

(2) The following changes to waiver services are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) All waiver services except goods may be offered remotely by providers when travel to the waiver participant is not possible due to COVID-19 infection or exposure.

(b) Limits to the number of respite hours a client may receive that are generated in the CARE assessment are temporarily suspended. The amount of respite hours a client may receive are determined by DDA.

(c) Assistive technology on the basic plus waiver is included as part of the list of aggregate services. The basic plus, CIIBS, and individual and family services waiver aggregate budgets may be exceeded for COVID-19-related health and safety needs.

(d) Respite provided out-of-state may be provided in excess of thirty days.

(e) Community guide and community engagement may be provided to more than one client at a time.

(f) Staff and family consultation may be provided to more than one client at a time.

(g) Assistive technology is available on all five waiver programs when a waiver participant requires a technology in order to receive waiver-funded remote supports, to increase, maintain, or improve independence with daily living, to increase safety, or to facilitate social communication. Assistive technology is only available to the participant when access to technologies through other resources is not possible. Assistive technology includes:

(i) The evaluation of the needs of the waiver participant, including a functional evaluation of the participant in the participant's customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

(iii) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for the participant and if appropriate, the participant's family;

(vi) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive

technology related life functions of individuals with disabilities; and

(vii) Distance-based observation and reporting for clients not receiving residential habilitation when provided by an assistive technology distance-based observation and reporting specialist.

(h) If transportation is necessary to prevent illness or meet a client's immediate health and safety needs, waiver transportation services may be used to travel to a place where the client will not be receiving waiver services (e.g., transportation to a family member's home).

(3) If a client is displaced from their home because of quarantine or hospitalization, or if a provider is unavailable due to illness or business closure, the following waiver services may be provided in a hotel, shelter, church, other facility-based setting, or the home of a direct-care worker when those supports are not available through the medicaid state plan or another legally liable funding source:

- (a) Residential habilitation;
- (b) Respite care;
- (c) Positive behavior support;
- (d) Staff and family consultation;
- (e) Behavioral health stabilization - positive behavior support;
- (f) Behavioral health stabilization - crisis diversion beds;
- (g) Nurse delegation; and
- (h) Skilled nursing.

(4) Positive behavior support and staff and family consultation may be provided in an acute care setting such as a hospital or short-term institutional setting if:

(a) DDA determines that no other alternatives are available and a nonintegrated setting is the only setting available to meet the client's health and safety needs;

(b) The waiver service provider is not otherwise funded by another resource; and

(c) The waiver services do not duplicate services already available in that setting.

(5) The following changes to waiver service provider qualifications are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) Staff and family consultation may include emergency preparedness consultation support from a provider trained in emergency management or a similar field with a current DDA contract.

(b) Respite care may be provided by currently contracted positive behavior support providers.

(6) Specialized medical equipment and supply, specialized equipment and supply, and assistive technology provider types may include the use of a purchase card and community choice guides when supply or cost impacts occur due to COVID-19.

(7) The following changes to level-of-care evaluations and re-evaluations for waiver participants are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) A client's services may continue and the level-of-care reassessment may be postponed up to one year if due to illness or quarantine:

(i) The client, their representative, or a DDA employee are unable to participate in the reassessment; or

(ii) There is insufficient time for the case manager to complete the annual reassessment paperwork.

(b) On a case-by-case basis, the time limit for approving a client's expired person-centered service plan may be extended if:

(i) The plan currently meets the client's needs; and

(ii) Monthly remote or telephonic monitoring is provided to ensure the plan continues to meet the client's needs.

(c) Telephonic assessments may occur in place of face-to-face assessments on a case-by-case basis. An initial assessment may be conducted telephonically when needed to prevent potential exposure related to COVID-19.

(d) For initial CARE assessments, employees may complete the assessment and person-centered service plan via the telephone or other electronic means and then do a brief in-person visit before moving the assessment to current.

(e) If the previsit questionnaire response indicates it is not safe to do an in-person visit, services can be authorized prior to an in-person visit occurring.

(f) A person-centered service plan, or revisions to a person-centered service plan, may be approved with a retroactive approval date for service needs identified to mitigate harm or risk directly related to COVID-19 impacts. Telephonic (or other information technology medium) assessments may occur when the assessment cannot occur due to impacts of COVID-19.

(8) CIIBS waiver quarterly face-to-face meeting requirement may be provided telephonically when a face-to-face meeting cannot occur due to client or client representative health concerns or staffing availability.

WSR 21-12-056

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 21-80—Filed May 26, 2021, 5:16 p.m., effective May 28, 2021]

Effective Date of Rule: May 28, 2021.

Purpose: The purpose of this emergency rule is to modify recreational salmon seasons in Marine Areas 8-2 and 10.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

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

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

Reasons for this Finding: This emergency rule is necessary to modify salmon seasons in Marine Areas 8-2 and 10 to conform to seasons agreed to with comanagers during the 2021 North of Falcon season-setting process. 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: May 26, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000B Puget Sound salmon—Salt-water seasons and daily limits. The following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 10 and the section of Marine Area 8-2 known as the Tulalip Terminal Area as defined below shall be modified during the dates and as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

1. Catch Record Card Area 8-2; the Tulalip Terminal Area:

(a) Tulalip Terminal Area is defined as: Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point and not including waters east of a line drawn from Mission Point to Hermosa Point.

(b) Effective May 28 through September 6, 2021: Salmon: Open from 12:00 a.m. Friday through 11:59 p.m. Monday of each week, only; except closed the day of June 5, 2021. Daily limit 2.

2. Catch Record Card Area 10: Effective June 1 through June 15: Salmon: Closed.

WSR 21-12-059

EMERGENCY RULES

LAKE WASHINGTON

INSTITUTE OF TECHNOLOGY

[Filed May 27, 2021, 8:48 a.m., effective May 27, 2021, 8:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations. We are continuing to work through the rule-making process, and so need to file for emergency rules again.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures, WAC 495D-121-680, 495D-121-690, 495D-121-700, 495D-121-710, 495D-121-720, 495D-121-730, 495D-121-740, 495D-121-750, and 495D-121-760.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

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

Reasons for this Finding: Lake Washington Institute of Technology is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which took effect on August 14, 2020.

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

Date Adopted: May 10, 2021.

Elsa J. Gossett
Senior Executive Assistant
to the President
and Board of Trustees

NEW SECTION

WAC 495D-121-680 Student conduct code—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 Lake Washington Institute of Technology's standard disciplinary procedures, WAC 495D-121-320 through 495D-121-670, these supplemental procedures shall take precedence. College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

NEW SECTION

WAC 495D-121-690 Student conduct code—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, Lake Washington Institute of Technology 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 Lake Washington Institute of Technology employee conditioning the provision of an aid, benefit, or service of Lake Washington Institute of Technology 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 Lake Washington Institute of Technology'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 495D-121-700 Student conduct code—Prohibited conduct under Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Lake Washington Institute of Technology 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 Lake Washington Institute of Technology 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 Lake Washington Institute of Technology.

(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 Lake Washington Institute of Technology from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Lake Washington Institute of Technology's student conduct code, WAC 495D-121-320 through 495D-121-670.

(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 495D-121-710 Student conduct code—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 either the chair of the student conduct committee or the college's appointed Title IX hearing officer and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) Lake Washington Institute of Technology will appoint the party an advisor of Lake Washington Institute of Technology'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 495D-121-720 Student conduct code—Pre-hearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee or the college's appointed Title IX hearing officer will send a hearing notice to all parties, in compliance with WAC 495D-121-410. 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 Lake Washington Institute of Technology intends to offer the evidence at the hearing.

NEW SECTION

WAC 495D-121-730 Student conduct code—Rights of parties. (1) Lake Washington Institute of Technology's student conduct procedures, WAC 495D-121-320 through 495D-121-670, and this supplemental procedure shall apply equally to all parties.

(2) The Lake Washington Institute of Technology 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 Lake Washington Institute of Technology's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 495D-121-740 Student conduct code—Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair or the college's appointed Title IX hearing officer 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 or the college's appointed Title IX hearing officer must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) **No negative inference:** The committee or the college's appointed Title IX hearing officer 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 or the college's appointed Title IX hearing officer 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 495D-121-750 Student conduct code—Initial order. (1) In addition to complying with WAC 495D-121-430, the student conduct committee or the college's appointed Title IX hearing officer 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 or the college's appointed Title IX hearing officer'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 Lake Washington Institute of Technology's education programs or activities; and

(h) Describes the process for appealing the initial order to the Lake Washington Institute of Technology president.

(2) The committee chair or the college's appointed Title IX hearing officer will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 495D-121-760 Student conduct code—Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495D-121-440.

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

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

consistent with comanager agreements reached in April during the North of Falcon season-setting process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 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: May 27, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000N Freshwater exceptions to statewide rules—Columbia River. Effective June 16 through June 30, 2021, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the I-182 Bridge at Pasco/Richland upstream to Priest Rapids Dam, 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:

From the I-182 Bridge at Pasco/Richland to boundary markers 650 feet below the fish ladders at Priest Rapids Dam: Salmon:

Daily limit 6. Up to 2 adults may be retained. Release wild adult Chinook.

**WSR 21-12-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-78—Filed May 27, 2021, 9:48 a.m., effective June 16, 2021]

Effective Date of Rule: June 16, 2021.

Purpose: The purpose of this emergency rule is to open retention seasons for spring Chinook salmon in the Hanford Reach area of the Columbia River.

Citation of Rules Affected by this Order: Amending WAC 220-312-060.

