

**WSR 21-03-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-04—Filed January 6, 2021, 4:19 p.m., effective January 8, 2021]

Effective Date of Rule: January 8, 2021.

Purpose: The purpose of this emergency rule is to close recreational sturgeon retention seasons in the Columbia River from Bonneville Dam to The Dalles Dam.

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

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

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

Reasons for this Finding: This rule is needed to close white sturgeon retention in Bonneville Pool. Catches in the first week of fishing were much higher than expected. Creel data indicates harvest has surpassed the quota of five hundred sturgeon. There is insufficient time to adopt permanent regulations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: January 6, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-06000G Freshwater exceptions to statewide rules—Columbia River.** Effective January 8, 2021, until further notice, the provisions of WAC 220-312-060 regarding white sturgeon retention seasons from Bonneville Dam to John Day Dam are as follows. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) **From Bonneville Dam to The Dalles Dam:** Sturgeon retention is prohibited.

(2) **From The Dalles Dam to John Day Dam:** Sturgeon retention is prohibited.

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REPEALER

The following section of Washington Administrative Code is repealed, effective January 8, 2021:

WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia River. (21-01)

## WSR 21-03-007

## EMERGENCY RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed January 7, 2021, 4:54 p.m., effective January 7, 2021, 4:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The emergency rule provides clarity for which unemployment insurance benefit claimants are subject to a one week waiting period and which claimants are exempt from the waiting week requirement due to the Governor's Proclamations 20-21 through 20-21.11.

Citation of Rules Affected by this Order: New WAC 192-110-006.

Statutory Authority for Adoption: RCW 50.12.040.

Other Authority: Proclamations by the Governor 20-21 through 20-21.11.

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: On March 28, 2020, pursuant to the governor's emergency powers, the governor issued Proclamation 20-21, which waived the statutory requirement that unemployment insurance claimants serve an unpaid waiting week before claimants can receive unemployment benefits. Since that time, leaders in the legislature repeatedly authorized the extension of this proclamation and the statutory waiver until December 28, 2020, at which time, the proclamation expired. Due to the sudden expiration of Proclamation 20-21, rules are needed now to guide the department, claimants, and administrative law judges for unemployment claims that are being filed now. Therefore, observing the time requirements for adoption of a permanent rule would be contrary to the public interest.

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: January 7, 2021.

Dan Zeitlin  
Policy Director

OTS-2846.1

NEW SECTION

**WAC 192-110-006 Transition rule for reinstatement of the waiting week requirement.** (1) **General rule.** If the first week you are otherwise eligible and qualified to receive unemployment insurance benefits occurs after the week ending March 7, 2020, through the week ending January 2, 2021, you will not be required to serve an unpaid waiting week before you receive unemployment insurance benefits. If the first week you are otherwise eligible and qualified to receive unemployment insurance benefits occurs during any other week, you will be required to serve an unpaid waiting week before you receive unemployment insurance benefits.

(2) **Examples.**

(a) Claimant A files an application for initial determination concerning unemployment insurance benefits during the week ending December 5, 2020. However, the first time claimant A files a claim for benefits is on January 27, 2021, for the week ending January 23, 2021. Claimant A must serve an unpaid waiting week.

(b) Claimant B files an application for initial determination during the week ending December 26, 2020. Claimant B then files a claim for benefits and is paid for the week ending December 26, 2020, and the week ending January 2, 2021. The department later discovers claimant B was not eligible for unemployment benefits for those two weeks. Claimant B will have to serve an unpaid waiting week before receiving any more unemployment benefits.

(c) Claimant C files their application for initial determination on January 13, 2021. Claimant C asks to backdate their unemployment claim to the week ending December 26, 2020, and meets the criteria to have their claim backdated. Claimant C will not have to serve an unpaid waiting week.

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**WSR 21-03-012**  
**EMERGENCY RULES**  
**DEPARTMENT OF HEALTH**

[Filed January 8, 2021, 9:51 a.m., effective January 8, 2021, 9:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-358 WAC, Temporary worker housing, the department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed a second emergency rule on September 10, 2020, WSR 20-19-048 and 20-19-049, to protect occupants from COVID-19 hazards in licensed temporary worker housing.

This emergency rule continues the requirements adopted in the first and second emergency rule. This emergency rule requires operators to: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters, prohibit the use of the top of bunk beds; (5) ensure frequent cleaning and disinfecting of surfaces; (6) identify and isolate occupants with suspect and confirmed positive cases; (7) ensure isolation requirements are met, including monitoring of occupants in isolation by health care professionals and verification that outside isolation facilities meet the isolation requirements before transporting workers to the facility; (8) report to L&I division of occupational safety and health within twenty-four hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (9) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

The emergency rule will [continue] to include an option for group shelters. A group shelter is where a cohort of up to fifteen occupants stay together and separated from others for housing, work, and transportation. The maximum number of occupants, fifteen, will not change. All dwelling units, facilities, and services must be only used by the group shelter members. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements. Under the group shelter options, both the top and bottom bunk of bunk beds may be used, although the occupants must sleep head to toe.

In addition, this emergency rule also: (a) Moves ventilation requirements to its own section; (b) specifies requirements for mechanical ventilation systems including the use of MERV13 filters or the highest supported, maximizing outdoor air intake, and maintaining maintenance logs and other documentation; and (c) adds a medical assistant-certified and medical assistant-registered to the list of health care professionals who may take vital signs of employees in isolation.

Both DOH and L&I each filed a Preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-10-050 regarding permanent amendments to the existing permanent rules to address hazards from COVID-19 or other outbreaks of airborne infectious diseases.

Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation requirements, and isolation requirements during an outbreak.

Citation of Rules Affected by this Order: New WAC 246-358-002.

Statutory Authority for Adoption: RCW 70.114A.065.

Other Authority: RCW 43.70.335.

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

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy, and the amendments transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." Under Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of DOH, L&I, and the Centers for Disease Control and Prevention. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the first emergency rule, the governor issued Proclamations 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place, the requirements covered by the rule were not included in the governor's order.

As new information, data, and science become available it is important that DOH and L&I continue to update and immediately amend existing rules to help prevent the spread of COVID-19. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing as we prepare for and begin the 2021 growing season. The governor's Stay Home, Stay Healthy order as amended to the Safe Start and Proclamation 20-57.1 are currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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Date Adopted: January 7, 2021.

Jessica Todorovich  
Chief of Staff

OTS-2301.8

NEW SECTION

**WAC 246-358-002 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure.** (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from 2019 novel coronavirus (COVID-19) hazards:

(a) Educate occupants and allow entry of community workers:

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing, the use of cloth face coverings, proper respiratory etiquette, and the importance of prompt sanitizing of frequently touched items; common symptoms and risk factors; and what to do if they develop symptoms.

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to secure medical treatment - all in a language commonly understood by the occupants.

(c) Provide at no cost an adequate number of cloth face coverings for occupants to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules. The operator must instruct occupants to use cloth face coverings in public and at housing as recommended in the public health orders.

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities.

(i) In order to facilitate social distancing, the operator must provide additional temporary cooking, bathing, washing, and toilet facilities.

