

WSR 21-07-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-28—Filed March 3, 2021, 4:20 p.m., effective March 5, 2021]

Effective Date of Rule: March 5, 2021.

Purpose: This rule is needed to modify salmon and steelhead seasons and daily limits within the Cowlitz, Kalama, Klickitat and Wind rivers, Salmon Creek, and Drano Lake.

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

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

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

Reasons for this Finding: This rule is needed to modify salmon and steelhead seasons and daily limits within the Cowlitz, Kalama, Klickitat and Wind rivers, Salmon Creek, and Drano Lake for the following reasons:

Cowlitz River, Cispus River and Cowlitz Falls Reservoir: An estimated one thousand eight hundred adult spring Chinook are forecast to return to the Cowlitz River in 2021. A return of this size is insufficient to meet both hatchery broodstock needs and projected harvest for a full season sport fishery.

Modifying spring Chinook fisheries on this river will help meet hatchery program goals.

Drano Lake: The 2021 preseason forecast for Drano Lake (three thousand nine hundred adults) is the third lowest return between 2000 and 2020 (roughly forty-five percent of the recent ten year average). At the same time, expanded hatchery programs intended to increase tribal and sport harvest for spring Chinook and support recovery of Southern Resident Killer Whales are being initiated at Little White Salmon and Carson National Fish Hatcheries, which increases broodstock collection goals. Fishery managers are reducing the adult salmon daily limit and shortening the season to ensure hatchery broodstock goals are achieved at these facilities.

Kalama River: Managers are reducing the adult salmon daily limit to ensure hatchery broodstock goals are achieved. Reducing the adult daily limit will provide continued opportunity for anglers to harvest spring Chinook and help ensure future hatchery returns.

Klickitat River: An estimated one thousand five hundred adult spring Chinook are forecast to return to the Klickitat River in 2021. Managers are reducing the adult salmon daily limit to ensure that hatchery Chinook broodstock goals are achieved. Reducing the adult salmon daily limit will provide continued opportunity for anglers to harvest spring Chinook and help ensure future hatchery returns.

Salmon Creek: Recent changes to hatchery steelhead programs, resulting from the Mitchell Act Biological Opinion, have resulted in the replacement of early returning winter steelhead stocks with local stocks that exhibit a somewhat later run timing. This rule opens hatchery steelhead fishing during the timeframe outlined and provides anglers with additional time to harvest these fish from Salmon Creek.

Wind River: The preseason forecast of adult spring Chinook returning to the Wind River is below what is needed to meet hatchery broodstock goals at Carson National Fish Hatchery. Closing the Wind River will maximize the number of fish available for this hatchery program.

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: March 3, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000W Freshwater exceptions to statewide rules—

Southwest. The provisions of WAC 220-312-030 regarding salmon seasons for Cispus River, Cowlitz River, Cowlitz Falls Reservoir, Kalama River and Klickitat River; steelhead seasons for Salmon Creek; and salmon and steelhead seasons for Drano Lake and Wind River shall be modified during the dates and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

1. **Cispus River (Lewis Co.):** Salmon: Effective March 5, 2021, until further notice: Closed.

2. **Cowlitz River (Cowlitz/Lewis Co.):** Salmon: Effective March 5, 2021, until further notice: Closed.

3. **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Salmon: Effective March 5, 2021, until further notice: Closed.

4. **Drano Lake (Skamania Co.):** Downstream of markers on a point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of the Highway 14 bridge: Salmon and hatchery steelhead:

(a) Effective March 16 through May 5, 2021: Daily limit 2, of which up to 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(b) Effective May 6, 2021, until further notice: Closed.

5. **Kalama River (Cowlitz Co.):** From the mouth to 1,000 feet below fishway at Kalama Falls Hatchery: Salmon: Effective March 5, 2021, until further notice:

Daily limit 6. Up to 1 adults may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

6. **Klickitat River (Klickitat Co.):**

- (a) From the mouth to Fisher Hill Bridge:
 - (i) Effective April 1 through May 28, 2021:
 - (A) Salmon and steelhead: Daily limit 2, of which up to 1 may be an adult salmon. Release wild Chinook.
 - (B) Open Mondays, Wednesdays, and Saturdays, only.
 - (ii) Effective May 29, 2021, until further notice: Salmon: Daily limit 6. Up to 1 adult salmon may be retained. Release wild Chinook.
 - (b) From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery: Salmon: Effective May 29, 2021, until further notice: Daily limit 6. Up to 1 adult salmon may be retained. Release wild Chinook.
7. **Salmon Creek (Clark Co.):** From the mouth to the 182nd Avenue Bridge: Steelhead: Effective March 16 through May 28, 2021: Daily limit 3. Selective Gear Rules in effect, except use of barbed hooks is allowed.
8. **Wind River (Skamania Co.):** from the mouth to 800 yards downstream of Carson National Fish Hatchery: Salmon and steelhead: Effective March 16, 2021, until further notice: Closed.

