

**WSR 21-17-013**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-134—Filed August 5, 2021, 1:41 p.m., effective August 5, 2021, 1:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open recreational halibut season in Marine Areas 1 through 10.

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

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

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

Reasons for this Finding: There is sufficient Washington sport allocation to open additional days in Puget Sound (Marine Areas 5 - 10), Neah Bay (Marine Area 4) and La Push (Marine Area 3) to recreational fishing for Pacific halibut. There is also sufficient sport allocation to open one additional day in Ilwaco (Marine Area 1) and Westport (Marine Area 2). State regulations will conform to rules adopted by the National Marine Fisheries Service. Halibut catch will continue to be closely monitored by the Washington department of fish and wildlife staff, the season will close after September 25 or earlier if quotas are achieved.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 5, 2021.

Kelly Susewind  
 Director

NEW SECTION

**WAC 220-314-03000G Halibut—Seasons—Daily and possession limits.** Notwithstanding the provisions of WAC 220-314-040, and 220-314-010, effective immediately through September 25, 2021, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-040, and 220-314-010, including Yelloweye Rockfish Conservation Areas

(YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

(1) **Catch Record Card Areas 1 and 2:**

Open August 27, 2021.

(2) **Catch Record Card Areas 3 and 4:**

Open August 19, 20, 21, 26, 27, 28; September 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, and 25, 2021. (Open Thursdays through Saturdays from August 19 through September 25, 2021.)

(3) **Catch Record Card Areas 5 through 10:**

Open August 19, 20, 21, 26, 27, 28; September 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, and 25, 2021. (Open Thursdays through Saturdays from August 19 through September 25, 2021.)

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

REPEALER

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

WAC 220-314-03000F Halibut—Seasons—Daily and possession limits. (21-123)

**WSR 21-17-016**  
**EMERGENCY RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed August 5, 2021, 2:08 p.m., effective August 5, 2021, 2:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To allow veterinarians and field livestock inspectors certified by the department to conduct inspections at facilities not currently allowed to use veterinarians or field livestock inspectors when the department has notified a facility that department inspectors are not available to conduct inspections.

The rule-making order amends WAC 16-610-060 Veterinarian and field livestock inspector certification.

Citation of Rules Affected by this Order: Amending WAC 16-610-060.

Statutory Authority for Adoption: RCW 16.57.025, 16.57.350, 16.58.030, 16.65.020.

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: A recent outbreak of COVID-19 at a licensed public livestock market has hindered the department's ability to conduct livestock inspections. In order to avoid adverse impacts to animal health and the related impacts on the public welfare of the loss of healthy animals from delayed livestock sales, and to protect the health of department employees, the department will allow the licensed facilities listed in WAC 16-610-060 to hire veterinarians or private field inspectors that are certified by the department to conduct inspections. Licensed facilities are restricted to only hiring veterinarians and private field

inspectors when the department provides notification to them that department inspectors are not available to conduct inspections, during the time period specified in the notice.

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

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

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

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

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

Date Adopted: August 5, 2021.

Derek I. Sandison  
Director

**AMENDATORY SECTION** (Amending WSR 19-20-022, filed 9/23/19, effective 10/24/19)

**WAC 16-610-060 Veterinarian and field livestock inspector certification.** (1)(a) The director may certify veterinarians, who are licensed and accredited in Washington state and field livestock inspectors who comply with the requirements of this section, to issue livestock inspection certificates.

(b) Veterinarians and field livestock inspectors may not conduct inspections at certified feedlots, slaughter plants, public livestock markets, or special sales unless the department has notified the facility in writing that department inspectors are not available to conduct inspections. If the department notifies a facility that its inspectors are not available to conduct inspections, the facility may use a veterinarian or field livestock inspector to conduct inspections during the period, as specified by the department, in which department inspectors are not available.

(c)(i) Veterinarians and field livestock inspectors may not perform livestock inspections for an individual or business if a conflict of interest exists.

(ii) For the purpose of this rule, a "conflict of interest" includes, but is not limited to, a financial or other interest, direct or indirect, in the livestock, the facility in which the livestock are presented for sale, or the event at which the livestock are being exhibited.

(2) Veterinarians licensed and accredited in Washington state and field livestock inspectors who wish to issue inspection certificates for livestock must apply for certification on the department's application form (WSDA form #7028). The application must include the following:

(a) The full name, address, telephone number, and email address of the individual applying for certification;

(b) The applicant's Washington state veterinary license number if the applicant is a veterinarian;

(c) The geographic area in which the applicant will issue inspection certificates for livestock;

(d) A statement describing the applicant's experience with large animals, especially cattle and horses;

(e) A brief statement indicating that the applicant is requesting certification to issue inspection certificates for cattle, horses or both;

(f) The signature of the applicant; and

(g) Any other additional information as requested by the director.

(3) All applications must be accompanied by a check or money order for the amount of the certification fee of sixty dollars per applicant.

(4) Certifications expire on the third December 31st following the date of issuance. For example, if a certification was issued on October 14, 2003, it would expire on December 31, 2005. All applications for renewal of certification must be submitted on AGR Form 930-7089 and accompanied by a check or money order for the amount of the certification fee of sixty dollars per applicant.

(5) All applicants applying for certification or renewal of certification must complete department-provided training and pass a written test with no less than a score of ninety percent. The department will provide to each person applying for certification or renewal of certification a copy of the most current brand book and any supplements issued to date to each certified veterinarian or field livestock inspector. Training will include, but will not be limited to, the:

(a) Reading of printed brands;

(b) Reading of brands or other marks on animals, including the location of brands on animals;

(c) Reading of a microchip or other electronic official individual identification;

(d) Completion of official documents; and

(e) Review of satisfactory ownership documents.

(6) The director will maintain a list of veterinarians and field livestock inspectors certified to perform livestock inspections. Interested parties may request a copy of the list by contacting the department at:

Washington State Department of Agriculture

Animal Services Division

1111 Washington Street S.E.

P.O. Box 42577

Olympia, WA 98504-2577

Email: [livestockid@agr.wa.gov](mailto:livestockid@agr.wa.gov)

Phone: 360-902-1855

Website: <https://agr.wa.gov/departments/animals-livestock-and-pets/livestock>

(7) Inspections by certified veterinarians and field livestock inspectors are conducted upon request and provided at the discretion of the veterinarian or field livestock inspector.

(8) Certified veterinarians and field livestock inspectors must submit all required inspection fees to the director and copies of each inspection certificate within thirty days of the date of issue.

(9) The director may deny certification or renewal of certification to issue inspection certificates if the veterinarian or field livestock inspector fails to meet the requirements of this section or knowingly makes false or inaccurate statements

regarding his or her qualifications on the certification application.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**WSR 21-17-021**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-142—Filed August 5, 2021, 5:12 p.m., effective August 5, 2021, 5:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open commercial gill net fisheries in Puget Sound Salmon Management and Catch Reporting Area 9A, Port Gamble Bay.

Citation of Rules Affected by this Order: Amending WAC 220-354-160.

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

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

Reasons for this Finding: This emergency rule is necessary to modify commercial skiff gill net start week for the 2021 season in Puget Sound Salmon Management and Catch Reporting Area 9A, Port Gamble Bay, to conform with seasons agreed to with comanagers during the 2021 North of Falcon season setting process and set forth in the list of agreed fisheries. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: August 5, 2021.

Kelly Susewind  
 Director

[NEW SECTION]

**WAC 220-354-16000K Puget Sound salmon—Gill net—Open periods.** Effective immediately through August 14, 2021, the following provisions of WAC 220-354-160 regarding commercial Gill Net open periods in Puget Sound Salmon Management and Catch Reporting Area 9A, Port Gamble Bay shall be as follows. All other provisions of WAC 220-351-210 not contained herein remain in effect unless otherwise altered by emergency rule:

(a) Puget Sound Salmon Management and Catch Reporting Area 9A, Port Gamble Bay:

AREA	TIME	DATES
Area 9A; Skiff gillnet only.	7 AM - 7 PM	8/8/2021 - 8/14/2021

(b) It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

**WSR 21-17-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-140—Filed August 6, 2021, 11:49 a.m., effective August 6, 2021, 11:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes commercial nonspot pot harvest in Shrimp Management Area 2E effective August 7, 2021. Extends the spot shrimp catch accounting period until August 17 and increases the catch limit to 5,000 pounds per license.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000G and 220-340-03000K; and amending WAC 220-340-520 and 220-340-030.

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

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

Reasons for this Finding: This emergency rule:

- (1) Defines the shrimp management areas and regions open to spot and nonspot commercial harvest.
- (2) Defines spot pot gear requirements.
- (3) Defines nonspot gear requirements.
- (4) Implements labeling requirements for groundline pot gear.
- (5) Implements restrictions for the concurrent use of spot shrimp and onspot [nonspot] shrimp pot gear.
- (6) Implements a fishing declaration requirement for all shrimp pot fisheries in Puget Sound.
- (7) Sets harvest restrictions for and opens the nonspot commercial pot fishery.
- (8) Sets harvest restrictions for and opens the spot commercial pot fishery.

(9) Sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery.

(10) Requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

The emergency regulation closes nonspot shrimp pot harvest in Marine Fish/Shellfish Management Area 2E due to projected quota attainment on August 8, 2021. This regulation also extends the spot shrimp catch accounting period to August 17, 2021, and increases the catch limit for that period to 5,000 pounds. Sections of this regulation define open areas to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and non-spot shares while also achieving the 50/50 harvest defined by the federal court order. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 6, 2021.

Kelly Susewind  
Director

## NEW SECTION

**WAC 220-340-52000H Puget Sound shrimp pot and trawl fishery—Season.** Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W and 3, as well as Marine Fish/Shellfish Management and Catch Area 26D are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) Sub-areas 23A-W, 23A-C, and 23A-S of Marine Fish/Shellfish Management and Catch Reporting Area 23A are closed to the commercial harvest of non-spot shrimp until the harvestable share available for the state managed commercial spot shrimp fishery is taken.