(ii) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe; **OR**

(B) Beds are separated by a bed length, floor to near ceiling temporary nonpermeable barrier (e.g., plexiglass, plastic sheeting, etc.) placed perpendicular to wall such that a thirty-six inch minimum aisle exists between the bed and the temporary barrier and occupants sleep head toward wall. The temporary barriers:

(I) Must be made of fire resistant or fire retardant treated material;

(II) Do not impede required egress;

(III) Do not compromise ventilation/air flow; and

(IV) Are cleaned at least daily.

(C) Except as allowed under (f) of this subsection, only the bottom bed of bunk beds may be used.

(iii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time. Any barriers placed near cooking equipment must be fire retardant.

(iv) The operator must provide additional facilities or services that meet the requirements of this chapter if needed to ensure social distancing in common areas, such as additional refrigeration or portable sinks.

(v) The operator must discourage occupants from visiting buildings or sleeping quarters that are not their assigned living spaces, to minimize potential cross-contamination.

(e) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility or building has a mechanical ventilation system, the owner shall maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. The operator shall have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation or the percentage of outside air that circulates into the system and verify the following:

(A) All HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) The maximum use of the HVAC system's outdoor air intake, making sure that the exhaust air is not pulled back into the building through the HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions including, but not limited to, wildfire smoke.

(D) The appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) are used when changing filters.

(E) Maintenance checks occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turned on mechanical ventilation systems (i.e., mini split system, window units, HVAC) or open windows whenever the TWH facility or building is occupied.

(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.



(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

(f) Group shelters. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "Group shelter" means a dwelling unit or cluster of dwelling units with sleeping facilities for up to fifteen occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

(i) Sleeping quarters. In group shelters, the operator must:

(A) Arrange beds so that the heads of beds are as far apart as possible - at least six feet apart. Both beds of bunk beds may be used. Bunk bed occupants must sleep head to toe.

(B) Maintain egress requirements.

(C) Provide all occupants suitable storage space including personal storage space for clothing and personal articles. Ensure all or a portion of the space is enclosed and lockable.

(ii) Common areas. In group shelters, the operator must instruct occupants to maintain physical distancing and wear cloth face coverings whenever possible.

(iii) Multiple group shelters. More than one group shelter may share facilities and common areas as long as:

(A) The facilities and areas are used by only one group shelter at a time;

(B) Adequate time is given to each group to accomplish daily activities;

(C) All high contact surfaces are sanitized between each group; and

(D) Schedules are shared and conspicuously posted.

(iv) Transportation and work. To utilize the group shelter option, the operator must ensure that members of each shelter group stay together and separate from other groups, occupants, or workers, including during transportation and work. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements.

(v) The operator must encourage each group shelter to designate one or two occupants to run errands if items cannot be provided by the operator. These designated occupants can be the main contact for procuring groceries or other items for the group shelter in order to limit public contact and potential disease transmission.

(vi) The operator must quarantine or test all members of a group shelter if a member of the group shelter develops symptoms of COVID-19, as directed by the local health agency.

(g) Clean and disinfect surfaces. The operator must:

(i) Clean and disinfect common areas on a regular schedule, at least as frequent as required by this chapter.

(ii) Wipe down and disinfect surfaces that are touched by multiple individuals at least daily using an EPA-approved disinfectant or diluted bleach solution.

(iii) Provide adequate supplies and instructions to occupants for cleaning and disinfecting of living spaces of dwelling units, family shelters, and group shelters. Occupants must be able to clean and disinfect frequent touched surfaces, bathroom, and cooking areas as needed. Chemicals used for cleaning and disinfecting must be labeled as to its intended purpose in a language commonly understood by the occupants using labeling requirements in chapter 296-901 WAC, Globally harmonized system for hazard communication.

(iv) Ensure adequate supplies of single-use soap and paper towels at all sinks to allow for frequent handwashing. Portable handwashing stations or hand sanitizer may be provided in addition to required facilities.

(v) Provide training in a language or languages understood by contracted workers regarding COVID-19 cleaning, disinfecting, and sanitizing protocols for any contracted cleaning labor prior to their arrival to clean temporary worker housing. In addition to any personal protective equipment required under L&I rules to perform the cleaning activities, provide and require that those contracted workers use disposable gloves and wear cloth face coverings covering nose and mouth while working at the site.

(vi) Clean and disinfect areas where occupants with suspect COVID-19 exposure have been according to CDC guidelines and before the space is used by others.

(2) Isolation.

(a) The operator must develop and implement a plan to identify and isolate sick occupants, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, and loss of taste or smell. The operator must provide each occupant with a thermometer or must designate and train a person to use a "no touch" or "no contact" thermometer to check all occupants' temperatures daily. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

(ii) Upon identification of suspect COVID-19 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect COVID-19 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(iv) Confirmed COVID-19 cases must be isolated and only housed with other confirmed cases and must have separated bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the sick occupant will have the option to isolate with family members.

(v) The operator must report COVID-19-symptomatic or positive TWH occupants in isolation to the department of labor and industries' division of occupational safety and health (DOSH) within twenty-four hours after placement. This notification can be made by telephone to the department of labor and industries toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for COVID-19-symptomatic or positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits occupants twice per day, at the employer's expense. At a minimum, the health care professional must assess symptoms, vital signs, and oxygen saturation via pulse oximetry, and perform a respiratory exam. For the purposes of this subsection, a licensed health care professional means:

(A) An individual licensed under chapter 18.79 RCW as a registered nurse;

(B) An individual licensed under chapter 18.71 RCW as a physician;

(C) An individual licensed under chapter 18.71A RCW as a physician assistant;

(D) An individual licensed under chapter 18.57 RCW as an osteopathic physician;

(E) An individual licensed under chapter 18.57A RCW as an osteopathic physician assistant;

(F) An individual licensed under chapter 18.79 RCW as an advanced registered nurse practitioner; and

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) and authorized to monitor COVID-19 symptomatic or positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

(H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner. The MA-C or MA-R may assist their supervisor or another licensed health care practitioner in performing the respiratory exam via telemedicine while the MA-C or MA-R is on-site.

(ii) Guarantee that the occupants have ready access to telephone service to summon emergency care.

(iii) Ensure that occupants in isolation have access to advanced life support emergency medical services within twenty minutes, and an emergency room with ventilator capability within one hour.

(iv) Provide occupants with information about paid leave and workers compensation.

(v) Permit access to other medical professionals who offer health care services in addition to those licensed health care professional required under (b) (i) (A) through (H) of this subsection.

(vi) The operator must provide food and water and monitor for safety occupants in isolation.

(vii) If the operator uses other isolation facilities, such as hotels, county or state run isolation centers, the operator must verify that the isolation facility complies with requirements of this section prior to transporting workers to the facility.

(3) The operator must revise the facility's written TWH management plan to include implementation of the requirements in this section, as applicable.

(a) The plan must identify a single point of contact at the TWH for COVID-19 related issues.

(b) The operator must share the plan with all occupants on the first day the plan is operational or the first day the occupant arrives at the TWH. The operator must designate a person that will ensure all occupants are aware of all aspects of the plan and be available to answer questions.

(c) If changes are made to the TWH management plan, the operator must submit the revised TWH management plan to the state department of health within ten calendar days of the effective date of this section.

(d) Failure to submit a revised plan or properly implement the requirements of this section may result in administrative action, including license suspension or fines.

