

**WSR 21-19-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-172—Filed September 2, 2021, 9:10 a.m., effective September 2, 2021, 9:10 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule closes commercial spot shrimp pot clean-up harvest in multiple areas of Puget Sound after reaching the state share.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000L and 220-340-03000Q; 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: Permanent rules regulating State Commercial Shrimp Harvest in Puget Sound and the Strait of Juan de Fuca require adoption of harvest seasons contained in this emergency rule. This emergency rule:

(1) Closes Shellfish Management Areas 1A, 1B, 1C, 2W, and Sub-areas 23A-W, 23A-C, and 23A-E of Marine Fish/Shellfish Catch Reporting Area 23A to commercial harvest of spot shrimp effective immediately.

(2) Closes Shrimp Management Area 2E and Marine Fish/Shellfish Catch Reporting Areas 26B and 26D to commercial harvest of nonspot shrimp.

(3) Allows concurrent harvest and gear deployment with Shrimp Management Regions 4 and 6 for spot shrimp clean-up fisheries.

(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 rule closes areas that have finished commercial clean-up spot shrimp pot harvest in multiple areas of Puget Sound. 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: September 2, 2021.

Kelly Susewind  
 Director

NEW SECTION

**WAC 220-340-52000M 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, 3 as well as Marine Fish/Shellfish Catch Reporting Areas 26B, and 26D are open to the commercial harvest of all shrimp species until further notice, except as provided for in this section:

(i) Commercial harvest of spot shrimp by pots is prohibited effective September 15, 2021 at 11:59 p.m..

(ii) Commercial harvest of non-spot shrimp by pots is prohibited effective October 15, 2021 at 11:59 p.m..

(iii) Sub-area 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.

(iv) Commercial harvest of spot shrimp in Shrimp Management Areas 1A, 1B and 1C is prohibited.

(v) Commercial harvest of spot shrimp in Shrimp Management Area 2W is prohibited.

(vi) Commercial harvest of spot shrimp in Sub-areas 23A-W, 23A-E, and 23A-C of Marine Fish/Shellfish Catch Reporting Area 23A and Marine Fish/Shellfish Catch Reporting Area 23B is prohibited.

(vii) Commercial harvest of non-spot shrimp in Shrimp Management Area 2E is prohibited.

(viii) Commercial harvest of non-spot shrimp in Marine Fish/Shellfish Catch Reporting Areas 26B and 26C is prohibited.

(ix) Commercial harvest of non-spot shrimp in Marine Fish/Shellfish Catch Reporting Area 26D is prohibited.

(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 Marine Fish/Shellfish Catch Reporting Area, with the following exceptions:

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

(B) Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Reporting 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 Shrimp Management Area (1A, 1B, 1C, 2E, 2W, 3, 4, 5, or 6) per day except for the following exceptions:

Spot Shrimp may be harvested from Shrimp Management Areas 4 and 6 during clean-up fisheries on the same day provided that catch from each Shrimp Management Area is kept in separate containers and attributed to the appropriate Marine Fish/Shellfish Catch Reporting Area on the Fish Receiving Ticket.

(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, and 2W combined.

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

(3) Shrimp Spot Pot Harvest Restrictions:

(a) Commercial harvest of spot shrimp in Shrimp Management Area 2E is limited to 953 pounds.

(b) Commercial harvest of spot shrimp in Sub-area 23A-S of Marine Fish/Shellfish Catch Reporting Area 23A and Marine Fish/Shellfish Catch Reporting Area 23D is limited to 837 pounds.

(c) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 23C is limited to 196 pounds.

(d) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 25A of Discovery Bay Shrimp District is limited to 356 pounds.

(e) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 29 is limited to 408 pounds.

(f) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 26B is limited to 321 pounds.

(g) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 26D is limited to 500 pounds.

(4) Shrimp trawl Harvest Restrictions:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Marine Fish/Shellfish Catch Reporting Area 23D) is open, effective immediately, until September 30, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

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 Marine Fish/Shellfish Catch Reporting 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 October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(c) The waters of south Lopez Sound (the portion of Marine Fish/Shellfish Catch Reporting Area 22A south of a line projected east and west from the northern tip of Trump Island) is open effective immediately, until October 15, 2021

at 11:59 p.m. or the State share has been taken, whichever comes first.

(d) The remaining portion of Shrimp Management Area 1B and Marine Fish/Shellfish Catch Reporting Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(e) Marine Fish/Shellfish Catch Reporting Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(f) Marine Fish/Shellfish Catch Reporting Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(g) Trawling is allowed only in waters deeper than 120 feet in Marine Fish/Shellfish Catch Reporting Area 20A.

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

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

**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 220-340-03000R 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 220-340-52000L Puget Sound shrimp pot and trawl fishery—Season. (21-161)

WAC 220-340-03000Q Shellfish harvest logs. (21-161)

## WSR 21-19-004 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order [21]-174—Filed September 2, 2021, 10:54 a.m., effective September 3, 2021]

Effective Date of Rule: September 3, 2021.

**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 220-359-02000R; 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 extends 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, August 11, and September 1, 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: September 2, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000S Columbia River salmon seasons.** Effective September 3, 2021, until further notice, the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Season: Immediately 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: 6:00AM September 6 through 6:00PM September 10

(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 September 3, 2021:

WAC 220-359-02000R Columbia River salmon seasons.  
(21-145)

**WSR 21-19-006**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed September 2, 2021, 3:08 p.m., effective September 2, 2021,  
 3:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On September 1, 2021, the research team (SR3) contracted by the Washington department of fish and wildlife (WDFW) to monitor Southern Resident killer whale (SRKW) body condition observed the two-year-old SRKW calf J56 with other members of J Pod near Point Roberts. This individual, J56, was born in May 2019. By September of 2020, her condition had declined by two condition states, bordering on "poor" classification, and she had developed a pale skin tone. When observed on September 1, 2021, J56's condition had further declined, and her pale coloration had persisted. WDFW verified the reports from SR3 on the morning of September 2, 2021, and determined that the designation of "sick or vulnerable" is appropriate. The best available science suggests that whales measured to be in the "poor condition" state had a significantly increased probability of subsequent mortality. Per WAC 220-460-110, WDFW is adopting an emergency rule to designate J56 as vulnerable and thereby prevent commercial whale watching operators from approaching this individual or a group containing the individual within 0.5 nautical mile[s]. This designation and the additional distance is necessary to ensure that J56's ability to survive is not hindered by the presence of vessels.

Citation of Rules Affected by this Order: New WAC 220-460-110B.

Statutory Authority for Adoption: RCW 77.65.620.

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 imminent risk to an endangered species requires additional protection immediately. This emergency action is necessary to protect the public's interest in the preservation of a vulnerable endangered animal.

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

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

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

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

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

Date Adopted: September 2, 2021.

Kelly Susewind  
 Director

NEW SECTION

**WAC 220-460-110B Southern Resident Killer Whale J56** In conjunction with WAC 220-460-110(2), the department designates the female Southern Resident Killer Whale J56 as a vulnerable individual.

**WSR 21-19-007**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-171—Filed September 2, 2021, 3:32 p.m., effective September 3,  
 2021]

Effective Date of Rule: September 3, 2021.

Purpose: The purpose of this emergency rule is to lower daily steelhead limits or close steelhead fisheries in the Snake River and tributaries, the Grande Ronde, Touchet, Tucannon, and Walla Walla rivers.

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 lower steelhead daily limits or close steelhead angling altogether for portions of the Snake River and its tributaries, the Grande Ronde, Touchet, Tucannon, and Walla Walla rivers. These measures regarding steelhead in the Snake River and its tributaries are needed to ensure that broodstock needs are met and to limit impacts on wild steelhead. The 2021 Columbia River forecasted return for upriver steelhead was 89,200. Steelhead passage at Bonneville Dam of steelhead from July 1 through August 29 is 33,906 and is the lowest count on record and tracking behind the preseason forecast. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: September 2, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-05000Z Freshwater exceptions to statewide rules—Eastside.** Effective September 3, 2021, until further notice, the following provisions of WAC 220-312-050 regarding steelhead seasons for the Snake River and its tributaries, the Grande Ronde, Touchet, Tucannon, and Walla Walla rivers shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or otherwise amended by emergency rule, remain in effect:

(1) **Grande Ronde River (Asotin County):** from County Road Bridge (approximately 2.5 miles upstream of the mouth) to the Washington/Oregon border: Steelhead:

(a) Daily limit 1 hatchery steelhead.

(b) Barbless hooks required.

(c) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(d) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

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

(a) From the Burbank to Pasco railroad bridge at Snake River mile 1.25 to Lower Granite Dam: Steelhead: Closed to fishing for or retaining.

(b) From Lower Granite Dam to the Idaho/Oregon Border: Steelhead:

(i) Daily limit 1 hatchery steelhead.

(ii) Barbless hooks required.

(iii) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(iv) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

(3) **Touchet River (Walla Walla County): from the mouth to the confluence of the North and South Forks:** Steelhead: Closed to fishing for or retaining.

(4) **Tucannon River (Columbia/Garfield Counties):** from the mouth to the Tucannon Hatchery Road Bridge: Steelhead: Closed to fishing for or retaining.

(5) **Walla Walla River (Walla Walla County):** from the mouth to the Washington/Oregon border: Steelhead: Closed to fishing for or retaining.

Purpose: The purpose of this emergency rule is to close recreational salmon and steelhead fisheries in the Columbia River from the Rocky Point/Tongue Point Line to Bonneville Dam, including Camas Slough.

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

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

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

Reasons for this Finding: The purpose of this rule is to close recreational salmon fisheries in the Columbia River from the Tongue Point/Rocky Point Line to Bonneville Dam. Catches to date in the Tongue Point/Rocky Point to Warrior Rock line area are exceeding expectations and harvest limits for the Lower River Hatchery (LRH) Chinook have been met for the Tongue Point/Rocky Point to Bonneville Dam area. LRH are the surrogate for ESA-listed Lower Columbia River (LCR) wild Tules, and return to tributaries downstream of Bonneville Dam. The delayed closure for the Warrior Rock line to Bonneville Dam area provides additional opportunity over the holiday weekend, but closes as well because LRH impacts occur in this area. Fisheries are managed to remain under ESA impact limits. Joint state action was necessary to limit additional LRH mortalities. There is insufficient time to adopt permanent rules

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

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

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

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

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

Date Adopted: September 2, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River.** Effective September 4, 2021, until further notice, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), to Bonneville Dam, including Camas Slough,

#### WSR 21-19-008

#### EMERGENCY RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 21-173—Filed September 2, 2021, 3:42 p.m., effective September 4, 2021]

Effective Date of Rule: September 4, 2021.

shall be as described below during the dates listed below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**From a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line) to a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line):** Salmon and steelhead: Effective September 4, 2021, until further notice: Closed.

**From a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line) to Bonneville Dam, including Camas Slough:** Salmon and steelhead: Effective September 7, 2021, until further notice: Closed.

**WSR 21-19-009**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-175—Filed September 2, 2021, 4:33 p.m., effective September 4, 2021]

Effective Date of Rule: September 4, 2021.

Purpose: The purpose of this emergency rule is to close recreational salmon fisheries in Catch Record Card Areas 2 and 3.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500E; and amending WAC 220-313-075.

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

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

Reasons for this Finding: This rule is needed to close salmon fishing in Catch Record Card Areas 2 and 3. Washington department of fish and wildlife data indicates that coho quota will be reached by the end of the day Friday, September 3, 2021, in Catch Record Card Area 3 and by the end of the day Tuesday, September 7 in Catch Record Card Area 2. This rule is also adopted at the recommendation of the Pacific Fisheries Management Council and has been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 2, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-07500F Pacific Ocean Salmon—Seasons—Closed areas.** Effective 12:01 AM September 4 through September 15, 2021 the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

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

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

Open immediately through September 7, 2021:

(a) Daily limit of 2 salmon.

(b) Release wild coho.

(c) Chinook minimum length 22 inches.

(d) Coho minimum length 16 inches.

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

(4) **Catch Record Card Area 4:**

Open immediately through September 15, 2021:

(a) Daily limit of 2 salmon; no more than one may be a Chinook.

(b) Release wild coho and chum.

(c) Chinook minimum length 24 inches.

(d) Coho minimum length 16 inches.

(e) No chinook retention in waters east of the Bonilla-Tatoosh line.

REPEALER

The following section of Washington Administrative Code is repealed, effective 12:01 AM September 4, 2021:

WAC 220-313-07500E Pacific Ocean Salmon—Seasons—Closed areas. (21-167)

**WSR 21-19-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-176—Filed September 2, 2021, 4:58 p.m., effective September 2, 2021, 4:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to increase the landing and possession limit for the coastal commercial troll fleet coho fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000Z; and amending WAC 220-354-300.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 2, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-354-30000A Coastal salmon troll seasons—Commercial.** Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective immediately, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open: immediately through September 30, 2021.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat.,

124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.): Closed.

(3) Landing and possession limit of 50 marked coho per vessel per landing week, defined as Thursday through Wednesday.

(4) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

(5) All retained coho must be marked with a healed adipose fin clip.

(6) No chum retention north of Cape Alava, WA in August and September.

(7) Minimum size for Chinook salmon is 27 inches in length (20 1/2 inches frozen dressed). Minimum size for coho salmon is 16 inches in length (12 inches frozen dressed). No minimum size for pink, sockeye or chum salmon.

(8) For delivery to Washington ports east of the Sekiu River, vessels must notify WDFW at (360)249-1215 or by email at Danielle.Williams@dfw.wa.gov prior to crossing the Bonilla-Tatoosh line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery. Vessels may not land fish east of Port Angeles or east of the Megler-Astoria bridge.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

#### REPEALER

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

WAC 220-354-30000Z Coastal salmon troll seasons—  
Commercial. (21-107)

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

#### **WSR 21-19-011**

#### **EMERGENCY RULES**

#### **HEALTH CARE AUTHORITY**

[Filed September 3, 2021, 7:44 a.m., effective September 3, 2021, 7:44 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is establishing chapter 182-521 WAC, titled public health emergency rules, and creating a new section under WAC 182-521-0100 Disregarded income,



to identify income that the agency does not count when determining apple health eligibility.

Citation of Rules Affected by this Order: New WAC 182-521-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Not applicable.

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

Reasons for this Finding: In response to the current public health emergency surrounding the outbreak of the coronavirus disease (COVID-19), along with the governor of Washington's emergency proclamations related to COVID-19, this rule making is necessary to preserve the public health, safety, and general welfare by identifying income that the health care authority (HCA) does not count when determining apple health eligibility.

This emergency filing is necessary to renew the current emergency rule, which is set to expire on September 3, 2021, while the permanent rule-making process proceeds. Since the previous emergency filing under WSR 21-11-002, HCA filed the Proposed rule making (CR-102) and a public hearing is scheduled for October 5, 2021.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

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

Date Adopted: September 3, 2021.

Wendy Barcus  
Rules Coordinator

## Chapter 182-521 WAC

### PUBLIC HEALTH EMERGENCY RULES

#### NEW SECTION

**WAC 182-521-0100 Disregarded income and resources.** (1) The health care authority (agency) does not count as income when determining apple health eligibility any Federal Pandemic Unemployment Compensation (FPUC) or Recovery Rebates authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act or other needs-based assistance authorized as a result of the

COVID-19 public health emergency as described in this section.

(2) The agency disregards as income for medicaid determinations and eligibility cost-sharing calculations all of the following:

(a) An emergency increase in unemployment compensation benefits of an additional six hundred dollars per week issued as compensation for the period of March 18, 2020, through July 31, 2020;

(b) Unemployment compensation issued due to the federal Disaster Relief Fund authorized for states to off-set lost wages due to the COVID-19 pandemic, known as Lost Wage Assistance (LWA). This income is intended for weeks ending August 1, 2020, through September 6, 2021. The weekly amount for this benefit is three hundred dollars per week;

(c) Unemployment compensation received during the public health emergency for all nonmodified adjusted gross income (non-MAGI) eligibility groups, except for individuals receiving a special income disregard as described in WAC 182-512-0840. For these individuals, unemployment compensation is counted to determine continued eligibility for that coverage. If the result is medically needy coverage, then the disregard is applied;

(d) Payments from the pandemic relief payment program as authorized by Governor Jay Inslee on December 27, 2020; and

(e) Federal Pandemic Unemployment Compensation authorized by the Coronavirus Aid, Relief, and Economic Security Act of 2020 and extended by the American Rescue Plan Act of 2021 through September 6, 2021, in the amount of three hundred dollars per week.

(3) The agency considers Pandemic Recovery Rebates (stimulus checks) to be exempt as income and does not count them as a resource for twelve months after receipt.

(4) The agency considers needs-based assistance from other agencies or tribal entities to be exempt as income.

(5) The agency excludes income described in this section from the post-eligibility treatment of income (PETI) calculation.

(6) Any income received as unemployment compensation not described within this section is otherwise countable and the agency counts it when determining MAGI-based apple health eligibility.

(7) These rules are in effect until the later of:

(a) The date the client is receiving any benefits described in this rule; or

(b) The end of the month the Secretary of the U.S. Department of Health and Human Services declares the COVID-19 public health emergency to be over.

#### WSR 21-19-012

#### EMERGENCY RULES

#### DEPARTMENT OF

#### CHILDREN, YOUTH, AND FAMILIES

[Filed September 3, 2021, 1:17 p.m., effective September 3, 2021, 1:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Clarify that the department does not regulate community-based quarantine and isolation facilities operated by or under contract with a local government.

Citation of Rules Affected by this Order: Amending WAC 110-145-1305.

Statutory Authority for Adoption: RCW 74.13.031 and 74.15.030.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. WAC 110-145-1305 was adopted under WSR 20-19-052, 20-11-014, and 21-03-016 on May 12, 2020, September 10, 2020, and January 8, 2021, respectively, to allow for the expedient delivery of life-saving services to a highly vulnerable population in Washington state—homeless youth who have recently been diagnosed with, infected by, or who came into contact with COVID-19. Circumstances changed under Proclamations 20-25 through 20-25.12 "Safe Start - Stay Health[y]" County-by-County Phased Reopening, but conditions prompting the state of emergency declaration still exist and justify the need for WAC 110-145-1305 to remain in effect.

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

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

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

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

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

Date Adopted: September 3, 2021.

Brenda Villarreal  
Rules Coordinator

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

**WAC 110-145-1305 What definitions do I need to know to understand this chapter?** The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and emotional condition.

"Business hours" means hours during the day in which state business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

"Capacity" means the age range, gender, and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Chapter" means chapter 110-145 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

(a) Under eighteen years old;

(b) Up to twenty-one years of age and enrolled in services through the department of social and health services developmental disabilities administration (DDA) the day prior to their eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

(c) Up to twenty-one years of age and participates in the extended foster care program;

(d) Up to twenty-one years of age with intellectual and developmental disabilities;

(e) Up to twenty-five years of age and under the custody of juvenile rehabilitation.

"Community-based COVID-19 isolation and quarantine facility" means any person, firm, partnership, association, corporation, or facility operated by or pursuant to a contract with a county in Washington state, and that provides temporary isolation and quarantine services to homeless youth who have been diagnosed with, infected with, or exposed to COVID-19. A community-based COVID-19 isolation and quarantine facility does not qualify as an "agency" under RCW 74.15.020(1). Such facilities are exempt from department licensing under RCW 74.15.020 (2)(1).

"Child placing agency" or "CPA" means an agency licensed to place children for temporary care, continued care, or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"Crisis residential center (secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family or in need of emergency placement.

"CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

"DDA" means the developmental disabilities administration. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department" or "DCYF" means the department of children, youth, and families.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care" means direct, hands-on personal care and supervision to group care children and youth.

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center (ERC)" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through seventeen years for up to seventy-two hours to prevent child abuse or neglect per RCW 74.15.020 (d). ERCs may choose to be open up to twenty-four hours a day, seven days a week. Facilities may also provide family assessment, family support services and referral to community services.

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for thirty or fewer days.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns, and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

"LD" means the licensing division of DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of DCYF and the child's whereabouts are unknown, the child has left care without the permission of the child's caregiver or DCYF, or both. This does not include children in a dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at risk youth or children in need of services, and their parents.

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

- (a) A decision issued by an administrative law judge;
- (b) A final determination, decision, or finding made by an agency following an investigation;
- (c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;
- (d) A revocation, denial, or restriction placed on any professional license; or
- (e) A final decision of a disciplinary board.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or runaway youth in need of emergency sleeping arrangements.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant, and anti-anxiety medications.

"Relative" means a person who is related to a child per RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Staff" or "staff member" means a person who provides services for your facility and is paid by your facility. The definition of staff member includes paid interns.

"Staffed residential home" means a licensed facility that provides twenty-four-hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Volunteer" means a person who provides services for your facility without compensation.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We, our, and us" refers to DCYF and its staff.

"Young child" refers to a child age twelve months through eight years old.

Reasons for this Finding: Steelhead fishing and retention throughout Drano Lake was closed from July through October 2021, based on low preseason forecasts of summer steelhead returning to the Columbia River. Subsequently, an additional boat angling restriction was implemented in a subarea of Drano Lake to address steelhead angling closure violations observed by fisheries enforcement. While the boat angling restriction has been effective, enforcement officers have observed increased targeting of steelhead along shoreline areas. The need for this rule is the result of continued angling violations in the area, increasing concern for summer steelhead returning to the Columbia River in record low numbers, and the need to manage sport fishing impacts to ESA-listed stocks within the limits established in the 2018-2027 *US v. Oregon* Management Agreement.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 3, 2021.

Kelly Susewind  
Director

**WSR 21-19-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-177—Filed September 3, 2021, 2:36 p.m., effective September 4, 2021]

Effective Date of Rule: September 4, 2021.

Purpose: The purpose of this emergency rule is to close a portion of Drano Lake to fishing for all species.