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

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

Reasons for this Finding: Summer Chinook and sockeye returns to the upper Columbia River are forecasted to be sufficient to provide this recreational opportunity. This action is

**WSR 21-12-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 21-79—Filed May 27, 2021, 2:52 p.m., effective May 29, 2021]

Effective Date of Rule: May 29, 2021.

Purpose: The purpose of this emergency rule is to open additional retention seasons for spring Chinook salmon in the lower Columbia River.

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

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

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

Reasons for this Finding: The *U.S. v. Oregon* technical advisory committee recently updated the 2021 Columbia River spring Chinook return to eighty-seven thousand, which was previously forecasted to be seventy-five thousand two hundred. The upriver Skamania stock steelhead passage at Bonneville Dam is currently the lowest cumulative count to-date. Additional spring Chinook directed angling opportunities are available while providing additional protection for steelhead with a reduced steelhead daily limit. This action also applies summer fishery regulations developed through the 2021 North of Falcon-season setting process. 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: May 27, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia River. Effective May 29 through July 31, 2021, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Megler-Astoria Bridge 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 the Megler-Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), and including Youngs Bay: Salmon and steelhead:

(a) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(b) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(2) From the Rocky Point/Tongue Point line to a line starting from a point on the Washington shore projected through Dolphin Marker J (near Shipping Terminal 9),

southerly across the Columbia River to Columbia Park Boat Ramp in Rainier, Oregon: Salmon and steelhead:

(a) Effective May 29, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective May 30 through May 31, 2021: Daily limit 6: Up to 1 steelhead may be retained. Release all salmon other than hatchery jack Chinook. Release wild steelhead.

(c) Effective June 1 through June 15, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(d) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(e) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(3) From line starting from a point on the Washington shore projected through Dolphin Marker J (near Shipping Terminal 9), southerly across the Columbia River to Columbia Park Boat Ramp in Rainier, Oregon upstream to a line projected from a point on the Washington shore projected through Cottonwood Island Dike Light "31", southerly across the Columbia River to a deadline marker on the Oregon shore and including the waters of Carrolls Channel (waters beginning at the upstream end of Cottonwood Island downstream to the confluence of the Cowlitz River): Salmon and steelhead:

(a) Effective May 29, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead. Fishing from a vessel is prohibited.

(b) Effective May 30 through May 31, 2021: Daily limit 6: Up to 1 steelhead may be retained. Release all salmon other than hatchery jack Chinook. Release wild steelhead.

(c) Effective June 1 through June 15, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead. Fishing from a vessel is prohibited.

(d) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(e) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(4) From a line starting from a point on the Washington shore projected through Cottonwood Island Dike Light "31", southerly across the Columbia River to a

deadline marker on the Oregon shore and including the waters of Carrolls Channel (waters beginning at the upstream end of Cottonwood Island downstream to the confluence of the Cowlitz River) upstream to the I-5 Bridge: Salmon and steelhead:

(a) Effective May 29, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective May 30 through May 31, 2021: Daily limit 6: Up to 1 steelhead may be retained. Release all salmon other than hatchery jack Chinook. Release wild steelhead.

(c) Effective June 1 through June 15, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(d) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(e) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(5) From the I-5 Bridge to Bonneville Dam: Salmon and steelhead:

(a) Effective May 29, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective June 1 through June 15, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(c) Effective June 16 through July 5, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(d) Effective July 6 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery jack Chinook and sockeye. Release wild steelhead.

(6) From Bonneville Dam to The Dalles Dam: Salmon and steelhead:

(a) Effective May 29 through May 30, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective June 5 through June 6, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(c) Effective June 16 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon

other than hatchery Chinook and sockeye. Release wild steelhead.

(7) From The Dalles Dam to a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected southeasterly across the Columbia River to a boundary sign on the Washington southern shore located approximately 200' above the fish ladder exit: Salmon and steelhead:

Effective May 29, 2021, until further notice: Closed to fishing for and retention of salmon and steelhead.

(8) From a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of the The Dalles Dam and Lock boat ramp projected southeasterly across the Columbia River to a boundary sign on the Washington south shore located approximately 200' above the fish ladder exit to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

(a) Effective May 29 through May 30, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(b) Effective June 5 through June 6, 2021: 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 steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

(c) Effective June 16 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

(9) From Hwy. 730 at the Washington/Oregon border to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

Effective June 16 through July 31, 2021: Daily limit 6. Up to 2 adults may be retained of which up to 1 may be a sockeye and up to 1 may be a steelhead. Release all salmon other than hatchery Chinook and sockeye. Release wild steelhead.

REPEALER

The following section of Washington Administrative Code is repealed, effective May 29, 2021:

WAC 220-312-06000M 06000P	Freshwater exceptions to statewide rules—Columbia River.
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Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 21-12-069
EMERGENCY RULES
BOARD OF
PILOTAGE COMMISSIONERS**

[Filed May 28, 2021, 8:24 a.m., effective May 28, 2021, 8:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend WAC 363-116-078 Pilot training program, in order to address the governor's State of Emergency Proclamation 20-05 concerning novel coronavirus/COVID-19.

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

Statutory Authority for Adoption: Chapter 88.16 RCW.

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

Reasons for this Finding: Governor Inslee declared a State of Emergency via Proclamation 20-05 in response to coronavirus/COVID-19. To minimize the risk of introducing vectors of exposure onto a vessel or to pilot trainees, the board may suspend or adjust the pilot training program. Trainees will be allowed to resume regular training at a time determined by the board. Trainees will need to complete at least twelve training program trips to receive maximum stipend during this training program suspension or adjustment. The board may also consider additional training opportunities for pilot trainees, such as distance learning or completion if they are nearing the end of their program, as determined by the trainee evaluation committee.

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

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

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

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

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

Date Adopted: May 25, 2021.

Jaimie C. Bever
Executive Director

AMENDATORY SECTION (Amending WSR 19-03-141, filed 1/22/19, effective 2/22/19)

WAC 363-116-078 Pilot training program. After passing the written examination and simulator evaluation, pilot candidates pursuing a pilot license are positioned on a list for the applicable pilotage district(s) and must enter and successfully complete a training program specified by the board before consideration for licensure.

(1) Notification. Pilot candidates on a list as described in subsection (2) of this section, waiting to enter a training program shall provide the board with the best address for notification to enter into a training program. In addition, a pilot candidate shall provide the board with other means of contact

such as postal mailing or email address, phone number, and/or fax number. The email address with a read receipt request, however, will be considered the primary means of notification by the board. It will be the responsibility of the pilot candidate to ensure the board has current contact information at all times. If a pilot candidate cannot personally receive postal or electronic mail at the address(es) provided to the board for any period of time, another person may be designated in writing as having power of attorney specifically to act in the pilot candidate's behalf regarding such notice. If notice sent to the email address provided by the pilot candidate is not acknowledged after three attempts or if notice sent via certified mail is returned after three attempts to deliver, that pilot candidate will be skipped and the next pilot candidate on the list will be contacted for entry into a training program. A person so skipped will remain next on the list. A pilot candidate or his/her designated attorney-in-fact shall respond within fifteen calendar days of receipt of notification to accept, refuse, or request a delayed entry into a training program.

(2) Entry. At such time that the board chooses to start a pilot candidate or candidates in a training program for either pilotage district, notification shall be given as provided in subsection (1) of this section. Pilot candidates shall be ranked in accordance with a point system established by the board based on overall performance on the written examination and simulator evaluation. Candidates shall be eligible to enter a training program for a pilotage district in the order of such rankings or as otherwise may be determined by the board. A pilot candidate who refuses entry into a program will be removed from the waiting list with no further obligation by the board to offer a position in that district's training program to such pilot candidate. If the pilot candidate indicated interest in the other pilotage district on the application for the written examination, the candidate shall remain available for that other district's training program in accordance with his/her position on that list.

(a) A pilot candidate who is not able to start a training program within two months of the board's specified entry date may, with written consent of the board, delay entry into that training program. When a pilot candidate delays entry into a training program by more than two months, the board gives notice to the next pilot candidate on the list for that pilotage district to enter a training program. The pilot candidate who delays entry shall remain eligible for the next position in that district provided that the next position becomes available within the earlier of:

(i) Four years from the pilot candidate's taking the written examination; or

(ii) The date scheduled for the next pilotage examination for the district.

(b) A pilot candidate not able to start in a training program within two months of the board's specified entry date and who does not obtain the board's written consent to delay entry into a training program shall no longer be eligible for that district's training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license pilot candidates must pass a physical examination by a board-

designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot candidates. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot candidate's fitness to pilot. The physical examination must be taken not more than ninety days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within ninety days prior to the anniversary date of that training license. Training license physical examinations will be at the expense of the pilot candidate. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into a training program as set forth in this section, the pilot candidate shall provide a completed experience questionnaire to the trainee evaluation committee (TEC), a committee created per subsection (11) of this section. The training program consists of three phases: Observation trips, training trips, and evaluation trips, and such other forms of learning and instruction that may be designated. The TEC shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the pilot candidate. If the pilot candidate agrees in writing to the training program, the board shall issue a training license to the pilot candidate, which license shall authorize the pilot candidate to take such actions as are contained in the training program. If the pilot candidate does not agree to the terms of a training program, in writing, within fifteen business days of it being received by certified mail return receipt, or by email read receipt requested, that pilot candidate shall no longer be eligible for entry into that pilotage district's training program and the board may give notice to the next available pilot candidate that he/she is eligible for entry into a training program pursuant to the terms in subsections (1) and (2) of this section.

(5) Initial assigned route.

(a) The TEC shall assign an initial route to each trainee at the beginning of his/her training program between a commonly navigated port or terminal and the seaward boundary of the pilotage district.