(ii) It is unlawful to harvest non-spot shrimp in Region 2E effective Sunday, August 8, 2021 at 11:59 p.m. or when the harvestable share is taken, whichever comes first.

(iii) Marine Fish/Shellfish Management and Catch Area 26D is closed to the commercial harvest of non-spot shrimp.

(iv) Discovery Bay Shrimp District is closed to the commercial harvest of spot shrimp.

(v) Shrimp Management Areas 1A, 1B, 2E, and 2W and Sub-area 23A-E of Catch Reporting Area 23A are closed to the commercial harvest of spot shrimp.

(b) There is no minimum size limit for spot shrimp or non-spot shrimp.

(c) Shrimp pot gear used for commercial harvest must meet the following requirements:

(i) A shrimp pot may not exceed a maximum 153 inch bottom perimeter and a maximum of 24 inch height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(iv) Spot shrimp may only be harvested using pots with a minimum mesh size of 1 inch. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(v) Non-spot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(d) Buoys must have the number of pots deployed per groundline recorded on each end-buoy of a groundline.

(e) It is lawful to concurrently deploy spot shrimp pots and non-spot pots with the following restrictions:

(i) Spot pots and non-spot pots may not be deployed concurrently within the same Catch Reporting Area, with the following exceptions:

Spot and non-spot pots may be concurrently deployed in Catch Area is 23A but not within the same sub-area (23A-E, 23A-W, 23A-C, or 23A-S).

Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Area 25A south of a line true west from Travis Spit to the Miller Peninsula, concurrently with spot shrimp pots in the remaining portion of 25A outside of Sequim Bay.

(ii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.

(f) Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and the amount of pounds that are being targeted

prior to the deployment of any shrimp gear to either [shrimp.report@dfw.wa.gov](mailto:shrimp.report@dfw.wa.gov), by text message to 360-302-6372, or by other electronic means designated by the Department.

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

(h) It is unlawful to harvest shrimp in more than one catch area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly, from 12:00 a.m. on Wednesdays through 11:59 p.m. on Tuesdays.

(b) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 1000 pounds per non-spot shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

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

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

(3) Shrimp Spot Pot Harvest Restrictions:

(a) The spot shrimp catch accounting period starts May 1, 2021 at 12:00 a.m. through August 17, 2021 at 11:59 p.m.

(b) It is unlawful for the total harvest within the spot shrimp accounting period to exceed 5,000 pounds of spot shrimp per license from Shrimp Management Areas 1A, 1C, 3, and 26D combined.

(4) Shrimp trawl Harvest Restrictions:

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

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

(c) The waters of south Lopez Sound (the portion of Catch Area 22A south of a line projected east and west from the northern tip of Trump Island) will open at 12:00 a.m. on July 10, 2021.

(d) The remaining portion of Shrimp Management Area 1B and Catch Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until further notice.

(e) Catch Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) will open at 12:00 a.m. on July 1, 2021.

(f) Catch Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) will open at 12:00 a.m. on August 1, 2021

(g) Trawling is allowed only in waters deeper than 120 feet in Catch Area 20A.

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

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

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

NEW SECTION

**WAC 220-340-03000L Shellfish harvest logs.** Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to [shrimp.report@dfw.wa.gov](mailto:shrimp.report@dfw.wa.gov), and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

REPEALER

The following sections of Washington Administrative Code are repealed, effective immediately:

WAC 220-340-52000G Puget Sound shrimp pot and trawl fishery—Season. (21-133)

WAC 220-340-03000K Shellfish harvest logs. (21-133)

**WSR 21-17-023**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 21-141—Filed August 6, 2021, 11:53 a.m., effective August 6, 2021, 11:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Opens recreational spot and nonspot shrimp harvest in Marine Areas 6, 7 South, 8-1, and 8-2.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000I and 220-330-02000A; and amending WAC 220-330-070 and 220-330-020.

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 regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available, but recreational shares will only support a limited number of days in the Marine Areas 6, 7 South, 8-1, and 8-2. Marine Areas 8-1 and 8-2 will open with a reduced pot limit to stay within the remaining share. In addition, this emergency regulation opens the Marine Area 5, 6, and 7 South 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 7 East, 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 2, Amended 0, Repealed 2.

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

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

Date Adopted: August 6, 2021.

Kelly Susewind  
Director

#### NEW SECTION

##### **WAC 220-330-07000J Shrimp—Areas and seasons.**

Notwithstanding the provisions of WAC 220-330-070, effective immediately through October 15, 2021, 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):

(a) Open August 11 through August 14 for all shrimp species

(b) Open August 26 through August 28 for all shrimp species

(3) Marine Area 7 South:

Open August 11 through August 14 for all shrimp species

(4) Marine Area 7 East:

Open through October 15 for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During these times 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.

(5) Marine Areas 8-1 and 8-2:

(a) Open from 11:00 am through 3:00 pm on Aug 11 for all shrimp species.

(b) Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on August 11 in Marine Area 8-2.

(c) Open through August 10 and again August 12 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:

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:

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 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.

#### NEW SECTION

##### **WAC 220-330-02000B Shrimp—Gear and gear-related unlawful acts.**

Notwithstanding the provisions of WAC 220-330-020, it is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled to have on board or to fish more than 2 shrimp pots in Marine Areas 8-1 and 8-2 on August 11.

#### REPEALER

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

WAC 220-330-07000I Shrimp—Areas and seasons. (21-110)

WAC 220-330-02000A Shrimp—Gear and gear-related unlawful acts. (21-110)

**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 21-17-024**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-143—Filed August 6, 2021, 12:12 p.m., effective September 1, 2021]

Effective Date of Rule: September 1, 2021.

Purpose: The purpose of this emergency rule is additional white sturgeon retention seasons in Lake Roosevelt.

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

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

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

Reasons for this Finding: This rule is necessary to open a harvest fishery for white sturgeon in Lake Roosevelt. White sturgeon hatchery programs began in 2001 in British Columbia (BC) and 2004 in Washington. Stocking ranged from 2,000-12,000 juvenile sturgeon per year from 2001 to 2010 (including both Washington and BC releases). Survival of hatchery-produced juvenile sturgeon was higher than anticipated, resulting in a surplus of hatchery-origin sturgeon available for harvest from Lake Roosevelt. 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: August 6, 2021.

Kelly Susewind  
 Director

**NEW SECTION**

**WAC 220-312-05000X Freshwater exceptions to statewide rules—Eastside.** Effective September 1 through September 20, 2021, the following provisions of WAC 220-312-050 regarding recreational sturgeon seasons and harvest rules for Lake Roosevelt shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended, remain in effect:

(1) Effective immediately through September 30, 2021, it is permissible to fish for sturgeon in waters of Lake Roosevelt from Grand Coulee Dam upstream to the China Bend Boat Ramp (including the Spokane River from Highway 25 Bridge upstream to 400' below Little Falls Dam, Colville River upstream to Meyers Falls and the Kettle River upstream to Barstow Bridge):

(a) Daily limit: 1 sturgeon; minimum fork length 50 inches, maximum fork length 63 inches. Annual limit 2 sturgeon. Anglers may continue catch and release fishing for sturgeon after the daily limit is retained only if the annual limit has not been retained.

(b) It is unlawful to fish for sturgeon after the annual limit has been retained.

(c) Anglers may fish for sturgeon with two poles with the purchase of a Two-pole endorsement.

(d) Night closure is in effect for sturgeon.

(e) All other statewide rules for white sturgeon apply.

(2) Effective September 1 through September 30, 2021, it is permissible to fish for sturgeon in waters of Lake Roosevelt from China Bend Boat Ramp upstream to the Canadian Border:

(a) Daily limit: 1 sturgeon; minimum fork length 50 inches, maximum fork length 63 inches. Annual limit 2 sturgeon. Anglers may continue catch and release fishing for sturgeon after the daily limit is retained only if the annual limit has not been retained.

(b) It is unlawful to fish for sturgeon after the annual limit has been retained.

(c) Anglers may fish for sturgeon with two poles with the purchase of a Two-pole endorsement.

(d) Night closure is in effect for sturgeon.

(e) All other statewide rules for white sturgeon apply.

**REPEALER**

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

WAC 220-312-05000R Freshwater exceptions to statewide rules—Eastside. (21-36)

**WSR 21-17-028**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed August 6, 2021, 4:40 p.m., effective August 8, 2021]

Effective Date of Rule: August 8, 2021.

Purpose: Amend chapters 110-04 and 110-06 WAC to allow the department of children, youth, and families (DCYF) to issue background check clearance authorizations before completing fingerprint-based background checks. Amend WAC 110-06-120 [110-06-0120] to remove certain crimes that disqualify a subject individual from authorization.

Citation of Rules Affected by this Order: Amending WAC 110-04-0040, 110-04-0080, 110-06-0040, 110-06-0046, and 110-06-120 [110-06-0120].

Statutory Authority for Adoption: RCW 43.216.065.

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

Reasons for this Finding: Proclamation of the Governor 20-05 declared a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-31 amends Proclamation 20-05 and waives and suspends fingerprint-based background checks before a person may be approved to have unsupervised access to children during the COVID-19 pandemic due to the potential risk of exposure to COVID-19 resulting from face-to-face contact in submitting fingerprints, limited access to fingerprinting as entities that receive and process fingerprints limit or suspend operations in order to limit exposure to COVID-19, and the unavailability of law enforcement agencies to process fingerprints during the pandemic. The ability to issue background check clearance authorizations before completing fingerprint-based background checks better enables DCYF to ensure the availability of child welfare service providers as well as stable and quality child care during the COVID-19 pandemic.

The amendment to WAC 110-06-120 [110-06-0120] temporarily removes crimes that account for 33 percent of family, friends, and neighbors being disqualified from participation in working connections child care. The amendment is in accord with the federal disqualifying crimes list, significantly increases the number of individuals who may provide care, and will not pose a safety risk for children in care.

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 5, Repealed 0.

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

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

Date Adopted: August 6, 2021.

