

WSR 24-09-001

EMERGENCY RULES

TACOMA COMMUNITY COLLEGE

[Filed April 3, 2024, 1:22 p.m., effective April 3, 2024, 1:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To bring Tacoma Community College's student conduct code into compliance with Title IX federal regulations, under 34 C.F.R. § 106 and the antihazing provisions of SHB [2SHB] 1751 and RCW 28B.10.900 and [28B.10].902, and to bring adjudicative procedures into compliance with the Administrative Procedure Act, chapter 34.05 RCW. The Tacoma Community College board of trustees adopted these emergency rules in an open public meeting on [no date provided by agency], and approved the emergency rules becoming effective upon filing.

Citation of Rules Affected by this Order: New WAC 132V-121-090, 132V-121-100, 132V-121-110, 132V-121-120, 132V-121-130, 132V-121-140, 132V-121-150, 132V-121-160, 132V-121-170, 132V-121-180, 132V-121-190, 132V-121-200, 132V-121-210, 132V-121-220, 132V-121-230, 132V-121-240, 132V-121-250, 132V-121-260, 132V-121-270 and 132V-121-280; and amending WAC 132V-121-030, 132V-121-040, 132V-121-050, 132V-121-060, 132V-121-070, and 132V-121-080.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Reasons for this Finding: Federal Title IX regulations require that the Title IX rules be implemented by August 14, 2020. SHB [2SHB] 1715 required colleges to implement antihazing provisions by fall quarter, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 10, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 21, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 26, Amended 0, Repealed 0.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: March 13, 2024.

Natalie Boes
Rules Coordinator

OTS-5285.1

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

WAC 132V-121-030 Definitions. (~~The definitions and phrases in this section apply throughout this chapter.~~

~~**Academic misconduct** is the violation of college policies (e.g., tampering with grades, taking part in obtaining or distributing any part of an exam prior to the scheduled testing time).~~

~~**Calendar day** means all days of the month, not just instructional days. In cases where a specified due date falls on a weekend or holiday, the working day closest to the date due will be used (i.e., if the seventh day deadline falls on Saturday the document will be due on Friday).~~

~~**Cheating** includes, but is not limited to, when a student misrepresents that he or she mastered information on an academic exercise.~~

~~**College** means Tacoma Community College main campus and any other campus or college facility which may be created by the board of trustees.~~

~~**College employee** includes any person employed by the college performing assigned administrative or professional responsibilities.~~

~~**College premises** includes all land, buildings, facilities and other property in the possession of or owned, used, controlled, or leased/rented by the college, and agencies or institutions that have educational agreements with the college, extending to associated electronic communication including websites and distance learning classroom environments.~~

~~**Complainant** means any person who alleges that a student violated the code of student conduct.~~

~~**Conduct hold** means a block prohibiting the student from registering for classes until he or she receives clearance from the student conduct administrator.~~

~~**Fabrication** is the use of invented information or the falsification of research or other findings with the intent to deceive or mislead.~~

~~**Faculty** means any person hired by the college to conduct classroom or teaching activities or who is otherwise considered by the college to be a member of its faculty.~~

~~**Instructional day** means any regularly scheduled instructional day designated in the instructional calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays are not regularly scheduled instructional days.~~

~~**May** is used in the permissive sense.~~

~~**Member of the college community** includes any person who is a student, faculty member, college employee, or volunteer. A person's status in a particular situation will be determined by the student conduct administrator.~~

~~**Plagiarism** includes, but is not limited to, the inclusion of someone else's words, ideas or data as one's own work.~~

~~**Policy** means the written regulations of the college as found in, but not limited to, the code of student conduct, college website, college catalog, and college administrative manual.~~

~~**Respondent** means any student accused of violating the code of student conduct.~~

~~**Student conduct administrator** means a college employee authorized by the vice president for student services to impose consequences upon any student(s) found to have violated the code of student conduct.~~

~~**Student conduct appeal board** means members of the college community authorized by the vice president for student services to hear an appeal by a student of a student conduct administrator's determination and imposed consequences for an alleged violation of the code of student conduct.~~

~~**Student** means any person who is admitted to or enrolled for classes through the college, including any person in affiliated distance learning courses. Admitted or enrolled students who withdraw after allegedly violating the code are considered students.~~

~~**Will** is used in the imperative sense.))~~

The following definitions shall apply for the purposes of this student conduct code:

(1) "Business day" means a week-day, excluding weekends and college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) A "complainant" is an alleged victim of sexual misconduct.

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(5) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(6) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of 10 instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(7) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) "The president" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(9) "Respondent" is the student against whom disciplinary action is initiated.

(10) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(11) "Sexual misconduct" has the meaning ascribed to this term in WAC 132V-121-060(12).

(12) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(13) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(14) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

WAC 132V-121-040 Code of student conduct authority. (1) The vice president for student ((services)) affairs will develop policies for the administration of the student conduct system and procedural rules for the conduct of student conduct appeal board hearings that are consistent with provisions of the code of student conduct.

(2) Decisions made by the student conduct appeal board and/or student conduct administrator will be final.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

WAC 132V-121-050 ~~Statement of jurisdiction ((of the college code of student conduct))~~. ~~((1) The college code of student conduct will apply to conduct that occurs on college premises, at college sponsored activities, and to off-campus conduct that adversely affects the college community and/or the pursuit of its objectives.~~

~~(2) Each student will be responsible for his/her conduct beginning at the time of application for admission and for the duration of their enrollment through the college, even though conduct may occur before classes begin or after classes end. The code of student conduct will apply to a student's conduct even if the student withdraws from school after the alleged misconduct has occurred.~~

~~(3) The vice president for student services will decide whether the code of student conduct will be applied to conduct occurring off-campus, on a case-by-case basis.~~

~~(4) Violation of law and college discipline.~~

~~(a) College disciplinary proceedings are separate and independent of any civil or criminal proceedings.~~

~~(b) The college will cooperate with law enforcement and other agencies in the enforcement of criminal law on campus. Members of the college community, acting in their personal capacities, are free to interact with governmental representatives as they deem appropriate.))~~

(1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises;

(b) At or in connection with college-sponsored activities; or

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

(3) Students are responsible for their conduct from notification of admission to the college through the actual receipt of a certificate or degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(5) The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct by students or student groups that occurs off-campus.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

WAC 132V-121-060 ((Standards for)) Prohibited student conduct.

~~((Any student found to have committed or to have attempted to commit the following misconduct is subject to the disciplinary consequences outlined in WAC 132V-121-070, Code of student conduct procedures.~~

~~(1) Acts of dishonesty including, but not limited to, the following (see Tacoma Community College Administrative Procedure for Academic Dishonesty):~~

~~(a) Cheating, plagiarism, fabrication, academic misconduct or other forms of academic dishonesty.~~

~~(b) Withholding information or furnishing false information to any college official, faculty member or office.~~

~~(c) Forgery, alteration or misuse of any college document, record, or instrument of identification.~~

~~(2) Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other college activities, including its public service functions on or off campus, or of other authorized noncollege activities when the conduct occurs on college premises.~~

~~(3) Physical abuse, verbal abuse, threats, intimidation, harassment, coercion, or other conduct which threatens or endangers the health or safety of any person, including reckless driving.~~

~~(4) Stalking which is a pattern of unwanted behavior that is directed at a specific person that would cause a reasonable person alarm and/or fear.~~

~~(5) Sexual harassment which is defined as engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such behavior offends the recipient, causes discomfort or humiliation, or interferes with school-related performance (as stated in chapter 132V-300 WAC, Grievance Procedure Sexual Harassment, Sex Discrimination and Disability Discrimination).~~

~~(6) Attempted or actual theft of and/or damage to property of the college or property of a member of the college community on campus.~~

~~(7) Hazing which means any method of initiation into a student group or any pastime or amusement engaged in with respect to such a group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education (as stated in chapter 132V-130 WAC, Hazing policy).~~

~~(8) Failure to comply with directions of college employees acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.~~

~~(9) Unauthorized possession, duplication or use of keys to any college premises or unauthorized entry to or use of college premises.~~

~~(10) Violation of any college policy.~~

~~(11) Violation of any federal, state or local law.~~

~~(12) Being under the influence, use, possession, manufacturing or distribution of marijuana (including medical marijuana), heroin, narcotics or other controlled substances, or associated paraphernalia (pursuant to RCW 69.50.102).~~

~~(13) Being under the influence, use, possession, manufacturing or distribution of alcoholic beverages (except as expressly permitted by college regulations) at college-sponsored events. Alcoholic beverages may not, in any circumstances, be used by, possessed by or distributed to any person under twenty-one years of age.~~

~~(14) Possession of firearms, explosives, other weapons, or dangerous chemicals on college premises or use of any such item in a manner that harms, threatens or causes fear to others.~~