(b) Unless an extension of time is granted by the board, within eight months of the beginning of the training program if the trainee is continuously on stipend, plus an additional month for every month a trainee is off stipend (up to a maximum of fifteen months), the trainee must:

(i) Take and pass with a minimum score of eighty percent all conning quizzes provided by the board applicable to the initial assigned route as described in subsection (8) of this section. These quizzes may be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed within the time period specified in (b) of this subsection; and

(ii) Take and pass with a minimum score of eighty-five percent the local knowledge examination(s) provided by the board applicable to the initial assigned route as described in

subsection (8) of this section. These examinations can be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed before the expiration date time period specified in (b) of this subsection; and

(iii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States Coast Guard license to pilot on the initial assigned route.

(6) Specification of trips. To the extent possible, a training program shall provide a wide variety of assigned requirements in three phases: Observation, training, and evaluation trips. A training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the TEC or with pilots designated by the TEC. In the Puget Sound pilotage district, pilot trainees shall complete a minimum of one hundred fifty trips. The board shall set from time to time the minimum number of trips for pilot trainees in the Grays Harbor pilotage district. The total number of trips in a training program shall be established by the board based on the recommendation of the TEC. The board will ensure that during a training program the pilot trainee will get significant review by supervising pilots and the pilot members of the TEC or with pilots designated by the TEC.

(7) Length of training program. For the Puget Sound district the length of the program shall not exceed thirty-six months. For the Grays Harbor district the length of the program will be determined at the time the training program is written.

(8) Local knowledge conning quizzes and local knowledge exams. A training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the pilotage district for which he/she is applying. Each conning quiz will be organized by main channel routes, ports, and approaches. A conning quiz is not intended to replace a local knowledge exam as specified in subsection (5)(b)(ii) of this section, but there will be some overlap of subject matter. A pilot trainee shall pass a conning quiz or quizzes related to the route or harbor area to move from the observation phase to the training phase of his/her training program for that route or harbor area. After a trainee has successfully passed a conning quiz on a main channel route or a port and approach, he/she will be eligible to take the conn on that route or approach unless it is a U.S. flag vessel and the required federal pilotage endorsement has not been obtained. The local knowledge exam for the initial route must be completed within eight months of the training start date if the trainee is taking the stipend. For each month the trainee is off stipend, an additional month is added up to a maximum of fifteen months to successfully pass the appropriate local knowledge exam. The final local knowledge exam must be completed before consideration for licensing and must be successfully passed before the expiration date of the training program. The

conning quizzes and local knowledge exams will be administered at the offices of the board of pilotage commissioners. Eighty percent is the passing grade for conning quizzes, and eighty-five percent is required for the local knowledge exams. If a trainee fails a conning quiz or local knowledge exam, it may be retaken after seven days, but must be passed within the timing deadlines discussed above. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

- (a) Area geography;
- (b) Waterway configurations including channel depths, widths and other characteristics;
- (c) Hydrology and hydraulics of large ships in shallow water and narrow channels;
- (d) Tides and currents;
- (e) Winds and weather;
- (f) Local aids to navigation;
- (g) Bottom composition;
- (h) Local docks, berths and other marine facilities including length, least depths and other characteristics;
- (i) Mooring line procedures;
- (j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;
- (k) Vessel traffic system;
- (l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;
- (m) Air draft and keel clearances;
- (n) Submerged cable and pipeline areas;
- (o) Overhead cable areas and clearances;
- (p) Bridge transit knowledge - Signals, channel width, regulations, and closed periods;
- (q) Lock characteristics, rules and regulations;
- (r) Commonly used anchorage areas;
- (s) Danger zone and restricted area regulations;
- (t) Regulated navigation areas;
- (u) Naval operation area regulations;
- (v) Local ship assist and escort tug characteristics;
- (w) Tanker escort rules - State and federal;
- (x) Use of anchors and knowledge of ground tackle;
- (y) Applicable federal and state marine and environmental safety law requirements;
- (z) Marine security and safety zone concerns;
- (aa) Harbor safety plan and harbor regulations;
- (bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and

(cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.

(9) Rest. It is the responsibility of the pilot trainee to obtain adequate rest. Pilot trainees shall observe the rest rules for pilots in place by federal or state law or regulation and rules established in the applicable pilotage district in which they will train, or any other rest requirements contained in a training program.

(10) Stipend.

(a) At the initial meeting with the TEC the pilot trainee shall indicate whether he/she wishes to receive a stipend during their training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, pilot trainees will agree to forego during their training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of their training program. With the consent of the TEC, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during their training program provided that such change request is provided in writing from the trainee. If the trainee intends to be in nonstipend status more than four consecutive months, his/her particular training program may be constructed to provide recency and/or a change in seniority placement prior to resuming the training program. In the Puget Sound pilotage district the stipend paid to pilot trainees shall be a maximum of six thousand dollars per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-300 sufficient to cover the expense of the stipend, and shall be paid from a pilot training account as directed by the board. In the Grays Harbor pilotage district the stipend paid to pilot trainees shall be determined by the board and shall be contingent upon the board's receipt of funds, from any party collecting the tariff or providing funds, sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board.

Determinations as to stipend entitlement will be made on a full calendar month basis and documentation of trips will be submitted to the board by the third day of the following month. Proration of the stipend shall be allowed at the rate of two hundred dollars per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(i) For the first and last months of a training program (unless the training program starts on the first or ends on the last day of a month); or

(ii) For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month.

(b)(i) In the Puget Sound pilotage district a minimum of twelve trips are required each month for eligibility to receive the minimum stipend amount as set by the board, or eighteen trips to receive the maximum stipend amount as set by the board. A trainee may make more than eighteen trips in a calendar month, but no further stipend will be earned for doing so. In the Grays Harbor pilotage district the minimum number of trips each month for eligibility to receive the stipend is seventy percent or such number or percentage of trips that may be set by the board of the total number of vessel movements occurring in this district during that month. Only trips required by the training program can be used to satisfy these minimums. Trips will be documented at the end of each month.

(ii) Whenever the governor issues a proclamation declaring a state of emergency, the board may determine whether there is a threat to trainees, pilots, vessel crews, or members of the public. Notwithstanding the other provisions of this chapter, the board, at its discretion, may suspend or adjust the

pilot training program during the pendency of a state of emergency lawfully declared by the governor. If the board suspends or adjusts the pilot training program, pilot trainees will continue to receive the maximum stipend allowable under this section if a trainee has taken at least twelve trips per month, until the board determines otherwise. The trainee evaluation committee may further consider additional non-shipboard pilot training including, but not limited to, distance learning.

(c) The TEC will define areas that are considered to be hard-to-get, which many differ for trainees depending on their date of entry. It is the pilot trainee's responsibility to make all available hard-to-get trips, as defined and assigned by the TEC. The board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.

(d) The TEC, with approval by the board may allocate, assign or specify training program trips among multiple pilot trainees. Generally, the pilot trainee who entered his/her training program earlier has the right of first refusal of training program trips provided that the TEC may, with approval by the board, allocate or assign training trips differently as follows:

(i) When it is necessary to accommodate any pilot trainee's initial route;

(ii) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the TEC, that trip will not be considered "available" under (c) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

(e) If a pilot trainee elects to engage in any full-or part-time employment, the terms and conditions of such employment must be submitted to the TEC for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

(f) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of thirty days beginning at the beginning of a month, provided that before any change takes effect, a request is made to the TEC in writing. The requirement for designated hard-to-get trips is waived during the time the pilot trainee is authorized to be in nonstipend status.

(g) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. In the Grays Harbor pilotage district, if there is no separate training surcharge in the tariff, any organization collecting the pilotage tariff levied by WAC 363-116-185 shall transfer sufficient funds to pay the stipend to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not

belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an accounting of such funds to the board on a monthly basis or at such other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges. The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee (TEC) to which members shall be appointed by the board. The TEC shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the pilotage district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The TEC may include such other persons as may be appointed by the board. The TEC shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the TEC cannot reach consensus with regard to any issue it shall report both majority and minority opinions to the board.

(12) Supervising pilots. The board shall designate as supervising pilots those pilots who are willing to undergo such specialized training as the board may require and provide. Supervising pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of supervising pilots available for public inspection at all times. All pilot members TEC shall also be supervising pilots.

(13) Training program trip reports. After each training program trip, the licensed or supervising pilot shall complete a training program trip report form (TPTR) provided by the board. Training program trip report forms prepared by licensed pilots who are supervising pilots shall be used by the TEC and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to a training program. Licensed pilots who are not supervising pilots may only have trainees on board for observation trips. All trip report forms shall be delivered or mailed by the licensed or supervising pilot to the board. They shall not be given to the pilot trainee. The licensed or supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The TEC shall review these training program trip report forms from time to time and the chairperson of the TEC shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the TEC may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the number of trips in a training program.

(14) Termination of and removal from a training program. A pilot trainee's program may be immediately terminated and the trainee removed from a training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district while receiving a stipend;

(d) The pilot trainee is not physically fit to pilot;

(e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in a training program;

(f) Inadequate performance on examinations or other actions required by a training program;

(g) Failure to complete the initial route requirements specified in subsection (5) of this section within the time periods specified;

(h) Inadequate, unsafe, or inconsistent performance in a training program and/or on training program trips as determined by the supervising pilots, the TEC and/or the board; or

(i) Violation of a training program requirement, law, regulation or directive of the board.

(15) Completion of a training program shall include the requirements that the pilot trainee:

(a) Successfully complete all requirements set forth in the training program including any addendum(s) to the program;

(b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot candidate seeks a license; and

(c) Complete portable piloting unit (PPU) training as defined by the TEC.

