

WSR 22-23-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-263—Filed November 3, 2022, 2:15 p.m., effective November 3, 2022, 2:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open additional recreational coho seasons in the Snohomish River system.

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

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

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

Reasons for this Finding: This action is necessary to extend recreational coho fisheries in the Snohomish, Skykomish, and Snoqualmie rivers. In-season observations indicate Snohomish River system spawning escapement remains on track to exceed target goals. A recreational harvest fishery is warranted.

Fishery managers will continue to monitor Snohomish system coho returns; seasons will be adjusted accordingly. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: November 3, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000X Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through November 13, 2022, provisions of WAC 220-312-040 regarding salmon seasons for Snohomish, Skykomish, and Snoqualmie 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 Co.):** From the mouth to confluence of North and South Forks:

Salmon: Daily limit 2. Release all salmon other than coho.

(2) **Snohomish River (Snohomish Co.)**: From the mouth (Burlington-Northern RR bridges) (including all channels, sloughs, and interconnected waterways, but excluding all tributaries) to confluence of the Skykomish and Snoqualmie rivers (all channels):

Salmon: Daily limit 2. Release all salmon other than coho.

(3) **Snoqualmie River (King/Snohomish Co.)**: From the mouth to Snoqualmie Falls:

Salmon: Daily limit 2. Release all salmon other than coho.

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REPEALER

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

WAC 220-312-04000W Freshwater exceptions to statewide rules—Puget Sound. (22-256)

WSR 22-23-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-259—Filed November 3, 2022, 3:08 p.m., effective November 5, 2022]

Effective Date of Rule: November 5, 2022.

Purpose: The purpose of this emergency rule is to open recreational chum salmon retention in portions of Catch Record Card Area 13.

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

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

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

Reasons for this Finding: This rule is necessary to open recreational harvest seasons for chum salmon in Catch Record Card Area 13. The in-season estimate of chum returns to Puget Sound indicate that there are sufficient returning numbers to allow for recreational harvest in portions of Catch Record Card Area 13. 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 Nongovernmental 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: November 3, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000L Puget Sound salmon—Saltwater seasons and daily limits. Effective November 5, through December 31, 2022, salmon retention rules for Catch Record Card Area 13 shall be modified only in areas described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(a) Catch Record Card Area 13 waters northerly and westerly of a line projected from the Johnson Point (47°10'40.8"N, 122°48'53.3"W) to Devil's Head (47°10'01.2"N, 122°46'01.5"W):

Salmon: Daily limit 2. Release wild coho and wild Chinook.

(b) Catch Record Card Area 13 waters of Carr Inlet northerly of a line projected from Penrose Point (47°15'53.6"N, 122°44'11.5"W) to Green Point (47°16'55.2"N, 122°41'41.8"W)

Salmon: Daily limit 2. Release wild coho and wild Chinook.

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WSR 22-23-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-264—Filed November 4, 2022, 12:17 p.m., effective November 7, 2022]

Effective Date of Rule: November 7, 2022.

Purpose: The purpose of this emergency rule is to adjust commercial purse seine and gillnet openings in Puget Sound Salmon Management and Catch Reporting Areas 12, 12B, and 12C.

Citation of Rules Affected by this Order: Amending WAC 220-354-120 and 220-354-160.

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

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

Reasons for this Finding: This rule is necessary to change commercial purse seine and gillnet fishery openings targeting chum salmon in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12B. The latest in-season runsize estimate for Hood Canal chum salmon based on fishery information suggests the chum return is large enough to allow for additional planned opening dates. Changing fishing days will inform fishery managers earlier in the week on an updated runsize and potentially offer additional fishing days later in the week. A closure in Area 12C is necessary to minimize geographic overlap with tribal fisheries while harvestable fish remain available in Areas 12 and 12B. 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 Nongovernmental 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: November 4, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000R Puget Sound salmon—Purse seine—Open periods. Effective November 7 through November 8, 2022, the following provisions of WAC 220-354-160 regarding commercial Purse Seine open periods in Puget Sound Salmon Management and Catch Reporting Areas 12, 12B,

and 12C shall be as follows. All other provisions of WAC 220-354-160 not contained herein remain in effect unless otherwise altered by emergency rule:

Areas	Open/Closed	Time	Date(s)
12, 12B	Open	7 AM - 5 PM	11/07/2022
12C	Closed	-	11/07/2022
12, 12B, 12C	Closed	-	11/08/2022

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NEW SECTION

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

Effective November 7 through November 9, 2022, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Puget Sound Salmon Management and Catch Reporting Areas 12, 12B, and 12C shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date(s)
12, 12B 12C	Closed	-	11/07/2022
12, 12B	Open	6 AM - 6 PM	11/08/2022 - 11/09/2022
12C	Closed	-	11/08/2022 - 11/09/2022

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

WSR 22-23-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-265—Filed November 4, 2022, 1:58 p.m., effective November 5, 2022]

Effective Date of Rule: November 5, 2022.

Purpose: The purpose of this emergency rule is to open salmon seasons targeting chum salmon in lower Kennedy 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 emergency rule is necessary to open salmon seasons in a portion of Kennedy Creek. Chum returns have exceeded preseason projections and are large enough to allow recreational chum retention while still meeting escapement 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 Nongovernmental 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: November 4, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Y Freshwater exceptions to statewide rules—Puget Sound. Effective November 5 through November 30, 2022, recreational salmon fishing seasons for Kennedy Creek, shall be modified as follows, during dates listed below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Kennedy Creek (Mason County): From the mouth (500 yards east of the northbound Hwy. 101 Bridge) to northbound 101 Bridge: Salmon:

(a) Daily limit 2.

(b) Release wild Chinook and wild coho

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WSR 22-23-028
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 7, 2022, 7:47 a.m., effective November 16, 2022]

Effective Date of Rule: November 16, 2022.

Purpose: The developmental disabilities administration (DDA) is amending WAC 388-101D-0030 to allow providers to hire a person without a high school diploma or GED.

Citation of Rules Affected by this Order: Amending WAC 388-101D-0030.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.120.

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

Reasons for this Finding: This subsequent filing is necessary to keep the emergency rule in effect until the CR-103P is effective, December 5, 2022. The CR-103P was filed as WSR 22-23-022. DDA is adopting this rule on an emergency basis to align with the education qualifications for direct support professionals in chapter 388-112A WAC and chapter 74.39A RCW, which do not require a GED or high school diploma. Immediate adoption allows providers to hire staff quickly, enabling providers to meet client health and safety needs.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 7, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4900.3

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0030 Staffing requirements. (1) The ((service)) provider must ensure each ((staff meets the following minimum requirements)) of its employees:

~~((1) Have))~~ (a) Has a high school diploma or GED equivalent, unless the ((employees were)) employee was hired before September 1, 1991, or is exempt under subsection (2) of this section;

~~((2) Be at least eighteen years of age))~~ (b) Is age 18 or older when employed as a direct ((care staff, or at least twenty-one years of age)) support professional who provides support services to a client;

(c) Is age 21 or older when employed as an administrator;

~~((3) Have))~~ (d) Has a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and

~~((4) Passed))~~ (e) Passes the department background check ((as)) required ((by)) under WAC 388-101-3250.

(2) The provider may hire a person without a high school diploma or GED if while working directly with clients the employee has access to another employee or a volunteer who:

(a) Has a high school diploma or GED; or

(b) Was hired before September 1, 1991.

(3) If the provider hires a person under subsection (2) of this section, the provider must have a written plan that states when and how the person must contact another employee for assistance.