~~(15) Leading or inciting others to disrupt scheduled and/or normal activities on any college premises.~~

~~(16) Obstruction of the free flow of pedestrian or vehicular traffic on college premises or at college sponsored or supervised functions.~~

~~(17) Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.~~

~~(18) Conduct that is disorderly, breach of peace, or aiding, abetting or procuring another person to breach the peace on college premises or at functions sponsored by the college or members of the academic community. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without his/her prior knowledge, or with his/her effective consent when such a recording is likely to cause injury or distress. This includes, but is not limited to, taking pictures of another person in a locker room or restroom without their permission.~~

~~(19) Theft or other abuse of computer facilities and resources including, but not limited to:~~

- ~~(a) Unauthorized entry into a file for any purpose;~~
- ~~(b) Use of another individual's identification and/or password without his or her permission;~~
- ~~(c) Use of computing facilities and resources to interfere with the work of another student, faculty member or college official;~~
- ~~(d) Interfering with normal operation of the college computing system;~~
- ~~(e) Violation of copyright laws;~~
- ~~(f) Any violation of the college's acceptable use of information systems and services policy.~~

~~(20) Abuse of the student conduct system including, but not limited to:~~

- ~~(a) Failure to obey the notice from a student conduct appeal board or college employee to appear for a meeting or hearing as part of the student conduct system;~~
- ~~(b) Falsification, distortion or misrepresentation of information before a student conduct appeal board;~~
- ~~(c) Disruption or interference with the orderly conduct of a student conduct appeal board hearing;~~
- ~~(d) Institution of a code of student conduct proceeding in bad faith;~~
- ~~(e) Attempting to discourage an individual's participation in, or use of, the student conduct system;~~
- ~~(f) Attempting to influence the impartiality of a member of a student conduct appeal board prior to and/or during the course of the student conduct appeal board proceeding;~~
- ~~(g) Harassment (verbal or physical) and/or intimidation of a member of a student conduct appeal board prior to, during and/or after a code of student conduct proceeding;~~
- ~~(h) Failure to comply with the consequence(s) imposed under the code of student conduct;~~
- ~~(i) Influencing or attempting to influence another person to violate the code of student conduct system.)) The college may impose disciplinary sanctions against a student or a college sponsored student organization, athletic team or living group, 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:~~

~~(a) Cheating - Any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.~~

~~(b) Plagiarism - 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 - 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.~~

~~(d) Deliberate damage - Taking deliberate action to destroy or damage another's academic work or college property in order to gain an advantage for oneself or another.~~

~~(2) **Other dishonesty.** Any other acts of dishonesty, including:~~

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

(b) 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 protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the college. The term includes disorderly conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, or tampering with student election processes.

(4) **Abuse of others.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking 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 paragraph, "bullying" is defined as severe or pervasive physical or verbal abuse involving a power imbalance between the aggressor and victim.

(5) **Cyber misconduct.** 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 numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the direction 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.**

(a) Hazing is any act committed as part of:

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

(ii) 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.

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

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

(ii) Humiliation by ritual act;

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

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

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

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

(d) 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, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. 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, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. 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, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Discriminatory conduct.** Conduct that harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; re-

ligion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(12) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132V-121-190 through 132V-121-270.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently serious as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

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

(iv) **Dating violence** is 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.

(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.

For purposes of this code "consent" means 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 he or she is 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.

(13) **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, that changes the terms or conditions of employment for a college employee, 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.

(14) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(15) **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.

(16) **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.

(17) **Safety violations.** 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.

(18) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(19) **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 reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

~~WAC 132V-121-070 ((Code of student conduct procedures.)) **Disciplinary sanctions—Terms—Conditions.** ((1) Purpose. The code of student conduct procedures are designed to afford complainants and respondents a fair and accessible process that educates students about their rights and responsibilities, holds students accountable for their actions, and provides due process.~~

~~(2) Complaints and student conduct appeal board hearings.~~

~~(a) Any member of the college community may submit a complaint against a student for violation of the code of student conduct. Any complaint must be submitted in writing to the student conduct administrator within ten instructional days of the date the person became aware or reasonably can be expected to have become aware of the alleged violation of the code of student conduct.~~

~~(b) All complaints will be presented to the respondent by the college in written form (i.e., by U.S. mail to the student's address of record, to the student's TCC email address, or delivered in person).~~

~~(c) The student conduct administrator will schedule an initial meeting with the respondent to discuss the complaint.~~

~~(i) During the initial meeting, the student conduct administrator will explain the process, the respondent's rights and responsibilities, and review the complaint and alleged violation(s) of the code of student conduct. The student conduct administrator will seek information from the respondent regarding the allegations and may seek additional information from other involved parties or observers.~~

~~(ii) If there is more than one respondent involved in the complaint, the student conduct administrator at sole discretion may permit the conferences concerning each respondent to be conducted either separately or jointly.~~

~~(3) The student conduct administrator will investigate to determine if the complaint has merit and will take one of the following actions:~~

~~(a) If the student conduct administrator determines that the case has no merit, the case will be dismissed;~~

~~(b) If the respondent and the student conduct administrator mutually agree to the resolution of the complaint, it will be put in writing and there will be no subsequent proceedings;~~

~~(c) If the respondent disagrees with the student conduct administrator's resolution of the complaint, the respondent may appeal the decision of the student conduct administrator to the student conduct appeal board, provided:~~

~~(i) The respondent must submit his or her appeal in writing to the student conduct administrator within seven calendar days of the date the decision is communicated to the student, either verbally or in writing, by the student conduct administrator;~~

~~(ii) A time will be set for a student conduct board appeal board hearing no later than the fifteenth instructional day after the respondent's written appeal has been received by the student conduct administrator;~~

~~(d) Such other action as the student conduct administrator deems appropriate.~~

~~(4) At any time during this process, failure to meet with the student conduct administrator at the appointed time may subject the respondent to a conduct hold. If the respondent fails to meet with the student conduct administrator in a timely fashion the complaint will be determined in the respondent's absence.~~

~~(5) Student conduct appeal board hearings will be conducted according to the following guidelines:~~

~~(a) Formal rules of process, procedure, and/or rules of evidence, such as are applied in criminal or civil court, are not used in student conduct proceedings;~~

~~(b) The respondent will be notified in written form (i.e., by U.S. mail to the student's address of record, to the student's TCC email address, or delivered in person) at least seven calendar days in advance of the hearing. Such notification will include the time, date and location of the hearing; and the specific complaints against the respondent. Upon request, any documents or other physical evidence that will be presented by any party at the hearing will be provided no less than three instructional days before the hearing to all other parties. Upon request, a list of persons who may appear at the hearing or provide written testimony for any party will be provided no less than three instructional days before the hearing to all other parties;~~

~~(c) Student conduct appeal board hearings normally will be conducted in private;~~

~~(d) The student conduct appeal board will be composed of five members. The membership will consist of one member of the exempt staff, chosen by the vice president for student services; two faculty members chosen by the faculty union president; and two students chosen by the president of the associated student body;~~

~~(i) Chairperson. The student conduct appeal board will elect its own chairperson for each complaint brought before it.~~

~~(ii) Quorum. A quorum will consist of no less than three members, provided, that one exempt staff, one faculty and one student are present.~~

~~(iii) Substitutes:~~

~~(A) Any member of the student conduct appeal board who has direct knowledge or involvement in a complaint under consideration may be excused from participation in the hearing or appeal.~~

~~(B) Substitutes may be appointed to form a quorum.~~

~~(e) The complainant and respondent and their advisors, if any, will be allowed to attend the entire portion of the student conduct appeal board hearing at which information is received (excluding deliberations). Admission of any other person to the student conduct appeal board hearing and level of involvement will be at the sole discretion of the student conduct appeal board and/or the student conduct administrator;~~

~~(f) In student conduct appeal board hearings involving more than one respondent, the student conduct administrator, in his or her sole discretion, may permit the student conduct appeal board hearings concerning each student to be conducted either separately or jointly;~~

~~(g) The complainant and the respondent may be assisted by an advisor of their choice. The advisor must be a member of the college community and may not be an attorney. The complainant and/or the respondent is responsible for presenting his or her own information. Therefore, advisors are not permitted to speak or to participate directly in any hearing before a student conduct appeal board. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the student conduct appeal board hearing because delays will not normally be allowed due to the scheduling conflicts of an advisor;~~

~~(h) The complainant, the respondent and the student conduct appeal board may arrange for witnesses to present pertinent information to the student conduct appeal board. The college will try to arrange the attendance of possible witnesses who are members of the college community, if reasonably possible, and who are identified by the complainant and/or respondent at least two weekdays prior to the student conduct appeal board hearing. Witnesses will provide information to and answer questions from the student conduct appeal board. Questions may be suggested by the respondent and/or complainant to be answered by each other or by other witnesses. This will be conducted by the student conduct appeal board with such questions directed to the chairperson, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment. The chairperson of the student conduct appeal board will determine relevancy of the questions;~~