(4) Consistent with WAC 246-358-040(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(5) In the event that any provisions of this section are in conflict with other regulations in this chapter, such other regulation shall be deemed superseded for purposes of this chapter.

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**WSR 21-03-013**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 8, 2021, 9:56 a.m., effective January 8, 2021, 9:56 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 296-307 WAC, Temporary worker housing, the department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed a second emergency rule on September 10, 2020, WSR 20-19-048 and 20-19-049, to protect occupants from COVID-19 hazards in licensed temporary worker housing.

This emergency rule continues the requirements adopted in the first and second emergency rule. This emergency rule requires operators to: (1) Educate occupants in a language or languages understood by the occupants on COVID-19; (2) provide occupants cloth face coverings; (3) ensure physical distancing of occupants when at housing sites, which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities; (4) with the exception of group shelters, prohibit the use of the top of bunk beds; (5) ensure frequent cleaning and disinfecting of surfaces; (6) identify and isolate occupants with suspect and confirmed positive cases; (7) ensure isolation requirements are met, including monitoring of occupants in isolation by health care professionals and verification that outside isolation facilities meet the isolation requirements before transporting workers to the facility; (8) report to L&I division of occupational safety and health within twenty-four hours whenever symptomatic or COVID-19 positive workers are placed in isolation; and (9) ensure any changes made to the revised temporary worker housing management plan are submitted to DOH.

This emergency rule will continue to include an option for group shelters. A group shelter is where a cohort of up to fifteen occupants stay together and separated from others for housing, work, and transportation. The maximum number of occupants, fifteen, will not change. All dwelling units, facilities, and services must be only used by the group shelter members. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements. Under the group shelter options, both the top and bottom bunk of bunk beds may be used, although the occupants must sleep head to toe.

In addition, this emergency rule also: (a) Moves ventilation requirements to its own section; (b) specifies requirements for mechanical ventilation systems including the use of MERV13 filters or the highest supported, maximizing outdoor air intake, and maintaining maintenance logs and other documentation; and (c) adds a medical assistant-certified and medical assistant-registered to the list of health care professionals who may take vital signs of employees in isolation. Also, L&I added two notes that are guidance only.

Both L&I and DOH each filed a Preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-10-050, regarding permanent amendments to the existing permanent rules to address haz-

ards from COVID-19 or other outbreaks of airborne infectious diseases. Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation requirements, and isolation requirements during an outbreak.

Citation of Rules Affected by this Order: New WAC 296-307-16102.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.240.

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

Reasons for this Finding: DOH and L&I continue to take action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy, and the amendments transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." Under Proclamation 20-25, agriculture is an essential business and must comply with the social/physical distancing and sanitation requirements of DOH, L&I, and the Centers for Disease Control and Prevention. The existing permanent temporary worker housing rules have specific requirements for the minimum distance between beds that is inconsistent with social/physical distancing requirements requiring emergency rules to, at a minimum, address these requirements. The initial emergency rule was adopted to help prevent the spread of COVID-19. Since the adoption of the first emergency rule, the governor issued Proclamations 20-57 and 20-57.1 addressing workplace and transportation requirements for COVID-19 specific to the agriculture industry. Since the emergency rule was in place, the requirements covered by the rule were not included in the governor's order.

As new information, data, and science become available it is important that DOH and L&I continue to update and immediately amend existing rules to help prevent the spread of COVID-19. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing as we prepare for and begin the 2021 growing season. The governor's Stay Home, Stay Healthy order as amended to the Safe Start and Proclamation 20-57.1 are currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 8, 2021.

Joel Sacks

## OTS-2279.5

NEW SECTION

**WAC 296-307-16102 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure.** (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from 2019 novel coronavirus (COVID-19) hazards:

(a) Educate occupants and allow entry of community workers:

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing, the use of cloth face coverings, proper respiratory etiquette, and the importance of prompt sanitizing of frequently touched items; common symptoms and risk factors; and what to do if they develop symptoms.

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information.

**Note:** When there is a designated or recognized office at an employer's establishment, all visitors should check in to provide their name and contact information and complete a screening to ensure they are symptom free. To the extent possible, a minimum number of visitors should be allowed at a time and 6-foot social distancing should be maintained. Personal protective equipment must be worn at all times.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to secure medical treatment - all in a language commonly understood by the occupants.

(c) The operator must provide at no cost an adequate number of cloth face coverings for occupants to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules. The operator must instruct occupants to use cloth face coverings in public and at housing as recommended in the public health orders.

(d) Develop and implement a physical distancing plan for maintaining six feet of separation between occupants when at housing sites which includes all cooking, eating, bathing, washing, recreational, and sleeping facilities.

(i) In order to facilitate social distancing, the operator must provide additional temporary cooking, bathing, washing, and toilet facilities.

(ii) Sleeping quarters. The operator must ensure:

(A) Beds are spaced at least six feet apart between frames in all directions and arranged so that occupants sleep head to toe; **OR**

(B) Beds are separated by a bed length, floor to near ceiling temporary nonpermeable barrier (e.g., plexiglass, plastic sheeting, etc.) placed perpendicular to wall such that a thirty-six inch minimum aisle exists between the bed and the temporary barrier and occupants sleep head toward wall. The temporary barriers:

(I) Must be made of fire resistant or fire retardant treated material;

(II) Do not impede required egress;

(III) Do not compromise ventilation/air flow; and

(IV) Are cleaned at least daily.

(C) Except as allowed under (f) of this subsection, only the bottom bed of bunk beds may be used.

(iii) The operator must use physical barriers (e.g., plastic shields) for fixtures such as sinks where occupants may come in close contact for short periods of time. Any barriers placed near cooking equipment must be fire retardant.

(iv) The operator must provide additional facilities or services that meet the requirements of this chapter if needed to ensure social distancing in common areas, such as additional refrigeration or portable sinks.

(v) The operator must discourage occupants from visiting buildings or sleeping quarters that are not their assigned living spaces, to minimize potential cross-contamination.

(e) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility/building has a mechanical ventilation system, maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. TWH operators must have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation or the percentage of outside air that circulates into the system and verify the following:

(A) Make sure all HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with a minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) Maximize the HVAC system's outdoor air intake. Make sure exhaust air is not pulled back into the building through HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions such as wildfire smoke.

(D) Use appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) when changing filters.

(E) Maintenance checks must occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks must occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turn on mechanical ventilation systems (i.e., mini split system, window units, HVAC) or open windows whenever the TWH facility or building is occupied.



(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.

(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

**Note:** Consider using portable high-efficiency particulate air (HEPA) fan/filtration systems to increase clean air, especially in higher-risk areas.

(f) Group shelters. If the TWH is set up to accommodate a group shelter and a group shelter is formed, the operator must designate which occupants are part of each group and maintain the same occupants in each group shelter. "Group shelter" means a dwelling unit or cluster of dwelling units with sleeping facilities for up to fifteen occupants that includes toilet facilities, bathing facilities and, if applicable, food preparation and cooking facilities. All facilities and services within the group shelter are for the sole use of the occupants of the group shelter and must be marked as such.

(i) Sleeping quarters. In group shelters, the operator must:

(A) Arrange beds so that the heads of beds are as far apart as possible - at least six feet apart. Both beds of bunk beds may be used. Bunk bed occupants must sleep head to toe.