WSR 21-12-071

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed May 28, 2021, 8:56 a.m., effective May 28, 2021, 8:56 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In chapter 182-531A WAC, the agency is revising these rules to remove the age limits for applied behavioral analysis (ABA) and update language to remove child or children and replace with client. In WAC 182-501-0600, the agency is updating the "N" (No) to a "Y" (Yes) in the ABA covered services table for ABP 21+, CN 21+ and MN 21+.

Citation of Rules Affected by this Order: Amending WAC 182-531A-0100, 182-531A-0200, 182-531A-0400, 182-531A-0500, 182-531A-0600, 182-531A-1100, and 182-501-0060.

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: The immediate revision of these rules is necessary to comply with an order of the Thurston County Superior Court in *J.C. and H.S. v. Washington State Health Care Authority*, no. 20-2-01813-34. The order prohibits the agency from applying prior versions of these rules to requests for ABA therapy from individuals over twenty years of age. The current emergency filing under WSR 21-04-111, filed on February 17, 2021, is set to expire on June 1, 2021. The agency filed the CR-101 notice of intent under WSR 21-04-112 on February 17, 2021. Permanent rule making is ongoing.

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 7, 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 7, Repealed 0.

Date Adopted: May 28, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-020, filed 6/24/19, effective 7/25/19)

WAC 182-501-0060 Health care coverage—Program benefit packages—Scope of service categories. (1) This rule provides a table that lists:

(a) The following Washington apple health programs:

(i) The alternative benefits plan (ABP) medicaid;

(ii) Categorically needy (CN) medicaid;

(iii) Medically needy (MN) medicaid; and

(iv) Medical care services (MCS) programs (includes incapacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005; and

(b) The benefit packages showing what service categories are included for each program.

(2) Within a service category included in a benefit package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefit package:

(a) Are determined in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited prior authorization when allowed by the agency.

(d) Are paid for by the agency or the agency's designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or the agency's designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or the agency's designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Programs not addressed in the table:

(a) Alien emergency medical (AEM) services (see chapter 182-507 WAC); and

(b) TAKE CHARGE program (see WAC 182-532-700 through 182-532-790);

(c) Postpartum and family planning extension (see WAC 182-523-0130(4) and 182-505-0115(5));

(d) Eligibility for pregnant minors (see WAC 182-505-0117); and

(e) Kidney disease program (see chapter 182-540 WAC).

(6) Scope of service categories. The following table lists the agency's categories of health care services.

(a) Under the ABP, CN, and MN headings, there are two columns. One addresses clients twenty years of age and younger, and the other addresses clients twenty-one years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Ambulance (ground and air)	Y	Y	Y	Y	Y	Y	Y
Applied behavior analysis (ABA)	Y	((N)) Y	Y	((N)) Y	Y	((N)) Y	N
Behavioral health services	Y	Y	Y	Y	Y	Y	Y
Blood/blood products/related services	Y	Y	Y	Y	Y	Y	Y
Dental services	Y	Y	Y	Y	Y	Y	Y
Diagnostic services (lab and X-ray)	Y	Y	Y	Y	Y	Y	Y
Early and periodic screening, diagnosis, and treatment (EPSDT) services	Y	N	Y	N	Y	N	N
Enteral nutrition program	Y	Y	Y	Y	Y	Y	Y
Habilitative services	Y	Y	N	N	N	N	N
Health care professional services	Y	Y	Y	Y	Y	Y	Y
Health homes	Y	Y	Y	Y	N	N	N
Hearing evaluations	Y	Y	Y	Y	Y	Y	Y
Hearing aids	Y	Y	Y	Y	Y	Y	Y
Home health services	Y	Y	Y	Y	Y	Y	Y
Home infusion therapy/parenteral nutrition program	Y	Y	Y	Y	Y	Y	Y
Hospice services	Y	Y	Y	Y	Y	Y	N
Hospital services Inpatient/outpatient	Y	Y	Y	Y	Y	Y	Y
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y	Y	Y
Maternity care and delivery services	Y	Y	Y	Y	Y	Y	Y
Medical equipment, supplies, and appliances	Y	Y	Y	Y	Y	Y	Y
Medical nutrition therapy	Y	N	Y	N	Y	N	Y
Nursing facility services	Y	Y	Y	Y	Y	Y	Y
Organ transplants	Y	Y	Y	Y	Y	Y	Y
Orthodontic services	Y	N	Y	N	Y	N	N
Out-of-state services	Y	Y	Y	Y	Y	Y	N
Outpatient rehabilitation services (OT, PT, ST)	Y	Y	Y	Y	Y	N	Y
Personal care services	Y	Y	Y	Y	N	N	N
Prescription drugs	Y	Y	Y	Y	Y	Y	Y
Private duty nursing	Y	Y	Y	Y	Y	Y	N

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Prosthetic/orthotic devices	Y	Y	Y	Y	Y	Y	Y
Reproductive health services	Y	Y	Y	Y	Y	Y	Y
Respiratory care (oxygen)	Y	Y	Y	Y	Y	Y	Y
School-based medical services	Y	N	Y	N	Y	N	N
Vision care Exams, refractions, and fittings	Y	Y	Y	Y	Y	Y	Y
Vision hardware Frames and lenses	Y	N	Y	N	Y	N	N

¹ Clients enrolled in the Washington apple health for kids and Washington apple health for kids with premium programs, which includes the children's health insurance program (CHIP), receive CN-scope of health care services.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0100 Applied behavior analysis (ABA)—Purpose. Applied behavior analysis (ABA) assists ~~((children))~~ clients and their families to improve the core symptoms associated with autism spectrum disorders or other developmental disabilities for which there is evidence ABA is effective, per WAC 182-501-0165. ABA services support learning, skill development, and assistance in any of the following areas or domains: Social, behavior, adaptive, motor, vocational, or cognitive.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0200 Applied behavior analysis (ABA)—Definitions. The following definitions and those found in chapter 182-500 WAC, medical definitions, and chapter 182-531 WAC, physician-related services, apply throughout this chapter.

Applied behavior analysis or ABA - Applied behavior analysis (ABA) is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA involves the systematic application of scientifically validated principles of human behavior to change inappropriate behaviors. ABA uses scientific methods to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods used include: Assessment of behavior, caregiver interviews, direct observation, and collection of data on targeted behaviors. A single-case design is used to demonstrate the relationship between the environment and behavior as a means to implement client-specific ABA therapy treatment plans with specific goals and promote lasting change. ABA also includes the implementation of a functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behaviors.

Autism spectrum disorder (ASD) - A condition, as defined by *Diagnostic and Statistical Manual of Mental Disorders* (DSM) criteria.

Autism spectrum disorder (ASD) diagnostic tool - A validated tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the

basis for treatment decisions and assist in the development of a multidisciplinary clinical treatment plan. Examples of autism diagnostic tools include:

- (a) Autism Diagnosis Interview (ADI); and
- (b) Autism Diagnostic Observation Schedule (ADOS).

Autism spectrum disorder (ASD) screening tool - A tool used to detect ASD indicators or risk factors which then require confirmation. Examples of screening tools include, but are not limited to:

- (a) Ages and Stages Questionnaire (ASQ);
- (b) Communication and Symbolic Behavior Scales (CSBS);
- (c) Parent's Evaluation and Developmental Status (PEDS);
- (d) Modified Checklist for Autism in Toddlers (MCHAT); and
- (e) Screening Tools for Autism in Toddlers and young children (STAT).

Centers of excellence (COE) - A hospital, medical center, or other health care provider that establishes or confirms the diagnosis of an autism spectrum disorder and develops the multidisciplinary clinical treatment plan and that has been designated by the agency as a center of excellence.

Client ~~((or child))~~ - For the purposes of this chapter, client ~~((or child))~~ means a person ~~((younger than twenty-one years of age and))~~ enrolled in Washington apple health (WAH).

Family member - A ~~((child's))~~ client's parent, guardian, caregiver, or other support person.

Qualifying diagnosis - A diagnosis of an ASD, as defined by the DSM, or other developmental disability for which there is evidence ABA is effective.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0400 Applied behavior analysis (ABA)—Client eligibility. To be eligible for applied behavior analysis (ABA) services, a client must:

- (1) ~~((Be under twenty-one years of age; ~~(2))~~))~~ Be covered under Washington apple health (WAH);
- ~~((2))~~ (2) Provide documentation created by a clinician that:
 - (a) Establishes the presence of functional impairment; delay in communication, behavior, or social interaction; or repetitive or stereotyped behavior;

(b) Establishes that the client's impairment, delay, or behaviors adversely affect development or communication, or both, such that:

(i) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit interferes with these activities; or

(ii) The ~~((child's))~~ client's behavior endangers the ~~((child))~~ client or another, or impedes access to home and community activities ~~((available to other children of the same age))~~; and

(c) An agency-recognized center of excellence (COE) has confirmed that:

(i) The ~~((child))~~ client meets all requirements in (a) and (b) of this subsection;

(ii) The ~~((child))~~ client has a qualifying diagnosis;

(iii) There is a reasonable calculation the requested services will result in measurable improvement in either the client's behavior, skills, or both; and

(iv) Either:

(A) Less intrusive or less intensive behavioral interventions have been tried and have not been successful; or

(B) No equally effective and substantially less costly alternative is available for reducing interfering behaviors, increasing prosocial skills and behaviors, or maintaining desired behaviors.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0500 Applied behavior analysis (ABA)—Stage one: COE evaluation and order. (1) Any person may refer a client suspected of meeting the criteria in WAC 182-531A-0400 to a center of excellence (COE) for an evaluation.