Brenda Villarreal  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

**WAC 110-04-0040 Who must have background checks?** (1) Under RCW 74.15.030, (~~prior to authorizing unsupervised access to children,~~) the department requires

background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Under RCW 74.15.030, (~~prior to authorizing unsupervised access to children,~~) the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities that provide care. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care. The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, (~~prior to returning a dependent child home,~~) the department requires a background check on all adults residing in the home, including the parents.

**AMENDATORY SECTION** (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

**WAC 110-04-0080 What does the background check cover?** (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.

(d) Department of health.

(e) Civil adjudication proceedings.

(f) Applicant's self-disclosure.

(g) Out-of-state law enforcement and court records.

(2) Background checks conducted for DCYF also includes:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) and (2) of this section, background checks conducted by DCYF



for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home, all staff working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

(a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint name-based background checks regardless of how long you have resided in Washington.

(4) Except as required in subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

(5) Applicants may be approved before the fingerprint-based background check is conducted.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 19-21-064, filed 10/11/19, effective 11/11/19)

**WAC 110-06-0040 Background clearance requirements.** This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals associated with early learning services applying for a first-time background check must complete the DCYF background check application process including, but not limited to:

(a) Submitting a completed background check application;

(b) Completing the required fingerprint process; and

(c) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals qualified by the department to have unsupervised access to children in care who are renewing their applications must:

(a) Submit the new background check application through DCYF;

(b) Submit payment of all required fees as provided in WAC 110-06-0044; (())

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section.

(3) Each subject individual completing the DCYF background check process must disclose whether they have:

(a) Been convicted of any crime;

(b) Any pending criminal charges; and

(c) Been subject to any negative action, as defined by WAC 110-06-0020.

(4) Subject individuals must not have unsupervised access to children in care unless they have obtained DCYF authorization under this chapter.

(5) Applicants may be approved to have unsupervised access to children before the fingerprint-based background check is conducted.

~~(6)~~ A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0046 Requirements for license-exempt in-home/relative providers.** (1) The background check process must be completed for:

(a) All license-exempt in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(2) Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing with a license-exempt in-home/relative provider when the provider cares for the child in the provider's own home where the child does not reside.

(3) The background check process for license-exempt in-home/relative providers requires:

(a) Submitting a completed background check application; and

(b) Completing the required fingerprint process.

(4) Each subject individual completing the DCYF background check process must disclose:

(a) Whether he or she has been convicted of any crime;

(b) Whether he or she has any pending criminal charges; and

(c) Whether he or she has been subject to any negative actions, as defined by WAC 110-06-0020.

(5) A subject individual must not have unsupervised access to children in care unless he or she has obtained DCYF background check clearance authorization under this chapter.

(6) Applicants may be approved to have unsupervised access to children before the fingerprint-based background check is conducted.

~~(7)~~ A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

~~((7))~~ (8) DCYF pays for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee.

**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.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

**WAC 110-06-0120 Secretary's list** (1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify ~~((him or her))~~ the individual from authorization to care for or have unsupervised access to children receiving early learning services.

(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify ~~((him or her))~~ the individual from authorization to care for or have unsupervised access to children receiving early learning services for a period of five years from the date of conviction.

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
<del>((Bail jumping))</del>	Custodial sexual misconduct
	Extortion 2
Child buying or selling	<del>((Forgery))</del>
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	<del>((Identity theft))</del>
Controlled substance homicide	Leading organized crime
Criminal mistreatment	<del>((Malicious explosion 3))</del>
Custodial interference	<del>((Malicious mischief))</del>
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	<del>((Patronizing a prostitute))</del>

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	<del>((Prostitution))</del>
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	<del>((Theft))</del>
Malicious explosion 2	<del>((Theft-welfare))</del>
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	

<b>(a) Crimes that permanently disqualify a subject individual</b>	<b>(b) Crimes that disqualify a subject individual for five years from date of conviction</b>
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism	

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**WSR 21-17-043  
EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed August 10, 2021, 7:39 a.m., effective August 17, 2021]

Effective Date of Rule: August 17, 2021.

Purpose: The department is extending the amendment of the rules listed below to assure nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will continue to align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow physicians to delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist. Current state rules specify physicians must perform some tasks. The amendment will permit delegation of those tasks as long as the task is within the scope of practice of the delegate, and the delegate works under the supervision of the physician. The department filed a preproposal CR-101 under WSR 20-17-133 and has continued to maintain the language under emergency filing. In addition, under the rule development phase of rule making, the department continues with discussions about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary.

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

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

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

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

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

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

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

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

Date Adopted: August 10, 2021.

Katherine I. Vasquez  
Rules Coordinator

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

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

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

(3) The nursing home must ensure that:

- (a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;
- (b) Another physician supervises the medical care of residents when their attending physician is unavailable; and
- (c) Physician services are provided twenty-four hours per day, in case of emergency.
- (4) The physician must:
  - (a) Write, sign and date progress notes at each visit;
  - (b) Sign and date all orders; and
  - (c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.
- (5) Except as specified in ~~((subsections))~~ subsection (6)((-7), and (9)) of this section, a physician may delegate tasks, including tasks that, under state law, must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is:
  - (a) Licensed by the state;
  - (b) Acting within the scope of practice as defined by state law; ~~((and))~~
  - (c) Under the supervision of, and working in collaboration with the physician; and
  - (d) Not an employee of the facility, if caring for a resident whose payor source is medicaid.
- (6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.
- (7) ~~((If the resident's primary payor source is medicare, the physician may:~~
  - (a) ~~Alternate federally required physician visits between personal visits by:~~
    - (i) ~~The physician; and~~

- ~~(ii) An advanced registered nurse practitioner or physician's assistant; and~~
- ~~(b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first thirty days of admission to the facility.~~
- ~~(8) If the resident's payor source is medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.~~
- ~~(9) If the resident's payor source is not medicare or medicaid:~~
  - (a) ~~In the medicare only certified facility or in the medicare certified area of a medicare/medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.~~
  - (b) ~~In the medicaid only certified facility or in the medicaid certified area of a medicare/medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.~~
- ~~(10) The following table describes the physician visit requirements related to medicare or medicaid certified area and payor type.~~

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

- ~~((11))~~ The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:
  - (a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;
  - (b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and
  - (c) Order resident self-medication when appropriate.
- ~~((12))~~ (8) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

- (a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;
- (b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and
- (c) Plans for continuing care and discharge.

**WSR 21-17-051**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 10, 2021, 11:53 a.m., effective August 10, 2021, 11:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) is responding to the 2021 passage of SSB 5254 regarding voluntary use of personal protective equipment (PPE) during a state of emergency, and ESSB 5115, also known as the Health Emergency Labor Standards Act. This rule making creates new sections of WAC, regarding public health emergency reporting and notification requirements for infectious and contagious disease.

The emergency rule includes requirements for when there is a public health emergency for an infectious or contagious disease and as such, the requirements are applicable to COVID-19.

Under the emergency rule:

- Employers with 50 or more covered employees at a workplace or worksite are required to report infectious or contagious disease outbreaks to L&I;
- Employees are not required to disclose any medical condition or diagnosis to their employer;
- Employers, except for certain healthcare employers, are required to notify employees in writing of potential exposures within one business day;
- Employees and contractors must be permitted to voluntarily use personal protective equipment.

Citation of Rules Affected by this Order: New WAC 296-62-600, 296-62-60001, 296-62-60002, 296-62-60003, 296-62-60004, 296-62-60005, 296-62-601, 296-62-60101, 296-62-60102, and 296-62-60103.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.60 [49.17.060].

Other Authority: Chapter 146, Laws of 2021; chapter 252, Laws of 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: SSB 5254 became effective April 26, 2021, and ESSB 5115 became effective on May 11, 2021, requiring L&I to take action to implement both bills. On February 29, 2021, Governor Inslee proclaimed a state-wide state of emergency to respond to the emerging spread of COVID-19 which has resulted in a global pandemic, Proclamation 20-05. Subsequent proclamations have been issued related to the pandemic response, including those with restrictions on business activities under Proclamation 20-25, et seq., initially entitled "Stay Home, Stay Healthy" and the most recent amendment titled "Washington Ready" under Proclamation 20-25.14. Washington state is still in the midst of a public health state of emergency battling the COVID-19 pandemic. These emergency rules are necessary to further respond to and diminish the spread of COVID-19, alert public officials to [of] workers' exposure to COVID-19 to allow

for adequate responses to outbreaks, and to reduce the number of outbreaks, keeping Washington workers safe.

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 10, 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 10, Amended 0, Repealed 0.

Date Adopted: August 10, 2021.

Joel Sacks  
Director

NEW SECTION

**WAC 296-62-600 Public health emergency reporting and notification requirements for infectious and contagious diseases.**

NEW SECTION

**WAC 296-62-60001 Purpose and scope.** WAC 296-62-600 through 296-62-60005 provides requirements for the reporting of infectious or contagious outbreaks to L&I's division of occupational safety and health (DOSH) and notification to employees of potential exposures to infectious or contagious diseases during a public health emergency as defined in this rule and consistent with the Health Emergency Labor Standards Act; sections 2 and 3, chapter 252, Laws of 2021. These requirements apply to employers in Washington state during a public health emergency.

NEW SECTION

**WAC 296-62-60002 Definitions. Covered employee.** Means any employee that the employer is responsible to record their injury and illness on the employer's OSHA 300 log according to WAC 296-27-02103, including employees from a temporary help service, employee-leasing service, a personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

**Public health emergency.** Means a declaration or order concerning any infectious or contagious disease, including a pandemic and is issued as follows:

(a) The President of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(b) The governor of the state of Washington has declared a state of emergency under RCW 43.06.010(12) in every county in the state.

NEW SECTION

**WAC 296-62-60003 General guidelines.** (1) WAC 296-62-600 through 296-62-60005 do not require any employee to disclose any medical condition or diagnosis to their employer(s).

(2) WAC 296-62-600 through 296-62-60005 do not alter or eliminate any other reporting obligations an employer has under state or federal laws.