[WSR 16-14-058, recodified as § 388-101D-0030, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3200, filed 12/21/07, effective 2/1/08.]

WSR 22-23-031

EMERGENCY RULES

SHORELINE COMMUNITY COLLEGE

[Filed November 7, 2022, 3:45 p.m., effective November 7, 2022, 3:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Department of Education has issued updated rules related to Title IX and, in addition, the state of Washington has implemented HB [2SHB] 1751 regarding hazing within higher education institutions. These legal updates require revision to the existing student conduct code Title IX, which necessitate Shoreline Community College amending chapter 132G-121 WAC, Student conduct code, immediately to remain in compliance with the updated legal requirements.

Citation of Rules Affected by this Order: New 10; and amending 1.

Statutory Authority for Adoption: HB [2SHB] 1751; Title IX of Education Amendments of 1972; RCW 28B.50.140.

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

Reasons for this Finding: Emergency rule adding new and revised rules to chapter 132G-121 WAC, Student conduct code, is necessary for compliance with the Department of Education updated rules issued in May 2020 and HB [2SHB] 1751 issued in June 2022, respectively. The college intends to proceed with permanent rule making on these subjects within the 90-day emergency rule period of effectiveness.

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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: November 1, 2022.

Veronica Zura
Executive Director
Human Resources

OTS-4208.1

AMENDATORY SECTION (Amending WSR 17-20-071, filed 10/2/17, effective 11/2/17)

WAC 132G-121-015 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, which interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account num-

bers, other confidential personal information, intellectual property, and university trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** ~~Hazing ((includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student)) is any act committed as part of:~~

(a) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(b) Any pastime or amusement engaged in with respect to such a student group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(i) Examples of hazing include, but are not limited to:

(A) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of harm;

(B) Humiliation by ritual act;

(C) Striking another person with an object or body part;

(D) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(E) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(ii) "Hazing" does not include customary athletic events or similar contests or competitions.

(iii) Consent is not a valid defense against hazing.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana.

While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; perceived or actual sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity or expression; military or veteran status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

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

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

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

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

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
 - (c) Unauthorized use or distribution of someone else's password or other identification;
 - (d) Use of such time or resources to interfere with someone else's work;
 - (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
 - (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
 - (g) Use of such time or resources in violation of applicable copyright or other law;
 - (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
 - (i) Failure to comply with the college's electronic use policy.
- (17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.
- (18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.
- (19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies.
- (20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[Statutory Authority: RCW 28B.50.140. WSR 17-20-071, § 132G-121-015, filed 10/2/17, effective 11/2/17.]

NEW SECTION

WAC 132G-121-120 Hazing prohibited—Sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132G-121-015(9).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor under RCW 28B.10.901 (2) and (3).

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corpo-

ration whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages. (RCW 28B.10.901(3))

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college. (RCW 28B.10.902(1))

(c) Student groups that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college. (RCW 28B.10.902(2))

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

[]

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132G-121-200 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. Sec. 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132G-121-005 through 132G-121-090, 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.

[]

NEW SECTION

WAC 132G-121-210 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids,

abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(d) Statutory rape. Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

[]

NEW SECTION

WAC 132G-121-220 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity;

and

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

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132G-121-015.

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

[]

NEW SECTION

WAC 132G-121-230 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);

and

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

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

[]

NEW SECTION

WAC 132G-121-240 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132G-121-060. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

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

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

[]

NEW SECTION

WAC 132G-121-250 Rights of parties. (1) The college's student conduct procedures and this supplemental procedure shall apply equally to all parties.

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

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

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

(5) All parties have the right to supportive measures at any time in the process and may request such measures through the college's Title IX coordinator.

[]

NEW SECTION

WAC 132G-121-260 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

(4) **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.

(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.

[]

NEW SECTION

WAC 132G-121-270 Initial order. (1) In addition to complying with WAC 132G-121-070, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

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

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

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

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

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

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

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

[]

NEW SECTION

WAC 132G-121-280 Appeals. (1) 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 officer 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 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) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process 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.

[]

NEW SECTION

WAC 132G-121-290 Conduct hold on student records. (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the respondent in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

[]

NEW SECTION

WAC 132G-121-300 Interim measures. (1) After receiving a report of sexual misconduct or other serious student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

(a) A no contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting party, other specified persons, and/or a specific student organization;

(b) Reassignment of on-campus housing;

(c) Changes to class schedules, assignments, or test schedules;

(d) Modified on-campus employment schedule or location;

(e) Restrictions on access to portions of campus including, but not limited to, on-campus housing; or

(f) Alternative safety arrangements such as campus safety escorts.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. The student conduct officer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until the student receives notice they have been lifted or modified from the student conduct officer.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code.

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WSR 22-23-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-267—Filed November 9, 2022, 1:03 p.m., effective November 10, 2022]

Effective Date of Rule: November 10, 2022.

Purpose: The purpose of this emergency rule is to open an additional purse seine period, targeting chum salmon in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12B.

Citation of Rules Affected by this Order: Amending WAC 220-354-120.

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

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

Reasons for this Finding: This rule is necessary to add a commercial purse seine fishery opening targeting chum salmon in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12B. The latest in-season runsize estimate for Hood Canal chum salmon based on commercial fishery information suggests the chum return is large enough to allow for additional opening dates. A closure in Area 12C is necessary to minimize geographic overlap with tribal fisheries while harvestable fish remain available in Areas 12 and 12B. 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 Nongovernmental 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: November 9, 2022.

Kelly Susewind
Director

NEW SECTION

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

Effective November 10, 2022, only, the following provisions of WAC 220-354-120 regarding commercial Purse Seine open periods in Puget Sound Salmon Management and Catch Reporting Areas 12, 12B, and 12C shall be as follows. All other provisions of WAC 220-354-120 not con-

tained herein remain in effect unless otherwise altered by emergency rule:

Areas	Open/Closed	Time	Date(s)
12, 12B	Open	7 AM - 5 PM	11/10/2022
12C	Closed		11/10/2022

[]

WSR 22-23-068
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 10, 2022, 9:22 a.m., effective November 10, 2022, 9:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Add new sections to chapter 392-122 WAC to describe the compliance rules and calculations concerning provisions in SSHB [2SHB] 1664 (2022) and the 2022 supplemental budget (ESSB 5693) related to physical, social, and emotional support in schools. These changes are required to ensure that local education agencies receive an allocation for basic education that is in alignment with the state budget.

Citation of Rules Affected by this Order: New WAC 392-122-430, 392-122-435, 392-122-440, 392-122-445, 392-122-450, and 392-122-455.

Statutory Authority for Adoption: RCW 28A.150.260.

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 2022 supplemental budget (ESSB 5693) implements SSHB [2SHB] 1664, which provides increased funding allocations for physical, social, and emotional support through the prototypical school funding model beginning with the 2022-23 school year. Maximum allocations to local education agencies are subject to compliance rules as drafted by the office of superintendent of public instruction (OSPI). These changes are required to ensure that local education agencies receive an allocation for basic education that is in alignment with the state budget. Without these rules, local education agencies could receive state basic education allocations in excess of what RCW and state budget language allows.

OSPI is in the process of regular rule making for these rule sections. A hearing was held on September 29, 2022 (WSR 22-17-159).

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 6, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental 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: November 10, 2022.

Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-3884.1

PHYSICAL, SOCIAL, AND EMOTIONAL SUPPORTNEW SECTION

WAC 392-122-430 Physical, social, and emotional support (PSES) staff—Apportionment of state moneys. (1) State moneys for PSES staff shall be allocated as provided in this chapter.