(2) The COE must complete a comprehensive diagnostic evaluation and create a multidisciplinary clinical treatment plan that includes:

(a) Documentation showing how the diagnosis was made or confirmed by a COE physician or psychologist that includes:

(i) Results of formal diagnostic procedures performed by a clinician, including name of measure, dates, and results, as available; or

(ii) Clinical findings and observations used to confirm the diagnosis;

(b) Documentation showing that the client's behaviors or skill deficits adversely affect on development or communication, or demonstrating injurious behavior, such that:

(i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit interferes with these activities; or

(ii) The client presents a safety risk to self or others;

(c) Documentation showing that, if applied behavior analysis (ABA) is included in the multidisciplinary clinical treatment plan:

(i) Less intrusive or less intensive behavioral interventions have been tried and were not successful; or

(ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors;

(d) Recommendations that address all of the ~~((child's))~~ client's health care needs;

(e) A statement that the evaluating and prescribing provider believes that there is a reasonable calculation that the requested ABA services will result in measurable improvement in the client's behavior or skills; and

(f) An order for ABA services. If ordered, a copy of the COE's comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan must be forwarded to the ABA provider selected by the ~~((child's))~~ client's guardian under this chapter or provided to the ~~((child's))~~ client's guardian to forward to the selected ABA provider.

(3) The COE must also include the following items, if it possesses a copy:

(a) Results of routine developmental screening performed by the ~~((child's))~~ client's primary care provider at well ~~((child))~~ client visits;

(b) Audiology and vision assessment results, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism screening questionnaire, including date completed and significant results;

(d) Documentation of a formal cognitive or developmental assessment performed by the COE or another qualified clinician, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores; and

(e) Documentation of a formal adaptive behavior assessment performed by the COE or another qualified clinician, including name of measure, dates, results, and standardized scores providing scores of each domain.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0600 Applied behavior analysis (ABA)—Stage two: Functional assessment and treatment plan development. (1) If the center of excellence's (COE's) evaluating and prescribing provider has ordered applied behavior analysis (ABA) services, the client may begin stage two - ABA assessment, functional analysis, and ABA therapy treatment plan development.

(2) Prior to implementing the ABA therapy treatment plan, the ABA provider must receive prior authorization from the agency. The prior authorization request, including the assessment and ABA therapy treatment plan, must be received by the agency within sixty days of the family scheduling the functional assessment.

(3) The ~~((child's))~~ client's legal guardian selects the ABA provider and the setting in which services will be rendered. ABA services may be rendered in one of the following settings:

(a) Day services program, which mean an agency-approved, outpatient facility or clinic-based program that:

(i) Employs or contracts with a lead behavior analysis therapist (LBAT), therapy assistant, speech therapist, and if clinically indicated, an occupational therapist, physical therapist, psychologist, medical clinician, and dietitian;

- (ii) Provides multidisciplinary services in a short-term day treatment program setting;
 - (iii) Delivers comprehensive intensive services;
 - (iv) Embeds early, intensive behavioral interventions in a developmentally appropriate context;
 - (v) Provides an individualized developmentally appropriate ABA therapy treatment plan for each ~~((child))~~ client; and
 - (vi) Includes family support and training.
- (b) Community-based program, which means a program that provides services in a natural setting, such as a school, home, office, or clinic. A community-based program:
- (i) May be used after discharge from a day services program (see subsection (3)(a) of this section);
 - (ii) Provides a developmentally appropriate ABA therapy treatment plan for each ~~((child))~~ client;
 - (iii) Provides ABA services in the home (wherever the ~~((child))~~ client resides), office, clinic, or community setting, as required to accomplish the goals in the ABA therapy treatment plan. Examples of community settings are: A park, restaurant, ~~((child))~~ client care, early ~~((childhood))~~ client education, or school and must be included in the ABA therapy treatment plan with services being provided by the enrolled LBAT or therapy assistant approved to provide services via authorization;
 - (iv) Requires recertification of medical necessity through continued authorization; and
 - (v) Includes family education, support, and training.
- (4) An assessment, as described in this chapter, must be conducted and an ABA therapy treatment plan developed by an LBAT in the setting chosen by the ~~((child's))~~ client's legal guardian. The ABA therapy treatment plan must follow the agency's ABA therapy treatment plan report template and:
- (a) Be signed by the LBAT responsible for the plan development and oversight;
 - (b) Be applicable to the services to be rendered over the next six months, based on the LBAT's judgment, and correlate with the COE's current diagnostic evaluation (see WAC 182-531A-0500(2));
 - (c) Address each behavior, skill deficit, and symptom that prevents the ~~((child))~~ client from adequately participating in home, school, community activities, or that presents a safety risk to the ~~((child))~~ client or others;
 - (d) Be individualized;
 - (e) Be client-centered, family-focused, community-based, culturally competent, and minimally intrusive;
 - (f) Take into account all school or other community resources available to the client, confirm that the requested services are not redundant, but are in coordination with, other services already being provided or otherwise available, and coordinate services (e.g., from school and special education or from early intervention programs and early intervention providers) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);
 - (g) Focus on family engagement and training;
 - (h) Identify and describe in detail the targeted behaviors and symptoms;
 - (i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, inten-

sity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;

(j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms, (e.g., discrete trial training, reinforcement, picture exchange, communication systems) including documentation of the number of service hours, in terms of frequency and duration, for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in the three- to six-month treatment period;

(l) Incorporate strategies for generalized learning skills;

(m) Integrate family education, goals, training, support services, and modeling and coaching ~~((family/child))~~ family/client interaction;

(n) Incorporate strategies for coordinating treatment with school-based special education programs and community-based early intervention programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-1100 Applied behavior analysis (ABA)—Prior authorization and recertification of ABA services. (1) The medicaid agency requires prior authorization (PA) and recertification of the medical necessity of applied behavior analysis (ABA) services.

(2) Requirements for PA requests are described in WAC 182-531A-0700.

(3) The agency may reduce or deny services requested based on medical necessity (refer to subsection (5) of this section) when completing PA or recertification responsibilities.

(4) The following are requirements for recertification of ABA services:

(a) Continued ABA services require the agency's authorization. Authorization is granted in three-month increments, or longer at the agency's discretion;

(b) The lead behavior analysis therapist (LBAT) must request authorization for continuing services three weeks prior to the expiration date of the current authorization. A reevaluation and revised ABA therapy treatment plan documenting the client's progress and showing measurable changes in the frequency, intensity, and duration of the targeted behavior/symptoms addressed in the previously authorized ABA therapy treatment plan must be submitted with this request. Documentation must include:

(i) Projection of eventual outcome;

(ii) Assessment instruments;

(iii) Developmental markers of readiness; and

(iv) Evidence of coordination with providers.

(c) When completing recertification responsibilities, the agency may request another evaluation from the COE to obtain that provider's review and recommendation. This COE

provider must review the ABA therapy treatment plan, conduct a face-to-face visit with the ~~(child)~~ client, facilitate a multidisciplinary record review of the client's progress, hold a family conference, or request a second opinion before recommending continued ABA services. Services will continue pending recertification.

(d) When completing recertification responsibilities, the agency may retroactively authorize dates of service. Services will continue pending recertification.

(5) Basis for denial or reduction of services includes, but is not limited to, the following:

(a) Lack of medical necessity, for example:

(i) Failure to respond to ABA services, even after trying different ABA techniques and approaches, if applicable; or

(ii) Absence of meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family disruption, change of residence), if applicable. For changes to be meaningful they must be:

(A) Confirmed through data;

(B) Documented in charts and graphs;

(C) Durable over time beyond the end of the actual treatment session; and

(D) Generalizable outside of the treatment setting to the client's residence and the larger community within which the client resides; or

(b) Noncompliance as demonstrated by a pattern of failure of the family to:

(i) Keep appointments;

(ii) Attend treatment sessions;

(iii) Attend scheduled family training sessions;

(iv) Complete homework assignments; and

(v) Apply training as directed by the therapy assistant or LBAT. Absences that are reasonably justified (e.g., illness) are not considered a pattern.

ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available, but recreational shares will only support a limited number of open days in the Marine Areas listed in this section. In addition, this emergency regulation opens the Marine Area 5, 6, and 7 seasons one hour before sunrise to one hour after sunset, which is the default daily start time and end time for those areas. This regulation opens the recreational nonspot shrimp fisheries on the dates listed for Marine Areas 8-1, 8-2, 9, 11, and 13 only. The nonspot shrimp fisheries have maximum depth restrictions specific to each area to limit capture and handling of spot shrimp. Spot shrimp must be immediately released unharmed during nonspot shrimp seasons. 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: May 28, 2021.

Amy H. Windrope
for Kelly Susewind
Director

WSR 21-12-073

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 21-81—Filed May 28, 2021, 10:47 a.m., effective May 28, 2021, 10:47 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreational harvest rules for Puget Sound shrimp.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000F; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-

NEW SECTION

WAC 220-330-07000G Shrimp—Areas and seasons.

Notwithstanding the provisions of WAC 220-330-070, effective immediately it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Area 5:

Open through Sept 15 for all shrimp species.

(2) Marine Areas 6 (excluding the Discovery Bay Shrimp District) and 7 West:

a. Open June 2 through June 5 for all shrimp species.

b. Open June 16 through June 19 for all shrimp species.

(3) Marine Area 7 South:

Open June 2 through June 5 for all shrimp species.

(4) Marine Area 7 East:

a. Open June 2 through June 5 for all shrimp species.

b. Open June 16 through June 19 for all shrimp species.