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

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

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

NEW SECTION

**WAC 220-312-03000C Freshwater exceptions to statewide rules—Southwest.** Effective September 4, 2021 until further notice, angling for all species is closed in waters of Drano Lake located between a line projected through shoreline markers (located on north and west shores) approximately 2,000 feet downstream of the Little White Salmon National Fish Hatchery, upstream to the deadline markers at the mouth of the Little White Salmon River immediately below the fish hatchery. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule.

REPEALER

The following section of Washington Administrative Code is repealed, effective September 4, 2021:

WAC 220-312-03000A Freshwater exceptions to statewide rules—Southwest. (21-156)

**WSR 21-19-015**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-178—Filed September 3, 2021, 2:39 p.m., effective September 6, 2021]

Effective Date of Rule: September 6, 2021.

Purpose: Closes commercial sea cucumber harvest in sea cucumber Management District 2-1.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000Z; 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 sea cucumber Management District 2-1 because the quota in this area has been reached. This closure is needed to fulfill obligations of state and tribal comanager agreements.

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

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

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

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

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

Date Adopted: September 3, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-73000A Commercial sea cucumber fishery.** Effective September 6, 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) 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 September 6, 2021:

WAC 220-340-73000Z Commercial sea cucumber fishery.  
(21-155)

**WSR 21-19-023**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed September 8, 2021, 1:32 p.m., effective September 8, 2021,  
1:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The office of superintendent of public instruction is adopting emergency rule revisions regarding data collection requirements on the annual S-275 school personnel report after the 2018 Washington legislature made significant changes to how school districts are funded and how educators are compensated. The Washington legislature no longer provides funding to school districts for teacher salary and benefits tied to their education level (degree and credits) and certificated years of experience. These rule revisions implement those changes while continuing to collect S-275 education and experience data as needed.

Citation of Rules Affected by this Order: Repealing WAC 392-121-255 through 392-121-262 and 392-121-266 through 392-121-299; and amending WAC 392-121-249, 392-121-250, and 392-121-264.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Reasons for this Finding: These rule revisions are needed to provide simplified, but accurate, data for the Washington legislature to review and rebase state salary allocations that align with the staffing costs for the state's program of basic education pursuant to RCW 28A.150.410

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 3, Repealed 10.

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 3, Repealed 10.

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

Date Adopted: September 7, 2021.

Chris P. S. Reykdal  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 17-03-025, filed 1/6/17, effective 2/6/17)

**WAC 392-121-249 Definition—Accredited institution of higher education.** As used in this chapter, "accredited institution of higher education" means an institution of higher education that has been accredited by a national or regional accrediting association recognized by the Washington student achievement council and the secretary of the U.S. Department of Education pursuant to WAC ((181-78A-010 (7))) 250-61-050.

**AMENDATORY SECTION** (Amending WSR 11-21-065, filed 10/17/11, effective 11/17/11)

**WAC 392-121-250 Definition—Highest degree level.** As used in this chapter, the term "highest degree level" means:

(1) The highest degree earned by the employee from an accredited institution of higher education, pursuant to WAC 392-121-249; or

(2) "Nondegreed" for a certificated instructional employee who((:

(a)) holds no bachelor's or higher level degree((; or

(b) Holds a bachelor's or higher level degree and a valid vocational/career and technical education certificate, but:

(i) The bachelor's or higher level degree was not a requirement of any past or present education certificate or permit, including the vocational/career and technical education certificate, pursuant to chapter 181-77 or 181-79A WAC; and

(ii) Whose highest placement pursuant to WAC 392-121-270 is as a nondegreed certificated instructional employee)).

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

**WAC 392-121-264 Definition—Certificated years of experience.** Regardless of the experience factors used by a school district ((or)), charter school, or tribal compact school for the purposes of its salary schedule(s), as used in this chapter, the term "certificated years of experience" means the number of years of accumulated full-time and part-time ((professional education)) certificated employment prior to the current reporting school year in the state of Washington, out-of-state, and a foreign country. School districts ((and)), charter schools, and tribal compact schools shall report all

certificated years of experience including those beyond the experience limit of ((the school district's or charter school's)) their salary schedule(s).

(1) ((Professional education)) Certificated employment shall be limited to ((the following):

(a)) employment in public or private preschools or elementary and secondary schools in positions which require certification where((:

(i) Schools include the Centrum education program, the Pacific Science Center education program, educational centers authorized under chapter 28A.205 RCW, and Seattle Children's Hospital education program;

(ii)) certification means the concurrent professional education licensing requirements established in the state, province, country, or other governmental unit in which employment occurred and which, for the state of Washington, refers to the certificates authorized by WAC 181-79A-140 and 181-79A-142, and temporary permits authorized by WAC 181-79A-128((;

(b) Employment in public or private vocational-technical schools, technical colleges, community/junior colleges, colleges, and universities in positions comparable to those which require certification in Washington school districts;

(c) Employment in a governmental educational agency with regional administrative responsibilities for preschool, elementary, and/or secondary education including but not limited to an educational service district, office of superintendent of public instruction, or United States department of education in any professional position including but not limited to C.P.A., architect, business manager, or physician;

(d) Experience in the following areas:

(i) Military, Peace Corps, or Vista service which interrupted professional education employment included in (a), (b), or (c) of this subsection; and

(ii) Sabbatical leave.

(e) For nondegreed vocational/career and technical education instructors, up to a maximum of six years of management experience as defined in WAC 181-77-003(6) acquired after the instructor meets the minimum vocational/career and technical education certification requirements of three years (six thousand hours) established in WAC 181-77-041(1)(a) (i), regardless of when the initial certificate is issued and regardless of type of vocational/career and technical education certificate held. If a degree is obtained while employed in the state of Washington as a nondegreed vocational/career and technical education instructor, the eligible years of management experience pursuant to this subsection reported on Report S-275 prior to the awarding of the degree shall continue to be reported but shall not increase.

(f) Beginning in the 2007-08 school year, for occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers regulated under Title 18 RCW, years of experience may include employment as occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers, that does not otherwise meet the requirements of (a) through (e) of this subsection, subject to the following conditions and limitations:

~~(i) Experience included under this subsection shall be limited to a maximum of two years.~~

~~(ii) The calculation of years of experience shall be that one year of experience in a school or other nonschool position counts as one year of experience for the purposes of this subsection, per subsection (2)(a) of this section.~~

~~(iii) Employment as occupational therapists shall be limited to the following:~~

~~(A) In positions requiring licensure as an occupational therapist under Title 18 RCW, or comparable out of state employment; and~~

~~(B) While holding a valid occupational therapist license, or other comparable occupational therapist credential.~~

~~(iv) Employment as physical therapists shall be limited to the following:~~

~~(A) In positions requiring licensure as a physical therapist under Title 18 RCW, or comparable out of state employment; and~~

~~(B) While holding a valid physical therapist license, or other comparable physical therapist credential.~~

~~(v) Employment as nurses shall be limited to the following:~~

~~(A) In positions requiring licensure as a registered nurse under Title 18 RCW, or comparable out of state employment; and~~

~~(B) While holding a valid registered nurse license, or other comparable registered nurse credential.~~

~~(vi) Employment as speech language pathologists or audiologists shall be limited to the following:~~

~~(A) In positions requiring the same or similar duties and responsibilities as are performed by speech language pathologists or audiologists regulated under Title 18 RCW; and~~

~~(B) After completion of the minimum requirements for conditional certification as a school speech language pathologist or audiologist established in WAC 181-79A-231(1)(e)(iv).~~

~~(vii) Employment as counselors shall be limited to the following:~~

~~(A) In positions requiring the same or similar duties and responsibilities as are performed by counselors regulated under Title 18 RCW; and~~

~~(B) After completion of the minimum requirements for emergency certification as a school counselor established in WAC 181-79A-231(3).~~

~~(viii) Employment as psychologists shall be limited to the following:~~

~~(A) In positions requiring the same or similar duties and responsibilities as are performed by psychologists regulated under Title 18 RCW; and~~

~~(B) After completion of the minimum requirements for emergency certification as a school psychologist established in WAC 181-79A-231(3).~~

~~(ix) Employment as social workers shall be limited to the following:~~

~~(A) In positions requiring the same or similar duties and responsibilities as are performed by social workers regulated under Title 18 RCW; and~~

~~(B) After completion of the minimum requirements for emergency certification as a school social worker established in WAC 181-79A-231(3).~~

~~(x) Certificated years of experience as occupational therapists, physical therapists, nurses, speech language pathologists, audiologists, counselors, psychologists, and social workers, determined pursuant to this subsection and reported on Report S-275, by teachers and other certificated staff who are no longer employed as occupational therapists, physical therapists, nurses, speech language pathologists, audiologists, counselors, psychologists, and social workers, shall continue to be reported but shall not increase).~~

~~(2) Years of full-time and part-time ((professional education)) certificated employment prior to the current reporting school year are accumulated as follows:~~

~~(a) For each ((professional education)) certificated employment which is not employment as a casual substitute pursuant to subsection (1)((a)) of this section;~~

~~(i) Determine the total number of hours, or other unit of measure, per year for an employee working full-time with each employer;~~

~~(ii) Determine the number of hours, or other unit of measure, per year with each employer, including paid leave and excluding unpaid leave;~~

~~(iii) Calculate the quotient of the hours, or other unit of measure, determined in (a)(ii) of this subsection divided by the hours, or other unit of measure, in (a)(i) of this subsection rounded to ((two)) one decimal place((s)) for each year.~~

~~(b) For ((professional education)) certificated employment as a casual substitute pursuant to subsection (1)((a)) of this section:~~

~~(i) Determine the total number of full-time equivalent substitute days per year;~~

~~(ii) Calculate the quotient of full-time equivalent days determined in (b)(i) of this subsection divided by ((180)) one hundred eighty rounded to ((two)) one decimal place((s)) for each year.~~

~~(c) No more than 1.0 year may be accumulated in any traditional nine-month academic year or any twelve-month period.~~

~~(i) Accumulate, for each year, ((professional education)) certificated employment calculated in (a)(iii) and (b)(ii) of this subsection.~~

~~(ii) Determine the smaller of the result in (c)(i) of this subsection or ((1.00)) 1.0 for each year.~~

~~(d) Determine certificated years of experience as the accumulation of all years of ((professional education)) certificated employment calculated in (c)(ii) of this subsection and report such years rounded to one decimal place.~~

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-121-255 Definition—Academic credits.

WAC 392-121-257 Definition—In-service credits.

WAC 392-121-259 Definition—Nondegree credits.

WAC 392-121-261 Definition—Total eligible credits.

WAC 392-121-262 Definition—Additional criteria for all credits.

- WAC 392-121-266 Definition—LEAP salary allocation documents.
- WAC 392-121-270 Placement of certificated instructional employees on LEAP salary allocation documents.
- WAC 392-121-280 Placement on LEAP salary allocation documents—Documentation required.
- WAC 392-121-295 Definition—District average certificated instructional staff mix factor.
- WAC 392-121-299 Determination of district average certificated instructional staff salary for the purpose of apportionment.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 3.

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

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

Date Adopted: September 8, 2021.

Kelly Susewind  
Director

**WSR 21-19-025**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-180—Filed September 8, 2021, 3:47 p.m., effective September 16, 2021]

Effective Date of Rule: September 16, 2021.

Purpose: The purpose of this emergency rule is to close coastal commercial crab seasons and modify coastal crab gear recovery permit rules by allowing an earlier start to gear recovery.

Citation of Rules Affected by this Order: Repealing WAC 220-340-49000E, 220-340-45000D and 220-340-42000N; and amending WAC 220-340-490.

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: In order to protect crab during the typical fall molting period and to meet the stipulations found in state tribal agreements, it is necessary to close the commercial crab fishery. Washington department of fish and wildlife permitted gear recovery is allowed by permanent regulation 15 days following the close of the commercial season to allow fish and wildlife officers time to enforce rules relative to fishing during the closed season. An earlier start to the permitted gear recovery gives participants more time to recover lost gear before weather conditions becomes prohibitive to safe gear recovery efforts. 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.

NEW SECTION

**WAC 220-340-49000E Coastal crab fishery—Coastal crab gear recovery permit.** Effective 8:01 AM September 16 until 11:59 PM October 31, 2021, the provisions of WAC 220-340-490 regarding gear recovery shall be as described below. All other provisions of WAC 220-340-490 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) A coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean in the coastal waters between the Washington/Oregon border (46°15.00) and the US/Canada border, including the Columbia River, Willapa Bay and Grays Harbor.

(2) No crab may be retained on any vessel engaged in permitted gear recovery activities or while recovered gear is on board the vessel.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 11:59 PM September 15, 2021:

WAC 220-340-45000D Commercial crab fishery—Seasons and areas—Coastal. (21-67)

WAC 220-340-42000N Commercial crab fishery—Unlawful acts. (21-67)

REPEALER

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

WAC 220-340-49000E Coastal crab fishery—Coastal crab gear recovery permit. (21-180)



**WSR 21-19-027**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-179—Filed September 9, 2021, 8:57 a.m., effective October 1, 2021]

Effective Date of Rule: October 1, 2021.

Purpose: The purpose of this emergency rule is to open retention of wild jack coho salmon in the Chehalis Basin salmon fisheries, from October 1 through December 31, 2021.

Citation of Rules Affected by this Order: Amending WAC 2201-312-020 [220-312-020].

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

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

Reasons for this Finding: This emergency rule is necessary to allow retention of wild jack coho as part of the salmon daily limit in the areas listed. Preseason planning during the 2021/2022 North of Falcon season setting process included wild jack coho retention in areas listed, but was inadvertently omitted from the permanent rule package, originally filed July 2, 2021, as WSR 21-14-067. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2021.

Kelly Susewind  
Director

**NEW SECTION**

**WAC 220-312-02000N Freshwater exceptions to statewide rules—Coast.** Effective October 1 through December 31, 2021, provisions of WAC 220-312-020 regarding wild jack coho salmon retention for the sections of streams in the Chehalis Basin open for salmon fishing, (includes Black, Chehalis, Elk, Johns, Hoquiam, Hoquiam West Fork, Hoquiam East Fork, Newaukum, Satsop, Skookumchuck, Wishkah, and Wynoochee rivers, as well as Van

Winkle Creek,) shall be modified as described below. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

Wild jack coho may be retained as part of the salmon daily limit in the following areas:

- (1) Black River: from mouth to bridge on 128th Ave. SW
- (2) Chehalis River: from mouth to high bridge on Weyerhaeuser 1000 line
- (3) Elk River: from mouth to confluence of Middle Branch
- (4) Johns River: from mouth to confluence of Ballon Creek
- (5) Hoquiam River including West Fork: from mouth to Dekay Rd. Bridge
- (6) Hoquiam River, East Fork: from mouth to the confluence of Berryman Creek
- (7) Newaukum River: from mouth to Leonard Rd.
- (8) Satsop River: from mouth to the bridge at Schafer State Park
- (9) Satsop River: from 400 feet downstream of Bingham Creek Hatchery Dam to Bingham Creek Hatchery Dam
- (10) Skookumchuck River: from mouth to 100 feet downstream of outlet of TransAlta WDFW steelhead rearing ponds
- (11) Van Winkle Creek: from mouth to 400 feet below outlet of Lake Aberdeen Hatchery
- (12) Wishkah River: from mouth to 200 feet downstream of the weir at the Wishkah Rearing Ponds
- (13) Wynoochee River: from mouth to WDFW White Bridge access site

**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 21-19-033**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order [21-]182—Filed September 9, 2021, 4:42 p.m., effective September 9, 2021, 4:42 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 220-359-02000S; 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 wild-life 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 extends 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, August 11, September 1, and September 9, 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: September 9, 2021.

Kelly Susewind  
Director

#### NEW SECTION

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

- 1) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)
  - (a) Season: Immediately 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: Immediately, through 6:00 PM September 10; and 6:00 AM September 13 through 6:00 PM September 17.
  - (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 through September 10, and reduced to a 150-foot radius starting September 13
- 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 220-359-02000S Columbia River salmon seasons.  
(21-174)

**WSR 21-19-035  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 21-185—Filed September 9, 2021, 5:02 p.m., effective September 9, 2021, 5:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Area 2N on September 12, Areas 2N and 2M on September 14, and Areas 2N, 2T, and 2U on September 18, 2021.

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

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

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

Reasons for this Finding: This emergency rule is needed to close the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Area 2N on September 12, 2021, Areas 2N and 2M on September 14, 2021, and Areas

2N, 2T, and 2U on September 18, 2021. The impacts of natural origin fall Chinook have been higher than preseason predictions. Based on preseason predictions and uncertainty around run sizes of Chinook in-season, a modification of the commercial fishery is necessary to help ensure that conservation objectives for Chinook are met. All other rules remain in effect.

For statistical week 36, the total impacts predicted preseason for natural origin Chinook was 24 fish. The estimated impacts for natural origin Chinook in-season for statistical week 36 was 39 fish. This is 163 percent of the preseason prediction.

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

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

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

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

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

Date Adopted: September 9, 2021.

Kelly Susewind  
Director

**NEW SECTION**

**WAC 220-354-25000A Willapa Bay salmon fall fishery.** Notwithstanding the provisions of WAC 220-354-250, the following rules apply. All other provisions of WAC 220-354-250, not contained herein remain in effect unless otherwise altered by emergency rule:

Areas	Date	Closed periods
2N	September 12, 2021	Closed
2N, 2M	September 14, 2021	Closed
2N, 2T, 2U	September 18, 2021	Closed

**WSR 21-19-036  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 21-181—Filed September 9, 2021, 5:51 p.m., effective September 11, 2021]

Effective Date of Rule: September 11, 2021.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish 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, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 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: Analysis of in-season catch information indicated that few ESA-listed lower river Chinook tules are expected to be caught within in the portion of river set to reopen. The Camas Slough closure will help provide additional protection for returning Chinook. Joint state action was taken to provide additional fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 9, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000X Freshwater exceptions to statewide rules—Columbia River.** Effective September 11, 2021, until further notice, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), to Warrior Rock Line and Camas Slough, shall be as described below during the dates listed below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) **From a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line) to a line projected from the Warrior Rock lighthouse through Red Buoy 4 to the**

**marker atop the piling dolphin located at the downstream end of Bachelor Island on the Washington Shore (Warrior Rock Line):** Salmon and steelhead: Effective immediately, until further notice: Closed.

(2) **Camas Slough** (waters of the Columbia River downstream from the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island): Salmon and steelhead: Effective immediately through September 30, 2021: Closed.

#### REPEALER

The following section of Washington administrative code is repealed, effective September 11, 2021:

WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River. (21-173)

**WSR 21-19-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-183—Filed September 10, 2021, 10:30 a.m., effective September 10, 2021, 10:30 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes subarea 23A-S of Marine Fish/Shellfish Catch Reporting Area 23A and Marine Fish/Shellfish Catch Reporting Areas 23B and 23D to commercial harvest of spot shrimp effective immediately. Closes Shrimp Management Area 2E and Marine Fish/Shellfish Catch Reporting Areas 26B, 26C, and 26D to commercial harvest of all shrimp species. Opens subarea 23A-S of Marine Fish/Shellfish Catch Reporting Area 23A to commercial harvest of nonspot shrimp.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000M and 220-340-0300R [220-340-03000R]; 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: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require adoption of harvest seasons contained in this emergency rule. This emergency rule:

(1) Closes Shellfish Management Areas 1A, 1B, 1C, 2W, 2E, and subareas 23A-W, 23A-C, 23A-S, and 23A-E of Marine Fish/Shellfish Catch Reporting Area 23A and Marine Fish/Shellfish Catch Reporting Areas 23B and 23D to commercial harvest of spot shrimp effective immediately.

(2) Closes Shrimp Management Area 2E and Marine Fish/Shellfish Catch Reporting Areas 26B, 26C, and 26D to commercial harvest of all shrimp species.

(3) Opens subarea 23A-S of Marine Fish/Shellfish Catch Reporting Area 23A to commercial harvest of nonspot shrimp.

(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 areas that have finished commercial clean-up spot shrimp pot harvest in multiple areas of Puget Sound. 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. For commercial harvest of spot shrimp the following pounds by area remain: 196 pounds in Marine Fish/Shellfish Catch Reporting Area 23C; 95 pounds in Marine Fish/Shellfish Catch Reporting Area 25A outside of Discovery Bay Shrimp District; and 408 pounds in Marine Fish/Shellfish Catch Reporting Area 29.

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: September 10, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-340-52000N 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, 3 as well as Marine Fish/Shellfish Catch Reporting Areas 26B, and 26D are open to the commercial harvest of all shrimp species until further notice, except as provided for in this section:

(i) Commercial harvest of spot shrimp by pots is prohibited effective September 15, 2021 at 11:59 p.m.

(ii) Commercial harvest of non-spot shrimp by pots is prohibited effective October 15, 2021 at 11:59 p.m.

(iii) Commercial harvest of all shrimp species in Shrimp Management Area 2E is prohibited.

(iv) Commercial harvest of all shrimp species in Shrimp Management Area 4 which consists of Marine Fish/Shellfish Catch Reporting Areas 26B and 26C, is prohibited.

(v) Commercial harvest of all shrimp species in Shrimp Management Area 6, which consists of Marine Fish/Shellfish Catch Areas 26D, is prohibited.

(vi) Commercial harvest of spot shrimp in Shrimp Management Areas 1A, 1B and 1C is prohibited.

(vii) Commercial harvest of spot shrimp in Shrimp Management Area 2W is prohibited.

(viii) Commercial harvest of spot shrimp in Sub-areas 23A-W, 23A-E, 23A-S, and 23A-C of Marine Fish/Shellfish Catch Reporting Area 23A and Marine Fish/Shellfish Catch Reporting Areas 23B and 23D is prohibited.

(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 Marine Fish/Shellfish Catch Reporting Area, with the following exceptions:

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

(B) Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Reporting 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.

It is unlawful to harvest shrimp in more than one Shrimp Management Area (1A, 1B, 1C, 2E, 2W, 3, 4, 5, or 6) 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, and 2W combined.