(B) Maintain egress requirements.

(C) Provide all occupants suitable storage space including personal storage space for clothing and personal articles. Ensure all or a portion of the space is enclosed and lockable.

(ii) Common areas. In group shelters, the operator must instruct occupants to maintain physical distancing and wear cloth face coverings whenever possible.

(iii) Multiple group shelters. More than one group shelter may share facilities and common areas as long as:

(A) The facilities and areas are used by only one group shelter at a time;

(B) Adequate time is given to each group to accomplish daily activities;

(C) All high contact surfaces are sanitized between each group; and

(D) Schedules are shared and conspicuously posted.

(iv) Transportation and work. To utilize the group shelter option, the operator must ensure that members of each shelter group stay together and separate from other groups, occupants, or workers, including during transportation and work. If the operator is not the employer, the operator must ensure the employer will follow the group shelter requirements.

(v) The operator must encourage each group shelter to designate one or two occupants to run errands if items cannot be provided by the operator. These designated occupants can be the main contact for procuring groceries or other items for the group shelter in order to limit public contact and potential disease transmission.

(vi) The operator must quarantine or test all members of a group shelter if a member of the group shelter develops symptoms of COVID-19, as directed by the local health agency.

(g) Clean and disinfect surfaces. The operator must:

(i) Clean and disinfect common areas on a regular schedule, at least as frequent as required by this chapter.

(ii) Wipe down and disinfect surfaces that are touched by multiple individuals at least daily using an EPA-approved disinfectant or diluted bleach solution.

(iii) Provide adequate supplies and instructions to occupants for cleaning and disinfecting of living spaces of dwelling units, family shelters, and group shelters. Occupants must be able to clean and disinfect frequent touched surfaces, bathroom, and cooking areas as needed. Chemicals used for cleaning and disinfecting must be labeled as to its intended purpose in a language commonly understood by the occupants using labeling requirements in chapter 296-901 WAC, Globally harmonized system for hazard communication.

(iv) Ensure adequate supplies of single-use soap and paper towels at all sinks to allow for frequent handwashing. Portable handwashing stations or hand sanitizer may be provided in addition to required facilities.

(v) Provide training in a language or languages understood by contracted workers regarding COVID-19 cleaning, disinfecting, and sanitizing protocols for any contracted cleaning labor prior to their arrival to clean temporary worker housing. In addition to any personal protective equipment required under L&I rules to perform the cleaning activities, provide and require that those contracted workers use disposable gloves and wear cloth face coverings covering nose and mouth while working at the site.

(vi) Clean and disinfect areas where occupants with suspect COVID-19 exposure have been according to CDC guidelines and before the space is used by others.

(2) Isolation.

(a) The operator must develop and implement a plan to identify and isolate sick occupants, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, and loss of taste or smell. The operator must provide each occupant with a thermometer or must designate and train a person to use a "no touch" or "no contact" thermometer to check all occupants' temperatures daily. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

(ii) Upon identification of suspect COVID-19 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Isolate suspect COVID-19 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(iv) Confirmed COVID-19 cases must be isolated and only housed with other confirmed cases and must have separate bathroom, cooking and eating facilities from people who have not been diagnosed with

COVID-19. If the confirmed occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(v) The operator must report COVID-19-symptomatic or positive TWH occupants in isolation to the division of occupational safety and health (DOSH) within twenty-four hours after placement.

**Note:** This notification can be made by telephone to the department's toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for COVID-19-symptomatic or positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits employees twice per day, at the employer's expense. At a minimum, the health care professional must assess symptoms, vital signs, and oxygen saturation via pulse oximetry, and perform a respiratory exam. For purposes of this subsection, a licensed health care professional means:

(A) An individual licensed under chapter 18.79 RCW as a registered nurse;

(B) An individual licensed under chapter 18.71 RCW as a physician;

(C) An individual licensed under chapter 18.71A RCW as a physician assistant;

(D) An individual licensed under chapter 18.57 RCW as an osteopathic physician;

(E) An individual licensed under chapter 18.57A RCW as an osteopathic physician assistant;

(F) An individual licensed under chapter 18.79 RCW as an advanced registered nurse practitioner; and

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) if authorized to monitor COVID-19 symptomatic or positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

(H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner. The MA-C or MA-R may assist their supervisor or another licensed health care practitioner in performing the respiratory exam via telemedicine while the MA-C or MA-R is on-site.

(ii) Guarantee that the occupants have ready access to telephone service to summon emergency care.

(iii) Ensure that occupants in isolation have access to advanced life support emergency medical services within twenty minutes, and an emergency room with ventilator capability within one hour.

(iv) Provide occupants with information about paid leave and workers compensation.

(v) Permit access to other medical professionals who offer health care services in addition to those licensed health care professionals required under (b) (i) (A) through (H) of this subsection.

(vi) The operator must provide food and water and monitor for safety occupants in isolation.

(vii) If the operator uses other isolation facilities, such as hotels, county or state run isolation centers, the operator must verify that the isolation facility complies with requirements of this section prior to transporting workers to the facility.

(3) The operator must revise the facility's written TWH management plan to include implementation of the requirements in this section, as applicable.

(a) The plan must identify a single point of contact at the TWH for COVID-19 related issues.

(b) The operator must share the plan with all occupants on the first day the plan is operational or the first day the occupant arrives at the TWH. The operator must designate a person that will ensure all occupants are aware of all aspects of the plan and be available to answer questions.

(c) If changes are made to the TWH management plan, the operator must submit the revised TWH management plan to the state department of health within ten calendar days of the effective date of this section.

(d) Failure to submit a revised plan or properly implement the requirements of this section may result in administrative action, including license suspension or fines.

(4) Consistent with WAC 296-307-16120(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(5) In the event that any provisions of this section are in conflict with other regulations in this chapter, such other regulation shall be deemed superseded for purposes of this chapter.

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**WSR 21-03-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed January 8, 2021, 11:29 a.m., effective January 8, 2021, 11:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is adopting WAC 388-437-0015 Good cause extension of Social Security number (SSN) requirement for basic food applicants during COVID-19, to comply with approval from the United States Department of Agriculture, Food and Nutrition Service (FNS) to extend the amount of time good cause for failure to provide the SSN is allowed during the COVID-19 pandemic. The department is also amending WAC 388-476-0005 Social Security number requirements, to align rule language more closely with federal regulations governing the Supplemental Nutrition Assistance Program.

The department filed a CR-101 Preproposal statement of inquiry for WAC 388-437-0015 as WSR 21-03-009 on January 8, 2021, and a CR-101 Preproposal statement of inquiry for WAC 388-476-0005 as WSR 20-22-079 on November 3, 2020, to begin the permanent rule-making process.

Citation of Rules Affected by this Order: New WAC 388-437-0015; and amending WAC 388-476-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

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: Under current federal law, all applicants and recipients must have a valid Social Security number to receive basic food benefits. For those who do not yet have a number, they are given the month of application and the month following to provide this information. Due to the conditions of the COVID-19 pandemic, FNS approved a waiver allowing the good cause period to be extended to the month of application plus four additional months. This filing aligns rule with this waiver approval, which supports access to basic food benefits.