~~(i) Pertinent records, exhibits and written statements may be accepted as information for consideration by the student conduct appeal board at the sole discretion of the chairperson;~~

~~(j) All procedural questions are subject to the final decision of the chairperson of the student conduct appeal board;~~

~~(k) After the portion of the student conduct appeal board hearing concludes in which all pertinent information has been received, the student conduct appeal board will determine which section(s) of the code of student conduct, if any, that the respondent has violated.~~

~~(6) The student conduct appeal board's determination will be made on the basis of whether it is more likely than not that the respondent violated the code. Formal rules of process, procedure, and/or rules of evidence, such as are applied in criminal or civil court, are not used in student conduct proceedings. There will be a single verbatim record, such as a tape recording, of all student conduct appeal board hearings before a student conduct appeal board (not including deliberations). Deliberations will not be recorded. The record will be the property of the college.~~

~~(7) If a respondent does not appear before a student conduct appeal board hearing, the information in support of the charges will be presented and considered even if the respondent is not present.~~

~~(8) The student conduct appeal board may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, respondent, or other witness during the hearing by providing separate facilities, by using a visual screen, or by permitting participation by telephone, videophone, closed circuit television, video conferencing, videotape, audio tape, written statement, or other means, where and as determined by the vice president for student services to be appropriate.~~

~~(9) In consultation and agreement with the vice president for student services, the student conduct appeal board will issue a final determination as follows:~~

~~(a) The board determines that the case has no merit, and the case is dismissed;~~

~~(b) The board upholds the determination of responsibility and consequences imposed by the student conduct administrator;~~

~~(c) The board upholds part or all of the determination of responsibility and modifies the consequences.~~

~~(10) Consequences.~~

~~(a) Any student found to have violated the code of student conduct will be subject to one or more of the following consequences:~~

~~(i) Warning. Written notice to a student that the student has been in violation of college policy or has otherwise failed to meet the college's standards of conduct. Such warnings will include the statement that continuation or repetition of the specific conduct involved or other misconduct may result in one of the more serious consequences;~~

~~(ii) Reprimand. Written action censuring a student for violation of college policy or otherwise failing to meet the college's standards of conduct. The written reprimand will be filed in the office of the vice president for student services for the duration of the student's attendance at the college. A reprimand will include the statement that continuation or repetition of the specific conduct involved or other misconduct may result in one of the more serious consequences;~~

~~(iii) Probation. Conditions placed upon the student's continued attendance for violation of this chapter. Notice will be made in writing and specify the period of probation and the conditions to be met by the student. Disciplinary probation may be for a specific term or for an indefinite period which may extend to graduation. Violation of the terms of the probation or violation of any college policy during the probation period may be grounds for additional consequences;~~

~~(iv) Loss of privileges. Denial of specified privileges for a designated period of time;~~

~~(v) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement;~~

~~(vi) Withholding admission or degree. Admission to or a degree awarded from the college may be withheld for a specified amount of time;~~

~~(vii) Revocation of admission or degree. Admission to or a degree awarded from the college is revoked and noted on the transcript. In general this action is reserved for conduct that includes, but is not limited to, acts of dishonesty;~~

~~(viii) Discretionary consequences. Work assignments, essays, service to the college, or other related discretionary assignments;~~

~~(ix) No contact. The student may have no contact with other student members of the college community;~~

~~(x) Suspension. Temporary dismissal from the college and termination of the person's student status;~~

~~(xi) Expulsion. Permanent dismissal from the college and termination of the person's student status.~~

~~(b) More than one of the consequences listed in (a) (i) through (xi) of this subsection may be imposed for any single violation.~~

~~(c) Consequences for conduct in class.~~

~~(i) Each faculty member is responsible for conduct in class and is authorized to take such steps as are necessary when behavior of a student interrupts the normal class procedure. When behavior is disruptive, the faculty member may dismiss the student from class for that one class period and make reasonable effort to resolve the situation. This includes electronically removing a disruptive student from online class situations. However, if the matter becomes so serious as to result in removing the student from the class for two consecutive class periods or when a pattern of periodic misconduct occurs, the faculty member will report the incident to the student conduct administrator in order to seek resolution to the situation and allow for due process.~~

~~(ii) Consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus.~~

~~(d) Disciplinary consequences will be made part of both the complainant's and the respondent's education record. The records may be expunged of disciplinary consequences, other than expulsion, seven years after the quarter in which the incident occurred.~~

~~(11) Emergency suspension.~~

~~(a) In certain circumstances, the vice president for student services, or designee, may impose an emergency suspension. Emergency suspension may be imposed only:~~

~~(i) To ensure the student's own physical or emotional safety and well-being; or~~

~~(ii) To ensure the safety and well-being of members of the college community or preservation of college property; or~~

~~(iii) If the student poses an ongoing threat of disruption or interference with the normal operations of the college.~~

~~(b) During the emergency suspension, a student will be denied access to the campus (including classes) and/or all other college activities or privileges for which the student might otherwise be eligible,~~

as the vice president for student services or the student conduct administrator may determine to be appropriate.

~~(c) The student will be notified in writing of this action and the reasons for the emergency suspension. The student will also be informed in writing of the time, date and place of an initial meeting.~~

~~(d) An initial meeting will take place within five instructional days of the emergency suspension. At the initial meeting the student may show cause why his or her continued presence on the campus does not constitute a threat and may contest whether a campus policy was violated.~~

~~(e) At the initial meeting the student conduct administrator, in consultation and agreement with the vice president for student services, will decide to uphold the emergency suspension, dismiss it, or impose other consequences. The student will be informed in writing of this decision.~~

~~(f) The emergency suspension does not replace the code of student conduct procedures, which will proceed on the normal schedule, up to and through a student conduct appeal board hearing, if required.~~

~~(g) Appeals.~~

~~(i) A decision reached or a consequence imposed by the student conduct administrator may be appealed by the respondent within five instructional days of the decision. Such appeals must be in writing and delivered to the student conduct administrator who will convene a student conduct appeal board hearing as outlined in subsection (5) of this section.~~

~~(ii) The decision of the student conduct appeal board will be final.) (1) The following disciplinary sanctions may be imposed upon students or upon college sponsored student organizations, athletic teams, or living groups found responsible for violating the student conduct code.~~

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the suspension is imposed.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the dismissal is imposed.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student deemed "not in good standing" with the college shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

AMENDATORY SECTION (Amending WSR 11-24-031, filed 12/1/11, effective 1/1/12)

WAC 132V-121-080 ((Interpretation and revision.)) Initiation of disciplinary action. ((1) Any question of interpretation or application of the code of student conduct will be referred to the vice president for student services or his or her designee for final determination.

(2) The code of student conduct will be reviewed every five years under the direction of the student conduct administrator.)) (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will

present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within 10 days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC 132V-121-070; or

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, that are not subject to Title IX, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132V-121-090 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within 20 days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right

to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of 10 instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of 10 instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warning and dismissals of disciplinary actions are final action are not subject to appeal.

(10) In cases involving allegations of sexual misconduct that are not subject to Title IX, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

NEW SECTION

WAC 132V-121-100 Brief adjudication proceeding—Initial hearing.

(1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within 10 days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within 10 days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct that are not subject to Title IX, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132V-121-110 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within 10 days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within 20 days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within 20 days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than 10 instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct that are not subject to Title IX, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132V-121-120 Student conduct committee. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

NEW SECTION

WAC 132V-121-130 Appeal—Student conduct committee—Prehearing.

(1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing,

lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline, or referral to the committee; and

(b) The notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132V-121-140 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair

shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct that are not subject to Title IX, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

NEW SECTION

WAC 132V-121-150 Student conduct committee—Initial decision.

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within 20 days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct that are not subject to Title IX, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to

have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

NEW SECTION

WAC 132V-121-160 Appeal from student conduct committee initial decision. (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within 10 days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to the party and the student conduct officer within 20 days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct that are not subject to Title IX, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132V-121-170 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges, for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) (a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

NEW SECTION

WAC 132V-121-180 Sexual misconduct proceedings. Both the respondent and the complainant in cases involving allegations of sexual misconduct that are not subject to Title IX shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURESNEW SECTION

WAC 132V-121-190 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132V-121-060 through 132V-121-170, 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 132V-121-200 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Act Amendments 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 the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome sexual or gender-based 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, RCW 26.50.010.