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

(3) Shrimp trawl Harvest Restrictions:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Marine Fish/Shellfish Catch Reporting Area 23D) is open, effective immediately, until September 30, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

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 Marine Fish/Shellfish Catch Reporting 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 October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(c) The waters of south Lopez Sound (the portion of Marine Fish/Shellfish Catch Reporting Area 22A south of a line projected east and west from the northern tip of Trump Island) is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(d) The remaining portion of Shrimp Management Area 1B and Marine Fish/Shellfish Catch Reporting Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(e) Marine Fish/Shellfish Catch Reporting Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(f) Marine Fish/Shellfish Catch Reporting Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(g) Trawling is allowed only in waters deeper than 120 feet in Marine Fish/Shellfish Catch Reporting Area 20A.

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

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

## NEW SECTION

**WAC 220-340-03000S 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.

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

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

REPEALER

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

WAC 220-340-52000M Puget Sound shrimp pot and trawl fishery—Season. (21-172)

WAC 220-340-03000R Shellfish harvest logs. (21-172)

**WSR 21-19-041**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-186—Filed September 10, 2021, 10:48 a.m., effective September 11, 2021]

Effective Date of Rule: September 11, 2021.

Purpose: Amends freshwater recreational rules for the Lewis River.

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

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

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

Reasons for this Finding: Early coho salmon returns to the Lewis Hatchery are projected to exceed broodstock collection goals for the Lewis Hatchery programs. Modifying coho fisheries will provide additional fishing opportunities while still meeting program and reintroduction goals. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 10, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-03000D Freshwater exceptions to statewide rules—Southwest.** Notwithstanding the provisions of WAC 220-312-030, effective September 11 through October 31, 2021, the provisions of WAC 220-312-030 regarding angling seasons for Lewis River, shall be modified during the dates and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule.

(1) Effective September 11 through September 30, 2021, Salmon: Daily limit 6; up to 6 adults may be retained, of which no more than 2 may be Chinook. Min. size 12". Release all salmon other than hatchery Chinook and hatchery coho.

(2) Effective October 1 through October 31, 2021, Salmon: Daily limit 6; up to 6 adults may be retained, of which no more than 2 may be Chinook. Min. size 12". Release all salmon other than Chinook and hatchery coho.

REPEALER

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

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

**WSR 21-19-043**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-188—Filed September 10, 2021, 3:22 p.m., effective September 11, 2021, 5:00 a.m.]

Effective Date of Rule: September 11, 2021, 5:00 a.m.

Purpose: Amend commercial purse seine and gill net rules for Puget Sound Salmon Management and Catch Reporting Area 7.

Citation of Rules Affected by this Order: Amending WAC 220-354-180.

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

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

Reasons for this Finding: This emergency rule is needed to provide for Pacific Salmon Commission's Fraser River Panel authorized commercial fisheries in Puget Sound Salmon Management and Catch Reporting Areas 7. The Fraser River Panel authorized these fisheries during their meeting on September 10, 2021. There is harvest share available for pink salmon at current run-size levels. There is insufficient time to adopt permanent rules.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 10, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-354-18000N Puget Sound salmon—Reef net open periods.** Effective 5 AM September 11, 2021 through 9 PM September 12, 2021, the following provisions of WAC 220-354-180 regarding reef net open periods in Puget Sound Salmon Management and Catch Reporting Area 7 shall be as follows. All other provisions of WAC 220-354-180 not contained herein remain in effect unless others altered by emergency rule:

**Reef nets** - Open to reef nets according to the times, dates, and conditions as prescribed and listed below:

Area	Open Periods
7	5 AM - 9 PM, Saturday, September 11, 2021
7	5 AM - 9 PM, Sunday, September 12, 2021

It is unlawful to retain any salmon other than pink and coho salmon taken with reef net gear.

**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 21-19-046  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 21-187—Filed September 10, 2021, 9:41 p.m., effective September 16, 2021]

Effective Date of Rule: September 16, 2021.

Purpose: Amends freshwater recreational rules for the Quillayute and Sol Duc rivers.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

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

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

Reasons for this Finding: This closure is necessary to protect wild summer coho returning to the system. The pre-season forecast was for an expected return of less than 300 adults. The Quillayute watershed is experiencing record low flows causing fish to remain in the lower river. Fishing will reopen when flows increase, or stock assessment information suggests that wild summer coho have started their upstream migration. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 10, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-02000P Freshwater exceptions to statewide rules—Coast.** Notwithstanding the provisions of WAC 220-312-020, effective September 16, 2021 until further notice, the provisions of WAC 220-312-020 regarding angling seasons for Quillayute and Sol Duc rivers shall be modified as described below. All other provisions of WAC 220-312-020 not addressed herein remain in effect unless otherwise amended by emergency rule.

(1) Quillayute River (Clallam Co.), from Olympic National Park Boundary upstream to confluence of Bogachiel and Sol Duc rivers - Closed to all fishing.

(2) Sol Duc River (Clallam Co.), from mouth to the Olympic National Park Boundary - Closed to all fishing.



**WSR 21-19-051**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed September 13, 2021, 2:42 p.m., effective September 13, 2021,  
2:42 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On September 6, 2021, the research team (SR3) that monitors southern resident killer whale (SRKW) body condition observed three female SRKW - J36, J37, and J19 - and determined these whales are in the latter stages of pregnancy. Of these whales, the SR3 research team provided photos and additional analysis of J36's condition on September 9, 2021, noting that she is likely very close to giving birth. The department verified the reports from SR3 and determined that the designation of "vulnerable" is appropriate. The best available science suggests that there is a high rate of failed pregnancies in SRKW, and failed pregnancy can be lethal. In addition, food consumption increases by 25 percent in the final month of gestation. Per WAC 220-460-110, the department is adopting an emergency rule to designate J36, J37, and J19 as vulnerable and thereby prevent commercial whale watching operators from approaching these individuals or a group containing any of these individuals within 0.5 nautical mile. This designation and the additional distance is necessary to ensure that J36, J37, and J19 are able to meet their late-stage pregnancy nutritional needs and to give these pregnant whales the best chance of success and survival in birthing.

Citation of Rules Affected by this Order: New WAC 220-460-110C.

Statutory Authority for Adoption: RCW 77.65.620.

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 imminent risk to an endangered species requires additional protection immediately. This emergency action is necessary to protect the public's interest in the preservation of a vulnerable endangered animal.

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

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

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

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

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

Date Adopted: September 13, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-460-110C Southern Resident Killer Whales J36, J37, and J19** In conjunction with WAC 220-460-110(2), the department designates the female Southern Resident Killer Whales J36, J37, and J19 as vulnerable individuals.

**WSR 21-19-056**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-184—Filed September 13, 2021, 5:07 p.m., effective September  
17, 2021]

Effective Date of Rule: September 17, 2021.

Purpose: The purpose of this emergency rule is to open recreational razor clam season and to increase the daily limit of razor clams to 20 on open days in 2021.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000X and 220-330-01000L; and amending WAC 220-330-160 and 220-330-010.

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. An exceptionally large population of harvestable razor clams in Razor Clam Areas 1, 3, 4, and 5 allow for a temporary increase in the daily bag limit. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: September 13, 2021.

Kelly Susewind  
Director

### NEW SECTION

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

(1) Effective 12:01 a.m. September 17, through 11:59 a.m. September 22, 2021, razor clam digging is permissible in Razor Clam Area 1 and Razor Clam Area 3. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 p.m. September 23, through 11:59 p.m. September 25, 2021, razor clam digging is permissible in Razor Clam Area 1 and Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 a.m. September 18, through 11:59 a.m. September 18, 2021, and effective 12:01 a.m. September 20, through 11:59 a.m. September 20, 2021, and effective 12:01 a.m. September 22, through 11:59 a.m. September 22, 2021, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 p.m. September 24, through 11:59 p.m. September 24, 2021, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) Effective 12:01 a.m. September 17, through 11:59 a.m. September 17, 2021, and effective 12:01 a.m. September 19, through 11:59 a.m. September 19, 2021, and effective 12:01 a.m. September 21, through 11:59 a.m. September 21, 2021, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(6) Effective 12:01 p.m. September 23, through 11:59 p.m. September 23, 2021, and effective 12:01 p.m. September 25, through 11:59 p.m. September 25, 2021, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(7) It is unlawful to dig for razor clams at any time in the Long Beach and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

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

### NEW SECTION

**WAC 220-330-01000L Shellfish—Daily limits, size restrictions, and unlawful acts.** Notwithstanding the provisions of WAC 220-330-010 regarding Razor clam daily limits, effective 12:01 a.m. September 17 through 11:59 p.m. December 31, 2021, the daily limit is 20 razor clams for personal use in any one day from Razor Clam Area 1, Razor Clam Area 3, Razor Clam Area 4 and Razor Clam Area 5. All other provisions of WAC 220-330-010 not addressed herein

remain in effect unless otherwise amended by emergency rule.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 25, 12:01 a.m.:

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

The following sections of the Washington Administrative Code are repealed effective 11:59 p.m. December 31, 2021:

WAC 220-330-01000L Shellfish—Daily limits, size restrictions, and unlawful acts.

**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 21-19-058

### EMERGENCY RULES

### BELLINGHAM TECHNICAL COLLEGE

[Filed September 14, 2021, 10:34 a.m., effective September 14, 2021, 10:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Changes to WAC 495B-121-380 are necessary as the result of a federal district court decision in Massachusetts (*Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021)), which vacated the part of 34 C.F.R. § 106.45 (b)(6)(i) that prohibits a decision maker from relying on statements that are not subject to cross examination during the hearing. In accordance with the court's order, the United States Department of Education (DOE) immediately ceased enforcement of the part of 34 C.F.R. § 106.45 (b)(6)(i) regarding the prohibition against statements not subject to cross examination. Bellingham Technical College's Title IX regulations (WAC 495B-121-380) must be also be updated to reflect this change.

Additional updates include clarification to the appeals procedure (WAC 495B-121-390) and a new invalidation provision in WAC 495B-121-250.

Citation of Rules Affected by this Order: Amending WAC 495B-121-250, 495B-121-380, and 495B-121-390.

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

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

Reasons for this Finding: The new language ensures that Bellingham Technical College is in compliance with recent federal caselaw and subsequent changes adopted by DOE regarding the prohibition against statements not subject to

cross examination (34 C.F.R. § 106.45 (b)(6)(i)). Additional updates are necessary to clarify the appeals procedure in WAC 495B-121-390 and to include a new invalidation provision in WAC 495B-121-250.

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

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

Date Adopted: September 14, 2021.

Ronda Laughlin  
Executive Assistant  
to the President

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

**WAC 495B-121-250 General policies.** (1) Bellingham Technical College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for laws by cooperating in their enforcement.

(2) Bellingham Technical College cannot and will not establish regulations that would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions helpful to the effective function of the college, to protect individual students from unfair penalties, and to assure due process. Bellingham Technical College is granted the right by law to adopt rules to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take that action which is in the best interest of the entire college.

(5) Bellingham Technical College reserves the right to impose the provisions of this code and provide further sanctions before or after law enforcement agencies, courts, or other agencies have imposed penalties or otherwise disposed of a case. College hearings are not subject to challenge on the grounds that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or otherwise not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

(6) If any provision of this code is invalidated by court order or operation of law, the affected provision of the code will no longer apply.

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

**WAC 495B-121-380 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

~~((6))~~ **(5) 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.

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

**WAC 495B-121-390 Appeals.** (1) ~~((The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495B-121-330.~~

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

(3)) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or

from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the response to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the response to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal if affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

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

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

**WSR 21-19-059  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 21-192—Filed September 14, 2021, 11:59 a.m., effective September 14, 2021, 11:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open commercial reef net seasons in Puget Sound Salmon Management and Catch Reporting Area 7.

Citation of Rules Affected by this Order: Amending WAC 220-354-180.

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

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

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

Reasons for this Finding: This emergency rule is needed to provide for Pacific Salmon Commission's Fraser River Panel authorized commercial fisheries in Puget Sound Salmon Management and Catch Reporting Area 7. The Fraser River Panel authorized these fisheries during their meeting on September 13, 2021. There is harvest share available for pink salmon at current run-size levels. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 14, 2021.

Kelly Susewind  
Director

**NEW SECTION**

**WAC 220-354-18000P Puget Sound salmon—Reef net open periods.** Effective immediately, through 9 PM, September 17, 2021, the following provisions of WAC 220-354-180 regarding reef net open periods in Puget Sound Salmon Management and Catch Reporting Area 7 shall be as follows. All other provisions of WAC 220-354-180 not contained herein remain in effect unless otherwise modified by emergency rule:

**Reef nets** - Open to reef nets according to the times, dates, and conditions as prescribed and listed below:

Area	Open/ Closed	Time	Date
7	Open	immediately - 9 PM	September 14, 2021
7	Open	5 AM - 9 PM daily	September 15 through September 17, 2021

It is unlawful to retain any salmon other than pink and coho salmon taken with reef net gear from September 14 through September 17, 2021.

**WSR 21-19-068**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-193—Filed September 14, 2021, 3:34 p.m., effective September 14, 2021, 3:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes Marine Fish/Shellfish Catch Reporting Area 25A to commercial harvest of spot shrimp effective immediately. Closes Shrimp Management Areas 1A, 1B, and 1C to commercial pot harvest of nonspot shrimp species effective September 16, 2021.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000N and 220-340-03000S; 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: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require adoption of harvest seasons contained in this emergency rule. This emergency rule:

(1) Closes Shellfish Management Areas 1A, 1B, and 1C to the commercial pot harvest of nonspot shrimp effective September 16, 2021, at 11:59 p.m.

(2) Closes Marine Fish/Shellfish Catch Area 25A to the commercial harvest of spot shrimp effective immediately.

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

(4) Defines spot pot gear requirements.

(5) Defines nonspot gear requirements.

(6) Implements labeling requirements for groundline pot gear.

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

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

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

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

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

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

The emergency regulation closes areas that have finished commercial clean-up spot shrimp pot harvest and reached commercial share of nonspot pot harvest in multiple areas of Puget Sound. 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. For commercial harvest of spot shrimp the following pounds by area remain: 196

Pounds in Marine Fish/Shellfish Catch Reporting Area 23C and 408 pounds in Marine Fish/Shellfish Catch Reporting Area 29. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort.

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: September 14, 2021.

Kelly Susewind  
 Director

NEW SECTION

**WAC 220-340-52000P 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, 3 as well as Marine Fish/Shellfish Catch Reporting Areas 26B, and 26D are open to the commercial harvest of all shrimp species until further notice, except as provided for in this section:

(i) Commercial harvest of non-spot shrimp by pots in Shrimp Management Areas 1A, 1B, and 1C is prohibited effective September 16, 2021 at 11:59 p.m.

(ii) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Area 25A is prohibited effective immediately.

(iii) Commercial harvest of spot shrimp by pots is prohibited effective September 15, 2021 at 11:59 p.m.

(iv) Commercial harvest of non-spot shrimp by pots is prohibited effective October 15, 2021 at 11:59 p.m.

(v) Commercial harvest of all shrimp species in Shrimp Management Area 2E is prohibited.

(vi) Commercial harvest of all shrimp species in Shrimp Management Area 4 which consists of Marine Fish/Shellfish Catch Reporting Areas 26B and 26C, is prohibited.

(vii) Commercial harvest of all shrimp species in Shrimp Management Area 6, which consists of Marine Fish/Shellfish Catch Areas 26D, is prohibited.

(viii) Commercial harvest of spot shrimp in Shrimp Management Areas 1A, 1B and 1C is prohibited.

(ix) Commercial harvest of spot shrimp in Shrimp Management Area 2W is prohibited.

(x) Commercial harvest of spot shrimp in Sub-areas 23A-W, 23A-E, 23A-S, and 23A-C of Marine Fish/Shellfish Catch Reporting Area 23A and Marine Fish/Shellfish Catch Reporting Areas 23B and 23D is prohibited.

(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 Marine Fish/Shellfish Catch Reporting Area, with the following exceptions:

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

(B) Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Reporting 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.

It is unlawful to harvest shrimp in more than one Shrimp Management Area (1A, 1B, 1C, 2E, 2W, 3, 4, 5, or 6) 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, and 2W combined.

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

(3) Shrimp trawl Harvest Restrictions:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Marine Fish/Shellfish Catch Reporting Area 23D) is open, effective immediately, until September 30, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

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 Marine Fish/Shellfish Catch Reporting 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 October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(c) The waters of south Lopez Sound (the portion of Marine Fish/Shellfish Catch Reporting Area 22A south of a line projected east and west from the northern tip of Trump Island) is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(d) The remaining portion of Shrimp Management Area 1B and Marine Fish/Shellfish Catch Reporting Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(e) Marine Fish/Shellfish Catch Reporting Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(f) Marine Fish/Shellfish Catch Reporting Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) is open effective immediately, until October 15, 2021 at 11:59 p.m. or the State share has been taken, whichever comes first.

(g) Trawling is allowed only in waters deeper than 120 feet in Marine Fish/Shellfish Catch Reporting Area 20A.

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

NEW SECTION

**WAC 220-340-03000T 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, 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.

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

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

REPEALER

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

WAC 220-340-52000N Puget Sound shrimp pot and trawl fishery—Season. (21-183)

WAC 220-340-03000S Shellfish harvest logs. (21-183)

**WSR 21-19-069**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-191—Filed September 14, 2021, 4:12 p.m., effective September 15, 2021]

Effective Date of Rule: September 15, 2021.

Purpose: The purpose of this emergency rule is to open recreational salmon seasons in Lake Washington and Lake Sammamish.

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

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

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

Reasons for this Finding: This emergency rule is necessary to open recreational salmon seasons in Lake Washington

and Lake Sammamish. This area had been closed under a comanager agreement to protect Lake Washington coho salmon, which have had poor returns in recent years. Early season fish counts at the Ballard Locks indicate that the coho return is strong enough to support a recreational fishery for coho salmon in Lake Washington. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 14, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000K Freshwater exceptions to statewide rules—Puget Sound.** Effective September 15 through October 31, 2021, provisions of WAC 220-312-040 regarding salmon seasons Lake Washington (King County) and Lake Sammamish (King County) shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) Lake Washington (King County):

Waters north of the Hwy. 520 Bridge and east of the Montlake Bridge, including that portion of the Sammamish River from 68th Ave. NE Bridge downstream:

Salmon: Open September 15 through October 31, 2021: Daily limit 4. Release all salmon other than coho.

(2) Lake Sammamish (King County):

Salmon: Open October 1 through October 31, 2021: Daily limit 4. Release all salmon other than coho.

**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 21-19-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-189—Filed September 14, 2021, 4:15 p.m., effective September 14, 2021, 4:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open an additional day of recreational halibut fishing in Marine Areas 1 and 2.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000G; 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 proceed with planned fishing 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) without exceeding the overall statewide sport allocation. 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 0.

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

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

Date Adopted: September 14, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-314-03000H 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 September 24, 2021.

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

Open September 16, 17, 18, 23, 24, and 25, 2021. (Open Thursdays through Saturdays through September 25, 2021.)

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

Open September 16, 17, 18, 23, 24, and 25, 2021. (Open Thursdays through Saturdays 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 220-314-03000G Halibut—Seasons—Daily and possession limits. (21-134)

#### **WSR 21-19-071**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 21-190—Filed September 15, 2021, 7:17 a.m., effective September 16, 2021]

Effective Date of Rule: September 16, 2021.

Purpose: The Washington department of fish and wildlife (WDFW) is repealing the wildfire prevention on department lands, which went into effect on September 1, 2021.

Citation of Rules Affected by this Order: Repealing WAC 220-500-04000G.

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: WDFW is repealing the wildfire prevention on department land emergency rule. Cooler, damp weather conditions have reduced the risk of wildfire eliminating the emergency need to restrict hours and activities to prevent new and multiple wildfires.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

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



Date Adopted: September 15, 2021.

Kelly Susewind  
Director

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

Date Adopted: September 15, 2021.

Kelly Susewind  
Director

### REPEALER

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

WAC 220-500-04000G Regulating public access. (21-170)

**WSR 21-19-079**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-194—Filed September 15, 2021, 3:55 p.m., effective September 18, 2021]

Effective Date of Rule: September 18, 2021.

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

Citation of Rules Affected by this Order: Amending WAC 220-312-050 and 220-312-060.

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

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

Reasons for this Finding: This emergency rule is needed to open coho retention seasons in the Icicle River and upper Columbia River from Priest Rapids Dam to Wells Dam.

Through September 12, 2021, the approximately 113,000 coho that have passed over Bonneville Dam is the second highest count on record. The estimated number of UCR-bound coho is currently at about 30,000 fish. At this abundance there is sufficient fish to meet spawner escape-ment and broodstock needs and provide for sport angler harvest.

Expected returns of coho to the Icicle River are sufficient to provide for sport angler harvest as are returns of upper Columbia River-bound coho salmon.

There is insufficient time to adopt permanent rules.

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

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

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

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

### NEW SECTION

**WAC 220-312-05000A Freshwater exceptions to statewide rules—Eastside.** Effective September 18, through November 30, 2021, the following provisions of WAC 220-312-050 regarding salmon seasons for the Icicle River shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or otherwise amended by emergency rule, remain in effect:

Icicle River (Chelan County):

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

- (a) Daily limit 4. Release all salmon other than coho.
- (b) It is unlawful to use bait.
- (c) Night Closure in effect.

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

- (a) Daily limit 4. Release all salmon other than coho.
- (b) It is unlawful to use bait.
- (c) Night Closure in effect.

### NEW SECTION

**WAC 220-312-06000Y Freshwater exceptions to statewide rules—Columbia** Effective September 18 through October 15, 2020, provisions of WAC 220-312-060 and 220-220-160 regarding Columbia River salmon seasons from Priest Rapid Dam upstream are modified as described below. All other provisions of WAC 220-312-060 and WAC 220-220-160 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

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

Effective September 18 through October 15, 2021: Daily limit is 6; of which, up to 2 adult Chinook and up to 4 coho may be retained. Release sockeye.