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

WSR 21-07-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-29—Filed March 3, 2021, 4:22 p.m., effective March 8, 2021]

Effective Date of Rule: March 8, 2021.

Purpose: The purpose of this rule is to close recreational fisheries in coastal streams and systems where wild steelhead escapement goals are unlikely to be met.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000G; and amending WAC 220-312-020.

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

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

Reasons for this Finding: These measures are being taken to protect wild steelhead stocks. Most coastal wild steelhead runs are expected to return below escapement targets as they have the past four seasons and have failed to meet management objectives. In-season information and increased concern for meeting conservation objectives has lead to a closure in coastal rivers where escapement goals are unlikely to be met while maintaining emergency measure[s] already in place for the Hoh and Quillayute systems. 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: March 3, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000H Freshwater exceptions to statewide rules—Coast. Effective March 8, 2021, until further notice the following provisions of WAC 220-312-020, regarding gamefish seasons, steelhead daily limits, fishing from a floating device, and gear and hook restrictions for coastal tributaries, including tributaries of Grays Harbor and Willapa Bay shall be modified as described below. All other

provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

1. **Bear River (Pacific Co.):** Effective immediately through March 31, 2021: All species: Closed.
2. **Bogachiel River (Clallam Co.),** from the mouth to Olympic National Park boundary:
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
3. **Calawah River: (Clallam Co.),** from the mouth to the forks:
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
4. **Chehalis River (Grays Harbor Co.),** from the mouth upstream, including all forks: Effective immediately through April 15, 2021: All species: Closed.
5. **Clearwater River (Jefferson Co.),** from the mouth to Snahapish River: Effective immediately through April 15, 2021: Closed.
6. **Dickey River (Clallam Co.),** from the Olympic National Park boundary upstream to the confluence of the east and west forks:
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
7. **Dickey River, East Fork (Clallam Co.):**
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
8. **Dickey River, West Fork (Clallam Co.):**
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
9. **Elk Creek (Lewis/Pacific Co.):** Effective immediately through March 31, 2021: All species: Closed.
10. **Fork Creek (Pacific Co.),** from Fork Creek Hatchery rack upstream 500 feet at fishing boundary sign: Effective immediately through March 31, 2021: All species: Closed.
11. **Hoh River (Jefferson Co.),** from Olympic National Park boundary upstream to Olympic National Park boundary below mouth of South Fork Hoh:
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.

- (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 15, 2021: All species: Closed
- 12. Hoh River, South Fork (Jefferson Co.),** outside of Olympic National Park boundary:
- (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 15, 2021: All species: Closed
- 13. Humptulips River (Grays Harbor Co.),** from the mouth to confluence of East and West forks: Effective immediately through March 31, 2021: All species: Closed.
- 14. Humptulips River, West Fork (Grays Harbor Co.),** from the mouth to Donkey Creek: Effective immediately through March 31, 2021: All species: Closed.
- 15. Naselle River (Pacific Co.),** from the Hwy. 101 Bridge to the North Fork: Effective immediately through April 15, 2021: All species: Closed.
- 16. Nemah River, Middle (Pacific Co.):** Effective immediately through March 31, 2021: All species: Closed
- 17. Nemah River, North (Pacific Co.),** from Hwy. 101 Bridge to Cruiser Creek: Effective immediately through March 31, 2021: All species: Closed
- 18. Nemah River, South (Pacific Co.):** Effective immediately through March 31, 2021: All species: Closed
- 19. Newaukum River, including South Fork (Lewis Co.),** from mouth to Hwy. 508 Bridge near Kearny Creek: Effective immediately through March 31, 2021: All species: Closed.
- 20. Newaukum River, Middle Fork (Lewis Co.),** from mouth to Taucher Rd. Bridge: Effective immediately through March 31, 2021: All species: Closed.
- 21. Newaukum River, North (Lewis Co.),** from mouth to 400' below Chehalis City water intake: Effective immediately through March 31, 2021: All species: Closed.
- 22. Palix River (Pacific Co.):**
- (a) From Hwy. 101 Bridge to the mouth of the Middle Fork: Effective immediately through March 31, 2021: All species: Closed
 - (b) From the confluence with the Middle Fork upstream (all forks including South fork Palix River and Canon River): Effective immediately through March 31, 2021: All species: Closed
- 23. Quillayute River (Clallam Co.),** from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers:
- (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through the May 28, 2021: All species: Closed
- 24. Quinault River, Upper (Grays Harbor/Jefferson Co.),** from the mouth at upper end of Quinault Lake upstream to Olympic National Park boundary: Effective immediately through April 15, 2021: Closed.
- 25. Satsop River and East Fork (Grays Harbor Co.),** from the mouth to bridge at Schafer State Park, and from 400' below Bingham Creek