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: January 8, 2021.

Katherine I. Vasquez  
Rules Coordinator

SHS-4820.2

NEW SECTION

**WAC 388-437-0015 Good cause extension of Social Security number (SSN) requirement for basic food applicants during COVID-19.** Applicants for food benefits must provide an SSN under WAC 388-476-0005(1) in order to qualify. For those who do not have an SSN, they must apply for one and provide it to DSHS when issued.

(1) For applicants with an initial application date of March 1, 2020, or later, who have established good cause for failure to provide an SSN, the good cause period is extended for three months, in addition to the application month and the next month under WAC 388-476-0005 (5)(a), for a total of up to five months.

(2) To continue receiving benefits beyond the five month good cause period, the applicant must show good cause for failure to apply for an SSN on a monthly basis in accordance with WAC 388-476-0005 (5)(b).

(3) Adjustments under subsection (1) will continue each month until the U.S. department of agriculture, food and nutrition service no longer approves these adjustments.

[]

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

**WAC 388-476-0005 Social Security number requirements.** (1) With certain exceptions, each person who applies for or receives cash or food assistance benefits must provide to the department a Social Security number (SSN), or numbers if more than one has been issued. For SSN requirements for immigrants, see WAC 388-424-0009.

(2) If the person is unable to provide the SSN, either because it is not known or has not been issued, the person must:

(a) Apply for the SSN;

(b) Provide proof that the SSN has been applied for; and

(c) Provide the SSN when it is received.

(3) Assistance will not be delayed, denied or terminated pending the issuance of an SSN by the Social Security Administration. However, a person who does not comply with these requirements is not eligible for assistance.

(4) For cash and food assistance benefits, a person cannot be disqualified from receiving benefits for refusing to apply for or supply an SSN based on religious grounds.

(5) For food assistance programs:

(a) A person can receive benefits for the month of application and the following month if the person attempted to apply for the SSN and made every effort to provide the needed information to the Social Security Administration.

(b) In order for a person to receive benefits after the time period provided in subsection (5)(a), good cause for failure to apply for the SSN must be shown monthly.

(c) If a person is unable to provide proof of application for a SSN for a newborn:

(i) The newborn can receive Basic Food with the household while effort is being made to get the SSN.

(ii) For the newborn to continue receiving Basic Food benefits; the household must provide proof of application for SSN or the SSN for the newborn, at the next recertification, or within six months following the month the baby is born, whichever is later.

(6) There is no SSN requirement for the following programs:

(a) The consolidated emergency assistance program; and

(b) The refugee cash assistance program.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-476-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-476-0005, filed 4/27/12, effective 6/1/12. Statutory Authority: RCW 74.08.090, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and Title 7, 273.6 C.F.R. WSR 10-17-101, § 388-476-0005, filed 8/17/10, effective 9/17/10. Statutory Authority: RCW 74.08.090. WSR 03-20-061, § 388-476-0005, filed 9/26/03, effective 10/27/03. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-17-025, § 388-476-0005, filed 8/10/99, effective 10/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-476-0005, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0530.]

**WSR 21-03-016**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed January 8, 2021, 12:36 p.m., effective January 8, 2021, 12:36 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 74.13.031 and 74.15.030.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. WAC 110-145-1305 was adopted under WSR 20-19-052 and 20-11-014 on September 10 and May 12, 2020, respectively, to allow for the expedient delivery of life saving services to a highly vulnerable population in Washington state, homeless youth who have recently been diagnosed with, infected by, or who came into contact with COVID-19. Circumstances changed under Proclamations 20-25 through 20-25.9 "Safe Start - Stay Health[y]" county-by-county phased reopening, but conditions prompting the state of emergency declaration still exist and justify the need for WAC 110-145-1305 to remain in effect.

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

Number of Sections Adopted at the Request of a 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 0, Repealed 0.

Date Adopted: January 8, 2021.

Brenda Villarreal  
Rules Coordinator



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

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

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

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

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

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

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

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

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

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

"Chapter" means chapter 110-145 WAC.

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

(a) Under eighteen years old;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"DOH" means the department of health.

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

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

"FBI" means the Federal Bureau of Investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

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

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

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

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been is-

sued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-145-1305, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-145-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1305, filed 12/11/14, effective 1/11/15.]

**WSR 21-03-028**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

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

Effective Date of Rule: Immediately upon filing.

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

Under the emergency rule:

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

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

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

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

Reasons for this Finding: This emergency rule making supersedes the emergency rule adopted on December 31, 2020, filed as WSR 21-02-047, as conditions have changed due to a new governor's proclamation being in effect (Proclamation 20-25.12).

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

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

on the health care system. As the regions fall along county lines and are designed based on the available health care services in the area, there is a strong connection to the metrics for COVID-19 hospitalizations, case data, and general mobility of individuals.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees. In setting the phases and conditions for businesses, state-wide and county level data was considered. In setting the conditions for businesses under the "Healthy Washington - Roadmap to Recovery" order, the increase in cases and hospitalizations, evidence of how the virus is spread, and factors that increase the risk for person-to-person COVID-19 transmission was [were] considered. Under this order, the phases and conditions for business in each region are based on consideration of four metrics - two metrics that measure community disease levels and two that measure health system capacity.

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

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

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

Date Adopted: January 12, 2021.

Joel Sacks  
Director

### OTS-2313.3

#### NEW SECTION

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

(2) Employers must comply with all conditions for operation required by emergency proclamation issued under RCW 43.06.220, including Safe Start phased reopening requirements for all business and any industry specific requirements.

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

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**WSR 21-03-033**  
**RECISSION OF EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 12, 2021, 4:43 p.m., effective January 12, 2021, 4:43 p.m.]

The department of labor and industries is rescinding the CR-103E emergency rules, pertaining to WAC 296-800-14035 related to prohibited business activities and compliance with conditions for operations under emergency proclamations and their amendments issued under RCW 43.06.220, filed on January 12, 2021, and published under WSR 21-03-028. The emergency rule was effective upon filing.

We are rescinding this emergency rule immediately upon filing of this memo in order to update the title of [the] current governor's proclamation. We are separately submitting an updated emergency rule.

Please contact Tracy West at 360-902-6954 or Tracy.West@Lni.wa.gov if you have any questions.

Tracy West  
Rules Coordinator



**WSR 21-03-034**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 12, 2021, 4:44 p.m., effective January 12, 2021, 4:44 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Under the emergency rule:

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

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

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

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

Reasons for this Finding: This emergency rule making supersedes the emergency rule adopted on December 31, 2020, filed as WSR 21-02-047, as conditions have changed due to a new Governor's Proclamation being in effect (Proclamation 20-25.12).

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

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

on the health care system. As the regions fall along county lines and are designed based on the available health care services in the area, there is a strong connection to the metrics for COVID-19 hospitalizations, case data, and general mobility of individuals.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees. In setting the phases and conditions for businesses, state-wide and county level data was considered. In setting the conditions for businesses under the "Healthy Washington - Roadmap to Recovery" order, the increase in cases and hospitalizations, evidence of how the virus is spread, and factors that increase the risk for person-to-person COVID-19 transmission was [were] considered. Under this order, the phases and conditions for business in each region are based on consideration of four metrics - two metrics that measure community disease levels and two that measure health system capacity.