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

Effective September 18 through October 15, 2021: Daily limit is 6; of which, up to 2 adult hatchery Chinook and up to 4 coho may be retained. Release wild adult Chinook and sockeye.

**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 21-19-080  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 21-195—Filed September 15, 2021, 4:14 p.m., effective September 16, 2021]

Effective Date of Rule: September 16, 2021.

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

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

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

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

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

Reasons for this Finding: Reasons for this finding: This rule sets commercial fisheries for fall 2021 in the mainstem and select areas. Impacts to nonlocal stocks are expected to be minimal in off channel select areas. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 27 and September 15, 2021. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as

threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

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

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

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

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

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

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

Date Adopted: September 15, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000D Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**(1) Mainstem:**

Open Dates	Open Days	Open Time	Open Duration
September 19 - September 20	Sunday (night)	8:00 pm - 6:00 am	10 hrs
September 22 - September 23	Wednesday (night)	8:00 pm - 6:00 am	10 hrs

(a) **Area:** Zones 4-5. The deadline at the lower end of Zone 4 is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy Rivers

(b) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. Multiple net rule NOT in effect, which means nets not authorized for this fishery may not be onboard. Lighted buoys required.

(c) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. A maximum of **six** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to mainstem fisheries only.

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

Open Dates	Open Days	Open Time	Open Duration
September 16 - October 29	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) **Area:**

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

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

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

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

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

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

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

(c) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. A maximum of **three** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to all Select Area fisheries.

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

Open Dates	Open Days	Open Time	Open Duration
September 16 - October 29	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 10:00 am	16 hrs

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

regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

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

Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope

with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

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

Open Dates	Open Days	Open Time	Open Duration
September 16 - October 15	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 18 - October 27	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 1 - November 24	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

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

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

(c) **Permanent transportation rules in effect.** In accordance with WAC chapter 220-352, commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. A maximum of **three** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to all Select Area fisheries.

(5) **24-hour quick reporting** is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

ate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. A maximum of **three** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to all Select Area fisheries.

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

Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

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

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

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

REPEALER

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

WAC 220-358-03000C Columbia River seasons below Bonneville. (21-127)

**WSR 21-19-081  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 21-198—Filed September 15, 2021, 4:27 p.m., effective September 18, 2021]

Effective Date of Rule: September 18, 2021.

Purpose: The purpose of this emergency rule is to [open] recreational white sturgeon retention seasons in the Columbia River from the Wauna powerlines crossing to Bonneville Dam, and in the Cowlitz River.

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

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

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

Reasons for this Finding: This rule is needed to allow a limited harvest of white sturgeon in the Columbia River below Bonneville Dam. The legal-size population is large enough to allow for a retention fishery within the lower Columbia River. This action is consistent with decisions made by the states of Washington and Oregon during the Columbia River compact hearing on March 23 and September 15, 2021. This action was restated in the Oregon and Washington departments of fish and wildlife joint staff reports on May 18, May 25, June 10, and July 7, 2021. The general public welfare is protected with the immediate and limited duration opening of recreational sturgeon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population. There is insufficient time to adopt permanent regulations.

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

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

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

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

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

Date Adopted: September 15, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000A Freshwater exceptions to statewide rules—Columbia River.** Effective September 18 through September 25, 2021 the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding white sturgeon retention seasons from the Wauna powerline crossing upstream to Bonneville Dam are as follows. All other provisions of WAC 220-312-060, WAC 220-316-010, and WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

From Wauna powerlines upstream to Bonneville Dam, including the Cowlitz River:

(a) It is permissible to retain white sturgeon on Saturday September 18, Sunday September 19, Wednesday September 22, Saturday September 25, and Wednesday September 29, 2021:

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

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

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

#### **WSR 21-19-083**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

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

(Developmental Disabilities Administration)

[Filed September 15, 2021, 4:30 p.m., effective September 23, 2021]

Effective Date of Rule: September 23, 2021.

Purpose: The department is enacting WAC 388-845-2019 on an emergency basis to make temporary modifications to developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers in order to control the spread of the COVID-19 virus and to meet immediate health and safety needs. This is a subsequent filing on WAC 388-845-2019 to enact Centers for Medicare and Medicaid Services (CMS) approved additional Appendix K waiver amendments on an emergency basis.

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

Statutory Authority for Adoption: RCW 34.05.350, 71A.12.030.

Other Authority: 42 U.S.C. 1396n(c).

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

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

An Appendix K is a standalone appendix that may be utilized by states during emergency situations to request amendment to approved 1915(c) waivers. It includes actions that

states can take under the existing section 1915(c) home and community-based waiver authority in order to respond to an emergency. The department adopted a CR-101 preproposal under WSR 20-15-010 to begin the permanent process.

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

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

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

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

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

Date Adopted: September 15, 2021.

Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of individuals with disabilities; and

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

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

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

(a) Residential habilitation;

(b) Respite care;

(c) Positive behavior support;

(d) Staff and family consultation;

(e) Behavioral health stabilization - positive behavior support;

(f) Behavioral health stabilization - crisis diversion beds;

(g) Nurse delegation; and

(h) Skilled nursing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## WSR 21-19-085

### EMERGENCY RULES

#### LOWER COLUMBIA COLLEGE

[Filed September 16, 2021, 8:02 a.m., effective September 16, 2021, 8:02 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Lower Columbia College must amend WAC 132M-126-115, 132M-126-145, and 132M-126-155 to meet new case law and guidance from the Department of Education regarding the federal regulations for Title IX of the Education Amendments of 1972 (Title IX) that specify how recipients of federal financial assistance covered by Title IX, including postsecondary institutions, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.

Citation of Rules Affected by this Order: Amending WAC 132M-126-115, 132M-126-145, and 132M-126-155.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

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: New caselaw and guidance from the Department of Education regarding regulations for Title IX that specify how recipients of federal financial assistance covered by Title IX, including postsecondary institutions, must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, 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: September 15, 2021.

Sue Orchard  
Vice President  
of Student Services

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-115 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132M-126-005 through 132M-

126-110, these supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-155 Appeals.** ~~(1) ((The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132M-126-090.~~

~~(2))~~ All parties, including the student conduct officer, in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanction(s) and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).

~~((3))~~ (5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

AMENDATORY SECTION (Amending WSR 21-01-145, filed 12/17/20, effective 1/17/21)

**WAC 132M-126-145 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

~~((6))~~ (5) 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.

## WSR 21-19-087

### EMERGENCY RULES

### DEPARTMENT OF

### FISH AND WILDLIFE

[Order 21-197—Filed September 16, 2021, 9:27 a.m., effective September 17, 2021]

Effective Date of Rule: September 17, 2021.

Purpose: The purpose of this emergency rule is to return Columbia River salmon and steelhead seasons to permanent rules, from the Rocky Point/Tongue Point line to the Warrior Rock Line while keeping the Camas Slough closed to salmon and steelhead fishing.

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



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

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

Reasons for this Finding: Current in-season catch projections indicate that few Endangered Species Act (ESA)-listed lower river Chinook tules are expected to be handled within the portion of river set to reopen to hatchery coho under permanent regulations. The Camas Slough closure will help provide additional protection for returning tule Chinook. This rule is concurrent with compact action taken on September 15, 2021. The general public welfare is protected with the immediate opening of recreational salmon fishing. This harvest opportunity allows for the public use of the resource as well as the maintenance of sustainable fish populations. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 16, 2021.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000Z Freshwater exceptions to statewide rules—Columbia River.** Effective September 17 through September 30, 2021, the provisions of WAC 220-312-060 regarding salmon and steelhead seasons in the Camas Slough, shall be as described below during the dates listed below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

**Camas Slough** (waters of the Columbia River downstream from the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island): Salmon and steelhead: Effective immediately through September 30, 2021: Closed.

#### REPEALER

The following section of Washington administrative code is repealed, effective September 17, 2021:

WAC 220-312-06000X Freshwater exceptions to statewide rules—Columbia River. (21-181)

**WSR 21-19-088**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed September 16, 2021, 9:49 a.m., effective September 16, 2021, 9:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In 2019 the legislature passed ESHB 1817, ensuring a skilled and trained workforce in high hazard facilities, codified under chapter 49.80 RCW, requires owners of petroleum refining or petrochemical manufacturing facilities use a skilled and trained workforce when contracting for construction, alteration, demolition, installation, repair, or maintenance work. A skilled and trained workforce means a workforce where all the workers are either registered apprentices in a Washington state apprenticeship and training council (WSATC) approved apprenticeship program or skilled journeypersons as defined by the statute. The law also requires a percentage of skilled journeypersons be graduates of a WSATC approved apprenticeship program beginning January 1, 2021. The percentage starts at 20 percent in 2021 and increases each year and caps out at 60 percent in 2024.

RCW 49.80.050 requires the department of labor and industries (L&I), in consultation with the WSATC, to prioritize consideration of new apprenticeship programs for workers in high hazard facilities and for the WSATC to make a decision within six months of the acceptance of a completed application for consideration of a new state registered apprenticeship program for workers in high hazard facilities. Several employers turned in apprenticeship program applications, which garnered objections. The WSATC made decisions to send each program application that received objections to the adjudication process through the WSATC or the office of administrative hearings for the issuance of initial orders. Initial orders may be reviewed by the WSATC either by its own motion or upon petition from party, with final orders issued by the WSATC. However, there has [have] been delays in the adjudication process due to COVID-19 and no initial orders were issued in 2020, which delayed the issuance of final orders. Under the current rule, WAC 296-05-008, the approval or disapproval of programs can only occur at regularly scheduled quarterly meetings. Not only does this delay the decision for programs and make it more difficult to comply with the law, but also the WSATC may not have enough time at the regularly scheduled meeting to conduct all needed business and address these adjudicated matters.

In order to address the problem, L&I with approval of the WSATC, is adopting an emergency rule to allow for the special meetings to consider the record of a program application and enter a final order following an adjudication process. Specifically, the emergency rule language amends WAC 296-05-008 as follows:

(1)(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the record and enters a final order following an adjudication conducted under subsection (6) of this section.

This emergency rule supersedes and replaces WSR 21-11-116 filed on May 19, 2021. On January 19, 2021, L&I filed a Preproposal statement of inquiry (CR-101) to initiate permanent rule making for these requirements, and an emergency rule. This emergency rule is necessary to cover the gap until the adoption of a permanent rule.

Citation of Rules Affected by this Order: Amending WAC 296-05-008.

Statutory Authority for Adoption: Chapter 49.04 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: Multiple new apprenticeship program application[s] were submitted following the adoption [of] 2019's ESHB 1817. While the legislation had a phased implementation schedule and contemplated there would be new applications for apprenticeship programs for employers with workers in high hazard facilities, the delays in the adjudication process due to the COVID-19 pandemic has [have] impacted the issuance of initial orders for those programs in the adjudication process. The rule limitation on special meeting will cause further delays in the ability to issue final orders. This restriction on when the WSATC can consider the orders and issue final orders creates uncertainty for employers with applications in the adjudication process, their employees, and the refineries that contract with them. This has the potential to result in temporary layoffs for contractors and challenges with scheduling maintenance activities at refineries. In addition, if the WSATC does not have enough time at the regularly scheduled meeting to conduct all needed business, the ability of the WSATC to perform their statutory mandated activities to oversee apprentice programs is impacted. As such, observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. Special meetings for approval/disapproval of programs will only be used in conjunction with the adjudication process.

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

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

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

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

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

Date Adopted: September 16, 2021.

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 18-17-149, filed 8/21/18, effective 10/10/18)

**WAC 296-05-008 Meetings and adjudicative proceedings.** (1) Regular meetings: Convened on the third Thursday of January, April, July, and October, held at locations within Washington, and open to the general public. Members of the public cannot be required to register their name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(a) Notice of regular meetings: The supervisor must distribute notice not later than (~~thirty~~) 30 calendar days prior to the meeting date to anyone who has requested notice of the regular meetings.

(b) The supervisor must send notices to all WSATC members, including ex officio members, and approved program sponsors.

(c) The following WSATC activities must take place in open public meetings:

- (i) All transactions of official business;
- (ii) All commitments or promises;
- (iii) All collective discussions;
- (iv) All collective decisions; and
- (v) All council actions.

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the record and enters a final order following an adjudication conducted under subsection (6) of this section.

(2) Special meetings: Called at the request of the chair or by a majority of the WSATC members, and open to the general public.

(a) Procedure for special meetings: To call a special meeting, the calling members must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the business to be transacted at the meeting, either personally or by mail, at least seven calendar days before the specified date of the meeting, to each member of the WSATC, all approved program sponsors, and those who have requested prior notice of special meetings.

(ii) Waiver: The notice requirements to WSATC members may be waived in writing at or prior to the meeting, but

all members must agree to waive notice and file the waiver with the supervisor.

(b) Content of special meetings: The subject matter of the special meeting must not exceed the scope of the written notice. If the WSATC takes action on a matter exceeding the scope of the written notice, the action is not final even if the members waive notice.

(c) Special meetings for rule changes: To call a special meeting to consider rule changes, the WSATC must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the rules to be changed at the meeting, either personally or by mail, at least ~~((twenty))~~ 20 calendar days before the meeting.

(ii) Waiver: The notice requirements may not be waived for special meetings when rule changes are contemplated.

(3) Registered apprenticeship standards actions: When a party requests specific action from the WSATC related to apprenticeship standards, such request must:

(a) Be in writing; and

(b) Signed by the committee's elected chair and secretary, or by an authorized signer approved by the petitioning sponsor;

(c) Sent to the apprenticeship supervisor at least ~~((forty-five))~~ 45 days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting.

(4) Other actions: When a party requests specific action or consideration from the WSATC on other issues, such requests must:

(a) Be in writing; and

(b) Sent to the apprenticeship supervisor at least ~~((fifteen))~~ 15 business days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting unless waived by the supervisor.

(5) Voting: All council members, except ex officio members, appointed by the director of the department of labor and industries are voting members of the council.

(a) A quorum is two-thirds of the WSATC members entitled to vote.

(b) The chair shall establish a standing tie-breaker committee comprised of three WSATC members entitled to vote:

(i) An employer representative;

(ii) An employee representative; and

(iii) A public member.

(c) The apprenticeship supervisor or designee shall act as secretary to the tie-breaker committee and furnish all information necessary for a decision.

(d) In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within ~~((thirty))~~ 30 calendar days.

(6) Adjudicative proceedings: All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapters 34.05 RCW and 10-08 WAC. The chair (or designee) is the presiding officer for adjudicative proceedings held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication is held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular quarterly meeting unless:

(a) The WSATC upon its own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for review of the initial order.

(7) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within ~~((thirty))~~ 30 calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal;

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt;

(iii) The respondent parties may file with the director or designee written arguments within ~~((thirty))~~ 30 calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in 29 C.F.R. 29.8 (b)(5).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

(8) Limitations: Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority person, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

(9) Retroactivity: The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.

**WSR 21-19-090**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-200—Filed September 16, 2021, 4:29 p.m., effective September 18, 2021]

Effective Date of Rule: September 18, 2021.

Purpose: The purpose of this emergency rule is to open retention of hatchery Chinook salmon in Whatcom Creek.

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

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

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

Reasons for this Finding: This action is necessary to open recreational hatchery Chinook retention seasons in Whatcom Creek. Chinook released at the Whatcom Fish Hatchery to aid southern resident killer whales and support harvest programs have returned to Whatcom Creek in harvestable numbers. Closure dates ensure that gear conflicts between comanager fisheries and recreations fisheries are avoided. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 16, 2021.

Kelly Susewind  
 Director

NEW SECTION

**WAC 220-312-04000L Freshwater exceptions to statewide rules—Puget Sound.** Effective September 18 through September 27, 2021, provisions of WAC 220-312-040 regarding salmon seasons for Whatcom Creek shall be as described below as will closure dates for all species. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

**Whatcom Creek (Whatcom Co): From the mouth (a line from the flashing light at the southwest end of the**

**Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond) to the markers downstream of the footbridge that is downstream of Dupont Street:**

(1) Salmon:

(a) Open Saturdays, Sundays, and Mondays only.

(b) Daily limit 1. Release all salmon other than hatchery Chinook.

(c) Night Closure in effect.

(d) Anti-snagging rule in effect.

(2) All species: Closed waters on Tuesdays, Wednesdays, Thursdays, and Fridays.

**WSR 21-19-091**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)

[Filed September 17, 2021, 7:01 a.m., effective September 17, 2021, 7:01 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-841-405, 246-841-420, 246-841-470, 246-841-490, 246-841-500, 246-841-510, and 246-841-555. Amending specific training requirements for nursing assistant certified (NAC) and nursing assistant registered (NAR). The nursing care quality assurance commission (commission) is continuing the adoption of emergency rules as the permanent rule-making process continues. The rules in chapter 246-841 WAC provide regulatory requirements for NACs and NARs. These amendments allow additional pathways to comply with current standards. This is the fifth emergency rule and it continues the emergency rule that was filed on May 20, 2021, under WSR 21-12-011, without change. Prior filings were June 26, 2020, WSR 20-14-066; October 23, 2020, WSR 20-22-023; and January 20, 2021, WSR 21-04-004. Transition from emergency to permanent rules were approved by the commission and a notice of intent to begin rule making was filed on February 8, 2021, under WSR 21-05-021. Permanent rule language development is ongoing.

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

Statutory Authority for Adoption: RCW 18.88A.060.

Other Authority: None.

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

Reasons for this Finding: The immediate amendment of existing rules is necessary for the preservation of public health, safety, and general welfare. Essential functions include increasing availability of health care professionals while taking necessary measures to help treat and prevent the spread of coronavirus disease 2019 (COVID-19). The commission is engaged in permanent rule making to convert certain emergency amendments to permanent rules. The notice of intent for permanent rule making was filed February 8,

2021, as WSR 21-05-021. The commission continues the adoption of emergency rules in response to COVID-19 while permanent rule making is in development. The COVID-19 pandemic has led to a demand for more healthcare professionals, especially qualified nursing assistants and has created barriers for nursing assistant training. The amendments eliminate barriers for these essential providers to participate in the health care workforce by providing additional opportunities to comply with current standards. Amendments are necessary to continue to increase the quantity of professionals able to respond to current demands. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: September 16, 2021.

Paula R. Meyer, MSN, RN, FRE  
Executive Director  
Nursing Care Quality Assurance Commission

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

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

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

(2) Before performing any delegated task:

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

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

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

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

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

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

(a) Only for the specific patient receiving delegation;

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

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

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

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

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

(b) Sterile procedures;

(c) Central line maintenance;

(d) Acts that require nursing judgment.

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

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

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

(a) Program objectives.

(b) Curriculum content outline.

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

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

(e) Sample lesson plan for one unit.

(f) Skills checklist.

(g) Description of classroom facilities.

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

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

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

- (i) The state board for community and technical colleges;
- (ii) The superintendent of public instruction; or
- (iii) The workforce training and education coordinating board.

(2) Agree to on-site survey of the training program ~~(s)~~ or online survey of the approved online classes as requested by the commission. This on-site will be coordinated with other on-site review requirements when possible.

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

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

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

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

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

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

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

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

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

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

- (i) Understanding the adult learner.
- (ii) Techniques for teaching adults.
- (iii) Classroom methods for teaching adults.
- (iv) Audio visual techniques for teaching adults.

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

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

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

(6) Program director responsibilities:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A guest lecturer, or individual with expertise in a specific course unit may be used in the classroom setting for teaching without commission approval, following the program director's review of the currency of content. The guest

lecturer, where applicable, must hold a license, certificate or registration in good standing in their field of expertise.

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

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

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

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

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

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

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

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

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

(iv) Debriefing is a critical component of planned simulation activities that helps students to learn from their clinical

experiences. Debriefing is facilitated by the program instructor or director in a way that encourages active discussion and reflective thinking by students and provides relevant instructor and peer feedback regarding simulation events and participants' performance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Be verifiable with the care facility.

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

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

(b) An identified instructor(s) will supervise clinical teaching or learning at all times. At no time will the ratio of students to instructor exceed ten students to one instructor in the clinical setting whether the clinical setting is a health care facility or represented through planned simulation in the training program's skills lab. As an alternative, the program director may award clinical hours' credit for NAR employment or volunteer experience as described in WAC 246-841-470 (6)(c).

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

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

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

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

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

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

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

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

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

(a) Dates attended.

(b) Test results.

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

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

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

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

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

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

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

(1) Development and use of a curriculum which:

(a) Meets the requirements of WAC 246-841-545; or

(b) Meets the requirements of WAC 246-841-550.

(2) Ensuring compliance with the requirements of WAC 246-841-500 and 246-841-510.

(3) Verifying home care aides-certified have a valid certification before admission to the alternative program.

(4) Verifying medical assistants-certified have certification before admission to the alternative program.

(5) Direct supervision of all students during clinical experience in a health care facility or during planned simulation in the training program's skills lab. Direct supervision means an approved program director or instructor observes students performing tasks. As an alternative, the program director may also award clinical hours' credit for nursing assistant-registered (NAR) employment or volunteer experience completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at [www.doh.wa.gov](http://www.doh.wa.gov) or by request to the commission. In addition, to meet qualifying standards to count as clinical hours' credit, the NAR employment or volunteer experience must:

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

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

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

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

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

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

(g) Be verifiable with the care facility.

(6) Ensuring the clinical instructor has no concurrent duties during the time he or she is instructing students.

(7) Maintaining an environment acceptable to teaching and learning.

(8) Supervising all instructors involved in the course. This includes clinical instructors and guest lecturers.

(9) Ensuring students are not asked to, or allowed to perform any clinical skill with patients or clients or in planned



simulation activities until the students have demonstrated the skill satisfactorily to an instructor in a practice setting, or as an alternative, providing students with instruction regarding the NAR employment or volunteer pathway and how to demonstrate competency and have competency documented under the supervision of a licensed nurse in a care facility in accordance with WAC 246-841-555(5).