(2) PSES staff allocations based on the prototypical school formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for PSES staff will be based upon budgeted assumptions as provided in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated PSES staffing penalty units, if applicable, for purposes of funding from September through December.

(4) Enrollment will only include student full-time equivalent (FTE) enrolled in the general education program 01 as defined in RCW 28A.150.260.

(5) Funded ratios starting with January apportionment will be based on actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of PSES staffing to generate the full allotment.

[]

NEW SECTION

WAC 392-122-435 Physical, social, and emotional support (PSES)—Student enrollment. (1) Grade level enrollment reported on the P-223 will be considered in the compliance calculations for January, March, and June.

(2) Only students in program 01 - Basic education will be included in the calculation. Enrollment in career and technical education, skill center, alternative learning experience, open doors, and running start programs will be excluded from the calculation.

[]

NEW SECTION

WAC 392-122-440 Physical, social, and emotional support (PSES)—Staff. (1) The superintendent of public instruction will include in the calculation of PSES compliance of those staff that are coded in programs 01 or 97 to one of the following duty root and activity code combinations:

- Duty root 39 - All activities - Orientation and mobility specialist;
 - Duty root 42 - All activities - Counselor;
 - Duty root 43 - All activities - Occupational therapist;
 - Duty root 44 - All activities - Social worker;
 - Duty root 45 - All activities - Speech, language pathology/ audio;
 - Duty root 46 - All activities - Psychologists;
 - Duty root 47 - All activities - Nurse;
 - Duty root 48 - All activities - Physical therapist;
 - Duty root 49 - All activities - Behavior therapist;
 - Duty root 64 - All activities - Contractor ESA;
 - Duty root 96 - Activity 24 - Family engagement coordinator;
 - Duty roots 91 - 99 - Activity 25 - Pupil management and safety;
 - Duty roots 91 - 99 - Activity 26 - Health/related services.
- (2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.
- (3) Districts must prioritize funding allocated for PSES staff to staff who hold a valid ESA certificate appropriate for that role.
- (4) Staff coded to the above duty roots and activity codes in program 21 will be multiplied by the annual percentage of students receiving special education instruction used in the determination of 3121 revenue for inclusion in the compliance calculation.

[]

NEW SECTION

WAC 392-122-445 Physical, social, and emotional support (PSES) compliance—Contracted and supplemental staff. (1) Eligible staff working under contract and staff not required to be reported in the S-275 must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered.

(2) The full-time equivalency of supplemental staff reported must be reported as less than a 1.0 full-time equivalent (FTE).

(3) The full-time equivalency (FTE) of staff providing services under contract should be reported as determined in the contracting agreement or defined at the local school district level.

(4) Supplemental staff reporting should include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignments of staff.

[]

NEW SECTION

WAC 392-122-450 Physical, social, and emotional support (PSES) compliance—Calculations. (1) Funded staffing units will be calculated using each grade level funding formula calculations.

(2) Staffing units will be combined at the district level and compared to the staffing units generated using the prototypical funding model.

(3) Penalty units are determined by subtracting the prototypical funded staff units from the district's actual funded units.

(4) Staff in the S-275 or the supplemental tool not assigned to a valid grade grouping will be included into the high school funding formula.

[]

NEW SECTION

WAC 392-122-455 Physical, social, and emotional support (PSES)—Penalty for noncompliance. (1) Penalty units identified by the calculations will be split between certificated instructional staff and classified staff based on the percentage that each contributes to the combined total of certificated instructional staff and classified staff in the physical, social, and emotional support staff for that school year at the state level.

(2) Any adjustments to those calculations will be made in January, March, and June apportionment payments.

[]

WSR 22-23-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-266—Filed November 10, 2022, 10:25 a.m., effective November 12, 2022]

Effective Date of Rule: November 12, 2022.

Purpose: The purpose of this emergency rule is to increase the adult salmon daily limit in Grays Harbor and Chehalis system salmon fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-312-020 and 220-312-070.

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

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

Reasons for this Finding: This emergency rule is necessary to increase the adult salmon daily limit in the areas listed. The number of coho returning to regional hatcheries has exceeded preseason forecasts, likely due to early season closures. Evaluations of commercial catch information and trap counts indicate the returns of both natural-origin and hatchery-origin coho to the Chehalis basin are expected to meet or exceed goals. This, coupled with reduced opportunity and impacts earlier in the season due to environmental conditions, provides for increased opportunity now.

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 Nongovernmental 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.

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: November 10, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000X Freshwater exceptions to statewide rules—Coast. Effective November 11, through November 30, 2022, all recreational salmon seasons for waters listed shall be as described herein. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Black River from mouth to bridge on 128th Ave. SE (Grays Harbor/Thurston Co.):

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(2) Chehalis River from Hwy 101 Bridge to high bridge on Weyerhaeuser 1000 line (Grays Harbor Co.).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(3) Elk River from Hwy 105 bridge to the confluence of Middle Branch (Grays Harbor Co.).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(4) Hoquiam River including West Fork from Hwy 101 bridge to Dekay Rd. (Grays Harbor Co.)

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(5) Hoquiam River East Fork from mouth to confluence of Berryman Creek (Grays Harbor Co.).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(6) Johns River from Hwy 105 bridge to confluence of Ballon Creek (Grays Harbor Co.).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(7) Newaukum River, including South Fork from mouth to Leonard Road (Lewis Co.).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(8) Satsop River and East Fork from mouth to bridge at Schafer State Park (Grays Harbor Co.).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(9) Satsop River East Fork from 400' below Bingham Creek Hatchery dam to the dam (Grays Harbor Co.)

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(10) Skookumchuck River from mouth to 100' below outlet of Trans-Alta WDFW steelhead rearing ponds (Lewis/Thurston Co.).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(11) Van Winkle Creek from mouth to 400' below outlet of Lake Aberdeen Hatchery (Grays Harbor Co.).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(12) Wishkah River (Grays Harbor Co.), from the mouth to 200' below the weir at the Wishkah Rearing Ponds and from 150' upstream to 150' downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

(13) Wynoochee River from mouth to WDFW White Bridge access site (Grays Harbor Co.).

Salmon: Daily limit 6. Up to 2 adults may be retained, including no more than 1 wild coho. Release Chinook.

[]

NEW SECTION

WAC 220-313-07000B Coastal salmon—Saltwater seasons and daily limits. Effective November 11, through November 30, 2022 the provisions of WAC 220-313-070 regarding recreational salmon seasons for Catch Record Card Area 2-2 East Grays Harbor Fishery shall be as described below. All other provisions of WAC 220-313-070 not addressed herein remain in effect unless otherwise amended by emergency rule:

Catch Record Card Area 2-2; easterly of a projected line from the mouth of Johns River (Hwy. 105 Bridge) to the Tripod Station on Brackenridge Bluff (46°59.12'N, 124°00.72'W) through channel marker 27 (green):

Salmon: Daily limit 2, including no more than 1 wild coho. Release Chinook.

[]

WSR 22-23-073

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed November 10, 2022, 11:56 a.m., effective November 10, 2022, 11:56 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-710, 246-945-712, 246-945-714, 246-945-716, 246-945-718, 246-945-720, 246-945-722, 246-945-724, 246-945-726, and 246-945-728, medication assistance. As provided in RCW 69.41.010(15), the pharmacy quality assurance commission (commission) and department of health (department) are filing jointly to reinstate medication assistance rules as permitted under chapter 69.41 RCW. This adopted emergency rule will extend WSR 22-15-049 filed on July 15, 2022. This rule establishes criteria for medication assistance in community-based and in-home care settings in accordance with chapter 69.41 RCW. The definition for medication assistance provided in RCW 69.41.010(15) states:

"Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department.