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

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

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

Date Adopted: January 12, 2021.

Joel Sacks  
Director

#### OTS-2313.4

#### NEW SECTION

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

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

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

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**WSR 21-03-039**  
**EMERGENCY RULES**  
**PIERCE COLLEGE**

[Filed January 13, 2021, 5:55 p.m., effective January 13, 2021, 5:55 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Pierce College is utilizing the WAC emergency rule to update the student conduct code, chapter 132K-135 WAC, in order to be in compliance with the United States Department of Education (DOE) federal rule regarding Title IX. In addition, Pierce College has filed the CR-101 to engage with rule making and update the student conduct code on a permanent basis.

Citation of Rules Affected by this Order: New WAC 132K-135-300, 132K-135-310, 132K-135-320, 132K-135-330, 132K-135-340, 132K-135-350, 132K-135-360, 132K-135-370 and 132K-135-380; amending WAC 132K-135-020, 132K-135-040, and 132K-135-070.

Statutory Authority for Adoption: RCW 34.05.350.

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: DOE requires institutions of higher education to be in compliance with Title IX and make appropriate policy and procedure changes under federal rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 3, 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 0, Repealed 0.

Date Adopted: January 13, 2021.

Michele Johnson  
Chancellor

**OTS-2503.1**

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

**WAC 132K-135-020 Authority.** The board, acting pursuant to RCW 28B.50.140(14), delegates to the chancellor of the college the authority to administer disciplinary action. The chancellor is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of learning and student success or their designee. The student

conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-020, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

**WAC 132K-135-040 Statement of jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises (~~(, to conduct that occurs)~~);

(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 and/or visitors or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students 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.

(3) Students are responsible for their conduct from the time of notification of acceptance at the college through the actual receipt of a degree or certificate, 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. 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 that occurs off-campus.

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-040, filed 6/20/17, effective 7/21/17.]

AMENDATORY SECTION (Amending WSR 17-13-102, filed 6/20/17, effective 7/21/17)

**WAC 132K-135-070 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

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

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

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in

completing an academic assignment. Plagiarism may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

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

(d) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

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

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

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

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

(3) **Obstruction or disruption.** Obstruction or disruption of:

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

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

(4) **Assault, intimidation, harassment.** Assault, 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.

(5) **Bullying is severe or pervasive physical or verbal (written or oral) abuse.**

(6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, email, instant messaging, online 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.

(7) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community, visitors, or organization; or

(d) Possession of such property or money after it has been stolen.

(8) **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 duties, including failure to properly identify oneself to such a person when requested to do so.

(9) **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 the student's 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 or chancellor 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.

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

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

(11) **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 college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products.

(12) **Lewd conduct.** Conduct which is lewd, obscene, or indecent.

(13) **Disorderly conduct.** Conduct which disrupts campus operations or the educational, social, or housing programs, or assisting or encouraging another person to engage in such conduct.

(14) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community and/or visitors because of 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.

(15) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX defined in the supplemental procedures to this code. See WAC 132K-135-300.

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

~~(i) Deny or limit~~ (~~(, and that does deny or limit, based on sex,))~~ the ability of a student to participate in or benefit from the college's educational (~~(, social, or housing programs or that))~~ 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~~ (~~(college))~~ campus community members (~~(and/or visitors))~~.

(b) **Sexual intimidation.** The term "sexual intimidation" 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 sexual harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, intimate partner violence, and stalking are all types of sexual violence.

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

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

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

~~(iv) Intimate partner violence is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.~~

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

~~(vi) **Consent**~~ )). 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.

(ii) 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.

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

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) 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.

(vi) 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.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For the 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 ((action)) conduct indicating freely given agreement to have sexual intercourse or sexual contact.

((A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.)) A person cannot consent if they are unable to understand what is happening or are 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 activity).

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 sexual activity)) conduct.

(16) **Harassment.** Unwelcome and offensive conduct including verbal, nonverbal, or physical conduct, that is directed at a person be-

cause 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, social, or housing programs or that creates an intimidating, hostile, or offensive environment for other college community members and/or visitors. Harassing conduct may include, but is not limited to, physical, verbal, written, social media, and electronic communications.

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."

(17) **Retaliation.** Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal 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. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

(18) **Theft or 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 student computing resources policy.

(19) **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.

(20) **Safety violations.** Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community and/or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(21) **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.

(22) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

[Statutory Authority: RCW 28B.50.140(13). WSR 17-13-102, § 132K-135-070, filed 6/20/17, effective 7/21/17.]

#### SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

##### NEW SECTION

**WAC 132K-135-300 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 132K-135-020 through 132K-135-250, these supplemental procedures shall take precedence.

[]

##### NEW SECTION

**WAC 132K-135-310 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive

that it effectively denies a person equal access to the college's educational programs or activities, or employment.

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

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

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

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

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

[ ]

#### NEW SECTION

**WAC 132K-135-320 Title IX jurisdiction.** (1) The 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 occurred. 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 132K-135 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 132K-135-330 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (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 132K-135-340 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 132K-135-150. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

[]

NEW SECTION

**WAC 132K-135-350 Rights of parties.** (1) The college's student conduct procedures, chapter 132K-135 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 132K-135-360 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

(6) 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 132K-135-370 Initial order.** (1) In addition to complying with WAC 132K-135-170, 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 132K-135-380 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132K-135-180.

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

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

[]



**WSR 21-03-047**  
**EMERGENCY RULES**  
**BUILDING CODE COUNCIL**

[Filed January 14, 2021, 2:13 p.m., effective January 14, 2021, 2:13 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This is an extension of WSR 20-19-094. Formal rule making is in progress. The effective date has been extended from February 1, 2021, to July 1, 2021, to address the ongoing impact of COVID-19.

Citation of Rules Affected by this Order: Amending 5.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

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: Implementing code changes on February 1, 2021, does not provide enough time to adjust to the new realities for code training due to COVID-19. This delay will benefit building design professionals, contractors, and regulators at the local level who are now faced with steep reductions in revenue as well as strained and, in some jurisdictions, reduced staffing levels because of the actions taken to address the global health crisis.

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 5, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 5, Repealed 0.

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

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

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

Date Adopted: January 8, 2021.

Diane Glenn  
Chair

**OTS-2642.2**

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

**WAC 51-50-008 Implementation.** The *International Building Code* adopted under chapter 51-50 WAC shall become effective in all counties and cities of this state on July 1, ((2020)) 2021.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-008, filed 12/12/19, effective 7/1/20; WSR 16-03-064, §

51-50-008, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-008, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-008, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-008, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-008, filed 12/17/03, effective 7/1/04.]

## OTS-2643.2

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

**WAC 51-51-008 Implementation.** The International Residential Code adopted by chapter 51-51 WAC shall become effective in all counties and cities of this state on July 1, (~~2020~~) 2021.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-023, § 51-51-008, filed 1/6/20, effective 7/1/20; WSR 16-03-025, § 51-51-008, filed 1/11/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-008, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-098, § 51-51-008, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-008, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-008, filed 12/17/03, effective 7/1/04.]