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

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

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

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

### WSR 21-19-092

#### EMERGENCY RULES

#### DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed September 17, 2021, 7:05 a.m., effective September 17, 2021, 7:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-840-010, 246-840-365, 246-840-367, 246-840-533, 246-840-840, and 246-840-930. Licensed practical nurse (LPN), registered nurse (RN), and advanced registered nurse practitioner (ARNP) specific credential and license requirements. The nursing care quality assurance commission (commission) is continuing the adoption of emergency rules in response to the coronavirus disease 2019 (COVID-19). This is the sixth emergency rule for these amendments and differs from the emergency rule that was filed on May 20, 2021, under WSR 21-12-012. This emergency rule does not include WAC 246-840-125 Retired active credential. Continuing competency rules, effective June 12, 2021, reduced the required education hours and replace [replaced] the emergency provisions in WAC 246-840-125. This emergency rule does not include WAC 246-840-534 Use of simulation for clinical experiences in LPN, RN, or RN to BSN nursing education programs located in Washington state. In-person training for clinical experience provides the desired academic model to assure patient safety and is required in the original rule language. This emergency rule does add clarifying language to WAC 246-840-533 regarding documentation in the nurse technician student's file explaining the reason employment is substituted for traditional clinical experiences. Changes to WAC 246-840-010 were approved by the commission on March 3, 2021, for inclusion in a CR-102. Changes to WAC 246-840-365, 246-840-367, 246-840-533 and 246-840-930 were approved by the commission on May 14, 2021, for inclusion in a CR-101.

This emergency rule retains the amendments adopted as WSR 20-10-014, 20-14-065, 20-22-024, 21-04-005, and 21-12-012 with the exceptions stated above. The rules in chapter 246-840 WAC are the licensing requirements for LPNs, RNs, and ARNPs. The emergency rules amend training program options, delegation requirements, and remove additional con-

tinuing education hours for specific ARNP credentials. Additionally, the rules waive the requirements for an ARNP to submit evidence of completing continuing education in order to return to active status when holding an inactive license, or when returning to active status from expired status.

Citation of Rules Affected by this Order: Amending WAC 246-840-010, 246-840-365, 246-840-367, 246-840-533, 246-840-840, and 246-840-930.

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

Other Authority: None.

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

Reasons for this Finding: The immediate amendment of these rules is necessary for the preservation of public health, safety, and general welfare. Essential functions including increasing and maintaining the availability of health care professionals must continue while taking necessary measures to help treat and prevent the spread of COVID-19. The amendments remove specific barriers that nurses face to providing care in response to COVID-19. Waiving the restriction that ARNPs with an inactive or expired license must complete clinical practice hours and the newly amended continuing education requirements removes barriers to rejoining the health care workforce. Allowing LPN students to practice as nursing technicians addresses the demand for more health care professionals in the workforce. More health care professionals will be available to continue responding to current demands because of these changes. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, 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 6, Repealed 0.

Date Adopted: September 16, 2021.

Paula R. Meyer, MSN, RN, FRE

Executive Director

Nursing Care Quality Assurance Commission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) "Delegation" means the licensed nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The nurse delegating the task is responsible and accountable for the nursing care of the client. The nurse delegating the task supervises the performance of the unlicensed person. Nurses must follow the delegation process following the RCW 18.79.260. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

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

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

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

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

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

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

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

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

(a) In a hospital setting, the RN who has agreed to act as supervisor is on the same patient care unit as the nursing tech-

nician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

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

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

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

(23) "Limited educational authorization" is an authorization to perform clinical training when enrolled as a student through a commission approved refresher course. This authorization does not permit practice for employment.

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

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

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

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

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

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

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

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

(32) "Practical nursing education program" means a nursing education program which, upon successful completion of course work that includes core nursing course to provide a sound theoretical base combining clinical experiences

with nursing principles, critical thinking, and interactive skills for entry level practical nursing, awards a certificate or degree that the graduate is prepared for interdependent practice to prepare a practical nurse for interdependent practice as an LPN.

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

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

(a) "Direct supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

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

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

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

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

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

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

(2) To return to active status the ARNP:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(2) ((Applicants who do not meet the required advanced clinical practice requirements must complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.~~

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

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

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

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

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

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

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

~~((5)) (3) If the applicant does not meet the required advanced clinical practice hours, the applicant shall obtain an ARNP interim permit consistent with the requirements for~~

supervised advanced clinical practice as defined in WAC 246-840-340 (4) and (5).

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

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

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

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

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

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

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

(a) Beginning;

(b) Midpoint; and

(c) End.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Endorsement by the nurse administrator placed in the student's file that:

(i) Traditional clinical experiences in a required area of study are limited or not available to the program; or

(ii) Circumstances are present in which the student will gain greater educational benefit from the nursing student-employee role;

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

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

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

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

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

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

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

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

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

(1) The nursing technician is as defined in WAC 246-840-010(~~(48)~~) (30).

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

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

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

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

ASSESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### PLAN

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

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

(a) The rationale for delegating the nursing task;

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

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

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

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

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

(g) The risks of the treatment;

(h) The interactions of prescribed medications;

(i) How to observe and report side effects, complications, or unexpected outcomes and appropriate actions to deal with them, including specific parameters for notifying the registered nurse delegator, health care provider, or emergency services;

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

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

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

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

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

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

(m) Supervision shall occur at least every ninety days. With delegation of insulin injections, the supervision occurs at least weekly for the first four weeks, and may be more frequent.

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

#### IMPLEMENT

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

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

#### EVALUATE

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

(17) The registered nurse delegator supervises and evaluates the performance of the nursing assistant or home care

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

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

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

**WSR 21-19-095**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-199—Filed September 17, 2021, 9:07 a.m., effective September 17, 2021, 9:07 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000T; 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 extends 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, August 11, September 1, September 9, and September 15, 2021. Confirms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River

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

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

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

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

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

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

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

Date Adopted: September 17, 2021.

Kelly Susewind  
Director

NEW SECTION

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

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

(a) Season: Immediately 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: Immediately, through 6:00 PM September 17; and

6:00 AM September 20 through 6:00 PM September 24.

(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. A reduced 150-foot radius Spring Creek Hatchery Sanctuary is in effect.

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 220-359-02000T Columbia River salmon seasons.  
(21-182)

#### **WSR 21-19-098**

#### **EMERGENCY RULES**

#### **SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed September 17, 2021, 11:02 a.m., effective September 17, 2021, 11:02 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To align office of superintendent of public instruction (OSPI) rules under chapter 392-162 WAC regarding the learning assistance program with the statutory provisions under chapter 28A.165 RCW as amended with passage of SHB 1208, and to provide regulatory guidelines to districts who choose to use learning assistance program funds to implement the K-2 literacy screening and intervention requirements under RCW 28A.320.260.

Citation of Rules Affected by this Order: New WAC 392-162-016, 392-162-017 and 392-162-120; repealing WAC 392-162-020, 392-162-023, 392-162-025, 392-162-032, 392-162-033, 392-162-036, 392-162-041 and 392-162-080; and amending WAC 392-162-005, 392-162-010, 392-162-015, 392-162-054, 392-162-100, 392-162-110, 392-162-112, and 392-162-115.

Statutory Authority for Adoption: RCW 28A.165.075.

Other Authority: RCW 28A.300.730.

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

Reasons for this Finding: In accordance with section 17 of SHB 1208, the provisions of the legislative enactment are "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions and takes effect immediately. OSPI began the regular rule-making process for these proposed changes by filing the CR-101 on August 13, 2021, WSR 21-17-099."

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 3, Amended 8, Repealed 8.

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: September 16, 2021.

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

**WAC 392-162-005 Authority.** The authority for this chapter is RCW 28A.165.075, which authorizes the superintendent of public instruction to adopt rules ~~((and regulations))~~ for the administration of the learning assistance program.

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

**WAC 392-162-010 Purpose.** The learning assistance program requirements in this chapter are designed to:

(1) ~~((Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;~~

~~((2)))~~ Promote the use of data when developing programs to assist students who are not meeting academic standards ~~((and reduce disruptive behaviors in the classroom)); and~~

~~((3)))~~ (2) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist students who are not meeting academic standards ~~((and reduce disruptive behaviors in the classroom; and~~

~~((4) Guide school districts in providing extended learning opportunities to assist K-12 students who are not meeting academic standards in English language arts or mathematics, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements)).~~

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

**WAC 392-162-015 Definitions**~~((—Basic skills))~~. As used in this chapter, the terms:

(1) "Basic skills" means English language arts or mathematics, as well as readiness associated with these skills.

(2) "District" means a school district, public charter school, or school authorized to operate as a state-tribal education compact school in accordance with chapter 28A.715 RCW.

(3) "Literacy interventions" means interventions under RCW 28A.320.260(3) to support students in kindergarten through second grade who show indications of below grade

level literacy development or indications of, or areas of weakness associated with, dyslexia.

(4) "Literacy screening tool" means one of the literacy screening tools identified and approved by the dyslexia advisory council and the office of the superintendent of public instruction in accordance with RCW 28A.300.700.

(5) "Statewide student assessments" means one or more of the assessments administered by school districts as required under RCW 28A.655.070.

(6) "Students who are not meeting academic standards" means students with the greatest academic needs in basic skills as identified by statewide, school, or district assessments or other performance measurement tools.

#### NEW SECTION

**WAC 392-162-016 Application.** (1) Immediately and through the later of:

(a) The expiration or termination of Proclamation 20-05, and any subsequent orders extending or amending the proclamation, declaring a state of emergency on February 29, 2020, for all counties in Washington due to COVID-19; or

(b) September 1, 2025, school districts must budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, to identify and address the academic and nonacademic needs of students who are not meeting academic standards resulting from and exacerbated by the COVID-19 pandemic.

(2) During the time period described in subsection (1) of this section, school districts are encouraged to budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

#### NEW SECTION

**WAC 392-162-017 Community partnerships.** A district may use up to fifteen percent of the district's learning assistance program allocation to deliver academic, nonacademic, and social-emotional supports and services to students who are not meeting academic standards through partnerships with community-based or other out-of-school organizations in accordance with RCW 28A.300.139. Any agreement entered into by a school district and a community partner in accordance with RCW 28A.300.139 must:

(1) Specify that learning assistance program funds may be used only to provide direct supports and services to students;

(2) Clearly identify the academic, nonacademic, or social-emotional supports and services that will be made available to students by the community partner and how those supports and services align to the needs of the students as identified in the student-level needs assessment under RCW 28A.300.139; and

(3) Identify the in-school supports that will be reinforced by the supports and services provided by the community partner to promote student progress towards meeting academic standards.

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

**WAC 392-162-054 Allocation, supplement not supplant, and use of funds.** (1) The funds for the learning assistance program shall be allocated according to WAC 392-122-605 for the learning assistance program base allocation and the learning assistance program high poverty-based school allocation.

(2) The learning assistance high poverty-based school allocation must be ~~((distributed to))~~ expended by the district for the schools ((building)) that generated the funding and may not supplant the learning assistance program base allocation expenditures for those schools.

(3) All learning assistance program funds must be expended for the purposes of RCW 28A.165.005 through 28A.165.065.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

**WAC 392-162-100 Federal and state program coordination.** (1) School districts may coordinate federal, state, and local programs in order to serve the maximum number of students who are ~~((below grade level in basic skills))~~ not meeting academic standards.

(2) ~~((Subject to guidelines provided by the United States Department of Education, districts with schoolwide buildings may use Title I, Part A funds to meet the requirement to focus first on students in kindergarten through fourth grade who are deficient in reading or literacy skills. Districts opting to use Title I, Part A funds in combination with or in place of learning assistance program funds must meet the requirements of chapter 28A.165 RCW, including implementing best practice strategies according to RCW 28A.165.035 and completing all reporting requirements outlined in this chapter.~~

~~((3))~~ Students receiving assistance in another special needs program may also be served in the learning assistance program if they ~~((meet student eligibility and selection requirements as identified in WAC 392-162-032 and 392-162-080))~~ are identified as students who are not meeting academic standards as defined under this chapter.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

**WAC 392-162-110 Program requirements—District reporting.** (1) Individual student records shall be recorded, beginning with the 2014-15 school year, in the statewide individual student data system annual entrance and exit performance data for each student participating in the learning assistance program according to specifications established by the office of the superintendent of public instruction's CEDARS manual.

(2) Districts shall submit to the superintendent of public instruction by the established due date an annual report in the electronic format provided by the superintendent of public instruction. The report must include the following:

(a) The amount of academic growth gained by students participating in the learning assistance program;

(b) The number of students who gain at least one year of academic growth;

(c) The specific practices, activities, and programs used by each school building that received learning assistance program funds; ~~((and))~~

(d) The percentage of learning assistance funding used to engage community partners, the number of students receiving direct supports and services from those community partners, and the types of supports and services; and

(e) The number of students served by the learning assistance program during the school year who were able to exit the program because student academic growth resulted in meeting the academic standard for grade level.

(3) The superintendent of public instruction ~~((will))~~ may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or state-tribal education compact school ~~((operated pursuant to a state-tribe education compact))~~ if the school district, charter school, or state-tribal education compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

**WAC 392-162-112 Carry over of funds.** (1) Districts may carry over from one year to the next up to ten percent of the learning assistance program base allocation provided ~~((allocated))~~ under WAC 392-122-605 ~~((; however,))~~. Carry-over funds ~~((shall))~~ must be expended solely for ~~((the))~~ allowable learning assistance program costs.

(2) Districts may carry over from one year to the next up to ten percent of the learning assistance program high poverty-based school allocation provided under WAC 392-122-605. Carry-over funds must be expended solely for ~~((the))~~ allowable learning assistance program costs and for the specific schools ~~((generating))~~ that generated the ~~((allocation))~~ funding.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

**WAC 392-162-115 Monitoring of districts.** ~~((In order to insure))~~ To ensure that school districts are meeting the requirements of this chapter, the superintendent of public instruction shall monitor learning assistance programs using, at minimum, data reported as required under WAC 392-162-110, no less than once every four years by using the state program review process. The primary purpose of the monitoring is to evaluate the effectiveness of a district's allocation and expenditure of resources and to monitor school district fidelity in their implementation of best practices using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

NEW SECTION

**WAC 392-162-120 Implementation of K-2 literacy screening requirements—Use of funds.** (1) A school district that chooses to expend learning assistance program funds to implement the screening and intervention requirements under RCW 28A.320.260 may use the district's learning assistance program base allocation under WAC 392-122-605 to fund:

(a) The purchase of a literacy screening tool as defined under this chapter; and

(b) Literacy interventions as defined under this chapter.

(2) A school district that chooses to expend learning assistance program funds as permitted under this section must submit data according to specifications established by the office of the superintendent of public instruction in accordance with RCW 28A.165.100 and 28A.320.270.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-162-020 Definition—Learning assistance program (LAP).  
 WAC 392-162-023 Definition—District.  
 WAC 392-162-025 Definition—Statewide student assessments.  
 WAC 392-162-032 Definition—Participating student.  
 WAC 392-162-033 Definition—Students who are not meeting academic standards.  
 WAC 392-162-036 Definition—Extended learning opportunities.  
 WAC 392-162-041 Best practices.  
 WAC 392-162-080 Program requirement—Selection of students.

**WSR 21-19-100  
 EMERGENCY RULES  
 DEPARTMENT OF  
 FISH AND WILDLIFE**

[Order 21-201—Filed September 17, 2021, 3:20 p.m., effective September 22, 2021]

Effective Date of Rule: September 22, 2021.

Purpose: The purpose of this emergency rule is to return fisheries in Quillayute and Sol Duc rivers to permanent rules beginning Monday, September 22, 2021.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000P.

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 action is necessary to open recreational fisheries in the Quillayute and Sol Duc rivers beginning September 22, 2021. The opening of fisheries on the Quillayute and Sol Duc rivers was delayed to protect wild summer coho expected to return at an abundance of less than 300 adults. The Quillayute watershed has been experiencing record low flows and increased caution was needed to reduce impact from fisheries as coho stage in the lower river. There is rain in the forecast over the weekend and river levels are expected to rise enough to draw coho upriver from staging areas in the lower river. The Quileute Tribe will also be reopening fisheries, beginning September 20, 2021.

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

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

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

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

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

Date Adopted: September 17, 2021.

Kelly Susewind  
 Director

REPEALER

The following section of Washington administrative code is repealed, effective September 22, 2021:

- WAC 220-312-02000P Freshwater exceptions to statewide rules—Coast. (21-187)

**WSR 21-19-101  
 EMERGENCY RULES  
 DEPARTMENT OF  
 FISH AND WILDLIFE**

[Order 21-203—Filed September 17, 2021, 3:50 p.m., effective September 19, 2021]

Effective Date of Rule: September 19, 2021.

Purpose: The purpose of this emergency rule is to adjust release requirements for Puget Sound Salmon Management and Catch Reporting Area 7.

Citation of Rules Affected by this Order: Amending WAC 220-354-180.

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 United States Fraser River Panel relinquished regulatory control of nontreaty commercial sockeye and pink salmon fisheries in United States waters including Puget Sound Marine Area 7 effective midnight, Saturday, September 18, returning those fisheries to regulation by state rule. The additional release requirements are needed to minimize encounters and mortalities to sockeye, pink and Chinook salmon in Marine Area 7. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 17, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-354-18000Q Puget Sound salmon—Reef net open periods.** Effective September 19 through November 6, 2021, the following provisions of WAC 220-354-180 regarding reef net open periods and retention allowance in Puget Sound Salmon Management and Catch Reporting Area 7 shall be as follows. All other provisions of WAC 220-354-180 not contained herein remain in effect unless otherwise modified by emergency rule:

(1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

Area	Open/ Closed	Time	Date
7	Open	5 AM - 9 PM Daily	9/19 - 11/6

(2) It is unlawful to retain any salmon other than coho salmon taken with reef net gear from September 19 through September 30, 2021.

(3) It is unlawful to retain any salmon other than coho and chum salmon taken with reef net gear from October 1 through November 6, 2021.

(4) All other saltwater and freshwater areas - Closed.

**WSR 21-19-103  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 21-202—Filed September 17, 2021, 4:57 p.m., effective September 20, 2021]

Effective Date of Rule: September 20, 2021.

Purpose: The purpose of this emergency rule is to extend recreational salmon seasons for the Snohomish and Skykomish rivers.

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

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

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

Reasons for this Finding: This action is necessary to extend the recreational salmon seasons in the Snohomish and Skykomish rivers. In-season update model indicates additional allowable encounters of nontarget species (wild coho and Chinook) during pink opening. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 17, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000M Freshwater exceptions to statewide rules—Puget Sound.** Effective September 20 through September 26, 2021, provisions of WAC 220-312-040 regarding salmon seasons for Skykomish and Snohomish

rivers shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) **Skykomish River (Snohomish County):** From the mouth to confluence of North and South Forks:

Salmon: Daily limit 4. Release all salmon other than pinks and hatchery coho.

(2) **Snohomish River (Snohomish County):** From the mouth to confluence of the Skykomish and Snoqualmie rivers (all channels):

Salmon: Daily limit 4. Release all salmon other than pinks and hatchery coho.

### WSR 21-19-114

#### EMERGENCY RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed September 20, 2021, 2:15 p.m., effective October 8, 2021]

Effective Date of Rule: October 8, 2021.

Purpose: The developmental disabilities administration (DDA) is enacting these changes to align chapter 388-845 WAC with Home and Community Based Services (HCBS) waiver amendments approved by the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: New WAC 388-845-0920, 388-845-0930, 388-845-0940, 388-845-1101, 388-845-1161, 388-845-1162, 388-845-1163, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2145, 388-845-2150 and 388-845-2155; repealing WAC 388-845-0300, 388-845-0305, 388-845-0310, 388-845-0400, 388-845-0405, 388-845-0410, 388-845-0700, 388-845-0705, 388-845-0710, 388-845-1300, 388-845-1305, 388-845-1310, 388-845-1400, 388-845-1405, 388-845-1410, 388-845-1900, 388-845-1905, 388-845-1910, 388-845-2160, 388-845-2165 and 388-845-2170; and amending WAC 388-845-0001, 388-845-0055, 388-845-0060, 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0510, 388-845-0515, 388-845-0520, 388-845-0525, 388-845-0650, 388-845-0800, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0905, 388-845-0910, 388-845-1100, 388-845-1105, 388-845-1110, 388-845-1150, 388-845-1155, 388-845-1160, 388-845-1505, 388-845-1607, 388-845-1700, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-2000, 388-845-2005, 388-845-2010, and 388-845-3070.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

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

Reasons for this Finding: Filing these amendments on an emergency basis is necessary to ensure federal compliance and maintain federal funding for the state. This is the fifth filing on these sections. This fifth filing is necessary to keep the emergency rule in place until DDA completes the permanent

rule-making process. (The department held a public hearing on July 27, 2021, and filed the CR-103P under WSR 21-19-108 with an effective date of October 21, 2021.)

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 30, Repealed 15.

Date Adopted: September 20, 2021.

Katherine I. Vasquez  
Rules Coordinator

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

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

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

"CARE" means comprehensive assessment and reporting evaluation.

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

"Community crisis stabilization services" or "CCSS" means a state-operated program that provides short-term supports to clients who are in crisis, or who are at risk of hospitalization or institutional placement.

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

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

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

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

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

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

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

"HCBS waiver" is a DDA 1915(c) home and community based services waiver program.

"Home" means present (~~(or intended)~~) place of residence.

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

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

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

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

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

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

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

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

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

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

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

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

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

"You" means the client or participant.