(5) Marine Areas 8-1 and 8-2:

a. Open June 2 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

b. Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on June 2 in Marine Area 8-2.

c. Open June 3 through October 15 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(6) Marine Area 9:

a. Open June 2 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

b. Open June 3 through October 15 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(7) Marine Area 11:

a. Open June 2 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

b. Open June 3 through October 15 for shrimp species other than spot shrimp with a 150-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 150 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

(8) Marine Area 12:

Open on June 2, June 5, and June 16 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(9) Marine Area 13:

Open June 1 through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

REPEALER

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

WAC 220-330-07000F Shrimp—Areas and seasons. (21-51)

WSR 21-12-078

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed May 28, 2021, 1:39 p.m., effective June 1, 2021]

Effective Date of Rule: June 1, 2021.

Purpose: The agency is amending this section to align with the Consolidated Appropriations Act, 2021 (Sec. 208) which restored eligibility for medicaid benefits for individuals from the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

Citation of Rules Affected by this Order: Amending WAC 182-503-0535.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Consolidated Appropriations Act, 2021 (Sec. 208).

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

Reasons for this Finding: The Consolidated Appropriations Act, 2021 was enacted on December 27, 2020, and restored medicaid funding for eligible individuals living in the United States in accordance with the Compacts of Free Association. The immediate revision of this rule is necessary to align with the act while the agency proceeds with the permanent rules process.

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

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

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

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

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

Date Adopted: May 28, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-10-002, filed 4/22/15, effective 5/23/15)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than twenty-one years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers

his or her child if the child is younger than twenty-one years of age. In that case, the child retains qualified alien status even after he or she turns twenty-one years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d)(5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a)(7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b)(3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted special immigrant status under INA Section 101 (a)(27).

(xii) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than twenty-one years of age.

(xiii) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least fifty percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) Eligibility.

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(d) A nonqualified alien may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(e) An undocumented person may be eligible for:

(i) Alien medical programs;

(ii) State-only funded apple health for kids; or

(iii) State-only funded apple health for pregnant women.

(3) The five-year bar.

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection((s)) (1)(b)(vi) through (xii) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

WSR 21-12-080

EMERGENCY RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed May 28, 2021, 2:25 p.m., effective May 28, 2021, 2:25 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 296-307 WAC, temporary worker housing. The department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to

respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed subsequent emergency rules on September 10, 2020 (WSR 20-19-048 and 20-19-049), January 8, 2021 (WSR 21-03-012 and 21-03-013) and May 7, 2021 (WSR 21-11-016 and 21-11-012), to protect occupants from COVID-19 hazards in licensed temporary worker housing. This emergency rule supersedes the May 7, 2021, emergency rule as conditions have changed due to the updated guidance from the Center[s] for Disease Control and Prevention (CDC) regarding mask use and physical distancing for fully vaccinated individuals.

Except as described below, this emergency rule continues the requirements under the previous emergency rules that operators: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters, prohibit the use of the top of bunk beds; (5) ensure the ventilation requirements are met, including specific requirements for mechanical ventilation systems or that windows are open in buildings without mechanical ventilation; (6) ensure frequent cleaning and disinfecting of surfaces; (7) identify and isolate occupants with suspect and confirmed positive cases; (8) ensure isolation requirements are met including medical monitoring by a licensed health care provider; (9) report to L&I division of occupational safety and health within twenty-four hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (10) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

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

Changes to this emergency rule include:

- Updates the requirements related to fully vaccinated occupants as follows:
 - Cloth face coverings do not apply to fully vaccinated occupants.
 - Physical distancing other than in sleeping quarters do not apply to fully vaccinated occupants.
 - In sleeping quarters with only fully vaccinated occupants, bed spacing must meet the requirements under WAC 296-307-16170 and both beds of bunk beds may be used.

- Operators must first verify employees are fully vaccinated for the reduced physical distancing/bed spacing requirements to apply and to discontinue cloth face covering use.
- To verify vaccination status, operators can have the occupant sign a document attesting to their status or provide proof of vaccination. Operators must be able to demonstrate they have verified vaccination status and the rule identifies possible options for verification methods. Operators are not required to verify vaccination status if they choose to maintain physical distancing and masking for all occupants.
- Removes the provision allowing beds to be separated by nonpermeable barriers placed perpendicular to the wall with a thirty-six inch minimum aisle between the bed and the barrier.
- Clarifies that physical barriers for fixtures such as sinks such where occupants may come in close contact for short periods of time is amended to apply only when physical distancing cannot be maintained.
- Clarifies that groups shelter plans can be utilized if all occupants are not fully vaccinated. The provisions for fully vaccinated groups shelter options are removed as unnecessary given the overall changes in the emergency rule for fully vaccinated occupants.
- Streamlines the requirements for cleaning and disinfecting to align with current CDC guidance.
- Makes other changes for consistency and clarity.

Both L&I and DOH each filed a Preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-10-050, regarding permanent amendments to the existing permanent rules to address hazards from COVID-19 or other outbreaks of airborne infectious diseases. Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation requirements, and isolation requirements during an outbreak.

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

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

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

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy, and the amendments transitioning to a phased-in approach to reopening Washington state under the current Proclamation 20-25.13 "Healthy Washington - Roadmap to Recovery." Under Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of DOH, L&I, and CDC. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a min-

imum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the first emergency rule, the governor issued Proclamation 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place, the requirements covered by the rule were not included in the governor's order.

As new information, data, and science becomes available, it is important that DOH and L&I continue to update and immediately amend existing rules to help prevent the spread of COVID-19. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the 2021 growing season. The Governor's Stay Home, Stay Healthy order as amended to the Roadmap for Recovery and Proclamation 20-25.13 are currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

Date Adopted: May 28, 2021.

Joel Sacks
Director

NEW SECTION

WAC 296-307-16102 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure. (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from the hazards posed by SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19):

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

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing, the use of cloth face coverings, proper respiratory etiquette, the importance of prompt sanitizing of frequently touched items; common symptoms and risk factors; how to get a vaccine and where to get answers about vaccine questions unless all occu-

pants are already fully vaccinated; and what to do if they develop symptoms.

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information. For the purposes of this section, a community health worker is defined as a frontline public health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the worker to serve as a liaison/link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A community-based outreach worker is defined as a legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

Note: When there is a designated or recognized office at an employer's establishment, all visitors should check in to provide their name and contact information and complete a screening to ensure they are symptom free. To the extent possible, a minimum number of visitors should be allowed at a time and 6-foot physical distancing should be maintained. Personal protective equipment must be worn at all times.

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

(c) The operator must provide at no cost an adequate number of cloth face coverings for occupants who are not fully vaccinated to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules. The operator must instruct occupants who are not fully vaccinated to use cloth face coverings in public and at housing, as recommended in the public health orders.

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities. Fully vaccinated occupants are not required to physically distance except as indicated in (d)(ii)(B) of this subsection.

(i) If needed to facilitate physical distancing, the operator must provide additional temporary cooking, bathing, washing, and toilet facilities.

(ii) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe in sleeping quarters where not all occupants are fully vaccinated. Except as allowed under (f) of this subsection, only the bottom bed of bunk beds may be used.

(B) In sleeping quarters where all occupants are fully vaccinated, bed spacing must meet the requirements under WAC 296-307-16170 and both bunks of bunk beds may be used.

(iii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time and where physical distancing cannot be maintained. Any barriers placed near cooking equipment must be fire retardant.

(iv) If needed to facilitate physical distancing in common areas, the operator must provide additional facilities or services that meet the requirements of this chapter, such as additional refrigeration or portable sinks.

(e) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility/building has a mechanical ventilation system, maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. TWH operators must have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation or the percentage of outside air that circulates into the system and verify the following:

(A) Make sure all HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with a minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) Maximize the HVAC system's outdoor air intake. Make sure exhaust air is not pulled back into the building through HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions such as wildfire smoke.

(D) Use appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) when changing filters.

(E) Maintenance checks must occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks must occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turn on mechanical ventilation systems (i.e., HVAC) or open windows whenever the TWH facility or building is occupied.

(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.

(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields

near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

(f) Group shelter plans can be utilized if all occupants are not fully vaccinated. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "Group shelter" means a dwelling unit or cluster of dwelling units with sleeping facilities for up to fifteen occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

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

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

(B) Maintain egress requirements.

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

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

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

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

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

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

(D) Schedules are shared and conspicuously posted.

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

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

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

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

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

(ii) Provide adequate cleaning supplies to occupants for cleaning and disinfecting of living spaces of dwelling units, family shelters, and group shelters.

(iii) Clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or confirmed SARS-CoV-2 positive

cases have been, according to CDC guidelines and before the space is used by others.

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

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

(2) COVID-19 screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases.

(a) The operator must develop and implement a plan to identify and isolate occupants with suspect SARS-CoV-2 and positive SARS-CoV-2, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, and loss of taste or smell. The operator must provide each occupant with a thermometer or must designate and train a person to use a "no touch" or "no contact" thermometer to check all occupants' temperatures daily. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever. Fully vaccinated occupants do not need to be screened for COVID-19.

(ii) A "suspect SARS-CoV-2 case" is defined as a person with signs and symptoms compatible with COVID-19 above who has not been tested yet, or refuses testing. Upon identification of suspect SARS-CoV-2 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect SARS-CoV-2 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(iv) Other individuals who have been in close contact of the symptomatic suspect SARS-CoV-2 case or confirmed SARS-CoV-2 positive must be quarantined, and remain separated from others in the housing. Individuals who have been fully vaccinated per CDC guidelines are not required to quarantine. Members of a group shelter will quarantine together. Individuals may leave quarantine when they meet CDC guidance for quarantine or when released from quarantine by the local health officer. Anyone becoming symptomatic or testing positive for SARS CoV-2 during quarantine will be moved to isolation.