## OTS-2644.2

AMENDATORY SECTION (Amending WSR 20-03-041, filed 1/8/20, effective 7/1/20)

**WAC 51-52-008 Implementation.** The International Mechanical Code adopted by chapter 51-52 WAC shall become effective in all counties and cities of this state on July 1, (~~2020~~) 2021.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-03-041, § 51-52-008, filed 1/8/20, effective 7/1/20; WSR 16-01-148, § 51-52-008, filed 12/21/15, effective 7/1/16. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-053, § 51-52-008, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.190, 19.27.074, 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 10-03-099, § 51-52-008, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-092, § 51-52-008, filed 12/19/06, effective 7/1/07. Statuto-

ry Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-104, § 51-52-008, filed 12/17/03, effective 7/1/04.]

## OTS-2645.2

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

**WAC 51-54A-008 Implementation.** The *International Fire Code* adopted by chapter 51-54A WAC shall become effective in all counties and cities of this state on July 1, ((2020)) 2021.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-008, filed 11/27/19, effective 7/1/20; WSR 16-03-055, § 51-54A-008, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-008, filed 2/1/13, effective 7/1/13.]

## OTS-2646.2

AMENDATORY SECTION (Amending WSR 20-02-072, filed 12/26/19, effective 7/1/20)

**WAC 51-56-008 Implementation.** The Uniform Plumbing Code adopted by chapter 51-56 WAC shall become effective in all counties and cities of this state on July 1, ((2020)) 2021.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-02-072, § 51-56-008, filed 12/26/19, effective 7/1/20; WSR 16-02-044, § 51-56-008, filed 12/30/15, effective 7/1/16. Statutory Authority: RCW 19.27.074 and 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-054, § 51-56-008, filed 2/1/13, effective 7/1/13; WSR 10-03-101, § 51-56-008, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020 and chapters 19.27 and 34.05 RCW. WSR 07-01-094, § 51-56-008, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-110, § 51-56-008, filed 12/17/03, effective 7/1/04; WSR 02-01-114, § 51-56-008, filed 12/18/01, effective 7/1/02.]

**WSR 21-03-051**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-05—Filed January 14, 2021, 3:24 p.m., effective January 19, 2021]

Effective Date of Rule: January 19, 2021.

Purpose: The purpose of this emergency rule is to close recreational salmon fishing in Marine Area 10.

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

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

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

Reasons for this Finding: This emergency rule is necessary because anglers have reached nearly half (two hundred eighty-two of five hundred seventy-nine) of this fishery's allowed natural origin Chinook encounter guideline within the first ten days of the season. Washington department of fish and wildlife, in consultation with fishing advisors for Puget Sound, has decided to temporarily close this fishery until later in the season in order to preserve future fishing opportunities and to limit impacts to natural origin Chinook. 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: January 14, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000Z Puget Sound salmon—Saltwater seasons and daily limits.** Effective January 19, 2021, until further notice, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 10 shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

**Catch Record Card Area 10:** Salmon: Closed.

[]

**WSR 21-03-058**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 21-06—Filed January 15, 2021, 1:49 p.m., effective January 18, 2021]

Effective Date of Rule: January 18, 2021.

Purpose: The purpose of this emergency rule is to close commercial red sea urchin harvest in Management District 3.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000Z; and amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule closes harvest of red sea urchins in sea urchin Management District 3 because the quota for red sea urchin in this area has been reached. This closure is needed to fulfill obligations of state and tribal comanager agreements. 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: January 15, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-75000A Commercial sea urchin fishery.** Effective January 18, 2021, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1; District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23A; District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude; and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude; District 6; and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(3) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 1; District 2; and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(4) The maximum cumulative landings for green sea urchins and red sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

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#### REPEALER

The following section of Washington Administrative Code is repealed, effective January 18, 2021:

WAC 220-340-75000Z Commercial sea urchin fishery. (20-249)

## WSR 21-03-073

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

[Filed January 19, 2021, 1:14 p.m., effective January 19, 2021, 1:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-310-710 Percutaneous coronary intervention (PCI) services concurrent review cycles. The department of health (department) is adopting an emergency rule to extend deadlines for PCI services concurrent review cycle. This existing rule sets the deadlines for each step of the concurrent review process based on identified need for PCI services in Washington state. The amendments in this emergency rule are necessary due to the coronavirus disease 2019 (COVID-19) pandemic response.

Citation of Rules Affected by this Order: Amending WAC 246-310-710.

Statutory Authority for Adoption: RCW 70.38.135.

Other Authority: None.

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

Reasons for this Finding: The amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare. This rule is necessary to amend the specific deadlines in rule for submitting and reviewing applications for PCI services to give applicants time and capacity to submit quality applications that satisfy regulatory requirements and identified community need. The report that these systems and facilities rely on to determine their ability to fill need and request review was impacted by technology challenges that occurred because of the COVID-19 response updates. The resources needed to correct the output have been limited due to the more immediate need for COVID-19 response support. Changing the deadlines in rule will create the flexibility needed to produce the needed materials and preserve the time needed for complete applications in a time when the applicants are also strained in their own COVID-19 responses resources. This change will limit the impact on resources currently needed in the communities. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. Extending the next PCI services start cycle will allow time for applicants to receive and respond to identified need for services as well as responding to current needs.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: January 19, 2021.

Jessica Todorovich  
 Chief of Staff  
 for Umair A. Shah, MD, MPH  
 Secretary

**OTS-2837.1**

AMENDATORY SECTION (Amending WSR 09-01-113, filed 12/19/08, effective 12/19/08)

**WAC 246-310-710 Concurrent review.** The department shall review new adult elective percutaneous coronary intervention (PCI) services using the concurrent review cycle according to the following table:

**Concurrent Review Cycle:**

<b>Application Submission Period</b>	Letters of Intent Due	First working day through last working day of ( <del>January</del> ) <u>February</u> of each year.	
	Receipt of Initial Application	First working day through last working day of ( <del>February</del> ) <u>March</u> of each year.	
	End of Screening Period	Last working day of ( <del>March</del> ) <u>April</u> of each year.	
	Applicant Response	Last working day of ( <del>April</del> ) <u>May</u> of each year.	
<b>Department Action</b>	Beginning of Review Preparation	( <del>May</del> ) <u>June</u> 1 through ( <del>May</del> ) <u>June</u> 15	
<b>Application Review Period</b>	Public Comment Period (includes public hearing if requested)	60-Day Public Comment Period	Begins ( <del>May</del> ) <u>June</u> 16 of each year or the first working day after ( <del>May</del> ) <u>June</u> 16.
	Rebuttal Period	30-Day Rebuttal period	Applicant and affected party response to public comment.
	Ex parte Period	45-Day Ex parte period	Department evaluation and decision.

(1) If the department is unable to meet the deadline for making a decision on the application, it will notify applicants fifteen days prior to the scheduled decision date. In that event, the department will establish a new decision date.

(2) The department may not accept new applications for a planning area if there are any pending applications in that planning area filed under a previous concurrent review cycle, or applications submitted prior to the effective date of these rules that affect any of the new planning areas, unless the department has not made a decision on the

pending applications within the review timelines of nine months for a concurrent review and six months for a regular review.

(3) If the department determines that an application does not compete with another application, it may convert the review of an application that was initially submitted under a concurrent review cycle to a regular review process.

[Statutory Authority: RCW 70.38.128. WSR 09-01-113, § 246-310-710, filed 12/19/08, effective 12/19/08.]