NEW SECTION

**WAC 296-62-60004 Reporting requirements for outbreaks during a public health emergency.** Employers must report outbreaks as follows:

(1) During a public health emergency, employers with more than fifty covered employees at a workplace or worksite, must:

(a) Report to L&I's division of occupational safety and health (DOSH) within twenty-four hours of being notified of:

(i) Ten or more test-confirmed covered employees at the workplace or worksite where the test was collected during any period of time the Washington state department of health or a local health jurisdiction communicates to the employer that there is a COVID-19 outbreak at their workplace or worksite; or

(ii) Ten or more test-confirmed employees where the test was collected during any period of time between the following start and end points:

Start: When any two or more test confirmed covered employee cases at the workplace or worksite occur within fourteen consecutive calendar days of each other.

End: Twenty-eight consecutive calendar days have passed since the last positive test result for any covered employee at the workplace or worksite.

(b) Report by calling DOSH 1-800-4BE-SAFE (1-800-423-7233), and using the option to report fatalities, hospitalizations, amputations, or loss of an eye.

**Exemptions:**

- Employers currently in an outbreak do not need to continue reporting to DOSH until the outbreak has ended.
- Employers in an outbreak who later learn intervening cases were false positives are not required to retroactively reevaluate their outbreak status and report to DOSH. They may continue to act as if they were under the same unbroken outbreak.

(2) For the purposes of this subsection:

(a) "Worksite" or "workplace" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control.

(b) "Test-confirmed" means testing positive for the infectious or contagious disease.

**Important:** When reporting to DOSH, do not include any employee names or personal identifying information.

NEW SECTION

**WAC 296-62-60005 Notification requirements related to potential exposures.** (1) Except for employers who are health care facilities as defined in RCW 9A.50.010,

if an employer receives notice of potential exposure, the employer must within one business day of potential exposures:

(a) Provide written notice to all covered employees who were on the premises at the same worksite on the same day(s) as the qualifying individual when the qualifying individual may have been infectious or contagious. The written notice must state that the covered employee may have been exposed to the infectious or contagious disease.

(i) For COVID-19, a qualifying individual is potentially infectious or contagious two days before the qualifying individual felt sick/had symptoms (or, for asymptomatic people, two days before the test specimen collection) until the time the qualifying individual left, and/or was isolated, from the worksite.

(ii) The written notice must be made in a manner the employer normally uses to communicate employment-related information including, but not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending.

(iii) The written notice must be in both English and the language understood by the majority of the employees.

(b) Provide written notice also to:

(i) The union representative, if any, of any covered employees notified under WAC 296-62-600 through 296-62-60005(1).

(ii) Any temporary help service, employee-leasing service, or personnel supply service employers of a covered employee notified under WAC 296-62-600 through 296-62-60005(1).

(c) The requirements for the manner of written notice and the time for notice in WAC 296-62-600 through 296-62-60005 (1)(a)(iii) apply to notice of union representatives and employers under this subsection.

(2) Any written notice under this section may not include any employee names or personal identifying information.

(3) For the purposes of this subsection:

(a) Notice of potential exposure. Means any of the following:

(i) Notification to the employer from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite;

(ii) Notification to the employer from an employee, or their emergency contact, that the employee is a qualifying individual; or

(iii) Notification through a testing protocol of the employer that the employee is a qualifying individual.

(b) Qualifying individual. Means any person who has:

(i) A positive laboratory test for the infectious or contagious disease that is the subject of a public health emergency;

(ii) A positive diagnosis of the infectious or contagious disease that is the subject of a public health emergency by a licensed health care provider;

(iii) An order to isolate by a public health official related to the infectious or contagious disease that is the subject of a public health emergency; or

(iv) Died due to the infectious or contagious disease that is the subject of a public health emergency, in the determination of a local health department.

(c) Worksite. Means the building, store, facility, agricultural field, or other location where the qualifying individual worked. "Worksite" does not include any buildings, floors, or other locations of the employer that the qualifying individual did not enter.

#### NEW SECTION

**WAC 296-62-601 Public health emergency voluntary personal protective equipment usage.**

#### NEW SECTION

**WAC 296-62-60101 Purpose and scope.** WAC 296-62-601 through 296-62-60103 provides requirements for employee voluntary use of personal protective equipment during a public health emergency, consistent with chapter 146, Laws of 2021 (SB 5254); Concerning the use of protective devices and equipment during a public health emergency, chapter 252, Laws of 2021. These requirements apply to employers in Washington state during a public health emergency.

#### NEW SECTION

**WAC 296-62-60102 Definitions. Employee.** Means any employee that the employer is responsible to record their injury and illness on the employer's OSHA 300 log according to WAC 296-27-02103, including employees from a temporary help service, employee-leasing service, a personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

**Public health emergency.** Means a declaration or order relating to controlling and preventing the spread of any infectious or contagious disease that covers the jurisdiction where the individual or business performs work, and is issued as follows:

- (a) The president of the United States has declared a national or regional emergency;
- (b) The governor has declared a state of emergency under RCW 43.06.010(12); or
- (c) An order has been issued by a local health officer under RCW 70.05.070.

#### NEW SECTION

**WAC 296-62-60103 Voluntary use of personal protective equipment requirements.** (1) Every employer who does not require employees or contractors to wear a specific type of personal protective equipment must accommodate its employee's or contractor's voluntary use of that specific type of protective device or equipment, including gloves, goggles, face shields, and face masks, as the employee or contractor deems necessary.

(2) The provisions of subsection (1) of this section applies only when:

- (a) The voluntary use of these protective devices and equipment does not introduce hazards to the work environment and is consistent with the provisions of both this chapter, and related rules established by the department of labor

and industries (L&I) division of occupational safety and health (DOSH);

(b) The use of facial coverings does not interfere with an employer's security requirements; and

(c) The voluntary use of these protective devices and equipment does not conflict with standards for that specific type of equipment established by the department of health or DOSH.

(3) An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.

### **WSR 21-17-060**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed August 11, 2021, 9:44 a.m., effective August 11, 2021, 9:44 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-437-0005, changes to food assistance in response to the COVID-19 pandemic. The amendments define that households that receive a zero benefit are not eligible for emergency adjustments to food assistance benefit issuances and that households that are eligible to receive an emergency adjustment will receive a minimum of \$95, as implemented under the Families First Coronavirus Response Act (H.R. 6201, Section 2302).

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

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

Other Authority: H.R. 6201.

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

Reasons for this Finding: This emergency amendment is required to implement provisions from an April 1, 2021, memo issued by United States Department of Agriculture's Food and Nutrition Service (FNS) and to align department policies with an April 21, 2021, Supplemental Nutrition Assistance Program clarification issued by FNS for the Families First Coronavirus Response Act (H.R. 6201, Section 2302) to be implemented immediately.

This filing is also necessary to extend existing emergency rules filed under two separate orders: WSR 21-09-036 filed on April 13, 2021, and WSR 21-10-048 filed on April 28, 2021. This filing consolidates these into one emergency filing and supersedes the aforementioned WSR.

The department filed notice of its intent to adopt the rule as a permanent rule under WSR 21-17-026 and is actively

undertaking appropriate procedures to adopt the rule as permanent.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 10, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 11, 2021.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 21-07-098, filed 3/22/21, effective 4/22/21)

**WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic.** Starting March 2020, assistance units (AUs) eligible for either federal or state-funded food assistance, or both, will receive emergency allotments that bring the AU up to the maximum benefit for their household size.

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

(2) Beginning April 2021, assistance units (AU) that receive less than ninety-five dollars, but more than zero, in emergency allotments under WAC 388-437-0005(1) will receive a minimum emergency allotment of ninety-five dollars.

(3) AUs receiving zero benefits due to income do not qualify for an emergency allotment unless the zero benefit is due to a prorated issuance in the first month of eligibility, as described in WAC 388-412-0015(4), with ongoing months above zero benefits.

(4) Emergency allotments will continue each month until:

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

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

(c) The food and nutrition service directs otherwise.

~~((3))~~ (5) Emergency allotments for state-funded food assistance will continue each month, contingent on the availability of state funds.

**WSR 21-17-063**

**EMERGENCY RULES  
DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed August 11, 2021, 11:12 a.m., effective August 11, 2021, 11:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To comply with P.L. 116.260, Supporting Youth and Foster Families through the Pandemic Act 2021, the emergency rules:

- Allow youth who are eligible for extended foster care services to voluntarily re-enter the program upon reaching the maximum eligibility age of 21 on or after January 27, 2020;
- Allow program participants to remain in the program, regardless of their age, until September 30, 2021; and
- Relieve program participants from being exited from the program for not being able to participate in required education, training, or employment activities or providing documentation of a medical condition that prevents their participation in these activities.

Citation of Rules Affected by this Order: Amending WAC 110-90-0020, 110-90-0040, 110-90-0110, 110-90-0140, 110-90-0160, 110-90-0190, 110-90-0200, 110-145-1305, 110-147-1305, and 110-148-1305.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: P.L. 116-260, Proclamation of the Governor 21-02.

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: P.L. 116-260 forbids states from refusing foster care services to persons who, during the COVID-19 pandemic, either have or will become too old to be eligible for services and eliminates certain additional eligibility elements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 10, 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 0, Repealed 0.

Date Adopted: August 11, 2021.

Brenda Villarreal  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-18 issue of the Register.



**WSR 21-17-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-144—Filed August 12, 2021, 9:59 a.m., effective August 12, 2021, 9:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes commercial spot pot harvest in Sub-area 23A-W of Marine Fish/Shellfish Management and Catch Area 23A effective August 10, 2021. Opens commercial non-spot pot harvest in Sub-area 23A-W of Marine Fish/Shellfish Management and Catch Area 23A effective August 11, 2021. Maintains the closure of all commercial shrimp harvest in Shrimp Management Area 2E.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000H and 220-340-03000L; and amending WAC 220-340-520 and 220-340-030.