(v) Any occupant in quarantine must continue to be screened for symptoms of COVID-19 as described in (a)(i) of this subsection.

(vi) Confirmed SARS-CoV-2 positive cases must be isolated and only housed with other confirmed cases and must have separate bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the confirmed occupant will have the option to isolate with the family members.

(vii) The operator must report suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants in isolation to the division of occupational safety and health (DOSH) within twenty-four hours after placement.

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

(b) The operator must ensure appropriate isolation facilities for suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits or assesses employees daily, at the employer's expense to perform a health check for each individual in isolation. Evaluations by licensed health care providers may be performed in-person, using audio telemedicine, or video telemedicine. At a minimum, the health care professional must review symptoms; temperature; oxygen saturation via pulse oximetry; and determine if additional medical services are needed, such as an in-person evaluation or treatment. If the licensed health care professional is not already familiar with the occupant's medical history, the licensed health care professional must obtain relevant medical history from the occupant.

(ii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services. If the health care provider has a question about the safety, health, or well-being for the occupant in isolation, they may contact the housing operator for further information.

(iii) For evaluations done by telehealth, the operator must ensure each occupant in isolation has or is provided a working telephone with a clear connection. The operator must also provide the occupant with a U.S. Food and Drug Administration approved pulse oximeter and thermometer with written and verbal instructions on use and interpretation of their results in the occupant's preferred language.

(iv) If an occupant prefers not to self-operate the pulse oximeter, and/or thermometer, the employer must ensure that they have competent assistance.

(v) Interpretation services must be provided when the medical professional is not fluent in the occupant's preferred language.

(vi) For purposes of this subsection, a licensed health care professional means:

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

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

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

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

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

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

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) if authorized to monitor suspect SARS-CoV-2 cases or SARS-CoV-2 positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

(H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner.

(I) Facilitate transportation for in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.

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

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

(ix) Permit access to other medical professionals who offer health care services in addition to the licensed health care professional(s) contracted to provide health checks.

(x) The operator must provide food and water.

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

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

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

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

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

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

(4) Consistent with WAC 296-307-16120(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(5) Vaccination verification.

(a) Occupants who are vaccinated against COVID-19 by a two-dose mRNA vaccine (such as Moderna and Pfizer), or a single dose vaccine (such as Johnson & Johnson), are considered "fully vaccinated" two weeks after the final dose of vaccine (the second dose for a two-dose regimen, or the single dose for a single-dose regimen). Occupants who have

been vaccinated outside the United States with a vaccine that has received World Health Organization (WHO) Emergency Use Listing (EUL) are considered fully vaccinated if:

(i) The occupant has completed the full vaccination series;

(ii) The appropriate amount of time has passed according to the manufacturer's guidance for the occupant to be fully protected.

(b) Occupants who have not received an FDA-authorized or WHO Emergency Use Listing COVID-19 vaccine must not be considered fully vaccinated.

(c) The operator is not required to verify vaccination status if masking and physical distancing are to be maintained; operators have the choice to maintain masking and physical distancing in their housing.

(d) If an occupant declines to provide verification of their vaccination status, they are not considered fully vaccinated.

(e) The operator must have a demonstrable process to verify vaccination status, but is not required to keep a copy of occupant's vaccination records, which may require secure and confidential handling as a medical record. The operator must establish a way of demonstrating they have verified vaccination status for occupants who are not wearing masks and are not being required to maintain a six-foot physical distance. Examples may include:

- Creating a log of the names of occupants who have been verified as fully vaccinated and the date that the verification was done;

- Marking an occupant's badge, site credential, or other individually identified item to indicate the occupant's status as fully vaccinated;

- Documented occupant attestations of vaccination; or

- Other methods that demonstrate an operator has verified an occupant has been fully vaccinated.

(f) To verify vaccination status, operators can require occupants to provide proof of vaccination status or signed document attesting to the employee's fully vaccinated status.

(i) Proof of vaccination means one of the following:

- A CDC vaccination card (which includes name of person vaccinated, type of vaccine provided, and date last dose administered);

- A photo of a CDC vaccination card as a separate document or a photo of the occupant's vaccine card stored on a phone or electronic device; or

- Documentation of vaccination from a health care provider electronic health record or state immunization information system record.

(ii) Signed self-attestation may be done in hard copy or electronically.

(g) The operator must provide evidence of their process to verify occupant vaccination status to the department upon request.

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

WSR 21-12-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-82—Filed May 28, 2021, 2:54 p.m., effective June 1, 2021]

Effective Date of Rule: June 1, 2021.

Purpose: Amends freshwater fishing rules for Hoh River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000K; and amending WAC 220-312-020.

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

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

Reasons for this Finding: This emergency rule is needed to provide opportunity for gamefish while protecting spring/summer-run Chinook salmon. 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: May 28, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000K Freshwater exceptions to statewide rules—Coast. Effective June 1 through June 30, 2021, provisions of WAC 220-312-020 regarding gamefish seasons for the Hoh River shall be as described below. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) Hoh River (Jefferson Co.), from Olympic National Park boundary near the mouth upstream to the Department of Natural Resources Hoh Oxbow Campground boat launch.

(a) Statewide minimum size and daily limit except release wild rainbow trout and cutthroat minimum size 14".

(b) Only one single point barbless hook allowed. Bait prohibited. Release all wild steelhead.

(c) Fishing from a boat allowed but no fishing from a floating device with an internal combustion motor.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-312-02000K Freshwater exceptions to statewide rules—Coast.

WSR 21-12-083
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed June 1, 2021, 9:11 a.m., effective June 1, 2021, 9:11 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-358 WAC, Temporary worker housing, the department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed subsequent emergency rules on September 10, 2020 (WSR 20-19-048 and 20-19-049), January 8, 2021 (WSR 21-03-012 and 21-03-013) and May 7, 2021 (WSR 21-11-016 and 21-11-012), to protect occupants from COVID-19 hazards in licensed temporary worker housing. This emergency rule supersedes the May 7, 2021, emergency rule as conditions have changed due to the updated guidance from the Center[s] for Disease Control and Prevention (CDC) regarding mask use and physical distancing for fully vaccinated individuals.

Except as described below, this emergency rule continues the requirements under the previous emergency rules that operators: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters, prohibit the use of the top of bunk beds; (5) ensure the ventilation requirements are met, including specific requirements for mechanical ventilation systems or that windows are open in buildings without mechanical ventilation; (6) ensure frequent cleaning and disinfecting of surfaces; (7) identify and isolate occupants with suspect and confirmed positive cases; (8) ensure isolation requirements are met including medical monitoring by a licensed health care provider; (9) report to L&I division of occupational safety and health within twenty-four hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (10) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

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

Changes to this emergency rule include:

(1) Updates the requirements related to fully vaccinated occupants as follows:

(a) Cloth face coverings do not apply to fully vaccinated occupants.

(b) Physical distancing other than in sleeping quarters do not apply to fully vaccinated occupants.

(c) In sleeping quarters with only fully vaccinated occupants, bed spacing must meet the requirements under WAC 296-307-16170 and both beds of bunk beds may be used.

(d) Operators must first verify employees are fully vaccinated for the reduced physical distancing/bed spacing requirements to apply and to discontinue cloth face covering use.

(e) To verify vaccination status, operators can have the occupant sign a document attesting to their status or provide proof of vaccination. Operators must be able to demonstrate they have verified vaccination status and the rule identifies possible options for verification methods. Operators are not required to verify vaccination status if they choose to maintain physical distancing and masking for all occupants.

(f) Removes the provision allowing beds to be separated by nonpermeable barriers placed perpendicular to the wall with a thirty-six inch minimum aisle between the bed and the barrier.

(g) Clarifies that physical barriers for fixtures such as sinks such where occupants may come in close contact for short periods of time is amended to apply only when physical distancing cannot be maintained.

(h) Clarifies that groups shelter plans can be utilized if all occupants are not fully vaccinated. The provisions for fully vaccinated groups shelter options are removed as unnecessary given the overall changes in the emergency rule for fully vaccinated occupants.

(i) Streamlines the requirements for cleaning and disinfecting to align with current CDC guidance.

(j) Makes other changes for consistency and clarity.

Both L&I and DOH each filed a Preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-10-050, regarding permanent amendments to the existing permanent rules to address hazards from COVID-19 or other outbreaks of airborne infectious diseases. Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation requirements, and isolation requirements during an outbreak.

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

Statutory Authority for Adoption: RCW 70.114A.065.

Other Authority: RCW 43.70.335.

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

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy, and the amendments transitioning to a phased-in approach to reopening Washington state under the current Proclamation 20-25.13 "Healthy Washington - Roadmap to Recovery." Under Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of DOH, L&I, and CDC. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the first emergency rule, the governor issued Proclamation 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place, the requirements covered by the rule were not included in the governor's order.

As new information, data, and science becomes available, it is important that DOH and L&I continue to update and immediately amend existing rules to help prevent the spread of COVID-19. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the 2021 growing season. The Governor's Stay Home, Stay Healthy order as amended to the Roadmap for Recovery and Proclamation 20-25.13 are currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

Date Adopted: June 1, 2021.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

NEW SECTION

WAC 246-358-002 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure. (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from the hazards posed by SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19):

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

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

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information. For the purposes of this section, a community health worker is defined as a frontline public health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the worker to serve as a liaison/link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A community-based outreach worker is defined as a legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

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

(c) The operator must provide at no cost an adequate number of cloth face coverings for occupants who are not fully vaccinated to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules. The operator must instruct occupants who are not fully vaccinated to use cloth face coverings in public and at housing, as recommended in the public health orders.