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

NEW SECTION

WAC 132V-121-210 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 defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occur-

red. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

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

(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 132V-121-220 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 supplement 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 132V-121-230 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 132V-121-130. 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 132V-121-240 Rights of parties. (1) The student conduct code of Tacoma Community College, chapter 132V-121 WAC, and this supplemental procedure shall apply equally to all parties.

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

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

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

NEW SECTION

WAC 132V-121-250 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 132V-121-260 Initial order. (1) In addition to complying with WAC 132V-121-150, 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 132V-121-270 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 office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

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

response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

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

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary 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 132V-121-280 Interpretation and revision. Any question of interpretation or application of the code of student conduct will be referred to the vice president for student services or his or her designee for final determination.

WSR 24-09-002
EMERGENCY RULES

TACOMA COMMUNITY COLLEGE

[Filed April 3, 2024, 1:22 p.m., effective April 3, 2024, 1:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington state legislature passed HB [2SHB] 1751 referred to as "Sam's Law," which took effect June 9, 2022. The law requires colleges to take several actions to prevent hazing, including modifying the code of student conduct.

Citation of Rules Affected by this Order: Repealing WAC 132V-130-020; and amending WAC 132V-130-010.

Statutory Authority for Adoption: RCW 28B.50.140.

Other Authority: Washington state HB [2SHB] 1751.

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: Washington HB [2SHB] 1751 became effective June 9, 2022, and the law requires colleges to modify their student conduct code fall quarter 2022 to implement antihazing provisions. The Tacoma Community College board of trustees adopted these emergency rules in an open public meeting on [no date provided by agency], and approved the emergency rules becoming effective upon filing.

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

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 1, 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: March 13, 2024.

Natalie Boes
Rules Coordinator

OTS-5286.1

AMENDATORY SECTION (Amending WSR 96-16-036, filed 8/1/96, effective 9/1/96)

WAC 132V-130-010 Hazing prohibited—Sanctions. (1) Hazing (~~is prohibited at Tacoma Community College.~~

~~(2) Hazing means any method of initiation into a student group or any pastime or amusement engaged in with respect to such a group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or postsecondary education.~~

~~Excluded from this definition are "customary athletic events or other similar contests or competitions.") by a student or a student group is prohibited pursuant to WAC 132V-121-060.~~

~~(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.~~

~~(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 corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.~~

~~(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.~~

~~(c) Student groups that knowingly permit 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.~~

~~(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.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132V-130-020 Penalties.

WSR 24-09-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-50—Filed April 4, 2024, 3:39 p.m., effective April 4, 2024, 3:39 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: Modifies previously adopted 2024 winter and spring period select area commercial seasons for South Channel. Current estimates of upriver encounters are tracking less than pre-season expectations, which allows for additional fishing time per previously adopted periods. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. Preseason modeling results in a select area commercial fisheries allocation of ≤ 387 upriver spring Chinook. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 13 and April 4, 2024. The general public welfare is protected with the immediate opening of nontreaty select area fisheries. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018,

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

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

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

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

Number of Sections Adopted at the Request of a 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: April 4, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000B Columbia River seasons below Bonneville.

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

(1) Tongue Point and South Channel areas:

Open Dates	Open Days	Open Time	Open Duration
Apr 22 - Apr 26	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 29 - May 3	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
May 6 - Jun 14	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	24 nights
Jun 17 - Jul 19	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	15 nights

South Channel Area only:

Open Dates	Open Days	Open Time	Open Duration
Apr 4 - Apr 5	Thu (night)	7:00 pm - 7:00 am	12 hrs
Apr 8 - April 9	Mon (night)	7:00 pm - 7:00 am	12 hrs
Apr 11- Apr 12	Thu (night)	7:00 pm - 7:00 am	12 hrs
Apr 16 - Apr 17	Tue (night)	7:00 pm - 7:00 am	12 hrs
Apr 18 - Apr 19	Thu (night)	7:00 pm - 7:00 am	12 hrs

(a) Area definitions:

(i) Immediately, through June 14, 2024:

(A) Tongue Point: Waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

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

(ii) June 17 through July 19, 2024:

(A) Tongue Point: Area as described in OAR 635-042-0170 (1)(a) and WAC 220-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

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

(b) Gear: Gillnets:

(i) Immediately, through April 12, 2024: 7-inch minimum mesh size.

(ii) April 16 through July 19, 2024: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 1,500 feet (250 fathoms).

(iv) In the Tongue Point Area, the lead line weight may not exceed two pounds per any one fathom.

(v) In the South Channel Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(2) Blind Slough and Knappa Slough areas:

Open Dates	Open Days	Open Time	Open Duration
Immediately - April 12	Mon, Thu (nights)	7:00 pm - 7:00 am	3 nights
Apr 16 - Apr 19	Tue, Thu (nights)	7:00 pm - 7:00 am	2 nights
Apr 22 - Apr 26	Mon, Thu (nights)	7:00 pm - 7:00 am	2 nights
April 29 - May 3	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	3 nights
May 6 - Jun 14	Mon, Tue, Wed, Thu (nights)	7:00 pm - 7:00 am	24 nights
Jun 17 - Jul 19	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	15 nights

(a) Areas:

(i) The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

(ii) The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

Through May 3 the downstream (western) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(b) Gear: Gillnets:

(i) February 15 through April 12, 2024: 7-inch minimum mesh size.

(ii) April 16 through Jul 19, 2024: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(c) Miscellaneous: Permanent transportation rules in effect.

(3) Deep River Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - Apr 12	Mon, Thu (nights)	7:00 pm - 9:00 am	3 nights
Apr 16 - Apr 19	Tue, Thu (nights)	7:00 pm - 9:00 am	2 nights
Apr 22 - Apr 26	Mon, Thu (nights)	7:00 pm - 9:00 am	2 nights
Apr 29 - May 3	Mon, Wed, Thu (nights)	7:00 pm - 9:00 am	3 nights
May 6 - Jun 14	Mon, Tue, Wed, Thu (nights)	7:00 pm - 9:00 am	24 nights

(a) Area:

From the mouth of Deep River defined as a line from USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(b) Gear: Gillnets:

(i) Immediately, through April 12, 2024: 7-inch minimum mesh size.

(ii) April 16 through June 14, 2024: 9 3/4-inch maximum mesh size.

(iii) The maximum net length is 600 feet (100 fathoms).

(iv) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(v) Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream, or channel any net longer than three-fourths the width of the stream (WAC 220-354-010(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of nets, whether fishing singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided by department rule (WAC 220-353-060(1)).

(c) Miscellaneous:

(i) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff.

(ii) February 15 through June 14, 2024: fishers are required to call 360-798-8098 to confirm the place and time of sampling.

(4) Allowable Sales: Salmon (except Chum) and shad.

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

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

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

REPEALER

The following section of Washington administrative code is repealed, effective immediately:

WAC 220-358-03000A Columbia River seasons below
Bonnevile. (24-18)

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 24-09-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-51—Filed April 4, 2024, 6:50 p.m., effective April 5, 2024]

Effective Date of Rule: April 5, 2024.

Purpose: This emergency rule is needed to modify spring recreational salmon and steelhead in the Columbia River and Deep River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000I and 220-312-06000D; and amending WAC 220-312-030 and 220-312-060.

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

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

Reasons for this Finding: Extends the 2024 spring recreational salmon and steelhead season in the mainstem Columbia River from Buoy 10 upstream to Bonneville Dam and maintains the previously adopted season from Bonneville Dam upstream to the Washington/Oregon border. Additionally, this rule aligns the Deep River salmon and steelhead daily bag limit with the mainstem lower Columbia River when the mainstem is open. The Endangered Species Act (ESA) impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. This regulation is consistent with compact actions of February 21 and April 4, 2024. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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: April 4, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000L Freshwater exceptions to statewide rules—Southwest. Effective April 5 through April 9, 2024, the provisions of WAC 220-312-030 regarding Deep River salmon and steelhead seasons shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

Deep River (Wahkiakum Co.): Salmon and steelhead:

Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

NEW SECTION

WAC 220-312-06000G Freshwater exceptions to statewide rules—Columbia. Effective April 5 through May 2, 2024, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to Hwy. 730 at the Washington/Oregon border, and shad seasons from the mouth to the Bonneville Dam, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From a true north-south line through Buoy 10, upstream to a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

(a) Salmon and steelhead: Effective immediately through April 9, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(b) Shad: Effective immediately through April 9, 2024: No min. size. No daily limit.

(2) From a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock upstream to Bonneville Dam:

(a) Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Salmon and steelhead: Effective immediately through April 9, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(c) Shad: Effective immediately through April 9, 2024: No minimum size. No daily limit.