These emergency rules provide further definitions for terms used within this definition, such as "enabler," and establish those "other means of medication assistance as defined by rule adopted by the department." These rules help impacted individuals retain their independence and live in the least restrictive setting, such as their own home, longer by providing means and guidance for medication assistance.

Citation of Rules Affected by this Order: New WAC 246-945-710, 246-945-712, 246-945-714, 246-945-716, 246-945-718, 246-945-720, 246-945-722, 246-945-724, 246-945-726, and 246-945-728.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.010(15), 69.41.075.

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 commission's new chapter, chapter 246-945 WAC, became effective in July 2020. The old rules, including the former rules on medication assistance (chapter 246-888 WAC), were repealed in March 2021. The commission's repeal of chapter 246-888 WAC has resulted in unintended disruptions for medication assistance in the community-based and in-home care settings permitted under chapter 69.41 RCW. Emergency rule making is necessary to immediately restore medication assistance regulations to preserve patient safety and welfare while the commission and the department work on permanent rule making. The CR-101 was filed on December 27, 2021, under WSR 22-02-015. Permanent rule making was delayed due to the coronavirus disease 2019 pandemic. The commission and the department continue to

work on draft language and plan to begin workshops in the spring of 2023.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 10, Amended 0, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 0, Repealed 0.

Date Adopted: November 10, 2022.

Teri Ferreira, RPh
and Kristin Peterson, JD
Pharmacy Quality Assurance Chair
and Chief of Policy
for Secretary

OTS-2998.2

PART 5 - MEDICATION ASSISTANCE

NEW SECTION

WAC 246-945-710 Scope and applicability. (1) This section through WAC 246-945-728 only apply to medication assistance provided in community-based care settings and in-home care settings.

(2) The following definitions apply to this section through WAC 246-945-728 unless the context requires otherwise:

(a) "Medication" means legend drugs and controlled substances;
and

(b) "Practitioner" has the same meaning as in RCW 69.41.010(17).

[]

NEW SECTION

WAC 246-945-712 Self-administration with assistance, independent self-administration, and medication administration. (1) Self-administration with assistance means assistance with legend drugs and con-

trolled substances rendered by a nonpractitioner to an individual residing in a community-based care setting or an in-home care setting. It includes reminding or coaching the individual to take their medication, handing the medication container to the individual, opening the medication container, using an enabler, or placing the medication in the hand of the individual/resident. The individual/resident must be able to put the medication into their mouth or apply or instill the medication. The individual/resident does not necessarily need to state the name of the medication, intended effects, side effects, or other details, but must be aware that they are receiving medication. Assistance may be provided by a nonpractitioner with prefilled insulin syringes. Assistance is limited to handing the prefilled insulin syringe to an individual/resident. Assistance with the administration of any other intravenous or injectable medication is specifically excluded. The individual/resident retains the right to refuse medication. Self-administration with assistance shall occur immediately prior to the ingestion or application of a medication.

(2) Independent self-administration occurs when an individual/resident is independently able to directly apply a legend drug or controlled substance by ingestion, inhalation, injection or other means. In licensed assisted living facilities, self-administration may include situations in which an individual cannot physically self-administer medications but can accurately direct others. These regulations do not limit the rights of people with functional disabilities to self-direct care according to chapter 74.39 RCW.

(3) If an individual/resident is not able to physically ingest or apply a medication independently or with assistance, then the medication must be administered to the individual/resident by a person legally authorized to do so (e.g., physician, nurse, pharmacist). All laws and regulations applicable to medication administration apply. If an individual/resident cannot safely self-administer medication or self-administer with assistance or cannot indicate an awareness that they are taking a medication, then the medication must be administered to the individual/resident by a person legally authorized to do so.

[]

NEW SECTION

WAC 246-945-714 Self-administration with assistance in a community-based care setting or an in-home setting. (1) An individual/resident, or their representative, in a community-based care setting or an in-home setting may request self-administration with assistance.

(2) No additional separate assessment or documentation of the needs of the individual/resident are required in order to initiate self-administration with assistance. It is recommended that providers document their decision-making process in the health record of the individual or resident health record.

(3) A nonpractitioner may help in the preparation of legend drugs and controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate.

[]

NEW SECTION

WAC 246-945-716 Enabler. (1) Enablers are physical devices used to facilitate an individual's/resident's self-administration of a medication. Physical devices include, but are not limited to, a medicine cup, glass, cup, spoon, bowl, prefilled syringes, syringes used to measure liquids, specially adapted table surface, straw, piece of cloth, or fabric.

(2) An individual's hand may also be an enabler. The practice of "hand-over-hand" administration is not allowed. Medication administration with assistance includes steadying or guiding an individual's hand while he or she applies or instills medications such as ointments, eye, ear, and nasal preparations.

[]

NEW SECTION

WAC 246-945-718 Alteration of medication for self-administration with assistance. Alteration of a medication for self-administration with assistance includes, but is not limited to, crushing tablets, cutting tablets in half, opening capsules, mixing powdered medications with foods or liquids, or mixing tablets or capsules with foods or liquids. Individuals/residents must be aware that the medication is being altered or added to their food.

[]

NEW SECTION

WAC 246-945-720 Medication alteration. A practitioner practicing within their scope of practice must determine that it is safe to alter a legend drug or controlled substance. If the medication is altered, and a practitioner has determined that such medication alteration is necessary and appropriate, the determination shall be communicated orally or by written direction. Documentation of the appropriateness of the alteration must be on the prescription container, or in the individual's/resident's record.

[]

NEW SECTION

WAC 246-945-722 Types of assistance provided by nonpractitioner. A nonpractitioner can transfer a medication from one container to another for the purpose of an individual dose. Examples include: Pouring a liquid medication from the medication container to a calibrated spoon or medication cup.

[]

NEW SECTION

WAC 246-945-724 Oxygen order/prescription requirements. Under state law, oxygen is not a medication and is not covered under this rule. While oxygen is not considered a medication under state law, oxygen does require an order/prescription from a practitioner.

[]

NEW SECTION

WAC 246-945-726 Self-administration with assistance of medication through a gastrostomy or "g-tube." If a prescription is written as an oral medication via "g-tube," and if a practitioner has determined that the medication can be altered, if necessary, for use via "g-tube," the rules as outlined for self-administration with assistance would also apply.

[]

NEW SECTION

WAC 246-945-728 Other medication assistance requirements. A practitioner, nonpractitioner, and an individual/resident or their representative should be familiar with the rules specifically regulating the residential setting. The department of social and health services has adopted rules relating to medication services in assisted living facilities and adult family homes.

[]

WSR 22-23-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-269—Filed November 10, 2022, 4:11 p.m., effective November 12, 2022]

Effective Date of Rule: November 12, 2022.

Purpose: The purpose of this emergency rule is to allow the use of bait in Cascade and Skagit river fisheries.