Hatchery dam to the dam: Effective immediately through March 31, 2021: All species: Closed.

26. Skookumchuck River (Lewis/Thurston Co.), from mouth to 100' below outlet of TransAlta WDFW steelhead rearing pond located at the base of Skookumchuck Dam: Effective immediately through April 30, 2021: All species: Closed.

27. Sol Duc River (Clallam Co.), from mouth to Hwy. 101 Bridge upstream of Klahowya campground:

(a) Effective immediately through March 31, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective April 1 through May 28, 2021: All species: Closed

28. Thunder Creek (Clallam Co.), from mouth to D2400 Rd.:

(a) Effective immediately through March 31, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective April 1 through April 30, 2021: All species: Closed

29. Willapa River (Pacific Co.), from mouth (City of South Bend boat launch) to Hwy. 6 Bridge (near the town of Lebam): Effective immediately through March 31, 2021: All species: Closed.

30. Wynoochee River (Grays Harbor Co.): Effective immediately through March 31, 2021: All species: Closed.

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

WSR 21-07-007

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed March 4, 2021, 10:57 a.m., effective March 4, 2021, 10:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is revising this section to allow for payment of office visits for clients under the alien emergency medical (AEM) program when the visit is specifically for the assessment and treatment of the COVID-19 virus.

Citation of Rules Affected by this Order: Amending WAC 182-507-0115.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This rule making is in response to the Governor's Proclamation 20-05 declaring a State of Emergency for all counties throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) and the secretary of the federal Department of Health and Human Services declaration of a public health emergency related to COVID-19. This emergency rule making is necessary to preserve the public health, safety, and general welfare by allowing payment for the office visit for an AEM client for the assessment and treatment of the COVID-19 virus.

This emergency filing replaces the emergency rules filed under WSR 20-23-003 on November 5, 2020. The agency is refiling the emergency to continue the emergency rule while proceeding through the permanent rule-making process. Since the last emergency filing, the agency completed the external review of a draft rule, is reviewing stakeholder comments, and is researching impacts and limits of federal programs and their interaction with the alien emergency medical program to inform permanent rule changes.

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

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

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

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

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

Date Adopted: March 4, 2021.

Wendy Barcus
Rules Coordinator

OTS-2140.1

AMENDATORY SECTION (Amending WSR 12-24-038, filed 11/29/12, effective 12/30/12)

WAC 182-507-0115 Alien emergency medical program (AEM). (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 182-507-0110 is eligible for the alien emergency medical program's scope of covered services described in this section if the person meets ~~((a) and (b) or (c))~~ the requirements of (a) of this subsection, as well as the requirements of either (b), (c), or (d) of this subsection:

(a) The medicaid agency determines that the primary condition requiring treatment ~~((meets the definition of))~~ is an emergency medical condition as defined in WAC 182-500-0030, and the condition is confirmed through review of clinical records; and

(b) The person's qualifying emergency medical condition is treated in one of the following hospital settings:

(i) Inpatient;

(ii) Outpatient surgery;

(iii) Emergency room services, which must include an evaluation and management (E&M) visit by a physician; or

(c) Involuntary Treatment Act (ITA) and voluntary inpatient admissions to a hospital psychiatric setting that are authorized by the agency's inpatient mental health designee (see subsection (5) of this section); or

(d) For the assessment and treatment of the COVID-19 virus, the agency covers one physician visit provided in any outpatient setting, including the office or clinic setting, or via telemedicine, online digital or telephonic services to assess/evaluate and test, if clinically indicated, as follows:

(i) If the test is positive, in addition to the services described in (b) of this subsection and subsection (2)(b) of this section, any medically necessary services to treat, including:

(A) Follow-up office visits;

(B) Medications, prior authorization requirements may apply;

(C) Respiratory services and supplies; and

(D) Medical supplies, prior authorization requirements may apply.