(3) From Bonneville Dam to Tower Island power lines (approximately 6 miles below The Dalles Dam): Salmon and steelhead:

(a) Effective immediately through May 2, 2024: Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Effective immediately through May 2, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(4) From Tower Island power lines to The Dalles Dam: Salmon and steelhead:

Effective immediately through May 2, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(5) From The Dalles Dam to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

Effective immediately through May 2, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

REPEALER

The following sections of Washington Administrative Code are repealed, effective April 5, 2024:

WAC 220-312-03000I Freshwater exceptions to statewide rules—Southwest. (24-25)

WAC 220-312-06000D Freshwater exceptions to statewide rules—Columbia. (24-25)

WSR 24-09-013

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed April 5, 2024, 11:21 a.m., effective April 5, 2024, 11:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Naloxone nasal spray as over-the-counter (OTC) status. In March 2023, the United States Food and Drug Administration (FDA) approved the first 4 mg naloxone hydrochloride nasal spray as an OTC drug and has approved other naloxone nasal sprays since that time. Naloxone is an opioid antagonist used for the emergency treatment of known or suspected opioid overdose. Currently, WAC 246-945-030 incorporates the 39th edition of the Approved Drug Products with Therapeutic Equivalence Evaluations, or "Orange Book," which has naloxone listed as a prescription drug. The pharmacy quality assurance commission (commission) considers the ongoing opioid epidemic to be a public health emergency in Washington state. In order to combat this epidemic in Washington, the commission is amending WAC 246-945-030 and adding new WAC 246-945-034 classifying the 3 mg and 4 mg naloxone hydrochloride nasal spray as approved by the FDA for OTC distribution as an OTC drug in Washington state.

The timeline for the availability of naloxone nasal spray is set by the manufacturers, although some are already available. This emergency rule prepares Washington state for the moment that the drug becomes available by manufacturers. The proposed new rule, WAC 246-945-034, will also allow for expansion of different formularies if the FDA makes further changes. This preparation will allow for a faster release of the drug throughout the state, meaning this life-saving drug would be in the hands of Washingtonians faster. Increasing patient access to the drug is critical to reduce opioid overdoses.

This emergency rule filing allows for the 3 mg and 4 mg dosage versions of naloxone spray to be prescribed as OTC products. This rule is unchanged from the previous emergency rule under WSR 24-01-021 filed on December 8, 2023. This emergency rule will be continued until the permanent rule-making is effective.

Citation of Rules Affected by this Order: New WAC 246-945-034; and amending WAC 246-945-030.

Statutory Authority for Adoption: RCW 18.64.005.

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

Reasons for this Finding: The immediate adoption of this rule is necessary for the preservation of public health, safety, and general welfare. The opioid epidemic is a public health emergency which requires the use of the emergency rule-making process. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. This rule will increase access to this life-saving drug faster, which will help relieve some stress on affected communities in Washington state and attempt to reduce opioid overdoses.

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

Amended 1, 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 0, Repealed 0.

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

Date Adopted: April 5, 2024.

Ken Kenyon, PharmD, BCPS, Chair
Pharmacy Quality Assurance Commission

OTS-4736.2

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-030 Identification of legend drugs for purposes of chapter 69.41 RCW. (1) Those drugs determined by the FDA to require a prescription under federal law should be classified as legend drugs under state law because their toxicity, potential for harmful effect, methods of use, or collateral measures necessary to their use indicate they are only safe for use under the supervision of a practitioner.

(2) The commission finds that under state law, legend drugs are those drugs designated as legend drugs under federal law, as of the date of adoption of this rule, and listed in at least one of the following publications unless the drug is identified as an over-the-counter drug by the commission in WAC 246-945-034:

(a) The 39th Edition, including supplements, of the *Approved Drug Products with Therapeutic Equivalence Evaluations "Orange Book"* (available at <https://www.fda.gov/drugs/drug-approvals-and-databases/approved-drug-products-therapeutic-equivalence-evaluations-orange-book>).

(b) The 2019 version, including monthly updates, of the *Approved Animal Drug Products "Green Book"* (available at <https://www.fda.gov/animal-veterinary/products/approved-animal-drug-products-green-book>).

(c) The 2019 *List of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations "Purple Book"* (available at <https://www.fda.gov/drugs/therapeutic-biologics-applications-bla/purple-book-lists-licensed-biological-products-reference-product-exclusivity-and-biosimilarity-or>).

(3) Copies of the reference material listed in subsection (2) of this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

(4) The commission also identifies those ephedrine products specified in WAC 246-945-031 as legend drugs under state law.

(5) There may be changes in the marketing status of drugs after the publication of the above references. Upon application of a manufacturer or distributor, the commission may grant authority for the over-the-counter distribution of certain drugs designated as legend drugs in these references. These determinations will be made after public hearing and will be published as an amendment to this chapter.

NEW SECTION

WAC 246-945-034 Identification of the over-the-counter drugs.

Although listed as a legend drug in publications that are incorporated by reference in WAC 246-945-030(2), the commission identifies the following as an over-the-counter drug in Washington:

- (1) 4 mg naloxone hydrochloride nasal spray, approved by the FDA for marketing as an OTC drug product.
- (2) 3 mg naloxone hydrochloride nasal spray, approved by the FDA for marketing as an OTC drug product.

WSR 24-09-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-53—Filed April 9, 2024, 11:29 a.m., effective April 9, 2024, 11:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule is needed to modify spring recreational salmon and steelhead rules in the lower Columbia River and Deep River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000L and 220-312-06000G; and amending WAC 220-312-030 and 220-312-060.

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

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

Reasons for this Finding: Extends the 2024 spring recreational salmon and steelhead season in the mainstem Columbia River from Buoy 10 upstream to Bonneville Dam and maintains the previously adopted season from Bonneville Dam upstream to the Washington/Oregon border. Additionally, this rule aligns the Deep River salmon and steelhead daily bag limit with the mainstem lower Columbia River when the mainstem is open. The Endangered Species Act (ESA) impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. This regulation is consistent with compact actions of February 21, April 4, 2024, and joint state action on April 9, 2024. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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: April 9, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000M Freshwater exceptions to statewide rules—Southwest. Effective immediately, through April 11, 2024, the provisions of WAC 220-312-030 regarding Deep River salmon and steelhead seasons shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

Deep River (Wahkiakum Co.): Salmon and steelhead:

Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

NEW SECTION

WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia. Effective immediately, through May 2, 2024, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to Hwy. 730 at the Washington/Oregon border, and shad seasons from the mouth to the Bonneville Dam, shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From a true north-south line through Buoy 10, upstream to a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

(a) Salmon and steelhead: Effective immediately, through April 11, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(b) Shad: Effective immediately, through April 11, 2024: No min. size. No daily limit.

(2) From a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock upstream to Bonneville Dam:

(a) Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Salmon and steelhead: Effective immediately, through April 11, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(c) Shad: Effective immediately through April 11, 2024: No minimum size. No daily limit.

(3) From Bonneville Dam to Tower Island power lines (approximately 6 miles below The Dalles Dam): Salmon and steelhead:

(a) Effective immediately, through May 2, 2024: Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Effective immediately, through May 2, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(4) From Tower Island power lines to The Dalles Dam: Salmon and steelhead:

Effective immediately, through May 2, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(5) From The Dalles Dam to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

Effective immediately, through May 2, 2024: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

REPEALER

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

WAC 220-312-03000L Freshwater exceptions to statewide rules—Southwest. (24-51)

WAC 220-312-06000G Freshwater exceptions to statewide rules—Columbia. (24-51)

WSR 24-09-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-52—Filed April 9, 2024, 3:40 p.m., effective May 16, 2024]

Effective Date of Rule: May 16, 2024.

Purpose: Opens recreational shrimp harvest in waters of Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-330-070.

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 regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and meet conservation objectives. Harvestable amounts of spot shrimp are available, but recreational shares will only support a limited number of open days in Marine Areas 8-1, 8-2, 9, 10, 11, and 12. In addition, this emergency regulation opens the seasons in Marine Areas 4 east of the Bonilla-Tatoosh line, 5, 6, and 7 one hour before sunrise to one hour after sunset, which is the default daily start time and end time for those areas. Marine Area 13 will remain closed to spot shrimp harvest for conservation reasons. 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: April 9, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000W Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective May 16, 2024, until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Ta-

toosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5: Open daily for all shrimp species beginning May 16, from 1 hour before official sunrise to 1 hour after official sunset, until further notice.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open for all shrimp species from 1 hour before official sunrise to 1 hour after official sunset on May 16 through 18, May 30 through June 1, June 13 through 16, June 28 through 30, and July 12 through 15.

(3) Discovery Bay Shrimp District: Open for all shrimp species May 17 from 9:00 a.m. through 1:00 p.m..

(4) Marine Area 7 South: Open for all shrimp species from 1 hour before official sunrise to 1 hour after official sunset on May 16 through May 18. Only that portion of Marine Area 7 South that is west of a line projected due south from Point Colville on Lopez Island and east of a line projected due south from Cattle Point on San Juan Island, will open from May 30 through June 1.