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

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

Reasons for this Finding: This emergency rule:

- (1) Defines the shrimp management areas and regions open to spot and nonspot commercial harvest.
- (2) Defines spot pot gear requirements.
- (3) Defines nonspot gear requirements.
- (4) Implements labeling requirements for groundline pot gear.
- (5) Implements restrictions for the concurrent use of spot shrimp and onspot [nonspot] shrimp pot gear.
- (6) Implements a fishing declaration requirement for all shrimp pot fisheries in Puget Sound.
- (7) Sets harvest restrictions for and opens the nonspot commercial pot fishery.
- (8) Sets harvest restrictions for and opens the spot commercial pot fishery.
- (9) Sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery.
- (10) Requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

The emergency regulation closes spot shrimp pot harvest in Sub-area 23A-W of Marine Fish/Shellfish Catch Area 23A due to projected quota attainment on August 10, 2021, at 11:59 p.m. This regulation also opens nonspot harvest in Sub-area 23A-W of Marine Fish/Shellfish Catch Area 23A at 12:00 a.m. on August 11, 2021. This regulation also maintains the closure of Shrimp Management Area 2E to all commercial shrimp harvest. Sections of this regulation define open areas to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and nonspot shares while also achieving the 50/50 harvest defined by the federal court order. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 10, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-52000I Puget Sound shrimp pot and trawl fishery—Season.** Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2W and 3, as well as Marine Fish/Shellfish Management and Catch Area 26D are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) Sub-areas 23A-W, 23A-C, and 23A-S of Marine Fish/Shellfish Management and Catch Reporting Area 23A are closed to the commercial harvest of non-spot shrimp until the harvestable share available for the state managed commercial spot shrimp fishery is taken.

(ii) It is unlawful to harvest spot shrimp from Sub-area 23A-W of Marine Fish/Shellfish Management and Catch Area 23A effective Tuesday, August 10, 2021 at 11:59 p.m.

(iii) It is lawful to harvest non-spot shrimp from Sub-area 23A-W of Marine Fish/Shellfish Management and Catch Area 23A effective Wednesday, August 11, 2021 at 12:00 a.m.

(iv) Marine Fish/Shellfish Management and Catch Area 26D is closed to the commercial harvest of non-spot shrimp.

(v) Discovery Bay Shrimp District is closed to the commercial harvest of spot shrimp.

(vi) Shrimp Management Areas 1A, 1B, 2E, and 2W and Sub-area 23A-E of Catch Reporting Area 23A are closed to the commercial harvest of spot shrimp.

(b) There is no minimum size limit for spot shrimp or non-spot shrimp.

(c) Shrimp pot gear used for commercial harvest must meet the following requirements:

(i) A shrimp pot may not exceed a maximum 153 inch bottom perimeter and a maximum of 24 inch height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(iv) Spot shrimp may only be harvested using pots with a minimum mesh size of 1 inch. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(v) Non-spot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(d) Buoys must have the number of pots deployed per groundline recorded on each end-buoy of a groundline.

(e) It is lawful to concurrently deploy spot shrimp pots and non-spot pots with the following restrictions:

(i) Spot pots and non-spot pots may not be deployed concurrently within the same Catch Reporting Area, with the following exceptions:

Spot and non-spot pots may be concurrently deployed in Catch Area is 23A but not within the same sub-area (23A-E, 23A-W, 23A-C, or 23A-S).

Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Area 25A south of a line true west from Travis Spit to the Miller Peninsula, concurrently with spot shrimp pots in the remaining portion of 25A outside of Sequim Bay.

(ii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.

(f) Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and the amount of pounds that are being targeted prior to the deployment of any shrimp gear to either [shrimp.report@dfw.wa.gov](mailto:shrimp.report@dfw.wa.gov), by text message to 360-302-6372, or by other electronic means designated by the Department.

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

(h) It is unlawful to harvest shrimp in more than one catch area per day.

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

(a) The non-spot shrimp catch accounting period is weekly, from 12:00 a.m. on Wednesdays through 11:59 p.m. on Tuesdays.

(b) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 1000 pounds per non-spot

shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

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

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

#### (3) Shrimp Spot Pot Harvest Restrictions:

(a) The spot shrimp catch accounting period starts May 1, 2021 at 12:00 a.m. through August 17, 2021 at 11:59 p.m.

(b) It is unlawful for the total harvest within the spot shrimp accounting period to exceed 5,000 pounds of spot shrimp per license from Shrimp Management Areas 1A, 1C, 3, and 26D combined.

#### (4) Shrimp trawl Harvest Restrictions:

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

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

(c) The waters of south Lopez Sound (the portion of Catch Area 22A south of a line projected east and west from the northern tip of Trump Island) will open at 12:00 a.m. on July 10, 2021.

(d) The remaining portion of Shrimp Management Area 1B and Catch Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until further notice.

(e) Catch Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) will open at 12:00 a.m. on July 1, 2021.

(f) Catch Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) will open at 12:00 a.m. on August 1, 2021

(g) Trawling is allowed only in waters deeper than 120 feet in Catch Area 20A.

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

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

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

### NEW SECTION

**WAC 220-340-03000M Shellfish harvest logs.** Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful for vessel operators

engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to [shrimp.report@dfw.wa.gov](mailto:shrimp.report@dfw.wa.gov), and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

### REPEALER

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

WAC 220-340-52000H Puget Sound shrimp pot and trawl fishery—Season. (21-140)

WAC 220-340-03000L Shellfish harvest logs. (21-140)

**WSR 21-17-072**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-145—Filed August 12, 2021, 12:32 p.m., effective August 12, 2021, 12:32 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule opens the 2021 tribal fall commercial fisheries above Bonneville Dam, and in

accordance with state/tribal MOUs/MOAs for below Bonneville Dam. This rule is consistent with actions of the Columbia River Compact on June 8, June 23, July 8, July 27, and August 11, 2021. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

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

Date Adopted: August 12, 2021.

Kelly Susewind  
Director

### NEW SECTION

**WAC 220-359-02000R Columbia River salmon seasons.** Effective Immediately, until further notice the follow-

ing provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Season: Immediately until further notice.

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

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

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

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

(a) Season: 6:00 AM August 23 through 6:00 PM August 26

6:00 AM August 30 through 6:00 PM September 2

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

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

(d) Standard sanctuaries applicable to gillnet gear. The standard Spring Creek Hatchery Sanctuary is in place.

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

(a) Season: Immediately through 11:59 PM October 31, 2021, only during days and times opened under tribal rules.

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

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

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

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

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

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

inches fork length in the Bonneville Pool may be kept for subsistence.

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

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

#### REPEALER

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

WAC 220-359-02000Q Columbia River salmon seasons.  
(21-129)

#### **WSR 21-17-081**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 21-146—Filed August 12, 2021, 5:01 p.m., effective August 12, 2021, 5:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes commercial spot pot harvest in Sub-area 23A-C of Marine Fish/Shellfish (MFSF) Catch Area 23A effective August 14, 2021. Opens commercial nonspot harvest in Sub-area 23A-C of MFSF Catch Area 23A effective August 15, 2021.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000I and 220-340-03000M; and amending WAC 220-340-520 and 220-340-030.

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

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

Reasons for this Finding: (1) Closes Sub-area 23A-C of MFSF Catch Area 23A and MFSF Catch Area 23B to commercial spot harvest effective August 14, 2021.

(2) Opens Sub-area 23A-C of MFSF Catch Area 23A to commercial nonspot harvest effective August 15, 2021.

(3) Closes Shrimp Management Area 2E to all commercial shrimp harvest.

(4) Defines the shrimp management areas and regions open to spot and nonspot commercial harvest.

(5) Defines spot pot gear requirements.

(6) Defines nonspot gear requirements.

(7) Implements labeling requirements for groundline pot gear.

(8) Implements restrictions for the concurrent use of spot shrimp and onspot [nonspot] shrimp pot gear.

(9) Implements a fishing declaration requirement for all shrimp pot fisheries in Puget Sound.

(10) Sets harvest restrictions for and opens the nonspot commercial pot fishery.

(11) Sets harvest restrictions for and opens the spot commercial pot fishery.

(12) Sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery.

(13) Requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

The emergency regulation closes spot shrimp pot harvest in Sub-area 23A-C of MFSF Catch Area 23A and MFSF Catch Area 23B due to projected quota attainment on August 14, 2021, at 11:59 p.m. This regulation also opens nonspot harvest in Sub-area 23A-C of MFSF Catch Area 23A at 12:00 a.m. on August 15, 2021. This regulation also maintains the closure of Shrimp Management Area 2E to all commercial shrimp harvest. Sections of this regulation define open areas to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and nonspot shares while also achieving the 50/50 harvest defined by the federal court order. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 12, 2021.

Kelly Susewind  
Director

## NEW SECTION

**WAC 220-340-52000J Puget Sound shrimp pot and trawl fishery—Season.** Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2W and 3, as well as Marine Fish/Shellfish Catch Area 26D are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) Sub-areas 23A-C, and 23A-S of Marine Fish/Shellfish Catch Reporting Area 23A are closed to the commercial

harvest of non-spot shrimp until the harvestable share available for the state managed commercial spot shrimp fishery is taken.

(ii) It is unlawful to harvest spot shrimp from Sub-areas 23A-C and 23B of Marine Fish/Shellfish Catch Area 23A effective Saturday, August 14, 2021 at 11:59 p.m.

(iii) It is lawful to harvest non-spot shrimp from Sub-area 23A-C of Marine Fish/Shellfish Catch Area 23A effective Sunday, August 15, 2021 at 12:00 a.m.

(iv) Marine Fish/Shellfish Catch Area 26D is closed to the commercial harvest of non-spot shrimp.

(v) Discovery Bay Shrimp District is closed to the commercial harvest of spot shrimp.

(vi) Shrimp Management Areas 1A, 1B, 2E, and 2W and Sub-areas 23A-E, 23A-W of Catch Reporting Area 23A are closed to the commercial harvest of spot shrimp.

(b) There is no minimum size limit for spot shrimp or non-spot shrimp.