**WSR 21-03-076**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed January 19, 2021, 2:58 p.m., effective January 19, 2021, 2:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In 2019 the legislature passed ESHB 1817, ensuring a skilled and trained workforce in high hazard facilities, codified under chapter 49.80 RCW, requires owners of petroleum refining or petrochemical manufacturing facilities use a skilled and trained workforce when contracting for construction, alteration, demolition, installation, repair, or maintenance work. A skilled and trained workforce means a workforce where all the workers are either registered apprentices in a Washington state apprenticeship and training council (WSATC) approved apprenticeship program or skilled journeypersons as defined by the statute. The law also requires a percentage of skilled journeypersons be graduates of a WSATC approved apprenticeship program beginning January 1, 2021. The percentage starts at twenty percent in 2021 and increases each year and caps out at sixty percent in 2024.

RCW 49.80.050 requires the department of labor and industries (L&I), in consultation with WSATC, prioritize consideration of new apprenticeship programs for workers in high hazard facilities and for the WSATC to make a decision within six months of the acceptance of a completed application for consideration of a new state registered apprenticeship program for workers in high hazard facilities. Several employers turned in apprenticeship program applications, which garnered objections. The WSATC made decisions to send each program receiving objections to the adjudication process through the WSATC or the office of administrative hearings for the issuance of initial orders. Initial orders may be reviewed by the WSATC either by its own motion or upon petition from party, with final orders issued by the WSATC. However, there have been delays in the adjudication process due to COVID-19 and no initial orders were issued in 2020, which has delayed the issuance of final orders. Under the current rule, WAC 296-05-008, the approval or disapproval of programs can only occur at regularly scheduled quarterly meetings. Not only does this delay the decision for programs and make it more difficult to comply with the law, but also the WSATC may not have enough time at the regularly scheduled meeting to conduct all needed business and address these adjudicated matters.

In order to address the problem, L&I with approval of the WSATC is adopting an emergency rule to allow for the special meetings to consider the record and enter a final order following an adjudication process. Specifically, the emergency rule language amends WAC 296-05-008 as follows:

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the record and enters a final order following an adjudication conducted under WAC 296-05-008(6).

Citation of Rules Affected by this Order: Amending WAC 296-05-008.

Statutory Authority for Adoption: Chapter 49.04 RCW.

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

Reasons for this Finding: Multiple new apprenticeship program applications were submitted following the adoption of 2019's ESHB 1817. While the legislation had a phased implementation schedule and contemplated there would be new applications for apprenticeship programs for employers with workers in high hazard facilities, the COVID-19 delays in the adjudication process have impacted the issuance of initial orders for those programs in the adjudication process. The rule limitation on special meeting will cause further delays in the ability to issue final orders. This restriction on when the WSATC can consider the orders and issue final orders creates uncertainty for employers with applications in the adjudication process, their employees, and the refineries that contract with them. This has the potential to result in temporary layoffs for contractors and challenges with scheduling maintenance activities at refineries. In addition, if the WSATC does not have enough time at the regularly scheduled meeting to conduct all needed business, the ability of the WSATC to perform their statutory mandated activities to oversee apprentice programs is impacted. As such, observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. Special meetings for approval/disapproval of programs will only be used in conjunction with the adjudication process.

The department is also filing a Preproposal statement of inquiry (CR-101) to initiate permanent rule making.

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

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

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

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

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

Date Adopted: January 19, 2021.

Joel Sacks  
Director

**OTS-2793.1**

AMENDATORY SECTION (Amending WSR 18-17-149, filed 8/21/18, effective 10/10/18)

**WAC 296-05-008 Meetings and adjudicative proceedings.** (1) Regular meetings: Convened on the third Thursday of January, April, July, and October, held at locations within Washington, and open to the general public. Members of the public cannot be required to register their name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(a) Notice of regular meetings: The supervisor must distribute notice not later than thirty calendar days prior to the meeting date to anyone who has requested notice of the regular meetings.

(b) The supervisor must send notices to all WSATC members, including ex officio members, and approved program sponsors.

(c) The following WSATC activities must take place in open public meetings:

(i) All transactions of official business;

(ii) All commitments or promises;

(iii) All collective discussions;

(iv) All collective decisions; and

(v) All council actions.

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting. The approval or disapproval of committee programs, plant programs, or amendments to those programs can also occur at a special meeting when the council considers the record and enters a final order following an adjudication conducted under WAC 296-05-088(6).

(2) Special meetings: Called at the request of the chair or by a majority of the WSATC members, and open to the general public.

(a) Procedure for special meetings: To call a special meeting, the calling members must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the business to be transacted at the meeting, either personally or by mail, at least seven calendar days before the specified date of the meeting, to each member of the WSATC, all approved program sponsors, and those who have requested prior notice of special meetings.

(ii) Waiver: The notice requirements to WSATC members may be waived in writing at or prior to the meeting, but all members must agree to waive notice and file the waiver with the supervisor.

(b) Content of special meetings: The subject matter of the special meeting must not exceed the scope of the written notice. If the WSATC takes action on a matter exceeding the scope of the written notice, the action is not final even if the members waive notice.

(c) Special meetings for rule changes: To call a special meeting to consider rule changes, the WSATC must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the rules to be changed at the meeting, either personally or by mail, at least twenty calendar days before the meeting.

(ii) Waiver: The notice requirements may not be waived for special meetings when rule changes are contemplated.

(3) Registered apprenticeship standards actions: When a party requests specific action from the WSATC related to apprenticeship standards, such request must:

(a) Be in writing; and

(b) Signed by the committee's elected chair and secretary, or by an authorized signer approved by the petitioning sponsor;

(c) Sent to the apprenticeship supervisor at least forty-five days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting.

(4) Other actions: When a party requests specific action or consideration from the WSATC on other issues, such requests must:

(a) Be in writing; and

(b) Sent to the apprenticeship supervisor at least fifteen business days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting unless waived by the supervisor.

(5) Voting: All council members, except ex officio members, appointed by the director of the department of labor and industries are voting members of the council.

(a) A quorum is two-thirds of the WSATC members entitled to vote.

(b) The chair shall establish a standing tie-breaker committee comprised of three WSATC members entitled to vote:

(i) An employer representative;

(ii) An employee representative; and

(iii) A public member.

(c) The apprenticeship supervisor or designee shall act as secretary to the tie-breaker committee and furnish all information necessary for a decision.

(d) In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within thirty calendar days.

(6) Adjudicative proceedings: All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapters 34.05 RCW and 10-08 WAC. The chair (or designee) is the presiding officer for adjudicative proceedings held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication is held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular quarterly meeting unless:

(a) The WSATC upon its own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for review of the initial order.

(7) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within thirty calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal;

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt;

(iii) The respondent parties may file with the director or designee written arguments within thirty calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in 29 C.F.R. 29.8 (b) (5).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

(8) Limitations: Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority person, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

(9) Retroactivity: The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.

[Statutory Authority: RCW 49.04.010 and 19.285.040. WSR 18-17-149, § 296-05-008, filed 8/21/18, effective 10/10/18. Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. WSR 11-11-002, § 296-05-008, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010. WSR 04-10-032, § 296-05-008, filed 4/28/04, effective 6/1/04.]