(5) Marine Area 7 East: Open for all shrimp species from 1 hour before official sunrise to 1 hour after official sunset on May 16 through 18.

(6) Marine Area 7 West: Open for all shrimp species from 1 hour before official sunrise to 1 hour after official sunset on May 16 through 18, May 30 through June 1, June 13 through 15, June 28 through 30, and July 12 through 14.

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

(a) Open for all shrimp species May 16 and May 30 from 9:00 a.m. through 1:00 p.m..

(b) Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on May 16 and May 30 in Marine Area 8-2.

(8) Marine Area 9: Open for all shrimp species May 16 from 9:00 a.m. through 1:00 p.m..

(9) Marine Area 10: Open for all shrimp species May 16 from 9:00 a.m. through 1:00 p.m..

(10) Marine Area 11: Open for all shrimp species May 16 from 9:00 a.m. through 1:00 p.m..

(11) Marine Area 12: Open for all shrimp species May 17, May 18, May 30, and June 15 from 9:00 a.m. through 1:00 p.m..

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

WSR 24-09-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-54—Filed April 10, 2024, 5:00 p.m., effective April 10, 2024, 5:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule is necessary to open additional recreational salmon fishing days in Catch Record Card Area 11.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000R; and amending WAC 220-313-060.

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

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

Reasons for this Finding: Catch estimates for the Marine Area 11 winter Chinook fishery indicate that through April 7, 2024, anglers have reached 69 percent of the total encounters (818 of 1,191), 67 percent of unmarked encounters (174 of 269), and 43 percent of sublegal encounters (347 of 816). Based on daily catch rates thus far, this allows space for additional days of fishing to be added to the 2024 winter Chinook season. 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: April 10, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000S Puget Sound salmon—Saltwater seasons and daily limits. Effective immediately, through April 15, 2024, salmon rules for Catch Record Card Areas 10 and 11 shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Catch Record Card Area 10, except Agate Pass (waters west of a line from Point Monroe to Indianola and east of a line from Point Bolin to Battle Point), and year-round piers (Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier):

Salmon: Closed.

(2) Catch Record Card Area 11, except year-round piers (Des Moines Pier, Les Davis Pier, and Point Defiance Boathouse Dock):

(a) Salmon: Daily limit 2 including no more than 1 hatchery Chinook. Release wild Chinook and chum.

(b) Commencement Bay (east of a line from Cliff House Restaurant to Sperry Ocean Dock): Closed to fishing for or retention of salmon.

REPEALER

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

WAC 220-313-06000R Puget Sound salmon—Saltwater seasons and daily limits. (24-47)

WSR 24-09-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-55—Filed April 10, 2024, 5:03 p.m., effective April 15, 2024, 8:00 a.m.]

Effective Date of Rule: April 15, 2024, 8:00 a.m.

Purpose: This emergency rule is necessary to adjust the Quinault secondary special management area boundary and set the season opening for the Quileute special management area with a pot limit.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000W and 220-340-45000Q; and amending WAC 220-340-420 and 220-340-450.

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: Tribal special management area descriptions conform with state/tribal agreements and state/tribal discussions regarding in-season modifications. 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 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: April 10, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000X Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420 and WAC 220-340-480, effective 8:00 a.m. April 15, 2024, until further notice:

(1) Effective immediately, through 7:59 a.m. April 24, 2024, it is unlawful for a vessel to use more than 200 pots in the area between Split Rock (47°24.50) and Raft River (47°28.00) shoreward of a line approximating the 27-fathom depth curve. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the following methods:

(a) E-mail to Jamie Fuller at Jamie.Fuller@dfw.wa.gov; or

(b) Telephone call to Jamie Fuller at 360-580-0875.

(2) It is unlawful for a vessel to use more than 100 pots in the area between the Copalis River (47°08.00) and Joe Creek (47°12.25) shoreward of a line approximating the 27-fathom depth curve, until further notice. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the following methods:

(a) E-mail to Jamie Fuller at Jamie.Fuller@dfw.wa.gov; or

(b) Telephone call to Jamie Fuller at 360-580-0875.

(3) Effective 8:00 a.m. May 1 through 7:59 a.m. June 1, 2024, it is unlawful for a vessel to use more than 100 pots in the Quileute SMA area between Cape Johnson (47°58.00) and Destruction Island (47°40.50) shoreward of a line approximating the 30-fathom depth curve. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the following methods:

(a) E-mail to Jamie Fuller at Jamie.Fuller@dfw.wa.gov; or

(b) Telephone call to Jamie Fuller at 360-580-0875.

(4) All other provisions of the permanent rule remain in effect.

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

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

NEW SECTION

WAC 220-340-45000R Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450, effective 8:00 a.m. April 15, 2024, until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section:

(1) Open area (except for areas and times listed in sections (2), (3), and (4) below): The area from the WA/OR border (46°15.00) to the U.S./Canada border, including Willapa Bay and Grays Harbor.

For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(2) The Quinault secondary special management area (SSMA) is closed to fishing for Dungeness crab. The SSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Split Rock (47°24.50) and Joe Creek (47°12.25) according to the following coordinates:

(a) Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.

(b) Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.

(c) Southwest Corner: 47°12.25 N. Lat. 124°27.50 W. Lon.

(d) Southeast Corner (Joe Creek): 47°12.25 N. Lat. 124°12.28 W. Lon.

(3) Effective immediately, through 7:59 a.m. May 1, 2024, the Quileute special management area (SMA) is closed to fishing for Dungeness crab. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- (a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.
- (b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- (c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- (d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.
- (4) All other provisions of the permanent rule remain in effect.

REPEALER

The following sections of the Washington Administrative Code are repealed, effective 8:00 a.m. April 15, 2024:

- WAC 220-340-42000W Commercial crab fishery—Unlawful acts—Coastal. (24-44)
- WAC 220-340-45000Q Commercial crab fishery—Season and areas—Coastal. (24-44)

WSR 24-09-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-56—Filed April 12, 2024, 2:16 p.m., effective April 12, 2024, 2:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open commercial crab fishing in Puget Sound.

WAC 220-340-45500H extends the commercial closures in Region 1 (Marine Fish-Shellfish (MFSF) Catch Areas 20A, 20B, 22A), Subregion 3-3, and Subregion 3-4 to April 17, 2024.

WAC 220-340-47000E updates the pot limits of recently closed crab management regions and subregions effective immediately.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500G and 220-340-47000D; 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: The season in Region 1 (MFSF Catch Areas 20A, 20B, 22A), Subregion 3-3, and Subregion 3-4 is extended through April 17, 2024, to accommodate weather safety concerns. The pot limits in Crab Management Region 1 and Subregions 3-1 and 3-2 have been updated to reflect their closure status. There is sufficient allocation remaining to accommodate harvest in the Puget Sound commercial crab fishery in Regions 1, 3-3, and 3-4 until further notice. These provisions are in conformity with the last agreed[-to] management plans with applicable tribes. Comanagement 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: April 12, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500H Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455, effective immediately, through April 17, 2024:

Harvest of Dungeness crab in Puget Sound is permitted during the "Open period" indicated in the following table. On the opening date harvest will be permitted starting at 8:00 a.m. Harvest for these areas after the opening date is permitted 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)	Effective Period
Region 1, MFSF Catch Areas 21A, 21B, and 22B	Closed.
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	Immediately through April 17, 2024.
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	Closed.
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	Closed.
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed.
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed.
Subregion 3-1	Closed.
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)).	Closed
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	Closed.
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	Closed.
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 through April 17, 2024.
Subregion 3-4	Immediately through April 17, 2024.

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.

NEW SECTION

WAC 220-340-47000E Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas Notwithstanding the provisions of 220-340-470, effective immediately, through April 17, 2024:

Effective during the "Open period" listed by emergency rule pursuant to WAC 220-340-455(1), it is 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	0
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	75
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	0
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	0
Subregion 3-1	0

Geographical Management Unit (WAC 220-320-110)	Pot limit
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)).	0
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	0
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	0
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	0
Subregion 3-3	75
Subregion 3-4	75

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

REPEALER

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

- WAC 220-340-45500G Commercial crab fishery—Seasons and areas—Puget Sound. (24-17)
- WAC 220-340-47000D Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. (24-36)

WSR 24-09-044

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed April 12, 2024, 2:43 p.m., effective April 12, 2024, 2:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is amending this rule to allow for back dating on the provider enrollment application.

Citation of Rules Affected by this Order: Amending WAC 182-502-0005.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 34.05.350.

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

Reasons for this Finding: This rule making is necessary to immediately allow provider's enrollment to align with contract dates and delivery of services.

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 1, Repealed 0.