(c) Shrimp pot gear used for commercial harvest must meet the following requirements:

(i) A shrimp pot may not exceed a maximum 153 inch bottom perimeter and a maximum of 24 inch height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(iv) Spot shrimp may only be harvested using pots with a minimum mesh size of 1 inch. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(v) Non-spot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(d) Buoys must have the number of pots deployed per groundline recorded on each end-buoy of a groundline.

(e) It is lawful to concurrently deploy spot shrimp pots and non-spot pots with the following restrictions:

(i) Spot pots and non-spot pots may not be deployed concurrently within the same Catch Reporting Area, with the following exceptions:

Spot and non-spot pots may be concurrently deployed in Catch Area is 23A but not within the same sub-area (23A-E, 23A-W, 23A-C, or 23A-S).

Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Area

25A south of a line true west from Travis Spit to the Miller Peninsula, concurrently with spot shrimp pots in the remaining portion of 25A outside of Sequim Bay.

(ii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.

(f) Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and the amount of pounds that are being targeted prior to the deployment of any shrimp gear to either [shrimp.report@dfw.wa.gov](mailto:shrimp.report@dfw.wa.gov), by text message to 360-302-6372, or by other electronic means designated by the Department.

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

(h) It is unlawful to harvest shrimp in more than one catch area per day.

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

(a) The non-spot shrimp catch accounting period is weekly, from 12:00 a.m. on Wednesdays through 11:59 p.m. on Tuesdays.

(b) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 1000 pounds per non-spot shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

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

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

**(3) Shrimp Spot Pot Harvest Restrictions:**

(a) The spot shrimp catch accounting period starts May 1, 2021 at 12:00 a.m. through August 17, 2021 at 11:59 p.m.

(b) It is unlawful for the total harvest within the spot shrimp accounting period to exceed 5,000 pounds of spot shrimp per license from Shrimp Management Areas 1A, 1C, 3, and Marine Fish/Shellfish Catch Reporting Area 26D combined.

**(4) Shrimp trawl Harvest Restrictions:**

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

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

(c) The waters of south Lopez Sound (the portion of Catch Area 22A south of a line projected east and west from the northern tip of Trump Island) will open at 12:00 a.m. on July 10, 2021.

(d) The remaining portion of Shrimp Management Area 1B and Catch Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until further notice.

(e) Catch Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) will open at 12:00 a.m. on July 1, 2021.

(f) Catch Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) will open at 12:00 a.m. on August 1, 2021

(g) Trawling is allowed only in waters deeper than 120 feet in Catch Area 20A.

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

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

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

**NEW SECTION**

**WAC 220-340-03000N Shellfish harvest logs.** Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to [shrimp.report@dfw.wa.gov](mailto:shrimp.report@dfw.wa.gov), and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

**REPEALER**

The following sections of Washington Administrative Code are repealed, effective immediately:

WAC 220-340-52000I Puget Sound shrimp pot and trawl fishery—Season. (21-144)

WAC 220-340-03000M Shellfish harvest logs. (21-144)

**WSR 21-17-082  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 21-147—Filed August 12, 2021, 5:08 p.m., effective August 18, 2021]

Effective Date of Rule: August 18, 2021.

Purpose: The purpose of this emergency rule is to open Chinook harvest seasons in the 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: This emergency rule is needed to open salmon seasons in the Snake River, effective August 18, 2021.

The 2021 Columbia River forecasted return of upriver bright adults is 361,500, with a significant portion of these fish expected to return to the Snake River. This forecast is large enough to allow for Chinook harvest in the Snake River. The Upriver Bright stock primarily returns to the Hanford Reach and Snake River sections of the Columbia River and the *US v. OR* Management Agreement reaches only to the confluence of the Snake River. There is an Endangered Species Act component to this fishery covered under a Washington/Idaho shared Fisheries Management and Evaluation Plan for the Snake River. Because of these factors, management, and the opening of this fishery by emergency rule is needed [to] maintain concurrency with Idaho's salmon rules and season openings for the Snake River.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 12, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-05000Y Freshwater exceptions to statewide rules—Eastside.** Effective August 18 through October 31, 2021 the following provisions of WAC 220-312-050 regarding salmon seasons for the Snake River shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

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

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

(a) Adult daily limit is 3 hatchery Chinook.

(b) No daily limit for jack Chinook. Jack Chinook may be wild or hatchery.

(c) Release all salmon other than jack Chinook and hatchery adult Chinook.

(d) Salmon that are not to be kept as part of the daily limit may not be removed from the water and must be released immediately and unharmed.

(e) Barbless hooks required.

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

(a) Adult daily limit is 3 Chinook.

(b) No daily limit for jack Chinook. Jack Chinook may be wild or hatchery.

(c) Release all salmon other than Chinook.

(d) Salmon that are not to be kept as part of the daily limit may not be removed from the water and must be released immediately and unharmed.

(e) Barbless hooks required.

#### **WSR 21-17-083**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 21-148—Filed August 12, 2021, 5:14 p.m., effective August 13, 2021]

Effective Date of Rule: August 13, 2021.

Purpose: The purpose of this emergency rule is to open additional salmon harvest opportunities in the East Elliott Bay salmon fishery and to return the Tulalip Terminal Area in Marine Area 8-2 to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000G; and 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 open additional recreational salmon harvest opportunities in Marine Area 10 and to return the Tulalip Terminal Area in Marine Area 8-2 salmon fishery to permanent rules.

The East Elliott Bay fishery is being opened because in-season updates indicate that higher than expected returns will allow for an additional weekend of fishing opportunity in Elliot Bay.

The Tulalip Terminal Area salmon fishery is being reopened because a sufficient number of Chinook have reached the Snohomish River hatcheries, satisfying brood-

stock goals enough to allow fishing to resume in the Tulalip Terminal Area.

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: August 12, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-313-06000K Puget Sound salmon—Saltwater seasons and daily limits.** Effective August 13 through 11:59 AM, August 16, 2021, the following provisions of WAC 220-313-060 regarding salmon seasons for the section of Marine Area 10 known as the East Elliott Bay fishery, as defined herein shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

**Catch Record Card Area 10; East Elliott Bay:**

(a) East Elliott Bay is defined as: Water of Elliott Bay between a line from Duwamish Head to Pier 91 up to the mouth of the Duwamish River including Harbor Island (Duwamish Waterways).

(b) Salmon:

(i) Daily limit 2 salmon.

(ii) Release chum.

#### REPEALER

The following section of Washington Administrative Code is repealed, effective August 13, 2021:

WAC 220-313-06000G Puget Sound salmon—Saltwater seasons and daily limits. (21-122)

#### **WSR 21-17-084**

#### **EMERGENCY RULES**

#### **WESTERN WASHINGTON UNIVERSITY**

[Filed August 13, 2021, 8:25 a.m., effective August 13, 2021, 8:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Western

Washington University is adopting a fourth emergency rule per RCW 34.05.350(2), while actively pursuing adoption of a permanent rule as evidenced by the Preproposal statement of inquiry, CR-101, filed on August 21, 2020, as WSR 20-18-011 as well as continuing to draft revisions, seek legal review and seek feedback from the campus community.

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

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

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

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

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

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

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

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

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

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

Date Adopted: June 11, 2021.

Jennifer L. Sloan  
Rules Coordinator

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

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

(2) A conduct officer(s) shall be appointed and supervised by the dean of students or their authorized designee. A conduct officer has the authority to consider complaints, make findings, and administer sanctions for violations of the code. In complaints alleging ~~((discrimination or sexual violence, which includes sexual assault, dating violence, domestic violence, and stalking or any other type of sexual misconduct or gender-based discrimination, an investigation and written report of findings from Western Washington Univer~~



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

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

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

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

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

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

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

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

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

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

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

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

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

from any source (police report, third party, online, etc.) may be considered a complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Evidence is relevant if it tends to make existence of a fact more or less probable. A conduct officer, appeal board chair, or dean of students shall have the discretion to determine admissibility of evidence.

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

#### NEW SECTION

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

#### NEW SECTION

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

- (a) Occurred in the United States;
- (b) Occurred during a Western Washington University educational program or activity; and
- (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

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

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

(4) If the Title IX coordinator determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Title IX

coordinator will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

#### NEW SECTION

**WAC 516-21-293 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Western Washington University may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

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

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

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

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

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

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

#### NEW SECTION

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

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

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

#### NEW SECTION

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

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files

a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

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

#### NEW SECTION

**WAC 516-21-296 Rights of parties under Title IX.** (1) Western Washington University's student conduct procedures, WAC 516-21-250 and 516-21-270 and this supplemental procedure shall apply equally to all parties.

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

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

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

#### NEW SECTION

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

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

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

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

- (a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or
- (b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

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

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

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

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

**NEW SECTION**

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

- (a) Identifies the allegations of sexual harassment;
  - (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
  - (c) Makes findings of fact supporting the determination of responsibility;
  - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
  - (e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
  - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
  - (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Western Washington University's educational programs or activities; and
  - (h) Describes the process for appealing the initial conduct order.
- (2) The committee chair will serve the initial conduct order on the parties simultaneously.

**NEW SECTION**

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

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

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

**WSR 21-17-098**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed August 13, 2021, 2:48 p.m., effective August 13, 2021, 2:48 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-424-0001 Citizenship and alien status—Definitions and 388-466-0005 Immigration status requirements for refugee assistance.

These amendments are necessary to allow special immigrants from Iraq and Afghanistan, who entered the United States as parolees (under Section 602 (B)(1) of Afghan Allies Protection Act of 2009 or Sec 1059(a) of National Defense Authorization Act), to be eligible for federally funded benefits. This change must be implemented immediately to allow access to benefits for these individuals, pursuant to federal law.

Citation of Rules Affected by this Order: Amending WAC 388-424-0001 and 388-466-0005.

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

Other Authority: Sec. 1059(a) of National Defense Authorization Act, Public Law 109-163-JAN. 6, 2006 (NDAA 2006), P.L. 111-118, the Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120, Section 602 (B)(1) of Afghan Allies Protection Act of 2009, P.L. 111-8, As Amended Through P.L. 116-283, Enacted January 1, 2021 (AAPA).