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

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-0055 How do I remain eligible for the waiver?** (1) Once you are enrolled in a DDA 1915(c) HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(a) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements;

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

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

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

(a) Be under age twenty-one;

(b) Live with your family; (~~and~~)

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s); and

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

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

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

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

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

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

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

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

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

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

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

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

(e) You choose to unenroll from the waiver;

- (f) You reside out-of-state;
  - (g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;
  - (h) You refuse to participate with DDA in:
  - (i) Service planning;
  - (ii) Required quality assurance and program monitoring activities; or
  - (iii) Accepting services agreed to in your person-centered service plan (~~individual support plan~~) as necessary to meet your health and welfare needs;
    - (i) You are (~~residing~~) in a hospital, jail, prison, nursing facility, ICF/IID, or other institution (~~and remain in residence~~) for at least one full calendar month, and (~~are still in residence~~) are under the care of that setting;
    - (i) At the end of that full calendar month (~~s~~) and there is no immediate plan for you to return to the community;
    - (ii) At the end of the twelfth month following the effective date of your current person-centered service (~~plan/individual support~~) plan, as described in WAC 388-845-3060; or
    - (iii) At the end of the waiver fiscal year, whichever date occurs first;
    - (j) Your needs exceed the maximum funding level or scope of services under the basic plus waiver as specified in WAC 388-845-3080; or
    - (k) Your needs exceed what can be provided under WAC 388-845-3085.
- (2) Services offered on a different waiver can meet your health and welfare needs and DDA enrolls you on a different waiver.

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

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

- (1) A service must be available in your waiver and address an unmet need identified in your person-centered service plan.
- (2) (~~Behavioral health~~) Stabilization services may be added to your person-centered service plan after the services have been provided.
- (3) Waiver services are limited to services required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).
- (4) The daily cost of your waiver services must not exceed the average daily cost of care in an ICF/IID.
- (5) Waiver services must not replace or duplicate other available paid or unpaid supports or services. Before DDA will cover a service through waiver services, you must first request and be denied all applicable services through private insurance, medicare, the medicaid state plan, and other resources.
- (6) Waiver funding must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0050.
- (7) For the individual and family services (IFS) (~~and~~) waiver, basic plus (~~waivers~~) waiver, and children's intensive in-home behavior support waiver, services must not

exceed the yearly limits specified in these programs for specific services or combinations of services.

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

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations of not more than thirty consecutive days.

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

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

(12) Waiver services do not cover:

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

(13) Waiver services do not cover a product unless the product is:

- (a) Necessary to meet a basic health and safety need; (~~and~~)
- (b) The least restrictive means for meeting that need; and
- (c) Requested by the waiver participant.

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

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

SERVICE	YEARLY LIMIT
AGGREGATE SERVICES: ( <del>Chemical</del> ) <u>Extermination</u> of cimex lectularius (bedbugs) Community ( <del>guide</del> ) <u>engagement</u> Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Skilled nursing Specialized ( <del>medical</del> ) equipment and supplies Specialized ( <del>psychiatric services</del> ) <u>habilitation</u> Speech, hearing, and language services	Total costs must not exceed six thousand one hundred ninety-two dollars per year per participant

SERVICE	YEARLY LIMIT
Staff and family consultation <del>((and training))</del> Transportation Wellness education	
<u>Therapeutic adaptations</u>	<u>Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding</u>
EMPLOYMENT SERVICES: Individual technical assistance <del>((Prevocational services))</del> Supported employment	Limits determined by DDA assessment and employment status <del>((; no new enrollment in prevocational services after September 1, 2015))</del>
Community inclusion	Limits determined by <del>((DDA-assessment))</del> <u>the person-centered service plan</u>
<del>((BEHAVIORAL HEALTH))</del> STABILIZATION SERVICES: <del>((Behavioral health))</del> <u>Crisis diversion bed</u> <del>((services</del> <u>Positive behavior support and consultation</u> <u>Specialized habilitation</u> <u>Staff and family consultation</u>	Limits determined by a <del>((behavioral health professional or DDA))</del> <u>the person-centered service plan</u>
<del>((Specialized psychiatric services))</del>	
<del>((Personal care))</del>	<del>((Limits determined by the CARE tool used as part of the DDA assessment))</del>
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA

SERVICE	YEARLY LIMIT
<del>((Emergency assistance is only for basic plus waiver aggregate services))</del>	<u>Six thousand dollars per year</u> <del>((; preauthorization required))</del> <u>for emergency assistance funding</u>
<u>Community engagement</u>	
<u>Environmental adaptations</u>	
<u>Occupational therapy</u>	
<u>Physical therapy</u>	
<u>Positive behavior support</u>	
<u>Specialized equipment and supplies</u>	
<u>Speech, hearing, and language services</u>	
<u>Skilled nursing</u>	
<u>Staff and family consultation</u>	
<u>Transportation</u>	



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

**WAC 388-845-0215 What services are available under the core waiver?** (1) The following services are available under the core waiver:

SERVICE	YEARLY LIMIT
<del>((Chemical))</del> Extermination of cimex lectularius (bedbugs)	Determined by the person-centered service plan
Community <del>((guide))</del> <u>engagement</u>	
Community transition	
Environmental <del>((adaptions))</del> <u>adaptations</u>	
Occupational therapy	
Physical therapy	
Positive behavior support and consultation	
Residential habilitation	
Risk assessment	
Skilled nursing	
Specialized <del>((medical))</del> equipment and supplies <del>((Specialized psychiatric services))</del>	
Speech, hearing, and language services	
Staff and family consultation <del>((and training))</del>	
Transportation	
Wellness education	
<u>Specialized habilitation</u>	<u>Limited to four thousand dollars per waiver year</u>
EMPLOYMENT SERVICES:	
Individualized technical assistance <del>((Prevocational services))</del>	Limits determined by DDA assessment and employment status <del>((; no new enrollment in prevocational services after September 1, 2015))</del>
Supported employment	
Community inclusion	Limits determined by <del>((DDA assessment))</del> <u>the person-centered service plan</u>

SERVICE	YEARLY LIMIT
<del>((BEHAVIORAL HEALTH))</del> STABILIZATION SERVICES: <del>((Behavioral health))</del> Crisis diversion bed <del>((services))</del> <del>((Positive behavior support and consultation))</del> Specialized <del>((psychiatric services))</del> <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by <del>((a-behavioral health professional or DDA))</del> <u>the person-centered service plan</u>
Respite care	Limits determined by DDA assessment

(2) A participant's core waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's core waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

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

**WAC 388-845-0220 What services are available under the community protection waiver?** (1) The following services are available under the community protection waiver:

SERVICE	YEARLY LIMIT
<del>((Chemical))</del> Extermination of cimex lectularius (bedbugs)	Determined by the person-centered service plan
Community transition	
Environmental adaptations	
Occupational therapy	
Physical therapy	
Positive behavior support and consultation	
Residential habilitation	
Risk assessment	
Skilled nursing	
Specialized <del>((medical))</del> equipment and supplies <del>((Specialized psychiatric services))</del>	
Speech, hearing, and language services	
Staff and family consultation <del>((and training))</del>	

SERVICE	YEARLY LIMIT
Transportation	
EMPLOYMENT SERVICES: Individual technical assistance <del>((Prevocational services))</del> Supported employment	Limits determined by DDA assessment and employment status ( <del>no new enrollment in prevocational services after September 1, 2015</del> )
<del>((BEHAVIORAL HEALTH))</del> STABILIZATION SERVICES: <del>((Behavioral health))</del> Crisis diversion bed <del>((services))</del> <del>((Positive behavior support and consultation))</del> Specialized <del>((psychiatric services))</del> habilitation <u>Staff and family consultation</u>	Limits determined by <del>((a behavioral health professional or DDA))</del> the person-centered service plan

(2) A participant's community protection waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's community protection waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

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

**WAC 388-845-0225 What services are available under the children's intensive in-home behavioral support (CIIBS) waiver?** (1) The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Environmental adaptations Nurse delegation <del>((Positive behavior support and consultation))</del> Specialized clothing Specialized <del>((medical))</del> equipment and supplies <u>Specialized habilitation</u> Staff and family consultation <del>((and training))</del> <del>((Therapeutic equipment and supplies))</del> Transportation Vehicle modifications	<del>((Determined by the person-centered service plan. Total cost of waiver services must not exceed the average cost of four thousand dollars per month per participant.))</del> <u>Fifteen thousand dollars per year for any combination of services</u>
Respite care	Limits determined by the DDA assessment. <del>((Costs are included in the total average cost of four thousand dollars per month per participant for all waiver services.))</del>
<del>((BEHAVIORAL HEALTH))</del> STABILIZATION SERVICES: <del>((Behavioral health))</del> Crisis diversion <del>((bed services</del> <del>Positive behavior support and consultation))</del> <u>Specialized habilitation</u> <u>Staff and family consultation</u>	Limits determined by <del>((behavioral health professional or DDA))</del> the person-centered service plan
Risk assessment <u>Positive behavior support</u>	Limits determined by DDA
<u>Environmental adaptations</u> (Accessibility and repairs) <u>Specialized habilitation</u> <u>Staff and family consultation</u> <u>Vehicle modifications</u>	<u>Six thousand dollars per year for emergency assistance funding</u>
<u>Music therapy</u> <u>Equine therapy</u>	<u>Five thousand dollars per year for combination of services</u>

SERVICE	YEARLY LIMIT
<u>Therapeutic adaptations</u>	<u>Limited to a single, one-time authorization not to exceed fifteen thousand dollars every five waiver years</u>

(2) A participant's CIIBS waiver services are subject to additional limits under this chapter.

**AMENDATORY SECTION** (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-0230 What services are available under the individual and family services (IFS) waiver?** (1) The following services are available under the individual and family services (IFS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan
Community engagement	
Environmental <del>((adap- tions))</del> <u>adaptations</u>	
Occupational therapy	
Peer mentoring	
Person-centered plan facilitation	
Physical therapy	
Positive behavior support and consultation	
Respite care	
Skilled nursing	
Specialized clothing	
Specialized <del>((medical))</del> equipment and supplies	
Specialized <del>((psychiatric services))</del> <u>habilitation</u>	
Speech, hearing, and language services	
Staff and family consultation <del>((and training))</del>	
Supported parenting services	
Transportation	
Vehicle modifications	
Wellness education	

SERVICE	YEARLY LIMIT
<u>Therapeutic adaptations</u>	<u>Limited to a one-time authorization every five years and limited to funds available in the client's aggregate and emergency services</u>
Risk assessment	Limits determined by <del>((DDA- Costs are excluded from the annual allocation-))</del> <u>the person-centered service plan</u>
<del>((BEHAVIORAL HEALTH- STABILIZATION SERVICES-))</del> Crisis diversion bed <del>((ser- vices))</del> <del>((Positive behavior sup- port and consultation))</del> Specialized <del>((psychiatric services))</del> <u>habilitation</u> <u>Staff and family consulta- tion</u>	Limits determined by <del>((behavioral health profes- sional or DDA))</del> <u>the person-centered service plan</u> . Costs are excluded from the annual allocation.

(2) Your IFS waiver services annual allocation is based upon the DDA assessment under chapter 388-828 WAC. The DDA assessment determines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars; or
- (d) Level 4 = three thousand six hundred dollars.

**AMENDATORY SECTION** (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-0425 Are there limits to the assistive technology you may receive?** The assistive technology you may receive has the following limits:

(1) Assistive technology is limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(2) Clinical and support needs for assistive technology must be identified in your DDA assessment and documented in the person-centered service plan.

(3) DDA requires ~~((your))~~ a treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

- (a) The treating professional has personal knowledge of and experience with the requested assistive technology; and
- (b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.

(4) Assistive technology requires prior approval by the DDA regional administrator or designee.

(5) DDA may require a written second opinion from a DDA-selected professional.

(6) The dollar amounts for your individual and family services (IFS) waiver annual allocation limit the amount of assistive technology you are authorized to receive.

(7) Assistive technology excludes any item that is for recreational or diversion purposes such as a television, cable, or DVD player.

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

**WAC 388-845-0500 What is positive behavior support and consultation?** (1) Positive behavior support and consultation ~~((may be provided to persons on any))~~ is available on all of the DDA HCBS waivers ((and)). A participant is eligible for positive behavior support and consultation if the participant is:

(a) Under age 21 and currently authorized to receive positive behavior support and consultation for the support of behavioral health or autism treatment when unable to access through the medicaid state plan; or

(b) On the community protection waiver and require behavior support to address sexual aggression, arson, or assaultive behaviors which make the client eligible for the community protection waiver.

(2) Positive behavior support and consultation includes the development and implementation of programs designed to support waiver participants using:

(a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, and development and implementation of a positive behavior support plan).

~~((2) Positive behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.))~~

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

**WAC 388-845-0510 Are there limits to the positive behavior support and consultation you may receive?** (1) Clinical and support needs for positive behavior support and consultation must be identified in your DDA assessment and documented in the person-centered service plan.

(2) DDA determines the amount of positive behavior support and consultation you may receive based on your needs and information from your treating professional.

(3) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services (IFS) waiver limit the amount of service unless provided as a ~~((behavioral health))~~ stabilization service.

(4) DDA may require a second opinion from a DDA-selected provider.

(5) Positive behavior support and consultation ~~((not provided as a behavioral health stabilization service))~~ requires prior approval by the DDA regional administrator or designee for the following waivers:

(a) Basic plus;

(b) Core;

(c) Children's intensive in-home behavior support (CIIBS); and

(d) IFS.

(6) Positive behavior support and consultation services are limited to services:

(a) Consistent with waiver objectives of avoiding institutionalization; and

(b) Not otherwise covered under the medicaid state plan.

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

**WAC 388-845-0515 What is ((chemical)) extermination of bedbugs?** (1) ~~((Chemical))~~ Extermination of cimex lectularius (bedbugs) is professional ~~((chemical))~~ extermination of bedbugs.

(2) DDA covers professional ~~((chemical))~~ extermination of bedbugs in your primary residence if you:

(a) Receive residential habilitation services; or

(b) Live in a private house or apartment for which you are financially responsible.

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

**WAC 388-845-0520 Who are qualified providers of ((chemical)) extermination of bedbugs?** A qualified ~~((chemical))~~ extermination provider must be:

~~(1) Licensed as a chemical pesticide applicator by the Washington state department of agriculture; and~~

~~(2)) contracted with DDA to provide ((chemical)) extermination of bedbugs.~~

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

**WAC 388-845-0525 Are there limits to the ((chemical)) extermination of bedbugs services I may receive?** (1) ~~((Chemical))~~ Extermination services covers only:

(a) The assessment or inspection by the qualified provider;

(b) Application of chemical-based pesticide; and

(c) One follow-up visit.

(2) ~~((Chemical))~~ Extermination of bedbugs is limited to two treatments per plan year.

(3) ~~((Chemical))~~ Extermination of bedbugs excludes:

(a) Lodging during the ~~((chemical))~~ extermination process; and

(b) Preparatory housework associated with the extermination process.

(4) DDA does not cover ~~((chemical))~~ extermination of bedbugs for a participant who lives:

(a) With their family; or

(b) In an adult family home, assisted living, group home, group training home, licensed staffed residential home, or other facility contractually obligated to provide housing.

(5) DDA requires prior approval by the regional administrator or designee for ~~((chemical))~~ extermination of bedbugs.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0650 What are community engagement services?** (1) Community engagement ~~((services are services))~~ is designed to increase a waiver participant's connection to and engagement in formal and informal community supports by connecting the participant to community resources.

(2) Services are designed to develop creative, flexible, and supportive community resources and relationships for individuals with developmental disabilities.

(3) Waiver participants are introduced to the community resources and supports that are available in their area.

(4) Participants are supported to develop identified skills that will facilitate integration into their community as described in the person-centered service plan.

~~((Outcomes for this service include skill development, opportunities for socialization, valued community roles, and involvement in community activities, organizations, groups, projects, and other resources.~~

~~((6))~~ This service is available ~~((in))~~ on the:

(a) IFS waiver;

(b) Basic plus waiver; and

(c) Core waiver when the participant is not receiving residential habilitation services.

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

**WAC 388-845-0800 What is emergency assistance funding?** Emergency assistance funding is a temporary increase, ninety days or less, to the yearly basic plus or CIIBS waiver aggregate dollar limit when additional waiver aggregate services are required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

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

**WAC 388-845-0810 How do I qualify for emergency assistance funding?** You qualify for emergency assistance only if you have used all of your waiver aggregate funding and your current situation meets one of the following criteria:

(1) You involuntarily lose your present residence for any reason either temporary or permanent;

(2) You lose your present caregiver for any reason, including death;

(3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or

(4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

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

**WAC 388-845-0820 Are there limits to your use of emergency assistance funding?** All of the following limits apply to the emergency assistance you may receive~~((s))~~.

(1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service plan to determine the need for emergency services~~((s))~~.

(2) Payment authorizations are reviewed every thirty days and must not exceed six thousand dollars per twelve months based on the effective date of your current person-centered service plan~~((s))~~.

(3) Emergency assistance ~~((services are))~~ funding is limited to the following ~~((basic plus waiver))~~ aggregate services when on the basic plus waivers:

(a) Community ~~((guide))~~ engagement;

(b) Environmental adaptations;

(c) Occupational therapy;

(d) Physical therapy;

(e) Positive behavior support and consultation;

(f) Skilled nursing;

(g) Specialized ~~((medical))~~ equipment and supplies;

(h) ~~((Specialized psychiatric services;~~

~~((s)))~~ Speech, hearing, and language services;

~~((s)))~~ (i) Staff and family consultation ~~((and training))~~, which excludes individual and family counseling;

~~((s)))~~ (j) Transportation; and

(k) Therapeutic adaptations.

(4) Emergency assistance funding is limited to the following services when on the CIIBS waiver:

(a) Environmental adaptations;

(b) Specialized habilitation;

(c) Staff and family consultation; and

(d) Vehicle modifications.

(5) Emergency assistance funding may be used for interim services until:

(a) The emergency situation has been resolved;

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-0900 What are environmental adaptations?** (1) Environmental adaptations provide basic physical adaptations to the ~~((dwelling))~~ existing home and existing rooms within the home required by the individual's person-centered service plan needed to:

(a) Ensure the health, welfare, and safety of the individual;

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the dwelling; and

(c) Increase the individual's independence inside ~~((the dwelling))~~ or outside the dwelling to ~~((provide access to the dwelling))~~ allow the individual to physically enter and move within the home.

(2) Examples of environmental ~~((adaptions))~~ adaptations include installing stair lifts, installing ramps and grab bars, widening doorways, modifying the individual's primary bathroom, or installing specialized electrical or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Environmental ~~((adaptions))~~ adaptations are available in all of the DDA HCBS waivers.

(4) Only the children's intensive in-home behavioral support (CIIBS) and individual and family services (IFS) waivers may include adaptations to the dwelling necessary to prevent or repair ~~((property destruction))~~ damage to the structure of the home caused by the participant's behavior, as addressed in the participant's ~~((positive))~~ behavior support plan.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0905 Who is a qualified provider for environmental adaptations?** ~~((1) For adaptations that do not require installation, qualified providers are retail vendors with a valid business license contracted with DDA to provide this service.~~

~~((2) For adaptations requiring installation,))~~ A qualified ~~((providers))~~ provider must be a registered contractor per chapter 18.27 RCW and contracted with DDA. The contractor ~~((or subcontractor))~~ must be licensed and bonded to perform the specific type of work ~~((they are providing))~~ being provided.

~~((3) For debris removal, qualified providers must be contracted with DDA.)~~

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-0910 What limits apply to environmental adaptations?** The following service limits apply to environmental adaptations:

(1) Clinical and support needs for an environmental adaptation must be identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) One thousand five hundred dollars or less, one bid is required;

(b) More than one thousand five hundred dollars and equal to or less than five thousand dollars, two bids are required; or

(c) More than five thousand dollars, three bids are required.

(3) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

(4) DDA may require an occupational therapist, physical therapist, or ~~((construction consultant))~~ other professional to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(5) Environmental adaptations to the home are excluded if they are of general utility without direct benefit to the individual as related to the individual's developmental disability, such as cosmetic improvements to the dwelling, or general home improvements, such as carpeting, roof repair, or central air conditioning.

(6) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to final payment for work.

~~((The condition of the dwelling or other projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA))~~ Environmental adaptations must not be performed while other adaptations or remodeling projects are in process.

(8) Environmental adaptations must not be approved if the existing residence condition is impacted by mold, asbestos, or dwelling dilapidation.

(9) Location of the dwelling in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

~~((9))~~ (10) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

~~((10))~~ (11) Environmental adaptations must not add to the total square footage of the dwelling, convert nonliving space to living space, or create a new room.

~~((11))~~ (12) The dollar amounts for aggregate services in your basic plus, CIIBS waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

~~((12))~~ (13) For core, community protection, ~~((and CIIBS waivers,))~~ annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

~~((13))~~ (14) Damage prevention and repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original function;

(b) Limited to the dollar amounts of the ~~((IFS waiver))~~ participant's annual allocation;

(c) Behaviors of waiver participants that resulted in damage to the dwelling must be addressed in a positive behavior support plan prior to the repair of damages;

(d) Repairs to personal property such as furniture and appliances are excluded; and

(e) Repairs due to normal wear and tear are excluded.

~~((14))~~ (15) The following adaptations are not covered as an environmental adaptation:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, generators, or ceiling fans;

(d) Roof repair or siding;

(e) Deck construction or repair; and

(f) Jetted tubs or saunas.

~~((15))~~ (16) Environmental ~~((adaptions))~~ adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

#### NEW SECTION

##### **WAC 388-845-0920 What is equine therapy? (1)**

Equine therapy is the use of horses to provide experiences that support mental health and emotional well-being.

(2) Services may include horsemanship as part of a therapeutic team and participation in other activities associated with preparing a horse for a client's riding lesson.

(3) Equine therapy is available in the CIIBS waiver.

#### NEW SECTION

**WAC 388-845-0930 Who are qualified providers of equine therapy? (1)** The provider of equine therapy must be a certified therapeutic horseback riding instructor and contracted with DDA to provide this service.

(2) The provider of equine therapy must have one year of experience working with individuals with developmental disabilities.

#### NEW SECTION

**WAC 388-845-0940 Are there limits to the equine therapy I may receive?** The following limits apply to your receipt of equine therapy:

(1) Support needs for equine therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

(3) Equine therapy requires prior approval by the DDA regional administrator or designee.