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

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

Date Adopted: April 12, 2024.

Wendy Barcus
Rules Coordinator

OTS-5352.1

AMENDATORY SECTION (Amending WSR 23-21-061, filed 10/12/23, effective 11/12/23)

WAC 182-502-0005 Core provider agreement (CPA). (1) The agency only pays claims submitted for services provided by or on behalf of:

(a) A health care professional, health care entity, supplier or contractor of service that has an approved core provider agreement (CPA) with the agency;

(b) A servicing provider enrolled under an approved CPA with the agency; or

(c) A provider who has an approved agreement with the agency as a nonbilling provider in accordance with WAC 182-502-0006.

(2) Servicing providers performing services for a client must be enrolled under the billing providers' CPA.

(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form. Refer to WAC 182-502-0006 for enrollment as a nonbilling provider.

(4) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, and 182-501-0184.

(5) The agency does not pay for services provided to clients during the CPA application process or application for nonbilling provider process, regardless of whether the agency later approves or denies the application, except as provided in subsection (6) of this section or WAC 182-502-0006(5).

(6) Enrollment of a provider applicant is effective on the date the agency approves the provider application or a date designated by the agency.

(a) A provider applicant may ask for an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than 365 days prior to the agency's approval of the provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

(c) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.

(d) Exceptions granted under this subsection (6) do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

WSR 24-09-059

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 24-04—Filed April 16, 2024, 9:12 a.m., effective April 16, 2024, 9:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Issuance of a formal emergency drought declaration, directed by the governor and signed by the department of ecology (ecology) director.

Purpose: Ecology is adopting a new emergency rule, chapter 173-167 WAC, Emergency drought funding. This emergency rule provides eligibility criteria for grant funds to alleviate hardship resulting from the drought declared on April 16, 2024.

The emergency rule will be effective through August 14, 2024. If needed, ecology may adopt subsequent emergency rules.

Under the authority of RCW 70A.02.120(2), the director of ecology determined that in the event this emergency rule is considered to be a significant agency action under the Healthy Environment for All (HEAL) Act, this emergency rule is exempted from the requirements of RCW 70A.02.060, including the requirement to complete an environmental justice assessment. It was determined that any delay in adopting this emergency rule would be likely to cause serious harm to the public interest.

Please visit ecology's website for information and supporting documents <https://www.ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-167-2024>.

Citation of Rules Affected by this Order: New chapter 173-167 WAC.

Statutory Authority for Adoption: Chapter 43.83B RCW, Drought conditions.

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: An emergency rule is necessary to protect public health and safety and promote timelines that are in the best interest of the public. Once the rule is in place, ecology may distribute funds to alleviate hardship. Drought can cause immediate impacts to public welfare. To address these impacts, drought funding needs to be administered in a timely manner.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 13, 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 13, 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: April 16, 2024.

Laura Watson
Director

OTS-4763.4

**Chapter 173-167 WAC
EMERGENCY DROUGHT FUNDING**

NEW SECTION

WAC 173-167-180 Purpose and applicability. (1) Ecology is authorized to provide funding to public entities to implement projects and measures that alleviate undue hardship caused by drought conditions negatively affecting:

- (a) The delivery of safe and reliable drinking water supplies;
- (b) The survival of fish and wildlife; and
- (c) The viability of agricultural activities and livestock operations.

(2) This chapter establishes criteria for grant eligibility, selection, issuance, and performance, and applies to projects under which ecology may disburse funds for addressing undue hardship caused by drought conditions.

(3) Provisions in this chapter supplement provisions of chapter 173-166 WAC. In the event of any conflict between this rule and chapter 173-166 WAC, the provisions of this chapter control.

NEW SECTION

WAC 173-167-190 Definitions. Definitions only apply to this chapter:

- (1) "Agreement effective date" means the date on which the grant agreement becomes effective, as specified in the agreement.
- (2) "Agreement signature date" means the date the grant agreement is signed by ecology.
- (3) "Applicant" means an entity that applies for a grant.
- (4) "Budget" means, for the purpose of grant agreements, a breakdown of eligible costs by task.
- (5) "Ecology" means the Washington state department of ecology.
- (6) "Grant agreement" or "agreement" means the formal, written, contractual document that details the terms and conditions, scope of work, budget, and schedule of the grant, signed by authorized signatories of the recipient and ecology.
- (7) "Recipient" means an entity that has a grant agreement.
- (8) "Scope of work" means the tasks, deliverables, and timelines of the grant agreement.

NEW SECTION

WAC 173-167-200 Funding limitations. (1) Ecology will administer grants in accordance with the *Administrative Requirements for Recipients of Ecology Grants and Loans*. (Publication No. 23-01-002.) Revised July 2023.

(2) Applicants must provide cost-share totaling 50 percent of the total eligible cost of the project.

(3) If an applicant is seeking funding for a public water system to address the immediate undue hardship arising from drought conditions, applicants that serve an economically disadvantaged community qualify for an exemption from the cost-share requirement. For the purposes of this rule, an economically disadvantaged community is defined by meeting one of the following:

(a) Communities ranked as a nine or 10 on the Washington state environmental health disparities map; or

(b) Communities at an 80th percentile or above for the demographic index of "people of color" and "low income" indicators on the Environmental Protection Agency's EJScreen environmental justice screening and mapping tool; or

(c) Applicant is, or the public water system serves, a federally recognized tribe.

(4) The department will provide no more than 25 percent of the total funds available to any single entity or any single project with funding authorized under this chapter.

NEW SECTION

WAC 173-167-210 Application. (1) All applicants must use the electronic system identified by ecology to apply for grants. Applicants without access to the electronic system must use a process approved by ecology.

(2) The applicant must complete the application process and provide all required information, including:

(a) Applicant information;

(b) Project location and description;

(c) Requested funding amount and budget for the project;

(d) Description of project benefit(s), including:

(i) Problem(s) or need(s) the project would address;

(ii) Timing and the extent to which the project is expected to address the identified needs;

(iii) Quantity of water, acreage, and number of residences affected by the proposed project, as applicable;

(iv) Method(s) used to determine project benefits; and

(v) Metrics for project success, including quantitative metrics if available.

(e) Scope of work for the project;

(f) Any other information required by ecology to evaluate the project.

(3) Ecology may request additional information to assist in the application evaluation process and may remove an application from further consideration if the application is incomplete.

NEW SECTION

WAC 173-167-220 Eligible public entities for grant funding under this chapter. (1)(a) County, or city governmental agencies.

(b) Federally recognized tribes.

(c) Public utility districts, formed under chapter 54.04 RCW.

(d) Water and sewer districts, formed under chapter 57.02 RCW.

(e) Conservation districts, formed under chapter 89.08 RCW.

(f) Irrigation districts, formed under chapter 87.03 RCW.

(g) Port districts formed under chapter 53.04 RCW.

(h) Watershed management partnerships formed under RCW 39.34.200.

(2) State agencies are not eligible for grants under RCW 43.83B.415 (1)(c); state agencies may receive funding through inter-agency agreements to address drought hardship under RCW 43.83B.410(6).

NEW SECTION

WAC 173-167-230 Eligibility for funding. (1) An activity or project for response to emergency drought conditions must be partially or completely within the area of a drought declaration order by ecology, which can be found at (a map of the drought declaration area can be viewed at <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-availability/Statewide-conditions/Drought-response>).

(2) One or more of the following must be partially or completely within the area of a drought declaration order by ecology:

(a) The public water system's service area;

(b) The geographic area where irrigated agriculture or livestock are located;

(c) The source of water, or the water body, that supplies water to the entity applying for funding.

(3) The reduction in water supply caused by drought must cause, or is expected to cause, undue hardship, as described under WAC 173-167-260.

(4) Funding may be granted if the following conditions are met:

(a) The proposed project or measure must be for an established beneficial use of water and not used for irrigation of new acreage or another new or expanded use.

(b) Water derived from the project or measure must be put to beneficial use and address the current water shortage during the drought declaration.

(c) The proposed project or measure cannot impair existing water rights, including instream and out-of-stream rights.

(d) The applicant must obtain all required permits and approvals for the proposed project prior to initiating work.

(e) If an applicant is seeking funding for a public water system, the applicant must obtain Washington department of health approval of the proposed project.

(f) If an applicant is on behalf of a public water system, the system must describe water conservation actions or demonstrate that the applicant has already made reasonable efforts to address their water supply shortage through conservation measures.

NEW SECTION

WAC 173-167-240 Waiver. To expedite drought relief projects and measures, ecology can approve funding or compensation under this chapter without complying with:

- (1) Notice of publication;
- (2) The State Environmental Policy Act; and
- (3) Competitive bidding requirements.