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

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

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

Reasons for this Finding: This emergency rule is necessary to remove bait restrictions previously in place to protect Chinook salmon returning to the Skagit system. The most recent chum spawning ground and aerial Chinook spawning ground surveys indicate that Chinook spawning activities have concluded in the Skagit system with very few live Chinook observed. 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 Nongovernmental 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: November 10, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Z Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through November 30, 2022, the following provisions of WAC 220-312-040 regarding fishing seasons for the Cascade River and Skagit River shall be modified in locations listed, as described herein. All other provisions of WAC 220-312-040, not addressed herein, or unless otherwise amended, remain in effect:

(1) Cascade River (Skagit County); from mouth to Rockport-Cascade Rd. Bridge:

Salmon:

- (a) Open daily.
- (b) Daily limit 4. Release all fish other than coho.
- (c) Anti-snagging rules in effect.
- (d) Night closure in effect.

(2) Skagit River (Skagit County); from the mouth (a line projected from the terminus of the jetty with McGlenn Island to the white monument on the easterly end of Ika Island, then to a white monument on the westerly end of Craft Island, then to a white monument near the corner of the levee on the westerly side of Dry Slough, and then to a white monument on the easterly side of Tom Moore Slough) to Cascade River Rd. (Marblemount Bridge):

- (a) All species: Night closure in effect.
- (b) Salmon: Daily limit 2. Release all salmon other than coho.

[]

REPEALER

The following sections of Washington Administrative Code are repealed, effective November 12, 2022:

WAC 220-312-04000V Freshwater exceptions to statewide rules—Puget Sound. (22-254)

WSR 22-23-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-270—Filed November 14, 2022, 12:24 p.m., effective November 15, 2022]

Effective Date of Rule: November 15, 2022.

Purpose: The purpose of this emergency rule is to open recreational crab seasons in Marine Areas 10 and 11.

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

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

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

Reasons for this Finding: Final summer recreational harvest estimates indicate that sufficient quota remains in Marine Areas 10 and 11 to open recreational crab harvest beginning November 15. Marine Areas 4 East of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, and 12 north of a line projected true east from Ayock Point have been open since October 1, 2022.

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 Nongovernmental 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: November 14, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000H Crab—Areas and seasons—Personal use. Notwithstanding the provisions of WAC 220-330-040, effective immediately through December 31, 2022, it is unlawful to fish for crab for personal use in Puget Sound in all waters of Marine Areas, 4 east of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13, except as provided herein:

Effective 12:01 a.m. November 15, through 11:59 p.m. December 31, 2022 it is permissible to crab for personal use in the following Ma-

rine Areas: 4 East of the Bonilla-Tatoosh line, 5, 6, 7, 8-1, 8-2, 9, 10, 11, and 12 north of a line projected true east from Ayock Point.

[]

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. November 15, 2022:

WAC 220-330-04000G Crab—Areas and seasons—Personal use.
(22-218)

WSR 22-23-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-271—Filed November 14, 2022, 12:28 p.m., effective November 15, 2022]

Effective Date of Rule: November 15, 2022.

Purpose: The purpose of this emergency rule is to open commercial purse seine and gillnet fisheries in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12B.

Citation of Rules Affected by this Order: Amending WAC 220-354-120 and 220-354-160.

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

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

Reasons for this Finding: This rule is necessary to add openings for commercial purse seine and gillnet fisheries targeting chum salmon in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12B. The latest in-season runsize estimate for Hood Canal chum salmon based on commercial fishery information suggests the chum return is large enough to allow for additional opening dates. Area 12C remains closed to minimize geographic overlap with tribal fisheries while harvestable fish remain available in Areas 12 and 12B. 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 Nongovernmental 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.

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: November 14, 2022.

Kelly Susewind
Director

NEW SECTION

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

Effective November 15, 2022, only, the following provisions of WAC 220-354-120 regarding commercial Purse Seine open periods in Puget Sound Salmon Management and Catch Reporting Areas 12 and 12B shall be as follows. All other provisions of WAC 220-354-120 not contained herein remain in effect unless otherwise altered by emergency rule:

Areas	Open/Closed	Time	Date(s)
12, 12B	Open	7 AM - 5 PM	11/15/2022
12C	Closed	-	11/15/2022

[]

NEW SECTION

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

Effective November 16, 2022, only, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Puget Sound Salmon Management and Catch Reporting Areas 12 and 12B shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date(s)
12, 12B	Open	6 AM - 6 PM	11/16/2022
12C	Closed	-	11/16/2022

[]

WSR 22-23-109
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-272—Filed November 16, 2022, 2:10 p.m., effective November 17, 2022]

Effective Date of Rule: November 17, 2022.

Purpose: The purpose of this emergency rule is to increase the adult salmon daily limit for the Klickitat River.

Citation of Rules Affected by this Order: Amending WAC 220-312-030.

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

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

Reasons for this Finding: This emergency rule is necessary to increase the adult salmon daily limit in the Klickitat River. The current return of Coho salmon to the Klickitat River has exceeded pre-season expectations and additional fish are available for harvest. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Nongovernmental 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: November 16, 2022.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000V Freshwater exceptions to statewide rules—Southwest. Effective November 17, 2022, through January 31, 2023, the provisions of WAC 220-312-030 regarding Klickitat River salmon seasons shall be modified during times and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

Klickitat River (Klickitat Co.):

(a) From mouth to Fisher Hill Bridge; effective November 17, 2022, through January 31, 2023:

Salmon: Daily limit 6. Up to 3 adults may be retained.

(b) From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery; effective November 17 through November 30, 2022:

Salmon: Daily limit 6. Up to 3 adults may be retained.

[]

WSR 22-23-118
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-273—Filed November 17, 2022, 5:01 p.m., effective November 17, 2022, 5:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 220-340-45500Q closes Puget Sound commercial crab harvest in Crab Management Region 2-East one hour after official sunset November 20, 2022, and Region 3-2 one hour after official sunset November 21, 2022.

WAC 220-340-47000M sets pot limits for all areas with commercial harvest opportunity in Puget Sound. Reduces the pot limit for all areas that are closed to "0."

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500P and 220-340-47000L; and amending WAC 220-340-455 and 220-340-470.

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

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

Reasons for this Finding: There is sufficient allocation available in Regions 1, 2-West, 3-1, 3-3, and 3-4 to accommodate remaining open until a later date. This rule is needed to close Regions 2-East and 3-2 because remaining allocations in these areas are expected to be fully harvested November 20 and 21, respectively. These provisions are in conformity with agreed-to management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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 Nongovernmental 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: November 17, 2022.

Kelly Susewind
Director

NEW SECTION**WAC 220-340-45500Q Commercial crab fishery—Seasons and areas—Puget Sound.** Notwithstanding the provisions of WAC 220-340-455:

Commercial harvest of Dungeness crab in Puget Sound is allowed during the "Open period" indicated in the following table. On the opening date harvest will be permitted starting at 8:00 a.m. Harvest on all other days is allowed starting one hour before official sunrise until further notice. Any closures will take effect one hour after official sunset unless otherwise indicated.

Geographical Management Unit (WAC 220-320-110)	Open Period
Region 1, MFSF Catch Areas 21A, 21B, and 22B	Immediately, until further notice.
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	Immediately, until further notice.
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	Immediately through November 20, 2022.
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	Immediately through November 20, 2022.
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	Immediately, until February 15, 2023.
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	Immediately, until February 15, 2023.
Subregion 3-1	Immediately, until further notice.
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Immediately through November 21, 2022.
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	Immediately through November 21, 2022.
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	Immediately through November 21, 2022.
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Closed, due to on-going public health concerns.
Subregion 3-3	Immediately, until further notice.
Subregion 3-4	Immediately, until further notice.