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities. Fully vaccinated occupants are not required to physically distance except as indicated in (d)(ii)(B) of this subsection.

(i) If needed to facilitate physical distancing, the operator must provide additional temporary cooking, bathing, washing, and toilet facilities.

(ii) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe in sleeping quarters where not all occupants are

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

(B) In sleeping quarters where all occupants are fully vaccinated, bed spacing must meet the requirements under WAC 246-358-135 and both bunks of bunk beds may be used.

(iii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time and where physical distancing cannot be maintained. Any barriers placed near cooking equipment must be fire retardant.

(iv) If needed to facilitate physical distancing in common areas, the operator must provide additional facilities or services that meet the requirements of this chapter, such as additional refrigeration or portable sinks.

(e) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility or building has a mechanical ventilation system, maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. TWH operators must have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation or the percentage of outside air that circulates into the system and verify the following:

(A) Make sure all HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) Maximize the HVAC system's outdoor air intake. Make sure exhaust air is not pulled back into the building through the HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions including, but not limited to, wildfire smoke.

(D) Use appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) when changing filters.

(E) Maintenance checks must occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks must occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turned on mechanical ventilation systems (i.e., HVAC) or open windows whenever the TWH facility or building is occupied.

(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.

(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

(f) Group shelter plans can be utilized if all occupants are not fully vaccinated. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "Group shelter" means a dwelling unit or cluster of dwelling units with sleeping facilities for up to fifteen occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

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

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

(B) Maintain egress requirements.

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

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

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

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

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

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

(D) Schedules are shared and conspicuously posted.

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

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

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

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

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

(ii) Provide adequate cleaning supplies to occupants for cleaning and disinfection of living spaces of dwelling units, family shelters, and group shelters.

(iii) Clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or confirmed SARS-CoV-2 positive cases have been, according to CDC guidelines and before the space is used by others.

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

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

(2) COVID-19 screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases.

(a) The operator must develop and implement a plan to identify and isolate occupants with suspect SARS-CoV-2 and positive SARS-CoV-2, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, and loss of taste or smell. The operator must provide each occupant with a thermometer or must designate and train a person to use a "no touch" or "no contact" thermometer to check all occupants' temperatures daily. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever. Fully vaccinated occupants do not need to be screened for COVID-19.

(ii) A "suspect SARS-CoV-2 case" is defined as a person with signs and symptoms compatible with COVID-19 above who has not been tested yet, or refuses testing. Upon identification of suspect SARS-CoV-2 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect SARS-CoV-2 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(iv) Other individuals who have been in close contact of the symptomatic suspect SARS-CoV-2 case or confirmed

SARS-CoV-2 positive must be quarantined, and remain separated from others in the housing. Individuals who have been fully vaccinated per CDC guidelines are not required to quarantine. Members of a group shelter will quarantine together. Individuals may leave quarantine when they meet CDC guidance for quarantine or when released from quarantine by the local health officer. Anyone becoming symptomatic or testing positive for SARS-CoV-2 during quarantine will be moved to isolation.

(v) Any occupant in quarantine must continue to be screened for symptoms of COVID-19 as described in (a)(i) in this subsection.

(vi) Confirmed SARS-CoV-2 positive cases must be isolated and only housed with other confirmed cases and must have separated bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the confirmed occupant will have the option to isolate with family members.

(vii) The operator must report suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants in isolation to the department of labor and industries' division of occupational safety and health (DOSH) within twenty-four hours after placement. This notification can be made by telephone to the department of labor and industries toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits or assesses occupants daily, at the employer's expense to perform a health check for each individual in isolation. Evaluations by licensed health care providers may be performed in-person, using audio telemedicine, or video telemedicine. At a minimum, the health care professional must review symptoms; temperature; oxygen saturation via pulse oximetry; and determine if additional medical services are needed, such as an in-person evaluation or treatment. If the licensed health care professional is not already familiar with the occupant's medical history, the licensed health care professional must obtain relevant medical history from the occupant.

(ii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services. If the health care provider has a question about the safety, health, or well-being for the occupant in isolation, they may contact the housing operator for further information.

(iii) For evaluations done by telehealth, the operator must ensure each occupant in isolation has or is provided a working telephone with a clear connection. The operator must also provide the occupant with a U.S. Food and Drug Administration approved pulse oximeter and thermometer with written and verbal instructions on use and interpretation of their results in the occupant's preferred language.

(iv) If an occupant prefers not to self-operate the pulse oximeter, and/or thermometer, the employer must ensure that they have competent assistance.

(v) Interpretation services must be provided when the medical professional is not fluent in the occupant's preferred language.

(vi) For the purposes of this subsection, a licensed health care professional means:

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

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

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

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

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

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

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) and authorized to monitor suspect SARS-CoV-2 cases or SARS-CoV-2 positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

(H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner.

(I) Facilitate transportation for in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.

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

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

(ix) Permit access to other medical professionals who offer health care services in addition to the licensed health care professional(s) contracted to provide health checks.

(x) The operator must provide food and water.

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

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

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

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

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

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

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

(5) Vaccination verification.

(a) Occupants who are vaccinated against COVID-19 by a two-dose mRNA vaccine (such as Moderna and Pfizer), or a single dose vaccine (such as Johnson & Johnson), are considered "fully vaccinated" two weeks after the final dose of vaccine (the second dose for a two-dose regimen, or the single dose for a single-dose regimen). Occupants who have been vaccinated outside the United States with a vaccine that has received World Health Organization (WHO) Emergency Use Listing (EUL) are considered fully vaccinated if:

(i) The occupant has completed the full vaccination series;

(ii) The appropriate amount of time has passed according to the manufacturer's guidance for the occupant to be fully protected.

(b) Occupants who have not received an FDA-authorized or WHO Emergency Use Listing COVID-19 vaccine must not be considered fully vaccinated.

(c) The operator is not required to verify vaccination status if masking and physical distancing are to be maintained; operators have the choice to maintain masking and physical distancing in their housing.

(d) If an occupant declines to provide verification of their vaccination status, they are not considered fully vaccinated.

(e) The operator must have a demonstrable process to verify vaccination status, but is not required to keep a copy of the occupant's vaccination records, which may require secure and confidential handling as a medical record. The operator must establish a way of demonstrating they have verified vaccination status for occupants who are not masked and are not being required to maintain a six-foot physical distance. Examples may include:

(i) Creating a log of the names of occupants who have been verified as fully vaccinated and the date that the verification was done;

(ii) Marking an occupant's badge, site credential, or other individually identified item to indicate the occupant's status as fully vaccinated;

(iii) Documented occupant attestations of vaccination; or

(iv) Other methods that demonstrate an operator has verified an occupant has been fully vaccinated.

(f) To verify vaccination status, operators can require occupants to provide proof of vaccination status or signed document attesting to the employee's fully vaccinated status.

(i) Proof of vaccination means one of the following:

(A) A CDC vaccination card, which includes name of person vaccinated, type of vaccine provided, and date last dose was administered;

(B) A photo of a CDC vaccination card as a separate document or a photo of the occupant's vaccine card stored on a phone or electronic device; or

(C) Documentation of vaccination from a health care provider electronic health record or state immunization information system record.

(ii) Signed self-attestation may be done in hard copy or electronically.

(g) The operator must provide evidence of their process to verify occupant vaccination status to the department upon request.

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

WSR 21-12-096

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed June 2, 2021, 8:24 a.m., effective June 2, 2021, 8:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-171 Retired active pharmacist license status, establishing a new section of rule. This adopted emergency rule will extend WSR 21-04-116 filed on February 1, 2021. On March 26, 2020, Governor Inslee signed Proclamation 20-32 to help increase the number of health care workers available to meet the needs of patients during the coronavirus disease 2019 (COVID-19) pandemic. This proclamation included a provision that allows a pharmacist with a retired active pharmacist license status to practice pharmacy. Specifically, the proclamation amended WAC 246-863-080(2) to allow holders of a retired active pharmacist license status to practice pharmacy while the proclamation remains in effect.

However, the pharmacy quality assurance commission (commission) recently updated and consolidated all rules under its authority into one new chapter (chapter 246-945 WAC). In this rewrite process, the requirements from WAC 246-863-080 and the retired active pharmacist license status no longer exist. Beginning July 1, 2020, chapter 246-945 WAC took effect and the commission no longer enforces WAC 246-863-080. This emergency rule matches the intent of the governor's proclamation by reinstating a retired active pharmacist license status allowing retired pharmacists to practice pharmacy during emergent or intermittent circumstances and assist with the COVID-19 response. This emergency rule also reinstates the process for applying for a retired active pharmacist license and establishes the criteria for returning to active status.

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

Statutory Authority for Adoption: RCW 18.64.005, 18.64.205.

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

Reasons for this Finding: The immediate adoption of WAC 246-945-171 is necessary for the preservation of public health, safety, and general welfare. This rule allows retired pharmacists to assist in the response during public health emergencies such as the COVID-19 pandemic and is in line with the intent of Governor Inslee's Proclamation 20-32. This emergency rule allows retired pharmacists to help meet the needs of patients during the COVID-19 pandemic through performing pharmacy services such as vaccine administration. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's orders.

The commission has also authorized permanent rules on this topic and will proceed with standard rule making for permanent rules as soon as the COVID-19 response allows.

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 1, Amended 0, Repealed 0.

Date Adopted: May 28, 2021.

Tim Lynch, PharmD, MS, FABC, FASHP, Chair
Pharmacy Quality Assurance Commission

NEW SECTION

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

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

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

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

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

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

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

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

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