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

Reasons for this Finding: To allow special immigrants from Iraq and Afghanistan paroled into the United States (under section 602 (B)(1) AAPA or Sec. 1059(a) NDAA 2006) the same access to benefits as those special immigrants from Iraq and Afghanistan who entered the United States as Lawful Permanent Residents (under the P.L. 111-118 The Department of Defense Appropriations Act of 2010, Division A, Title VIII, Section 8120).

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

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

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

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

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

Date Adopted: August 13, 2021.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-09-044, filed 4/8/20, effective 5/9/20)

**WAC 388-424-0001 Citizenship and alien status—**

**Definitions.** For the purposes of determining an individual's citizenship and alien status for public assistance, the following definitions apply:

(1) **"Lawfully present"** are immigrants or noncitizens who have been inspected and admitted into the United States and not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigrant Services (CIS) to stay or live in the U.S.

(2) **"Qualified aliens"** are lawfully present immigrants defined in federal law as one of the following:

(a) Individuals lawfully admitted for permanent residence (LPRs).

(b) Individuals who are admitted to the U.S. as refugees under INA §207. The following individuals are treated the same as refugees in their eligibility for public assistance:

(i) Hmong or Highland Lao are members of a Hmong or Highland Laotian tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964 to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribal members.

(ii) Victims of trafficking according to federal law are:

(A) Individuals who have been certified or approved as victims of trafficking by the federal office of refugee resettlement.

(B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or minor sibling if the victim is under twenty-one years old.

(iii) Special immigrants from Iraq and Afghanistan are individuals granted special immigrant status under INA §101 (a)(27), or paroled under section 602 (B)(1) AAPA/Sec 1059 (a) NDAA 2006.

(c) Individuals who have been granted asylum under INA §208.

(d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(e) Abused spouses or children, parents of abused children, or children of abused spouses:

(i) When the alien no longer resides with the person who committed the abuse, and 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 or unmarried child under age twenty-one of a lawful permanent resident (LPR);

(B) A notice of "prima facie" approval of a pending self-petition under the violence against women act (VAWA); or

(C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.

(ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned twenty-one years old. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn twenty-one years old.

(f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA §212 (d)(5), including "public interest" parolees.

(g) Individuals granted withholding of deportation or removal under INA §243(h) or §241 (b)(3).

(h) Individuals who were admitted to the U.S. as conditional entrants under INA §203 (a)(7) prior to April 1, 1980.

(i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **"Nonqualified aliens"** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (1) of this section. Nonqualified aliens include but are not limited to:

(a) Citizens of Marshall Islands, Micronesia or Palau;

(b) Immigrants paroled into the U.S. for less than one year;

(c) Immigrants granted temporary protected status; or

(d) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also non-qualified. Examples include:

(i) Business visitors;

(ii) Students; and

(iii) Tourists.

(4) **"Undocumented aliens"** are noncitizens without a lawful immigration status as defined in subsections (2) or (3) of this section, and who:

(a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

(5) **"U.S. citizens"** are one of the following:

(a) Individuals born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

(c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per title 8, subchapter III, section 1401 of the United States Code.

(e) Individuals who turn eighteen years of age on or after February 27, 2001, automatically become U.S. citizens if the

following conditions are met while the individual is under age eighteen per INA 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals who turned eighteen before February 27, 2001, would have automatically become a citizen if, while the individual was still under eighteen, he or she became a lawful permanent resident and both his or her parents naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

(6) **"U.S. nationals"** are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

AMENDATORY SECTION (Amending WSR 12-19-037, filed 9/12/12, effective 10/13/12)

**WAC 388-466-0005 Immigration status requirements for refugee cash assistance.** (1) You may be eligible for refugee cash assistance (RCA) if you can provide documentation issued by the U.S. Citizenship and Immigration Services (USCIS), that you are:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the U.S. as a refugee or asylee under section 212 (d)(5) of the INA;

(c) Granted conditional entry under section 203 (a)(7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d)(5) of the INA;

(g) Certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;

(i) Admitted as Special Immigrant from Iraq or Afghanistan under section 101 (a)(27) of the INA, or paroled under section 602 (B)(1) AAPA/Sec 1059(a) NDAA 2006.

(2) A permanent resident alien meets the immigration status requirements for RCA if the individual was previously

in one of the statuses described in subsections (1)(a) through (g) of this section.

**WSR 21-17-100**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-150—Filed August 13, 2021, 3:30 p.m., effective August 13, 2021, 3:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to delay the start of recreational crabbing in Marine Area 7 north to August 21.

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

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

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

Reasons for this Finding: The opening of Marine Area 7 north will be delayed until August 21 to accommodate additional time for tribal comanagers to plan and prosecute fisheries. Because of this delay, two additional days are being added to the original recreational crab schedule in 7 north on September 28 and 29. 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: August 13, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-330-04000B Crab—Areas and seasons—Personal use.** Notwithstanding the provisions of WAC 220-330-040, effective immediately through September 30, 2021, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas 4 east of the Bonilla-Tatoosh

line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein:

(1) Marine Areas 4 east of the Bonilla-Tatoosh line, 5, 6, 8-1, 8-2, and 9: Effective immediately, through 11:59 p.m. September 6, 2021, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(2) Marine Area 10: Effective immediately, through 11:59 p.m. September 6, 2021, it is permissible to fish for crab for personal use on Sundays and Mondays.

(3) Marine Area 11: Effective immediately, through 11:59 p.m. August 30, 2021, it is permissible to fish for crab for personal use on Sundays and Mondays.

(4) The portion of Marine Area 12 north of a line projected due east from Ayock Point: Effective immediately, through 11:59 p.m. September 6, 2021, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(5) The portion of Marine Area 12 south of a line projected due east from Ayock Point: Closed until further notice.

(6) Those waters of Marine Area 7 south and west of a line projected from Village Point, Lummi Island, through the navigation buoy just east of Matia Island, thence to the buoy at Clements Reef, thence to the easternmost point of Patos Island, thence running along the northern shore of Patos Island to the westernmost point of Patos Island, thence true west to the international boundary and south of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective immediately, through 11:59 p.m. September 30, 2021, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays.

(7) Those waters of Marine Area 7 north and east of a line projected from Village Point, Lummi Island through the navigation buoy just east of Matia Island thence to the buoy at Clements Reef thence to the easternmost point of Patos Island, running along the northern shoreline of Patos Island and from the westernmost point of Patos Island true west to the international boundary and north of a line that extends from Point Francis on Portage Island, through the marker just north of Inati Bay on Lummi Island to Lummi Island: Effective 12:01 a.m. August 21, 2021, through 11:59 p.m. September 27, 2021, it is permissible to fish for crab for personal use on Thursdays, Fridays, Saturdays, Sundays and Mondays. Additionally, it is permissible to fish for crab for personal use from September 28, 2021 through September 30, 2021.

(8) Marine Area 13: Closed until further notice.

#### REPEALER

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

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

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

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

### WSR 21-17-101 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 21-151—Filed August 13, 2021, 3:40 p.m., effective August 16, 2021]

Effective Date of Rule: August 16, 2021.

Purpose: The purpose of this emergency rule is to close commercial sea cucumber harvest in sea cucumber management District 2.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000X; and amending WAC 220-340-730.

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

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

Reasons for this Finding: This emergency rule closes harvest of sea cucumber in parts of sea cucumber management District 2 (25A, 25B, 25C, 25D, 25E, 23B) because the quota in this area is expected to be taken by August 15, 2021. This closure is needed to fulfill obligations of state and tribal comanager agreements. Immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 13, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-340-73000Y Commercial sea cucumber fishery.** Effective August 16, 2021, until further notice, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest and sales shall be described below. All other provisions of WAC 220-340-730

not addressed herein, and unless otherwise amended, remain in effect:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following catch record areas of Sea Cucumber District 1, Monday through Sunday of each week: 20A, 20B, 21A, 21B, 22A, 22B.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following catch record areas of Sea Cucumber District 2, Monday through Sunday of each week: 29, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) Sea cucumber harvest using shellfish diver gear is allowed in the following catch record areas of Sea Cucumber District 5, Monday through Sunday of each week: 28B, 28C, 28D, and 28A except for all waters of Hale Passage and Wollochot Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(4) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license.

#### REPEALER

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

WAC 220-340-73000X Commercial sea cucumber fishery.  
(21-131)

**WSR 21-17-102**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-149—Filed August 13, 2021, 3:51 p.m., effective August 13, 2021, 3:51 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open waters surrounding Dash Point to fishing for food fish.

Citation of Rules Affected by this Order: Amending WAC 220-311-020.

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

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

Reasons for this Finding: This emergency rule is necessary because the city of Tacoma has closed the Dash Point

Pier due to structural concerns. Due to the pier being closed it is no longer necessary to close the surrounding waters as a measure to prevent gear conflicts with beach and boat fishers. Opening the surrounding area will provide publicly accessible opportunity that would otherwise be lost. 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: August 13, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-311-02000A Puget Sound public fishing piers—Restricted fishing areas.** Effective immediately, until further notice, the following provisions of WAC 220-311-020 regarding fishing for food fish within 100 yards of the Dash Point public fishing pier shall be as described below. All other provisions of WAC 220-211-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

It is permissible fish for and possess food fish taken within 100 yards of the Dash Point public fishing pier.

**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 21-17-127**  
**EMERGENCY RULES**  
**PARAEDUCATOR BOARD**

[Filed August 17, 2021, 1:56 p.m., effective August 17, 2021, 1:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amendment will allow school districts to meet the one day in-person fundamental course of study training requirement through online synchronous instruction with an instructor. The emergency rule would be valid through September 1, 2022.

Citation of Rules Affected by this Order: Amending WAC 179-09-040.

Statutory Authority for Adoption: Chapter 28A.413 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: Since March 2020, the pandemic requires consistent social distancing for the safety of the public. As we approach the start of the next school year, it is apparent that the COVID-19 variant "Delta" is a rising concern for the health of Washington students, educators, and families. As school districts are looking to hold both in-person and hybrid learning, maintaining the in-person requirement to meet seven hours of the fundamental course of study is not attainable for school districts. This amendment will allow school districts to meet the in-person training requirement in a virtual setting, so long as the training is synchronous and led by an instructor.