[]

NEW SECTION**WAC 220-340-47000M Commercial crab fishery—Gear limits—Puget Sound and Marine Fish—Shellfish Management and Catch Reporting Areas** Notwithstanding the provisions of 220-340-470,

(1) Effective during the "Open period" listed in amended section of WAC 220-340-455 above it will be unlawful for any person to harvest crabs with more than the "Pot limit" per license per buoy tag number indicated within each "geographical management unit".

Geographical Management Unit (WAC 220-320-110)	Pot limit
Region 1, MFSF Catch Areas 21A, 21B, and 22B	30
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	30
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	30
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	30
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	30

Geographical Management Unit (WAC 220-320-110)	Pot limit
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	20
Subregion 3-1	30
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	30
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	20
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	20
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	0
Subregion 3-3	30
Subregion 3-4	30

(2) Effective after the "Open Period" listed in amended section of WAC 220-340-455 above the "Pot Limit" within each "geographical management unit" will be reduced to "0".

[]

REPEALER

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

- WAC 220-340-45500P Commercial crab fishery—Seasons and areas—Puget Sound. (22-255)
- WAC 220-340-47000L Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas (22-245)

WSR 22-23-119
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-274—Filed November 18, 2022, 7:59 a.m., effective November 20, 2022]

Effective Date of Rule: November 20, 2022.

Purpose: The purpose of this emergency rule is to close steelhead fishing in the Hanford Reach area of the Columbia River.

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

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

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

Reasons for this Finding: This year's return of Ringold Springs Hatchery steelhead is projected to be the second lowest return on record in the past 20 years. Returning steelhead will be needed for broodstock to meet the production goal of 180,000 juvenile steelhead scheduled for release in April 2024.

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 Nongovernmental 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: November 17, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000G Freshwater exceptions to statewide rules—Columbia Effective November 20, 2022, until further notice, provisions of WAC 220-312-060 regarding Columbia River hatchery steelhead seasons from the I-182 Bridge (Richland/Pasco) upstream to the Old Hanford townsite powerline crossing are modified as described below. All other provisions of WAC 220-312-060 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

I-182 Bridge (Richland/Pasco) upstream to the Old Hanford townsite powerline crossing: Steelhead: Closed.

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WSR 22-23-140
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-275—Filed November 21, 2022, 1:13 p.m., effective November 22, 2022]

Effective Date of Rule: November 22, 2022.

Purpose: The purpose of this emergency rule is to open commercial gillnet and beach seine fisheries in Puget Sound Salmon Management and Catch Reporting Area 12C.

Citation of Rules Affected by this Order: Amending WAC 220-354-160 and 220-354-210.

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

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

Reasons for this Finding: This rule is necessary to add openings for commercial gillnet and beach seine fisheries targeting chum salmon in Puget Sound Salmon Management and Catch Reporting Area 12C Hood-sport Hatchery Zone. The latest in-season runsize estimate for Hood Canal chum salmon, based on commercial fishery information, suggests the chum return is large enough to allow for these openings. 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 Nongovernmental 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.

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: November 21, 2022.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

Effective November 22, 2022, only, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Puget Sound Salmon Management and Catch Reporting Area 12C shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date(s)
12C	Open	6 AM - 6 PM	11/22/2022

[]

NEW SECTION

WAC 220-354-21000I Puget Sound salmon—Beach Seine—Open periods.

Effective November 22, 2022, only, the following provisions of WAC 220-354-210 regarding commercial Beach Seine open periods for Puget Sound Salmon Management and Catch Reporting Areas 12C Hoodspout Hatchery Zone shall be as described below. All other provisions of WAC 220-354-210 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date(s)
12C	Open	6 AM - 6 PM	11/22/2022

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WSR 22-23-155
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support)

[Filed November 22, 2022, 2:31 p.m., effective November 26, 2022]

Effective Date of Rule: November 26, 2022.

Purpose: The department is amending WAC 388-97-0140 and 388-97-0120 to waive and suspend the requirement for nursing homes to suspend certain transfers and discharges pending the outcome of a resident appeal of the nursing home transfer or discharge decision. The COVID-19 pandemic continues to require more rapid transfers and discharges than the rule permits. This emergency rule waives the requirement for nursing homes to suspend certain transfers and discharges pending the outcome of a resident appeal hearing and improves resident safety by allowing faster grouping of COVID-19 positive residents in one facility, or grouping asymptomatic residents together. This helps expedite infection control processes, and maximizes the availability of nursing home beds. This amendment will align with federal rules.

Citation of Rules Affected by this Order: Amending WAC 388-97-0120 and 388-97-0140.

Statutory Authority for Adoption: RCW 74.42.620.

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 threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as nursing homes. Currently WAC 388-97-0140 requires nursing homes to suspend a transfer or discharge pending the outcome of a resident appeal request to the office of administrative hearings (OAH) when the appeal is received by OAH on or before the date the resident actually transfers or discharges.

Strict compliance with these requirements will prevent, hinder, or delay certain transfers or discharges of nursing home residents to other long-term care facilities when they are necessary to expedite the grouping or cohorting of residents to reduce the spread of COVID-19, especially the delta variant, among our most vulnerable populations, and to relieve stress on our health care system to meet the increased demand of addressing COVID-19 related illnesses.

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

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

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

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

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

Date Adopted: November 21, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4908.3

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

WAC 388-97-0120 Individual transfer and discharge rights and procedures. (1) The skilled nursing facility and nursing facility must comply with all of the requirements of 42 C.F.R. § 483.10 and § 483.12, and RCW 74.42.450, or successor laws, and the nursing home must comply with all of the requirements of RCW 74.42.450 (1) through (4) and (7), or successor laws, including the following provisions and must not transfer or discharge any resident unless:

- (a) At the resident's request;
- (b) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (c) The transfer or discharge is appropriate because the resident's health has improved enough so the resident no longer needs the services provided by the facility;
- (d) The safety of individuals in the facility is endangered;
- (e) The health of individuals in the facility would otherwise be endangered; or
- (f) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

(2) The following notice requirements apply if a nursing home/facility initiates the transfer or discharge of a resident. The notice must:

- (a) Include all information required by 42 C.F.R. § 483.12 when given in a nursing facility;
- (b) Be in writing, in language the resident understands;
- (c) Be given to the resident, the resident's surrogate decision maker, if any, the resident's family and to the department;
- (d) Be provided thirty days in advance of a transfer or discharge initiated by the nursing facility, except that the notice may be given as soon as practicable when the facility cannot meet the resident's urgent medical needs, or under the conditions described in (1)(c), (d), and (e) of this section; or for cohorting purposes related to the COVID-19 pandemic as allowed under any applicable Centers for Medicare and Medicaid Services (CMS) emergency waivers; and
- (e) Be provided fifteen days in advance of a transfer or discharge initiated by the nursing home, unless the transfer is an emergency.

(3) The nursing home must:

- (a) Provide sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the nursing home;
- (b) Attempt to avoid the transfer or discharge of a resident from the nursing home through the use of reasonable accommodations unless

agreed to by the resident and the requirements of WAC 388-97-0080 are met; and

(c) Develop and implement a bed-hold policy. This policy must be consistent with any bed-hold policy that the department develops.