(ii) If a test is negative, any treatment described in (d)(i)(A) through (B) of this subsection, as a precautionary measure for an anticipated positive test result.

(e) The coverage described in (d) of this subsection is in effect only during the time period, as determined by the agency in its sole discretion, that a public health emergency related to COVID-19 exists.

(2) If a person meets the criteria in subsection (1) of this section, the agency will cover and pay for all related medically necessary health care services and professional services provided:

(a) By physicians in their office or in a clinic setting immediately prior to the transfer to the hospital, resulting in a direct admission to the hospital; and

(b) During the specific emergency room visit, outpatient surgery or inpatient admission. These services include, but are not limited to:

(i) Medications;

(ii) Laboratory, X-ray, and other diagnostics and the professional interpretations;

(iii) Medical equipment and supplies;

(iv) Anesthesia, surgical, and recovery services;

(v) Physician consultation, treatment, surgery, or evaluation services;

(vi) Therapy services;

(vii) Emergency medical transportation; and

(viii) Nonemergency ambulance transportation to transfer the person from a hospital to a long term acute care (LTAC) or an inpatient physical medicine and rehabilitation (PM&R) unit, if that admission is prior authorized by the agency or its designee as described in subsection (3) of this section.

(3) The agency will cover admissions to an LTAC facility or an inpatient PM&R unit if:

(a) The original admission to the hospital meets the criteria as described in subsection (1) of this section;

(b) The person is transferred directly to this facility from the hospital; and

(c) The admission is prior authorized according to LTAC and PM&R program rules (see WAC 182-550-2590 for LTAC and WAC 182-550-2561 for PM&R).

(4) The agency does not cover any services, regardless of setting, once the person is discharged from the hospital after being treated for a qualifying emergency medical condition authorized by the agency or its designee under this program. Exceptions:

(a) For admissions to treat COVID-19 or complications thereof, the agency will cover up to two postdischarge physician follow-up visits, regardless of how the visits are conducted or where they are conducted.

(b) Pharmacy services, drugs, devices, and drug-related supplies listed in WAC 182-530-2000, prescribed on the same day and associated with the qualifying visit or service (as described in subsection (1) of this section) will be covered for a one-time fill and retrospectively reimbursed according to pharmacy program rules.

(5) Medical necessity of inpatient psychiatric care in the hospital setting must be determined, and any admission must be authorized by the agency's inpatient mental health designee according to the requirements in WAC 182-550-2600.

(6) There is no precertification or prior authorization for eligibility under this program. Eligibility for the AEM program does not have to be established before an individual begins receiving emergency treatment.

(7) Under this program, certification is only valid for the period of time the person is receiving services under the criteria described in subsection (1) of this section. The exception for pharmacy services is also applicable as described in subsection (4) of this section.

(a) For inpatient care, the certification is only for the period of time the person is in the hospital, LTAC, or PM&R facility - The admission date through the discharge date. Upon discharge the person is no longer eligible for coverage.

(b) For an outpatient surgery or emergency room service the certification is only for the date of service. If the person is in the hospital overnight, the certification will be the admission date through the discharge date. Upon release from the hospital, the person is no longer eligible for coverage.

(8) Under this program, any visit or service not meeting the criteria described in subsection (1) of this section is considered not within the scope of service categories as described in WAC 182-501-0060. This includes, but is not limited to:

(a) Hospital services, care, surgeries, or inpatient admissions to treat any condition which is not considered by the agency to be a qualifying emergency medical condition, including but not limited to:

(i) Laboratory X-ray, or other diagnostic procedures;
(ii) Physical, occupational, speech therapy, or audiology services;

(iii) Hospital clinic services; or

(iv) Emergency room visits, surgery, or hospital admissions.

(b) Any services provided during a hospital admission or visit (meeting the criteria described in subsection (1) of this section), which are not related to the treatment of the qualifying emergency medical condition;

(c) Organ transplants, including preevaluations, post operative care, and anti-rejection medication;

(d) Services provided outside the hospital settings described in subsection (1) of this section including, but not limited to:

(i) Office or clinic-based services rendered by a physician, an ARNP, or any other licensed practitioner;

(ii) Prenatal care, except labor and delivery;

(iii) Laboratory, radiology, and any other diagnostic testing;

(iv) School-based services;

(v) Personal care services;

(vi) Physical, respiratory, occupational, and speech therapy services;

(vii) Waiver services;

(viii) Nursing facility services;

(ix) Home health services;

(x) Hospice services;

(xi) Vision services;

(xii) Hearing services;

(xiii) Dental services;

(xiv) Durable and nondurable medical supplies;

(xv) Nonemergency medical transportation;

(xvi) Interpreter services; and

(xvii) Pharmacy services, except as described in subsection (4) of this section.