(4) DDA may require a second opinion by the department-selected provider.

(5) Equine therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per plan year.

(6) Equine therapy services must not be used to provide hippotherapy, which is an occupational therapy service.

(7) The department reserves the right to terminate the authorization for service if there is not a demonstrable improvement in behavior as documented by the contracted equine therapist or other treatment provider.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-1100 What are ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~? ~~((Behavioral health))~~ (1) Crisis diversion ~~((bed services))~~ beds are ~~((short-term emergent residential services that may be provided in a client's home, licensed or certified setting, or state operated setting. These services are available to eligible clients whose current living situation is disrupted and the client is at risk of institutionalization. These services are))~~ available in all five HCBS waivers administered by DDA as ~~((behavioral health))~~ a stabilization ~~((services))~~ service in accordance with WAC 388-845-1150 through 388-845-1160.**

(2) Crisis diversion beds are short-term residential habilitative supports provided by trained specialists and include direct care, supervision or monitoring, habilitative supports, referrals, and consultation. Crisis diversion beds are available to individuals determined by DDA to be at risk of institutionalization.

#### NEW SECTION

**WAC 388-845-1101 Where may stabilization services - crisis diversion be provided?** Stabilization services - crisis diversion beds may be provided in a client's home or a licensed or certified setting.

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

**WAC 388-845-1105 Who is a qualified provider of ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~?** Providers of ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~ beds must be:

(1) DDA certified residential agencies per chapter 388-101 WAC;

(2) Other department licensed or certified agencies; or

(3) State-operated ~~((agency))~~ agencies.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-1110 What are the limits of ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~?** (1) Clinical and support needs for ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~ beds are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) ~~((Behavioral health))~~ Stabilization services - crisis diversion ~~((bed services))~~ beds are intermittent and temporary. A behavioral health professional may make a recommendation about your need for ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~ beds. DDA determines the duration and amount of ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~ beds you will receive.

(3) The costs of ~~((behavioral health))~~ stabilization services - crisis diversion ~~((bed services))~~ beds do not count

toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the individual and family services waiver.

(4) Stabilization services - crisis diversion beds are limited to additional services not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-1150 What are ~~((behavioral health))~~ stabilization services?** (1) ~~((Behavioral health))~~ Stabilization services assist persons who are experiencing a behavioral health crisis.

(2) ~~((Behavioral health))~~ Stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers.

(3) A participant may be eligible for ~~((behavioral health))~~ stabilization services if:

(a) A behavioral health professional ~~((or))~~ and DDA has determined the participant is at risk of institutionalization or hospitalization; and

(b) The participant needs:

(i) ~~((Positive behavior support and consultation))~~ Specialized habilitation;

(ii) ~~((Specialized psychiatric services for people age twenty-one and older))~~ Staff and family consultation; or

(iii) ~~((Behavioral health))~~ Crisis diversion ~~((bed services available to participants on the individual and family services, basic plus, core, CIIBS, and community protection waivers))~~ beds.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

**WAC 388-845-1155 Who are qualified providers of ~~((behavioral health))~~ stabilization services?** Providers of these ~~((behavioral health))~~ stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1160 Are there ~~((limitations))~~ limits to the ~~((behavioral health))~~ stabilization services that you can receive?** (1) ~~((Clinical and support needs for behavioral health))~~ Stabilization services are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) ~~((Behavioral health))~~ Stabilization services are intermittent and ~~((temporary))~~ ninety days or less. ~~((The duration and amount of services you need to stabilize your crisis is determined by a behavioral health professional and/or DDA.))~~

(3) The costs of ~~((behavioral health))~~ stabilization services do not count toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the IFS waiver.

~~((4) Behavioral health stabilization services require prior approval by DDA or its designee.))~~

#### NEW SECTION

##### **WAC 388-845-1161 What is music therapy?**

(1) Music therapy is the use of musical interventions to promote the accomplishment of individualized goals within a therapeutic relationship.

(2) Services may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, or other expressive musical forms.

(3) Music therapy is available in the CIIBS waiver.

#### NEW SECTION

##### **WAC 388-845-1162 Who are qualified providers of music therapy?**

(1) Qualified providers of music therapy are agencies or individuals who are or employ board certified music therapists (MT-BC) as defined by the certification board for music therapists;

(2) Are contracted with DDA to provide this service; and

(3) Have one year of experience working with individuals with developmental disabilities.

#### NEW SECTION

**WAC 388-845-1163 Are there limits to the music therapy I may receive?** The following limits apply to your receipt of music therapy:

(1) Support needs for music therapy are limited to those identified in your DDA assessment and documented in the person-centered service plan.

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

(3) Music therapy requires prior approval by the DDA regional administrator or designee.

(4) DDA may require a second opinion by a department-selected provider.

(5) Music therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per year.

(6) The department reserves the right to terminate the authorization for service if there is not a demonstrable improvement in behavior as documented by the certified music therapist or other treatment provider.

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

##### **WAC 388-845-1505 Who are qualified providers of residential habilitation services for the core waiver?**

Providers of residential habilitation services for participants in the core waiver must be one of the following:

(1) Individuals contracted with DDA to provide residential support as a "companion home" provider;



(2) Individuals contracted with DDA to provide training as an "alternative living provider";

(3) Agencies contracted with DDA and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA);

(5) Licensed and contracted group care homes, foster homes, child (~~placement~~) placement agencies or staffed residential homes per chapter (~~388-148~~) 110-148 WAC.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1607 Can someone who lives with you be your respite provider?** (~~Someone~~) A person who lives with you may be your respite care provider as long as (~~he or she~~) that person is not your primary care provider and is not (~~contracted to provide~~) providing any other DSHS paid service to you in the month that person provides respite care to you. The (~~limitations~~) limits listed in WAC 388-845-0111 also apply.

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

**WAC 388-845-1700 What is waiver skilled nursing?**

(1) Waiver skilled nursing means long-term, intermittent, and hourly skilled nursing services consistent with waiver objectives of avoiding institutionalization.

(2) Waiver skilled nursing services are available in the basic plus, community protection (CP), core, and individual and family services (IFS) waivers, and are limited to participants age twenty-one and older unless skilled nursing is authorized as nurse delegation.

(3) Waiver skilled nursing services include nurse delegation services provided by a registered nurse under WAC 388-845-1170.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-1800 What are specialized (~~medical~~) equipment and supplies?** (1) Specialized (~~medical~~) equipment and supplies are durable and nondurable medical equipment, or equipment necessary to prevent institutionalization, not available through the medicaid state plan or are in excess of what is available through the medicaid state plan benefit which enables individuals:

(a) To increase their abilities to perform their activities of daily living;

(b) To perceive, control, or communicate with the environment in which they live; or

(c) On the IFS and CIIBS waiver only, to improve daily functioning through sensory integration when prescribed in a written therapeutic plan by the current treating professional.

(2) Specialized equipment and supplies are available in all DDA HCBS waivers.

(3) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500 respectively.

(~~3~~) (4) Also included are items necessary for life support and ancillary supplies and equipment necessary to the

proper functioning of the equipment and supplies described in subsection (1) of this section.

(~~4~~) (5) Specialized (~~medical~~) equipment and supplies include the maintenance and repair of specialized (~~medical~~) equipment not covered through the medicaid state plan.

(~~5~~) Specialized medical equipment and supplies are available in all DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-1805 Who are the qualified providers of specialized (~~medical~~) equipment and supplies?** (1) The provider of specialized (~~medical~~) equipment and supplies must be a medical equipment supplier contracted with DDA or (~~have~~) having a state contract as a Title XIX vendor(~~-~~);

(2) (~~For IFS only~~;) A provider contracted with DDA as a goods and services shopper; or

(3) The provider of specialized (~~medical~~) equipment and supplies under WAC 388-845-1800(1)(c) (~~must~~) may be contracted with DDA as a provider of specialized goods and services or specialized equipment and supplies for IFS and CIIBS waiver clients only.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-1810 Are there limits to the specialized (~~medical~~) equipment and supplies you may receive?** The following limits apply to the specialized (~~medical~~) equipment and supplies you may receive:

(1) Habilitative support needs for specialized (~~medical~~) equipment and supplies are limited to those identified in your DDA person-centered assessment and documented in your person-centered service plan.

(2) Specialized (~~medical~~) equipment and supplies require prior approval by the DDA regional administrator or designee for each authorization.

(3) DDA may require a second opinion by a DDA-selected provider.

(4) Items must be of direct medical or remedial benefit to you and necessary as a result of your disability.

(5) Medications, personal hygiene products, supplements, and vitamins are excluded.

(6) The dollar amounts for aggregate services in your basic plus waiver limit the amount of service you may receive.

(7) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

(8) Items excluded from specialized equipment and supplies include nonspecialized recreational or exercise equipment, (~~such as~~) including but not limited to trampolines, treadmills, swing sets, and hot tubs.

(9) Specialized equipment and supplies are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(10) For a participant on the IFS or CIIBS waiver, specialized equipment and supplies are limited to those items

needed to improve daily functioning through sensory integration. The item must be in a written therapeutic plan by the participant's current treating professional.

#### NEW SECTION

**WAC 388-845-1870 What are specialized habilitation services?** (1) Specialized habilitation services provide community-based and individualized support with the intent of reaching an identified habilitative goal in the person-centered service plan.

(2) Service must assist a client to learn or maintain skills in the category of self-empowerment, safety awareness, self-advocacy, interpersonal effectiveness, effective social communication, appropriate, coping strategies for everyday life changes, managing daily tasks, or adaptive skills.

(3) Specialized habilitation must promote inclusion in the community

(4) Specialized habilitation services are available on the basic plus, IFS, core and CIIBS waivers.

(5) Specialized habilitation, when authorized as a stabilization service, is available on all five HCBS waivers.

#### NEW SECTION

**WAC 388-845-1880 Who are qualified providers of specialized habilitation services?** To provide specialized habilitation services, a provider must be contracted with DDA for this service, have one year of experience working with people with a developmental or intellectual disability, and be one of the following licensed, registered, or certified professionals:

- (1) Certified life skills coach;
- (2) Individuals with bachelor's, master's, or doctoral degrees in social work, sociology, psychology, education; child development, gerontology, nursing or other related field; or
- (3) In a university internship program for social work, sociology, psychology, education, child development, gerontology, sociology, gerontology, or nursing.

#### NEW SECTION

**WAC 388-845-1890 Are there limits to the specialized habilitation services I may receive?** The following limits apply to your receipt of specialized habilitation services:

- (1) Specialized habilitation services are limited to address a maximum of three goals at a time.
- (2) Support needs for specialized habilitation, and must be identified in your DDA assessment and documented in the person-centered service plan.
- (3) Specialized habilitation services must not exceed:
  - (a) Four-thousand dollars of your basic plus aggregate funding;
  - (b) Your IFS annual allocation in combination with other waiver services;
  - (c) Fifteen thousand dollars within your total CIIBS aggregate budget and six thousand dollars emergency funding when eligible per WAC 388-845-0800 and 388-845-0820.

(4) Specialized habilitation services do not cover education, vocational, skills acquisition training through community first choice, behavioral health, ABA, skilled nursing, occupational therapy, physical therapy, or speech, language, and hearing services that are covered benefits through the medicaid state plan, including early and periodic screening, diagnosis, and treatment and part B special education services.

(5) Specialized habilitation must not be authorized to clients enrolled in residential habilitation.

(6) Habilitation plans must be documented as formal plans as outlined in the provider's contract.

(7) Specialized habilitation services, not provided as a stabilization service, require prior approval by the DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-2000 What is staff and family consultation (~~and training~~)?** (1) Staff and family consultation (~~and training~~) is (~~professional~~) assistance, not covered by the medicaid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

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

(3) Staff and family consultation (~~and training~~) is consultation and guidance to a staff member or family member about one or more of the following:

- (a) Health and medication monitoring to track and report to healthcare provider;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) (~~Positive behavior support~~) Consultation with potential referral resources;
- (e) Augmentative communication systems;
- (f) Diet and (~~nutrition~~) nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;
- (i) Environmental (~~safety~~) consultation;
- (j) Assistive technology safety; (~~and~~)
- (k) Consultation to an existing plan of care; and
- (l) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

**WAC 388-845-2005 Who is a qualified provider of staff and family consultation (~~and training~~)?** To provide staff and family consultation (~~and training~~), a provider must be contracted with DDA and be one of the following licensed, registered, or certified professionals:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;

- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech-language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only);
- (19) Psychiatrist;
- (20) Professional advocacy organization; or
- (21) Teacher certified under chapter 181-79A WAC.

**AMENDATORY SECTION** (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

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

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

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

(4) Under the basic plus waiver, individual and family counseling is limited to family members who:

- (a) Live with the participant; and
- (b) Have been assaulted by the participant and the assaultive behavior was:
  - (i) Documented in the participant's person-centered service plan; and
  - (ii) Addressed in the participant's positive behavior support plan or therapeutic plan.

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

#### NEW SECTION

**WAC 388-845-2145 What are therapeutic adaptations?** (1) Therapeutic adaptations are modifications to an existing room in the waiver participant's current home and are necessary to reduce or eliminate environmental sensory stressors, enable effective social support, or give a sense of control to the waiver participant in order for a therapeutic plan to be implemented.

- (2) Therapeutic adaptations include on-time room modifications not related to physical accessibility such as:
  - (a) Noise reduction or enhancement;
  - (b) Lighting adjustment;
  - (c) Wall softening;
  - (d) Anchored and nonremovable tactile accents; or
  - (e) Anchored and nonremovable visual accents.

#### NEW SECTION

**WAC 388-845-2150 Who is a qualified provider of therapeutic adaptations?** (1) A qualified provider of therapeutic adaptations is a person who is contracted with DDA and:

(a) A registered contractor per chapter 18.27 RCW and licensed and bonded to perform the specific type of work they are providing; or

(b) A medical equipment supplier with a state contract as a Title XIX vendor.

(2) A qualified provider of therapeutic adaptations may also be someone who is contracted with DDA as:

- (a) A purchasing goods and services contractor; or
- (b) A CIIBS goods and services contractor.

#### NEW SECTION

**WAC 388-845-2155 Are there limits to the therapeutic adaptations I may receive?** The following limits apply to your receipt of therapeutic adaptations:

(1) Therapeutic adaptations are limited to one adaptation request every five waiver years.

(2) Funding is limited to the aggregate budget in the basic plus and IFS waiver or fifteen thousand dollars on the CIIBS waiver.

(3) Modifications may not add square footage to the home or convert nonliving space into living space.

(4) The department requires a written recommendation by a behavioral health provider, occupational therapist, or physical therapist within the waiver participant's current therapeutic plan.

(5) Therapeutic adaptations are limited to items not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(6) Therapeutic adaptations require prior approval by the DDA regional administrator or designee.

(7) Therapeutic adaptations are limited to those identified in the client's person-centered service plan.

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

**WAC 388-845-3070 What happens if you do not sign your person-centered service plan?** (1) If you do not sign your initial person-centered service plan (PCSP), DDA must not provide waiver services to you until you sign the PCSP.

(2) If you do not sign your PCSP and it is a reassessment or review, DDA will:

- (a) Continue providing services identified in your current PCSP until the end of the notice period under WAC 388-825-105; and

(b) Return your PCSP to you for your signature.

(3) If you do not return your signed PCSP within two months of your reassessment or review, DDA (~~(must)~~) may terminate your services.

(4) Your appeal rights are under:

(a) WAC 388-845-4000; and

(b) WAC 388-825-120 through 388-825-165.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                  |  |
|------------------|--|
| WAC 388-845-0300 | What are adult family home (AFH) services?                                     |
| WAC 388-845-0305 | Who is a qualified provider of AFH services?                                   |
| WAC 388-845-0310 | Are there limits to the AFH services I can receive?                            |
| WAC 388-845-0400 | What are adult residential care (ARC) services?                                |
| WAC 388-845-0405 | Who is a qualified provider of ARC services?                                   |
| WAC 388-845-0410 | Are there limits to the ARC services I can receive?                            |
| WAC 388-845-0700 | What are community guide services?   |
| WAC 388-845-0705 | Who may be a qualified provider of community guide services?                   |
| WAC 388-845-0710 | Are there limits to the community guide services I may receive?                |
| WAC 388-845-1300 | What are personal care services?   |
| WAC 388-845-1305 | Who are the qualified providers of personal care services?                     |
| WAC 388-845-1310 | Are there limits to the personal care services you can receive?                |
| WAC 388-845-1400 | What are prevocational services?   |
| WAC 388-845-1405 | Who are the qualified providers of prevocational services?                     |
| WAC 388-845-1410 | Are there limits to the prevocational services you may receive?                |
| WAC 388-845-1900 | What are specialized psychiatric services?                                     |
| WAC 388-845-1905 | Who are qualified providers of specialized psychiatric services?               |
| WAC 388-845-1910 | Are there limitations to the specialized psychiatric services you can receive? |
| WAC 388-845-2160 | What is therapeutic equipment and supplies?                                    |
| WAC 388-845-2165 | Who are qualified providers of therapeutic equipment and supplies?             |

WAC 388-845-2170 Are there limits to your receipt of therapeutic equipment and supplies?

**WSR 21-19-118  
EMERGENCY RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed September 20, 2021, 3:14 p.m., effective September 20, 2021, 3:14 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Under the emergency rule:

- Employers must not allow employees to perform work where a business activity is prohibited by an emergency proclamation.
- Employers must comply with all conditions for operation required by emergency proclamation.

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

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

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

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

Reasons for this Finding: This emergency rule making supersedes the emergency rule adopted on August 23, 2021, filed as WSR 21-18-030, as conditions have changed due to a new governor's proclamation being in effect (Proclamation 20-25.17).

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

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual, and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state,

referred to as "Safe Start Washington." The "Safe Start" orders further build on these by continuing the Safe Start plan for county-by-county phased reopening where the subsequent "Stay Safe-Stay Healthy" orders rolled back the county-by-county phased reopening in response to a COVID-19 outbreak surge and the following amendments under the "Health [Healthy] Washington - Roadmap to Recovery" took a regional approach to easing of the rolled back restrictions and aligning with CDC guidance on fully vaccinated individuals. Under the July 2021 "Washington Ready" order, Proclamation 20-25.14, some restrictions remained for large indoor gatherings and mask use is required for unvaccinated employees when indoors. The current "Washington Ready" Proclamation 20-25.17 addresses the increase in COVID-19 cases and hospitalizations in many parts of the state and the need to decrease the spread of the highly contagious Delta variant. Proclamation 20-25.17 continues the requirements under 20-25.15 for face coverings or masks for customers and employees regardless of vaccination status in indoor spaces accessible to the public and requires face coverings or masks for large outdoor events with 500 or more individuals, regardless of vaccination status.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions among individuals not fully vaccinated, reduce the occurrence of breakthrough infections, safely easing some restrictions while also maintaining crucial hospital capacity, ensuring care for Washingtonians who need it, and paving the way for economic recovery. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees. In setting the conditions for businesses under the "Washington Ready" 20-25.17 order considerations included statewide and county level data, the percentage of the state population who are fully vaccinated, the number of counties with high or substantial transmission rates, and critical knowledge gained regarding the spread of COVID-19, including a better understanding of the risks associated with certain activities and the measures that can be taken to reduce those risks.

The business operating conditions in the governor's orders are also consistent with the purpose of chapter 49.17 RCW and guidance from CDC. Chapter 49.17 RCW and L&I rules require employers to provide a safe and healthy workplace free from recognized hazards, and an employer can be cited for a violation of the "safe place" rule where there are no specific rules to address the particular hazard. Lack of COVID-19 hazard controls such as failure to address symptomatic employees can be cited under the "safe place" standard. This emergency rule ensures clarity that restrictions and conditions on business under the emergency proclamations are also health and safety requirements under chapter 49.17 RCW and that employers can be subject to a citation and monetary penalties for violations.

This emergency rule is necessary for the preservation of public health, safety, and general welfare of all employees. The governor's proclamation has found that the hazards of the unnecessary spread of COVID-19 present an immediate

threat to public health and safety. The governor's proclamation is currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

Date Adopted: September 20, 2021.

Joel Sacks  
Director

#### NEW SECTION

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

(2) Employers must comply with all conditions for operation required by emergency proclamation issued under RCW 43.06.220.

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

**WSR 21-19-120**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-205—Filed September 20, 2021, 4:11 p.m., effective September 20, 2021, 4:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes commercial sea cucumber harvest in sea cucumber management District 1.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000A.

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 sea cucumber management District 1 because the quota in this area has been reached. This closure is needed to fulfill obligations of state and tribal comanager agreements.

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

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

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

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

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

Date Adopted: September 20, 2021.

Kelly Susewind  
Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-340-73000A Commercial sea cucumbers fishery.  
(21-178)

**WSR 21-19-121  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order [21]-204—Filed September 20, 2021, 4:18 p.m., effective September 20, 2021, 4:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Area 2U on September 21, 2021, and to modify the commercial fishing gear for all areas during this week from September 21 - 25, 2021.

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

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

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

Reasons for this Finding: This emergency rule is needed to modify the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Area 2U on September 21, 2021, and Areas 2N, 2M, 2T, and 2U on September 21, 22, 24, and 25, 2021.

For statistical week 38 (September 12 - 18, 2021), the total impacts predicted pre-season for natural origin Chinook was 50 fish. The estimated impacts for natural origin Chinook in-season for statistical week 38 was 64 fish. This is 128 percent of the pre-season prediction for week 38.

The cumulative total impacts predicted pre-season for natural origin Chinook was 136 fish for statistical weeks 34 - 38. The estimated impacts for natural origin Chinook in-season to-date are 188 fish. This is 138 percent of the pre-season prediction for the season total.

The impacts of natural origin fall Chinook have been higher than pre-season predictions. The purpose of this modification is to reduce the number of natural origin Chinook impacts in the commercial fishery to preserve coho opportunity with the limited remaining Chinook impacts available. Based on pre-season predictions and uncertainty around run sizes of Chinook in-season, a modification of the commercial fishery is necessary to help ensure that conservation objectives for Chinook are met. All other rules remain in effect.