(4) The nursing home must provide the bed-hold policy, in written format, to the resident, and a family member, before the resident is transferred or goes on therapeutic leave. At a minimum the policy must state:

(a) The number of days, if any, the nursing home will hold a resident's bed pending return from hospitalization or social/therapeutic leave;

(b) That a medicaid eligible resident, whose hospitalization or social/therapeutic leave exceeds the maximum number of bed-hold days will be readmitted to the first available semi-private bed, provided the resident needs nursing facility services. Social/therapeutic leave is defined under WAC 388-97-0001. The number of days of social/therapeutic leave allowed for medicaid residents and the authorization process is found under WAC 388-97-0160; and

(c) That a medicaid eligible resident may be charged if he or she requests that a specific bed be held, but may not be charged a bed-hold fee for the right to return to the first available bed in a semi-private room.

(5) The nursing facility must send a copy of the federally required transfer or discharge notice to:

(a) The department's home and community services when the nursing home has determined under WAC 388-97-0100, that the medicaid resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility; and

(b) The department's designated local office when the transfer or discharge is for any of the following reasons:

(i) The resident's needs cannot be met in the facility;

(ii) The health or safety of individuals in the facility is endangered; or

(iii) The resident has failed to pay for, or to have paid under medicare or medicaid, a stay at the facility.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0120, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 20-03-103, filed 1/15/20, effective 2/15/20)

WAC 388-97-0140 Transfer and discharge appeals for resident in medicare or medicaid certified facilities. (1) A skilled nursing facility and a nursing facility that initiates transfer or discharge of any resident, regardless of payor status, must:

(a) Provide the required written notice of transfer or discharge to the resident and, if known or appropriate, to a family member or the resident's representative;

(b) Attach a department-designated hearing request form to the transfer or discharge notice;

(c) Inform the resident in writing, in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge; and

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility (the facility must document the danger that failure to transfer or discharge would pose); and

(iii) The nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

(2) A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the hearing when the resident's appeal is received by the office of administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

(3) The resident is entitled to appeal the skilled nursing facility or nursing facility's transfer or discharge decision. The appeals process is set forth in chapter 182-526 WAC and this chapter. In such appeals, the following will apply:

(a) In the event of a conflict between a provision in this chapter and a provision in chapter 182-526 WAC, the provision in this chapter will prevail;

(b) The resident must be the appellant and the skilled nursing facility or the nursing facility will be the respondent;

(c) The department must be notified of the appeal and may choose whether to participate in the proceedings. If the department chooses to participate, its role is to represent the state's interest in assuring that skilled nursing facility and nursing facility transfer and discharge actions comply substantively and procedurally with the law and with federal requirements necessary for federal funds;

(d) If a medicare certified or medicaid certified facility's decision to transfer or discharge a resident is not upheld, and the resident has been relocated, the resident has the right to readmission immediately upon the first available bed in a semi-private room if the resident requires and is eligible for the services provided by a nursing facility or skilled nursing facility;

(e) Any review of the administrative law judge's initial decision shall be conducted under chapter 182-526 WAC.

[Statutory Authority: RCW 74.42.620. WSR 20-03-103, § 388-97-0140, filed 1/15/20, effective 2/15/20. Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 11-22-077, § 388-97-0140, filed 11/1/11, effective 12/2/11. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0140, filed 9/24/08, effective 11/1/08.]

WSR 22-23-160
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-276—Filed November 22, 2022, 4:58 p.m., effective November 23, 2022]

Effective Date of Rule: November 23, 2022.

Purpose: The purpose of this emergency rule is to open coho harvest seasons in the Stillaguamish River.

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

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

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

Reasons for this Finding: Salmon fishing closures are no longer necessary to protect Chinook salmon, as they have finished spawning and are no longer present in the system. Coho returns are sufficient to allow for this limited fishery. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a Nongovernmental 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: November 22, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000A Freshwater exceptions to statewide rules—Puget Sound. Effective November 23 through November 30, 2022, salmon fishing seasons within the Stillaguamish River shall be as described herein. All other provisions of WAC 220-312-040, not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Stillaguamish River (Snohomish County); from Marine Drive to forks:

Salmon: Daily limit 2. Release all salmon other than coho.

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WSR 22-23-165
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-268—Filed November 23, 2022, 8:31 a.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The purpose of this emergency rule is to alter the number of days per week white sturgeon retention is allowed in the Bonneville and The Dalles pools.

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 set the open days per week for recreational sturgeon harvest in Bonneville and The Dalles reservoirs. Without altering open periods, these populations of sturgeon are at risk of exceeding retention guidelines within January, as indicated by the last decade of data. These actions are expected extend the sport fishing seasons and to help ensure the overall sport guidelines of 675 and 190 fish in the Bonneville and The Dalles pools respectively, are not exceeded. This action is consistent with decisions made by the states of Washington and Oregon during the Columbia River compact hearing on November 9, 2022.

The duration of the retention seasons will be adjusted if catch rates and effort are much different than projected, based on pool-specific catch guidelines. The recommended days-per-week approach will allow fishery managers sufficient time to produce and monitor daily harvest estimates and recommend actions necessary to stay within the harvest guidelines.

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 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 Nongovernmental 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: November 10, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia River. Effective January 1, through March 22, 2023 the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding white sturgeon retention seasons from Bonneville Dam to John Day 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:

(1) From Bonneville Dam upstream to The Dalles Dam, including adjacent tributaries:

(a) From January 1, through March 22, 2023, it is permissible to retain white sturgeon only on the following dates:

January 1, 2, 4, 7, 9, 11, 14, 16, 18, 21, 23, 25, 28, 30;

February 1, 4, 6, 8, 11, 13, 15, 18, 20, 22, 25, 27; and

March 1, 4, 6, 8, 11, 13, 15, 18, 20, 22, 2023.

(b) Minimum fork length 38 inches. Maximum fork length 54 inches.

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

(2) From The Dalles Dam upstream to John Day Dam, including adjacent tributaries:

(a) From January 1, through March 22, 2023, it is permissible to retain white sturgeon only on the following dates:

January 1, 2, 4, 7, 9, 11, 14, 16, 18, 21, 23, 25, 28, 30;

February 1, 4, 6, 8, 11, 13, 15, 18, 20, 22, 25, 27; and

March 1, 4, 2023.

(b) Minimum fork length 43 inches. Maximum fork length 54 inches.

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

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WSR 22-23-166

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed November 23, 2022, 9:39 a.m., effective November 23, 2022, 9:39 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule allows home health and hospice agencies to perform supervision either on-site or via telemedicine.

This emergency rule continues, without change, amendments within the in-home service agencies rules made by the department of health (department). Amendments to WAC 246-335-545 and 246-335-645 remove the requirement that supervision of aide services must be "during an on-site visit" and add language that the supervisory visit "may be conducted on-site or via telemedicine." This will allow home health and hospice agencies to perform supervision either on-site or via telemedicine. Amendments to the definition of "telemedicine" in WAC 246-335-510 and 246-335-610 clarify that telemedicine applies to both delivery of health care services and supervision of direct care providers. Amendments also clarify how telemedicine may be used.

During the coronavirus disease 2019 (COVID-19) pandemic, federal and state guidelines and department waivers, filed under WSR 20-10-061, required home health and hospice agencies to implement social distancing practices and limit in-person contact to reduce the spread of the virus. These pandemic-era practices proved to increase home health and hospice agency flexibility, increase ability to implement social distancing practices, and increase time available for clinical care activities. Continuing the emergency rule amendments while permanent rule making is in progress will allow home health and hospice agencies and their patients to continue benefiting from these practices as Washington continues recovering from the COVID-19 pandemic.