NEW SECTION

WAC 173-167-250 Eligible projects or measures. (1) Eligible projects or measures include, but are not limited to:

- (a) Leasing or acquiring water rights providing an uninterrupted water supply for instream or out-of-stream use;
- (b) Establishing emergency interties or other alternate source(s) of supply;
- (c) Obtaining an emergency supply of potable water from trucks or bottles;
- (d) Addressing fish hatchery or migration barriers caused by drought conditions;
- (e) The cost of providing personnel necessary to implement the activities identified in this section.

(2) (a) Ecology retains the discretion to fund an eligible project for less than the amount requested or deny a grant request for an eligible project. Situations where ecology may reduce or deny a grant request for an eligible project include, but are not limited to, incomplete application submittal, unavailability of sufficient funding for a project, or evidence that information submitted in an application is false or inaccurate.

(b) The department is not obligated to fund projects that do not provide sufficient benefit to alleviating hardship caused by drought or water unavailability. Projects must show substantial benefit from securing water supply, availability, or reliability relative to project costs.

NEW SECTION

WAC 173-167-260 Undue hardship. Undue hardship will be evaluated by considering:

(1) The short-term and long-term economic, public health, or environmental effects the water shortage would have in the absence of drought relief on agricultural crops, livestock operations, public water system safety and reliability, or instream fish and wildlife resources.

(2) The degree to which current drought conditions are directly responsible for the effects described as undue hardship.

(3) The amount of water shortage experienced or forecast for each applicant.

NEW SECTION

WAC 173-167-270 Grant agreement. (1) Ecology will work with the recipient to prepare the grant agreement.

(2) A grant agreement issued and managed in ecology's electronic system must include, at a minimum:

- (a) Project description;
- (b) Expected outcomes;
- (c) Project budget and funding distribution;
- (d) Agreement effective date and expiration date;
- (e) Description of tasks, deliverables, and timelines;
- (f) Contact information for ecology and the recipient;
- (g) Signatures of authorized signatories;
- (h) General terms and conditions that specify requirements related, but not limited to:
 - (i) Amendments and modifications;
 - (ii) Assignment limits on transfer of rights or claims;
 - (iii) Inadvertent discovery plan for human remains and/or cultural resources;
 - (iv) Compliance with all laws;
 - (v) Conflict of interest;
 - (vi) Disputes;
 - (vii) Environmental data standards;
 - (viii) Governing law;
 - (ix) Indemnification;
 - (x) Independent status of the parties to the agreement;
 - (xi) Order of precedence for laws, rules, and the agreement;
 - (xii) Property rights, copyrights, and patents;
 - (xiii) Records, audits, and inspections;
 - (xiv) Recovery of funds;
 - (xv) Severability;
 - (xvi) Suspension;
 - (xvii) Sustainable practices;
 - (xviii) Termination;
 - (xix) Third-party beneficiary;
 - (xx) Waiver of agreement provisions.
 - (i) Special terms and conditions, if any;
 - (j) Agreement-specific terms and conditions, if any;
 - (k) Other items, if any, necessary to meet the goals of the grant program.

(3) All grant agreements under this chapter will include the latest version, as of the original agreement date, of ecology's grant general terms and conditions.

(4) Ecology may choose to extend a grant agreement at its sole discretion.

NEW SECTION

WAC 173-167-280 Performance standards—General provisions. (1) Nothing in this chapter influences, affects, or modifies existing ecology programs, rules, or enforcement of applicable laws and rules relating to activities funded by a grant.

(2) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant agreements, records, and activities.

(3) New ecology grant agreements signed after the effective date of this chapter must be managed using ecology's designated electronic system. A recipient who cannot access the electronic system to meet a deadline or agreement requirements must use a process approved by ecology.

(4) Ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

(5) Recipients must:

(a) Follow all applicable accounting and auditing laws and rules related to grants;

(b) Use funds according to the agreement;

(c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules;

(d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement;

(e) Obtain prior approval for equipment purchases over the amount specified in the agreement.

(6) As specified in the grant agreement, the recipient must submit the following to ecology:

(a) Progress reports;

(b) Payment requests;

(c) Equipment and materials purchase reports, including receipts;

(d) Documentation of project implementation;

(e) A final closeout report;

(f) Any other required information.

(7) Ecology will:

(a) Follow all applicable accounting and auditing laws and rules related to grants;

(b) Monitor projects and review progress reports to assure compliance with applicable laws, rules, orders, permits, and terms and conditions of the agreement;

(c) Confirm receipt of required documentation and satisfactory completion of the project before approving final payment.

NEW SECTION

WAC 173-167-290 Closing out the agreement. (1) The recipient must follow the closeout requirements in the agreement.

(2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the time frames in the agreement.

(3) Ecology will close out the grant agreement when it determines the recipient has met the requirements or when the agreement has been terminated (see WAC 173-167-300).

NEW SECTION

WAC 173-167-300 Termination of agreement. (1) Failure by the recipient to comply with a grant agreement may result in termination of the agreement.

(2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior to terminating an agreement.

(3) Ecology's ability to make payments is contingent on availability of funding.

(4) Ecology will document the termination of an agreement.

WSR 24-09-060
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 16, 2024, 9:18 a.m., effective April 17, 2024]

Effective Date of Rule: April 17, 2024.

Purpose: The department of social and health services (department) is extending emergency amendments to the following WAC sections to more accurately align pandemic EBT (P-EBT) program rules with federal regulations. WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six, and 388-439-0025 Eligibility for pandemic EBT benefits during the 2023 summer period.

Citation of Rules Affected by this Order: Amending WAC 388-439-0020 and 388-439-0025.

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

Other authority: H.R. 6201, 8337, 133, and 1319.

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: These amendments are necessary to address discrepancies between WAC and federal regulations. Emergency rules have been in place since December 18, 2023, under WSR 24-01-090. The department is concurrently proceeding with the permanent rule change process. Refer to CR-101 filed as WSR 24-01-094 on December 18, 2023, and CR-102 filed as WSR 24-07-076 on March 18, 2024.

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 0, Repealed 0.

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

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

Date Adopted: April 12, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5008.1

AMENDATORY SECTION (Amending WSR 23-20-014, filed 9/22/23, effective 10/23/23)

WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six. (1) To be eligible for federally funded pandemic

electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between September 1, 2022, and May 11, 2023;

(b) Under age of six during the specified time period.

(2) Children who do not qualify for federally funded P-EBT benefits because they receive state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between September 1, 2022, and May 11, 2023.

(b) State-funded P-EBT benefits are contingent on the availability of state funds.

(3) We calculate a standard benefit level for each month of P-EBT eligibility by:

(a) Using the full daily meal reimbursement rate of \$8.18 for breakfast, lunch, and snack;

(b) For September 2022, through April 2023, multiplied by the statewide average operating days of 18 days per month;

(c) For the partial prorated month of May 2023, multiplied by the nine operating days prior to the May 11 expiration of the PHE;

(d) Multiplied using a percentage of benefit reimbursement based on statewide child and adult care food program (CACFP) reported meal service prior to the COVID-19 PHE compared to the current school year, a 29.8 percent reduction, as follows:

Child Care Months	Daily Reimbursement Rate	Average Operating Days	Reduction in CACFP Claims	Average Monthly Benefits
September 2022 - April 2023	\$8.18	18	29.8%	\$43.88
May 1 - May 11, 2023	\$8.18	9	29.8%	\$28.94

(e) P-EBT benefits are issued for each month that the household receives a SNAP or FAP benefit more than zero dollars.

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as ~~((follows:))~~ a lump sum one-time payment covering eligible months from September 2022, through May 2023.

~~((a) A lump sum one-time P-EBT allotment is issued for eligible months from September 2022, through May 2023;~~

~~(b) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.)~~

(5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(6) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.

AMENDATORY SECTION (Amending WSR 23-20-014, filed 9/22/23, effective 10/23/23)

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2023 summer period. (1) During the summer period of July and August 2023, schools ~~((and covered childcare centers))~~ will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after the 2022-2023 school year, prior to August 31, 2023, a child must be ~~((+))~~ an eligible student as defined under WAC 388-439-0005 (2) (d) in June 2023.

~~((a) An eligible student as defined under WAC 388-439-0005 (2) (d) in June 2023; or~~

~~(b) A child under age six, as defined under WAC 388-439-0020(1), between July 1, 2023, and August 31, 2023.)~~

(3) Children under the age of six as defined in WAC 388-439-0020 are not eligible for Summer P-EBT benefits following the expiration of the federal public health emergency declaration.

(4) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$120 for the 2023 summer period.

~~((4))~~ (5) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

~~((5))~~ (6) USDA requires all issuances of P-EBT benefits to be complete by December 31, 2023, as federal funding will be exhausted. Any and all P-EBT benefits issued beyond this date will be subject to additional USDA approval and funding.