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

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

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

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

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

Date Adopted: September 20, 2021.

Kelly Susewind  
Director

**NEW SECTION**

**WAC 220-354-25000B Willapa Bay salmon fall fishery.** Effective immediately, through September 25, 2021, the provisions of WAC 220-354-250 describing commercial gill net open periods and allowable mesh sizes in Willapa Bay shall be as follows. All other provisions of WAC 220-354-250, not contained herein remain in effect unless otherwise altered by emergency rule:

Areas	Date	Closed periods
2U	9/21/2021	Closed

Areas	Time	Date(s)	Maximum Mesh Size
2N, 2M, 2T	7:00 a.m. through 7 p.m.	9/21	4.25"
2N, 2R, 2T, 2U	7:00 a.m. through 7 p.m.	9/22	4.25"
2N, 2M, 2T, 2U	7:00 a.m. through 7 p.m.	9/24	4.25"
2N, 2T	7:00 a.m. through 7 p.m.	9/25	4.25"

**REPEALER**

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

WAC 220-354-25000A Willapa Bay salmon fall fishery. (21-185)

**WSR 21-19-133  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 21-206—Filed September 21, 2021, 12:51 p.m., effective September 21, 2021, 12:51 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open recreational razor clam digging on Copalis Beach on September 25, 2021.

Citation of Rules Affected by this Order: Repealing WAC 220-330-01000L and 220-330-16000X; and amending WAC 220-330-010 and 220-330-160.

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

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

Reasons for this Finding: This regulation adds an opening on Razor Clam Area 4 for Saturday, September 25. This additional date is available to state licensed diggers as a result of comanager agreement with the Quinault Indian Nation, that they will not include it in openers for their use during this tide series. Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. An exceptionally large population of harvestable razor clams in Razor Clam Areas 1, 3, 4, and 5 allow for a temporary increase in the daily bag limit. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. There is insufficient time to adopt permanent rules

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

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: September 21, 2021.

Kelly Susewind  
Director

**NEW SECTION**

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

(1) Effective immediately, through 11:59 a.m. September 22, 2021, razor clam digging is permissible in Razor Clam Area 1 and Razor Clam Area 3. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 p.m. September 23, through 11:59 p.m. September 25, 2021, razor clam digging is permissible in Razor Clam Area 1 and Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 a.m. September 22, through 11:59 a.m. September 22, 2021, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 p.m. September 24, through 11:59 p.m. September 25, 2021, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(5) Effective immediately, through 11:59 a.m. September 21, 2021, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(6) Effective 12:01 p.m. September 23, through 11:59 p.m. September 23, 2021, and effective 12:01 p.m. September 25, through 11:59 p.m. September 25, 2021, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(7) It is unlawful to dig for razor clams at any time in the Long Beach and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

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

**NEW SECTION**

**WAC 220-330-01000M Shellfish—Daily limits, size restrictions, and unlawful acts.** Notwithstanding the provi-

sions of WAC 220-330-010 regarding Razor clam daily limits, effective immediately, through 11:59 p.m. December 31, 2021, the daily limit is 20 razor clams for personal use in any one day from Razor Clam Area 1, Razor Clam Area 3, Razor Clam Area 4 and Razor Clam Area 5. All other provisions of WAC 220-330-010 not addressed herein remain in effect unless otherwise amended by emergency rule.

### REPEALER

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

WAC 220-330-16000X Razor clams—Areas and seasons. (21-184)

WAC 220-330-01000L Shellfish—Daily limits, size restrictions, and unlawful acts. (21-184)

### **WSR 21-19-147**

#### **EMERGENCY RULES**

#### **HEALTH CARE AUTHORITY**

[Filed September 22, 2021, 10:30 a.m., effective September 22, 2021, 10:30 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In chapter 182-531A WAC, the agency is revising these rules to remove the age limits for applied behavioral analysis (ABA) and update language to remove child or children and replace with client. In WAC 182-501-0600, the agency is updating the "N" (No) to a "Y" (Yes) in the ABA covered services table for ABP 21+, CN 21+ and MN 21+. The agency is also updating the ambulance section in the covered services table for ABP 21+ to a "Y" (Yes) as it was inadvertently left blank.

Citation of Rules Affected by this Order: Amending WAC 182-531A-0100, 182-531A-0200, 182-531A-0400, 182-531A-0500, 182-531A-0600, 182-531A-1100, and 182-501-0060.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The immediate revision of these rules is necessary to comply with an order of the Thurston County Superior Court in *J.C. and H.S. v. Washington State Health Care Authority*, no. 20-2-01813-34. The order prohibits the agency from applying prior versions of these rules to requests for ABA therapy from individuals over 20 years of age. The current emergency filing under WSR 21-12-071, filed on May 28, 2021, is set to expire on September 25, 2021. Since the last emergency filing, the agency has proceeded forward with drafting of the permanent rule, com-

pleted internal reviews, and is preparing to send the external review to interested stakeholders shortly.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: September 22, 2021.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-020, filed 6/24/19, effective 7/25/19)

**WAC 182-501-0060 Health care coverage—Program benefit packages—Scope of service categories.** (1) This rule provides a table that lists:

- (a) The following Washington apple health programs:
  - (i) The alternative benefits plan (ABP) medicaid;
  - (ii) Categorically needy (CN) medicaid;
  - (iii) Medically needy (MN) medicaid; and
  - (iv) Medical care services (MCS) programs (includes incapacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005; and
- (b) The benefit packages showing what service categories are included for each program.
- (2) Within a service category included in a benefit package, some services may be covered and others noncovered.
- (3) Services covered within each service category included in a benefit package:
  - (a) Are determined in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.
  - (b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.
  - (c) May require prior authorization (see WAC 182-501-0165), or expedited prior authorization when allowed by the agency.
  - (d) Are paid for by the agency or the agency's designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.
- (4) The agency does not pay for covered services, equipment, or supplies that:
  - (a) Require prior authorization from the agency or the agency's designee, if prior authorization was not obtained before the service was provided;
  - (b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;



(c) Are included in an agency or the agency's designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Programs not addressed in the table:

(a) Alien emergency medical (AEM) services (see chapter 182-507 WAC); and

(b) TAKE CHARGE program (see WAC 182-532-700 through 182-532-790);

(c) Postpartum and family planning extension (see WAC 182-523-0130(4) and 182-505-0115(5));

(d) Eligibility for pregnant minors (see WAC 182-505-0117); and

(e) Kidney disease program (see chapter 182-540 WAC).

(6) Scope of service categories. The following table lists the agency's categories of health care services.

(a) Under the ABP, CN, and MN headings, there are two columns. One addresses clients twenty years of age and younger, and the other addresses clients twenty-one years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	ABP 20-	ABP 21+	CN <sup>1</sup> 20-	CN 21+	MN 20-	MN 21+	MCS
Ambulance (ground and air)	Y	<u>Y</u>	Y	Y	Y	Y	Y
Applied behavior analysis (ABA)	Y	<del>((N))</del> <u>Y</u>	Y	<del>((N))</del> <u>Y</u>	Y	<del>((N))</del> <u>Y</u>	N
Behavioral health services	Y	Y	Y	Y	Y	Y	Y
Blood/blood products/related services	Y	Y	Y	Y	Y	Y	Y
Dental services	Y	Y	Y	Y	Y	Y	Y
Diagnostic services (lab and X-ray)	Y	Y	Y	Y	Y	Y	Y
Early and periodic screening, diagnosis, and treatment (EPSDT) services	Y	N	Y	N	Y	N	N
Enteral nutrition program	Y	Y	Y	Y	Y	Y	Y
Habilitative services	Y	Y	N	N	N	N	N
Health care professional services	Y	Y	Y	Y	Y	Y	Y
Health homes	Y	Y	Y	Y	N	N	N
Hearing evaluations	Y	Y	Y	Y	Y	Y	Y
Hearing aids	Y	Y	Y	Y	Y	Y	Y
Home health services	Y	Y	Y	Y	Y	Y	Y
Home infusion therapy/parenteral nutrition program	Y	Y	Y	Y	Y	Y	Y
Hospice services	Y	Y	Y	Y	Y	Y	N
Hospital services Inpatient/outpatient	Y	Y	Y	Y	Y	Y	Y
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y	Y	Y
Maternity care and delivery services	Y	Y	Y	Y	Y	Y	Y
Medical equipment, supplies, and appliances	Y	Y	Y	Y	Y	Y	Y
Medical nutrition therapy	Y	N	Y	N	Y	N	Y
Nursing facility services	Y	Y	Y	Y	Y	Y	Y
Organ transplants	Y	Y	Y	Y	Y	Y	Y
Orthodontic services	Y	N	Y	N	Y	N	N
Out-of-state services	Y	Y	Y	Y	Y	Y	N
Outpatient rehabilitation services (OT, PT, ST)	Y	Y	Y	Y	Y	N	Y
Personal care services	Y	Y	Y	Y	N	N	N
Prescription drugs	Y	Y	Y	Y	Y	Y	Y
Private duty nursing	Y	Y	Y	Y	Y	Y	N
Prosthetic/orthotic devices	Y	Y	Y	Y	Y	Y	Y
Reproductive health services	Y	Y	Y	Y	Y	Y	Y
Respiratory care (oxygen)	Y	Y	Y	Y	Y	Y	Y
School-based medical services	Y	N	Y	N	Y	N	N
Vision care Exams, refractions, and fittings	Y	Y	Y	Y	Y	Y	Y

Service Categories	ABP 20-	ABP 21+	CN <sup>1</sup> 20-	CN 21+	MN 20-	MN 21+	MCS
Vision hardware Frames and lenses	Y	N	Y	N	Y	N	N

<sup>1</sup> Clients enrolled in the Washington apple health for kids and Washington apple health for kids with premium programs, which includes the children's health insurance program (CHIP), receive CN-scope of health care services.

**AMENDATORY SECTION** (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-0100 Applied behavior analysis (ABA)—Purpose.** Applied behavior analysis (ABA) assists ~~((children))~~ clients and their families to improve the core symptoms associated with autism spectrum disorders or other developmental disabilities for which there is evidence ABA is effective, per WAC 182-501-0165. ABA services support learning, skill development, and assistance in any of the following areas or domains: Social, behavior, adaptive, motor, vocational, or cognitive.

**AMENDATORY SECTION** (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-0200 Applied behavior analysis (ABA)—Definitions.** The following definitions and those found in chapter 182-500 WAC, medical definitions, and chapter 182-531 WAC, physician-related services, apply throughout this chapter.

**Applied behavior analysis or ABA** - Applied behavior analysis (ABA) is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA involves the systematic application of scientifically validated principles of human behavior to change inappropriate behaviors. ABA uses scientific methods to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods used include: Assessment of behavior, caregiver interviews, direct observation, and collection of data on targeted behaviors. A single-case design is used to demonstrate the relationship between the environment and behavior as a means to implement client-specific ABA therapy treatment plans with specific goals and promote lasting change. ABA also includes the implementation of a functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behaviors.

**Autism spectrum disorder (ASD)** - A condition, as defined by *Diagnostic and Statistical Manual of Mental Disorders* (DSM) criteria.

**Autism spectrum disorder (ASD) diagnostic tool** - A validated tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and assist in the development of a multidisciplinary clinical treatment plan. Examples of autism diagnostic tools include:

- (a) Autism Diagnosis Interview (ADI); and
- (b) Autism Diagnostic Observation Schedule (ADOS).

**Autism spectrum disorder (ASD) screening tool** - A tool used to detect ASD indicators or risk factors which then require confirmation. Examples of screening tools include, but are not limited to:

- (a) Ages and Stages Questionnaire (ASQ);
- (b) Communication and Symbolic Behavior Scales (CSBS);
- (c) Parent's Evaluation and Developmental Status (PEDS);
- (d) Modified Checklist for Autism in Toddlers (MCHAT); and
- (e) Screening Tools for Autism in Toddlers and young children (STAT).

**Centers of excellence (COE)** - A hospital, medical center, or other health care provider that establishes or confirms the diagnosis of an autism spectrum disorder and develops the multidisciplinary clinical treatment plan and that has been designated by the agency as a center of excellence.

**Client ~~((or child))~~** - For the purposes of this chapter, client ~~((or child))~~ means a person ~~((younger than twenty-one years of age and))~~ enrolled in Washington apple health (WAH).

**Family member** - A ~~((child's))~~ client's parent, guardian, caregiver, or other support person.

**Qualifying diagnosis** - A diagnosis of an ASD, as defined by the DSM, or other developmental disability for which there is evidence ABA is effective.

**AMENDATORY SECTION** (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-0400 Applied behavior analysis (ABA)—Client eligibility.** To be eligible for applied behavior analysis (ABA) services, a client must:

- (1) ~~((Be under twenty-one years of age; ~~(2))~~))~~ Be covered under Washington apple health (WAH);
- ~~((2))~~ (2) Provide documentation created by a clinician that:

(a) Establishes the presence of functional impairment; delay in communication, behavior, or social interaction; or repetitive or stereotyped behavior;

(b) Establishes that the client's impairment, delay, or behaviors adversely affect development or communication, or both, such that:

(i) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit interferes with these activities; or

(ii) The ~~((child's))~~ client's behavior endangers the ~~((child))~~ client or another, or impedes access to home and community activities ~~((available to other children of the same age))~~; and

(c) An agency-recognized center of excellence (COE) has confirmed that:

- (i) The ~~((child))~~ client meets all requirements in (a) and (b) of this subsection;
- (ii) The ~~((child))~~ client has a qualifying diagnosis;
- (iii) There is a reasonable calculation the requested services will result in measurable improvement in either the client's behavior, skills, or both; and
- (iv) Either:
  - (A) Less intrusive or less intensive behavioral interventions have been tried and have not been successful; or
  - (B) No equally effective and substantially less costly alternative is available for reducing interfering behaviors, increasing prosocial skills and behaviors, or maintaining desired behaviors.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-0500 Applied behavior analysis (ABA)—Stage one: COE evaluation and order.** (1) Any person may refer a client suspected of meeting the criteria in WAC 182-531A-0400 to a center of excellence (COE) for an evaluation.

(2) The COE must complete a comprehensive diagnostic evaluation and create a multidisciplinary clinical treatment plan that includes:

(a) Documentation showing how the diagnosis was made or confirmed by a COE physician or psychologist that includes:

- (i) Results of formal diagnostic procedures performed by a clinician, including name of measure, dates, and results, as available; or
- (ii) Clinical findings and observations used to confirm the diagnosis;

(b) Documentation showing that the client's behaviors or skill deficits adversely affect on development or communication, or demonstrating injurious behavior, such that:

(i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit interferes with these activities; or

(ii) The client presents a safety risk to self or others;

(c) Documentation showing that, if applied behavior analysis (ABA) is included in the multidisciplinary clinical treatment plan:

(i) Less intrusive or less intensive behavioral interventions have been tried and were not successful; or

(ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors;

(d) Recommendations that address all of the ~~((child's))~~ client's health care needs;

(e) A statement that the evaluating and prescribing provider believes that there is a reasonable calculation that the requested ABA services will result in measurable improvement in the client's behavior or skills; and

(f) An order for ABA services. If ordered, a copy of the COE's comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan must be forwarded to the ABA provider selected by the ~~((child's))~~ client's guardian under this chapter or provided to the ~~((child's))~~ client's guardian to forward to the selected ABA provider.

(3) The COE must also include the following items, if it possesses a copy:

(a) Results of routine developmental screening performed by the ~~((child's))~~ client's primary care provider at well ~~((child))~~ client visits;

(b) Audiology and vision assessment results, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism screening questionnaire, including date completed and significant results;

(d) Documentation of a formal cognitive or developmental assessment performed by the COE or another qualified clinician, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores; and

(e) Documentation of a formal adaptive behavior assessment performed by the COE or another qualified clinician, including name of measure, dates, results, and standardized scores providing scores of each domain.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-0600 Applied behavior analysis (ABA)—Stage two: Functional assessment and treatment plan development.** (1) If the center of excellence's (COE's) evaluating and prescribing provider has ordered applied behavior analysis (ABA) services, the client may begin stage two - ABA assessment, functional analysis, and ABA therapy treatment plan development.

(2) Prior to implementing the ABA therapy treatment plan, the ABA provider must receive prior authorization from the agency. The prior authorization request, including the assessment and ABA therapy treatment plan, must be received by the agency within sixty days of the family scheduling the functional assessment.

(3) The ~~((child's))~~ client's legal guardian selects the ABA provider and the setting in which services will be rendered. ABA services may be rendered in one of the following settings:

(a) Day services program, which mean an agency-approved, outpatient facility or clinic-based program that:

(i) Employs or contracts with a lead behavior analysis therapist (LBAT), therapy assistant, speech therapist, and if clinically indicated, an occupational therapist, physical therapist, psychologist, medical clinician, and dietitian;

(ii) Provides multidisciplinary services in a short-term day treatment program setting;

(iii) Delivers comprehensive intensive services;

(iv) Embeds early, intensive behavioral interventions in a developmentally appropriate context;

(v) Provides an individualized developmentally appropriate ABA therapy treatment plan for each ~~((child))~~ client; and

(vi) Includes family support and training.

(b) Community-based program, which means a program that provides services in a natural setting, such as a school, home, office, or clinic. A community-based program:

(i) May be used after discharge from a day services program (see subsection (3)(a) of this section);

(ii) Provides a developmentally appropriate ABA therapy treatment plan for each ~~((child))~~ client;

(iii) Provides ABA services in the home (wherever the ~~((child))~~ client resides), office, clinic, or community setting, as required to accomplish the goals in the ABA therapy treatment plan. Examples of community settings are: A park, restaurant, ~~((child))~~ client care, early ~~((childhood))~~ client education, or school and must be included in the ABA therapy treatment plan with services being provided by the enrolled LBAT or therapy assistant approved to provide services via authorization;

(iv) Requires recertification of medical necessity through continued authorization; and

(v) Includes family education, support, and training.

(4) An assessment, as described in this chapter, must be conducted and an ABA therapy treatment plan developed by an LBAT in the setting chosen by the ~~((child's))~~ client's legal guardian. The ABA therapy treatment plan must follow the agency's ABA therapy treatment plan report template and:

(a) Be signed by the LBAT responsible for the plan development and oversight;

(b) Be applicable to the services to be rendered over the next six months, based on the LBAT's judgment, and correlate with the COE's current diagnostic evaluation (see WAC 182-531A-0500(2));

(c) Address each behavior, skill deficit, and symptom that prevents the ~~((child))~~ client from adequately participating in home, school, community activities, or that presents a safety risk to the ~~((child))~~ client or others;

(d) Be individualized;

(e) Be client-centered, family-focused, community-based, culturally competent, and minimally intrusive;

(f) Take into account all school or other community resources available to the client, confirm that the requested services are not redundant, but are in coordination with, other services already being provided or otherwise available, and coordinate services (e.g., from school and special education or from early intervention programs and early intervention providers) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);

(g) Focus on family engagement and training;

(h) Identify and describe in detail the targeted behaviors and symptoms;

(i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;

(j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms, (e.g., discrete trial training, reinforcement, picture exchange, communication systems) including documentation of the number of service hours, in terms of frequency and duration, for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in the three- to six-month treatment period;

(l) Incorporate strategies for generalized learning skills;

(m) Integrate family education, goals, training, support services, and modeling and coaching ~~((family/child))~~ family/client interaction;

(n) Incorporate strategies for coordinating treatment with school-based special education programs and community-based early intervention programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

**AMENDATORY SECTION** (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-1100 Applied behavior analysis (ABA)—Prior authorization and recertification of ABA services.** (1) The medicaid agency requires prior authorization (PA) and recertification of the medical necessity of applied behavior analysis (ABA) services.

(2) Requirements for PA requests are described in WAC 182-531A-0700.

(3) The agency may reduce or deny services requested based on medical necessity (refer to subsection (5) of this section) when completing PA or recertification responsibilities.

(4) The following are requirements for recertification of ABA services:

(a) Continued ABA services require the agency's authorization. Authorization is granted in three-month increments, or longer at the agency's discretion;

(b) The lead behavior analysis therapist (LBAT) must request authorization for continuing services three weeks prior to the expiration date of the current authorization. A reevaluation and revised ABA therapy treatment plan documenting the client's progress and showing measurable changes in the frequency, intensity, and duration of the targeted behavior/symptoms addressed in the previously authorized ABA therapy treatment plan must be submitted with this request. Documentation must include:

(i) Projection of eventual outcome;

(ii) Assessment instruments;

(iii) Developmental markers of readiness; and

(iv) Evidence of coordination with providers.

(c) When completing recertification responsibilities, the agency may request another evaluation from the COE to obtain that provider's review and recommendation. This COE provider must review the ABA therapy treatment plan, conduct a face-to-face visit with the ~~((child))~~ client, facilitate a multidisciplinary record review of the client's progress, hold a family conference, or request a second opinion before recommending continued ABA services. Services will continue pending recertification.

(d) When completing recertification responsibilities, the agency may retroactively authorize dates of service. Services will continue pending recertification.

(5) Basis for denial or reduction of services includes, but is not limited to, the following:

(a) Lack of medical necessity, for example:

(i) Failure to respond to ABA services, even after trying different ABA techniques and approaches, if applicable; or

(ii) Absence of meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family disruption, change of residence), if applicable. For changes to be meaningful they must be:

(A) Confirmed through data;

(B) Documented in charts and graphs;

(C) Durable over time beyond the end of the actual treatment session; and

(D) Generalizable outside of the treatment setting to the client's residence and the larger community within which the client resides; or

(b) Noncompliance as demonstrated by a pattern of failure of the family to:

(i) Keep appointments;

(ii) Attend treatment sessions;

(iii) Attend scheduled family training sessions;

(iv) Complete homework assignments; and

(v) Apply training as directed by the therapy assistant or LBAT. Absences that are reasonably justified (e.g., illness) are not considered a pattern.