This emergency rule continues amendments originally filed August 3, 2021, under WSR 21-16-096, and extended on December 1, 2021, under WSR 21-24-099; March 31, 2022, under WSR 22-08-044; and July 29, 2022, under WSR 22-16-067. The department began the permanent rule-making process on this topic under WSR 21-20-084 and proposed rules under WSR 22-17-139; when permanent rule making is complete, the new permanent rules will supersede these emergency rules.

Citation of Rules Affected by this Order: Amending WAC 246-335-510, 246-335-545, 246-335-610, and 246-335-645.

Statutory Authority for Adoption: RCW 70.127.120.

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

Reasons for this Finding: This emergency rule allows home health and hospice agencies to perform supervision either on-site or via telemedicine. Maintaining these emergency rules will allow for regulatory consistency as permanent rules on telemedicine supervision are in progress.

While the declared emergency in Washington has ended, telehealth supervision continues to be valuable. This new practice offers additional flexibility and efficiency to home health and hospice agencies, without sacrificing quality of patient care. Supervision via telemedicine particularly benefits rural communities where health services are

less available and required travel time is greater. Additionally, consistent with the federal "Patients over Paperwork" initiative, telemedicine supervisory visits allow hospice and home health nurse supervisors to dedicate more time to performing clinical care activities.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: November 23, 2022.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3165.3

AMENDATORY SECTION (Amending WSR 21-06-054, filed 2/25/21, effective 3/28/21)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to pro-

vide home health services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW and 246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

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

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

(18) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietitian or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

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

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

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

(22) "Telemedicine" means the delivery of health care services, including supervision of direct care providers, through the use of HIPAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient at the originating site, direct care provider, and the supervising care provider, for the purpose of ((diagnosis)) supervision, consultation, education, or treatment. "Telemedicine" includes the provision of health care services and evaluating compliance with the plan of care using audio-visual technology instead of a face-to-face visit. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

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

- (a) A physical therapist licensed under chapter 18.74 RCW;
- (b) A respiratory therapist licensed under chapter 18.89 RCW;
- (c) An occupational therapist licensed under chapter 18.59 RCW;
- (d) A speech therapist licensed under chapter 18.35 RCW; or
- (e) A massage therapist licensed under chapter 18.108 RCW.

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

[Statutory Authority: RCW 70.127.120 and 42 U.S.C. 1395f. WSR 21-06-054, § 246-335-510, filed 2/25/21, effective 3/28/21. Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-510, filed 3/6/18, effective 4/6/18.]

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

- WAC 246-335-545 Supervision of home health services.** (1) A licensee must employ a director of clinical services;
- (2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence;
- (3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of ten hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of home health services. Examples of appropriate training include, but are not limited to:
- (a) Agency sponsored in-services;
 - (b) Community venues;
 - (c) Community classes;
 - (d) Conferences;
 - (e) Seminars;
 - (f) Continuing education related to the director's health care professional credential, if applicable; and
 - (g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.
- (4) The director of clinical services or designee must be available during all hours patient care is being provided;
- (5) The director of clinical services or designee must ensure:
- (a) Coordination, development, and revision of written patient care policies and procedures related to each service provided;
 - (b) Supervision of all patient care provided by personnel and volunteers. The director of clinical services may delegate staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;
 - (c) Evaluation of services provided by contractors;
 - (d) Coordination of services when one or more licensed agencies are providing care to the patient;
 - (e) Compliance with the plan of care;
 - (f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and
 - (g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.
- (6) The licensee must document supervision including, but not limited to:
- (a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW;

(b) For patients receiving acute care services, supervision of the home health aide services (~~(during an on-site visit)~~) with or without the home health aide present must occur once a month to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site or via telemedicine and must be conducted by a licensed nurse or therapist in accordance with the appropriate practice acts;

(c) For patients receiving maintenance care or home health aide only services, supervision of the home health aide services (~~(during an on-site visit)~~) with or without the home health aide present must occur every six months to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site or via telemedicine and must be conducted by a licensed nurse or licensed therapist in accordance with the appropriate practice acts; and

(d) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts.

(7) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-545, filed 3/6/18, effective 4/6/18.]

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

WAC 246-335-610 Definitions—Hospice. The definitions in this section apply throughout WAC 246-335-605 through 246-335-660 unless the context clearly indicates otherwise:

(1) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's physical, psychosocial, emotional and spiritual status related to their terminal illness and other health conditions. This includes evaluating the caregiver's and family's willingness and capability to care for the patient.

(2) "Authorizing practitioner" means the individual practitioners licensed in Washington state and authorized to approve a hospice plan of care:

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

(b) An advanced registered nurse practitioner as authorized under chapter 18.79 RCW.

(3) "Bereavement services" means emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

(4) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutri-

tion specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

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

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

(7) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of permanent or temporary residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(8) "Hospice services" means symptom and pain management to a terminally ill individual, and emotional, spiritual and bereavement services for the individual and their family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

(9) "Interdisciplinary team" means the group of individuals involved in patient care providing hospice services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor and volunteer.

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

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

(12) "Medical director" means a physician licensed under chapter 18.57 or 18.71 RCW responsible for the medical component of patient care provided in an in-home services agency licensed to provide hospice services according to WAC 246-335-615 (4) (a).

(13) "Patient" means an individual receiving hospice services.

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

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

(16) "Restraint" means:

(a) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move their arms, legs, body, or head freely. Restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient from falling out of bed, or to permit the patient to participate in activities without the risk of

physical harm, or to physically guide a patient from one location to another; or

(b) A drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard hospice or palliative care treatment or dosage for the patient's condition.

(17) "Seclusion" means the involuntary confinement of a patient alone in a room or an area from which the patient is physically prevented from leaving.

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

(19) "Spiritual counseling" means services provided or coordinated by an individual with knowledge of theology, pastoral counseling or an allied field.

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

(21) "Telemedicine" means the delivery of health care services, including supervision of direct care providers, through the use of HI-PAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient at the originating site, direct care provider, and the supervising care provider, for the purpose of ((diagnosis)) supervision, consultation, education, or treatment. "Telemedicine" includes the provision of health care services and evaluating compliance with the plan of care using audio-visual technology instead of a face-to-face visit. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-610, filed 3/6/18, effective 4/6/18.]

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

WAC 246-335-645 Supervision of hospice services. (1) A licensee must employ a director of clinical services.

(2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence.

(3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of ten hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of hospice services. Examples of appropriate training include, but are not limited to:

- (a) Agency sponsored in-services;
- (b) Community venues;
- (c) Community classes;
- (d) Conferences;
- (e) Seminars;

- (f) Continuing education related to the director's health care professional credential, if applicable; and
- (g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.
- (4) The director of clinical services or designee must be available twenty-four hours per day, seven days per week.
- (5) The director of clinical services or designee must ensure:
- (a) Coordination, development, and revision of written patient and family care policies and procedures related to each service provided;
- (b) Supervision of all patient and family care provided by personnel and volunteers. The director of clinical services may assign staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;
- (c) Evaluation of services provided by contractors;
- (d) Coordination of services when one or more licensed agency is providing care to the patient and family;
- (e) Compliance with the plan of care;
- (f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and
- (g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.
- (6) The licensee must document supervision including, but not limited to:
- (a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW;
- (b) Licensed nurse supervision of home health aide services (~~(during an on-site visit)~~) with or without the home health aide present once a month to evaluate compliance with the plan of care and patient and family satisfaction with care. The supervisory visit may be conducted on-site or via telemedicine; and
- (c) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts.
- (7) The licensee using home health aides must ensure:
- (a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and
- (b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-645, filed 3/6/18, effective 4/6/18.]