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

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

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

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

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

Date Adopted: August 17, 2021.

Jack Busbee  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 20-20-002, filed 9/23/20, effective 10/24/20)

**WAC 179-09-040 Fundamental course of study.** (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2)(a) School districts must provide a fundamental course of study on the state standards of practice, as defined by the board in WAC 179-09-050 of this chapter, to paraeducators who have not completed the course, either in the district or in another district within the state. At least one day of the fundamental course of study must be provided in person. School districts must use best efforts to provide the fundamental course of study before the paraeducator begins to work with students and their families, and at a minimum by the deadlines provided in subsection (3) of this section.

(b) Beginning March 1, 2020, through September 1, (~~2021~~) 2022, virtual learning environments that use synchronous learning with an instructor will meet the one day in-

person training requirement of the fundamental course of study.

(3) Except as provided in (b) of this subsection, school districts must provide the fundamental course of study required in subsection (2) of this section by the deadlines provided in (a) of this subsection:

(a)(i) For paraeducators hired on or before September 1st, the first two days of the fundamental course of study must be provided by September 30th of that year and the second two days of the fundamental course of study must be provided within six months of the date of hire, regardless of the size of the district; and

(ii) For paraeducators hired after September 1st:

(A) For districts with ten thousand or more students, the first two days of the fundamental course of study must be provided within four months of the date of hire and the second two days of the fundamental course of study must be provided within six months of the date of hire or by September 1st of the following year, whichever is sooner; and

(B) For districts with fewer than ten thousand students, no later than September 1st of the following year.

(b)(i) For paraeducators hired for the 2018-19 school year, by September 1, 2020; and

(ii) For paraeducators not hired for the 2018-19 school year, but hired for the 2019-20 school year, by September 1, 2021.

(4) School districts may collaborate with other school districts or educational service districts to meet the requirements of this section.

(5)(a) Providers of the fundamental course of study must provide to the paraeducator written documentation of each unit completed by a paraeducator. The documentation is as published by the professional educator standards board.

(b) Upon request, if such request is made within seven calendar years of unit completion, the provider shall provide the paraeducator with documentation of unit completion.

(6) The fundamental course of study must include the training competencies that align with the standards of practice in chapter 179-07 WAC.

(7) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the fundamental course of study.

### WSR 21-17-130

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

[Filed August 17, 2021, 2:42 p.m., effective August 31, 2021]

Effective Date of Rule: August 31, 2021.

Purpose: The department is extending the amendment of the rule listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 epidemic. These amendments align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow nurs-

ing facilities to provide clinical records to residents and resident representatives in ten working days instead of two working days. Current state rules specify clinical records be accessible to residents and their representatives for review within 24 hours and copies must be provided within two working days. The amendment lengthens the time nursing homes have to provide the resident access to, or copies of the requested clinical record from two to ten days. The amendment does not permit the nursing facility to deny the resident access to records. The department filed a CR-101 under WSR 20-19-009. In addition, under the rule development phase of rule making, the department continues discussions with interested parties about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary.

Citation of Rules Affected by this Order: Amending WAC 388-97-0300.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Under nursing home rules, residents have the right to access and review their clinical record. Access to the record must be provided within 24 hours and if the resident or resident representative requests a copy of the record, it must be provided within two working days. The emergency rule lengthens the time nursing homes have to provide the resident access to, or copies of the requested clinical record. The amendment does not permit the nursing facility to deny the resident access to records. This amendment provides flexibility for nursing homes to prioritize direct care over nondirect care tasks while maintaining the resident's right to access their records.

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

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

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

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

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

Date Adopted: August 17, 2021.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-12-040, filed 5/29/14, effective 6/29/14)

**WAC 388-97-0300 Notice of rights and services.** (1)

The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right((:

~~(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and~~

~~(b) After receipt of his or her records for inspection,)) to purchase at a cost not to exceed twenty-five cents a page, photocopies of the records or any portions of them upon request and ((two)) ten working days advance notice to the nursing home. For the purposes of this chapter, "**working days**" means Monday through Friday, except for legal holidays.~~

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, services or activities specified in section (4)(a)(i) and (ii), or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his or her representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, pre-paid charges or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

### WSR 21-17-134

#### EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 17, 2021, 4:30 p.m., effective August 17, 2021, 4:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule provides necessary accommodations for youth reengagement programs as a result of the ongoing coronavirus (COVID-19) pandemic. The emergency rule provides clarification regarding acceptable "face-to-face" engagements when a reengagement program is being administered in remote learning environments made necessary by the global COVID-19 pandemic. Because face-to-face, in-person interaction is not feasible for all students participating in remote learning, this emergency rule amendment is necessary to ensure students will be able to access services through different means of contact in the 2021-22 school year. The office of superintendent of public instruction (OSPI) is initiating rule making to make this change permanent through the remainder of the 2021-22 school year

Citation of Rules Affected by this Order: Amending WAC WAC 392-700-015.

Statutory Authority for Adoption: RCW 28A.175.100.

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

Reasons for this Finding: Students being served through reengagement programs under chapter 392-700 WAC must still be able to receive educational services, including the face-to-face interaction time required under WAC 392-700-015, as school districts continue remote learning options due to the global COVID-19 pandemic. Because face-to-face, in-person interaction is not feasible for all students participating in remote learning, this emergency rule amendment is neces-

sary to ensure students will be able to access services through different means of contact in the 2021-22 school year. OSPI is initiating rule making to make this change permanent through the remainder of the school year.

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

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

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

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

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

Date Adopted: August 17, 2021.

Chris P. S. Reykdahl  
State Superintendent  
of Public Instruction

**AMENDATORY SECTION** (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

**WAC 392-700-015 Definitions.** The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month. For the 2021-22 school year, face-to-face interaction means in-person, or synchronous communication using interactive digital tools, including real-time online applications, or voice or video communication technology.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

(5) **"College"** means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

(6) **"College level class"** is a class provided by a college that is one hundred level or above.

(7) **"Consortium"** means a regional group of organizations that consist of districts, tribal compact schools, charter schools and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts, tribal compact schools, and charter schools and reduce the administrative burden.

(8) **"Consortium agreement"** means the agreement that is signed by the authorized consortium lead and all district,

tribal compact school, and charter school superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts, tribal compact schools, and charter schools.

(9) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

(10) **"Count day"** is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.

(11) **"Credential"** is identified as one of the following:

(a) High school diploma; or

(b) Associate degree.

(12) **"Enrolled student"** is an eligible student whose enrollment and attendance meets the criteria outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding. An enrolled student can be further defined as one of the following:

(a) **New student** is an enrolled student who is being claimed for state funding for the first time by the program.

(b) **Continuing student** is an enrolled student who has continuously been enrolled in the program and claimed for state funding on at least one count day.

(c) **Returning student** is an enrolled student who has returned to the program after not receiving program services for a period of at least one count day and not more than ten count days.

(d) **Reenrolling student** is an enrolled student who has reenrolled in the program after not receiving program services for a period of eleven count days or more.

(13) **"ERDC"** refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(14) **"Full-time equivalent (FTE)"** is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

(15) **"Indicator of academic progress"** means a standard academic benchmark that demonstrates academic performance which is attained by a reengagement student. These indicators will be tracked and reported by the program and district, tribal compact school, or charter school for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

(a) Earns at minimum a 0.25 high school credit;

(b) Earns at minimum a whole college credit;

(c) Receives a college certificate after completion of a college program requiring at least forty hours of instruction;

(d) Receives an industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction;

(e) Passes one or more tests or benchmarks that would satisfy the state board of education's graduation requirements as provided in chapter 180-51 WAC;

(f) Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;

(g) Makes a significant gain in a core academic subject based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);

(h) Successfully completes a grade level curriculum in a core academic subject that does not earn high school or college credit;

(i) Successfully completes college readiness course work with documentation of competency attainment;

(j) Successfully completes job search and job retention course work with documentation of competency attainment;

(k) Successfully completes a paid or unpaid cooperative work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);

(l) Enrolls in a college level class for the first time (limited to be claimed once per enrolled student);

(m) Successfully completes an English as a second language (ESL) class;

(n) Successfully completes an adult basic education (ABE) class; or

(o) Successfully completes a series of short-term industry recognized certificates equaling at least forty hours.

(16) **"Instructional staff"** means the following:

(a) For programs operated by a district, tribal compact school, charter school, or agency, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205; and

(b) For programs operated by a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college.

(17) **"Letter of intent"** means the document signed by the district, tribal compact school, charter school, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, tribal compact school, charter school, college, or agency agree to implement.

(18) **"Noninstructional staff"** is any person employed in a position that is not an instructional staff as defined under subsection (16) of this section.

(19) **"OSPI"** means the office of superintendent of public instruction.

(20) **"Program"** means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

(21) **"School year"** is the twelve-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

(22) **"Scope of work"** means the document signed by district, tribal compact school, or charter school superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district, tribal compact school, or charter school, and will

receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district, tribal compact school, or charter school agree to implement.

(23) **"Resident district"** means the district where the student resides or a district that has accepted full responsibility for a student who lives outside of the district through the choice transfer process pursuant to RCW 28A.225.200 through 28A.225.240. For students enrolled in a tribal compact school or charter school, the tribal compact school or charter school is the student's resident district.

(24) **"Weekly status check"** means individual communication from a designated program staff to a student. Weekly status check:

(a) Can be accomplished in person or through the use of telephone, email, instant messaging, interactive video communication, or other means of digital communication;

(b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;

(c) Must be documented; and

(d) Must occur at least once every week that has at least three days of instruction.

(25) **"Tribal compact school"** means a school that is the subject of a state-tribal education compact operated according to the terms of its compact executed in accordance with RCW 28A.715.010.

(26) **"Charter school"** means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school board, and operated according to the terms of a charter contract executed under chapter 28A.710 RCW.