(9) The services listed in subsection (8) of this section are not within the scope of service categories for this program and therefore the exception to rule process is not available.

(10) Providers must not bill the agency for visits or services that do not meet the qualifying criteria described in this section. The agency will identify and recover payment for claims paid in error.

[Statutory Authority: RCW 41.05.021. WSR 12-24-038, § 182-507-0115, filed 11/29/12, effective 12/30/12. WSR 12-13-056, recodified as § 182-507-0115, filed 6/15/12, effective 7/1/12. Statutory Authority: RCW 74.04.050, 74.08.090, and 2009 c 564 §§ 1109, 201, 209. WSR 10-19-085, § 388-438-0115, filed 9/17/10, effective 10/18/10.]

**WSR 21-07-014
EMERGENCY RULES****EVERETT COMMUNITY COLLEGE**

[Filed March 5, 2021, 8:13 a.m., effective March 5, 2021]

Effective Date of Rule: March 5, 2021.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and went into effect on August 14, 2020. An earlier CR-103E request was submitted to reflect these federal changes to the college's WAC and presently remains in effect until mid-March 2021. Shortly after the submission of the initial CR-103E request, the college initiated the permanent rule-making process. Everett Community College is seeking a final extension of the emergency rule for purposes of completing the permanent rule-making process.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures; WAC 132E-122-140, 132E-122-420, 132E-122-430, 132E-122-440, 132E-122-450, 132E-122-460, 132E-122-470, 132E-122-480 and 132E-122-490; and amending WAC 132E-122-170 and 132E-122-250.

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

Under RCW 34.05.350 the agency for good cause finds that 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: Everett Community College is required by the United States Department of Education to comply with the 2020 Title IX rule changes. Everett Community College is seeking a final extension of the emergency rule for purposes of completing the requirements associated with the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 8, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 2, Repealed 0.

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

Date Adopted: March 5, 2021.

Erin Carr
Director of Equal Opportunity
and Title IX Programs

OTS-2532.2

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

WAC 132E-122-170 Reporting—Sexual misconduct and discrimination. (1) Persons who believe that a sexual misconduct or discrimination violation has been committed may contact and make a report to the Title IX coordinator directly (~~(or by filing a report online at everettcc.edu/TitleIX)~~).

(~~Becky Lamboley~~)
 Title IX Coordinator
 425-388-9271
 TitleIXcoordinator@everettcc.edu
 Olympus Hall ((207)) 114
 2000 Tower Street
 Everett, WA 98201

(2) The person filing the report will be asked to write a brief statement of allegation(s), including dates, names, a description of the incident, and the remedy sought.

(3) **Sexual misconduct responsible employee reporting.** Any employee who receives a report, formally or informally, of an alleged Title IX violation is required to report such information to the Title IX coordinator. The employee may contact the Title IX coordinator directly ((+) at TitleIXcoordinator@everettcc.edu or 425-388-9271 (~~(or may file a Title IX report through the college online reporting system)~~).

(4) **Campus counselors.** If information regarding a possible sexual misconduct violation is disclosed during a confidential counseling session with a campus counselor, the counselor is not required to report this information to the Title IX coordinator.

(5) If the complaint is against the conduct officer or Title IX coordinator, the matter is to be reported to the vice president of (~~administrative services~~) human resources.

Vice President of (~~Administrative Services~~
~~vpadmin@everettcc.edu~~) Human Resources
hr@everettcc.edu
 425-388-9232
 2000 Tower Street
 Everett, WA 98201

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-170, filed 12/19/17, effective 1/19/18.]

NEW SECTION

WAC 132E-122-410 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 Everett Community College's standard disciplinary procedures, WAC 132E-122-010 through 132E-122-490, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132E-122-420 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, Everett Community 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.** An Everett Community College employee conditioning the provision of an aid, benefit, or service of Everett Community 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 Everett Community 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 132E-122-430 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;
 (b) Occurred during an Everett Community 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 Everett Community 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 Everett Community 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 Everett Community College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Everett Community College's student conduct code, WAC 132E-122-010 through 132E-122-490.

(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 132E-122-440 Initiation of Title IX proceedings. (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 proceed-

ing 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 advisor(s) during the hearing and that:
 - (i) The advisor(s) will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) Everett Community College will appoint the party an advisor of the Everett Community 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 132E-122-450 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 132E-122-440. 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 Everett Community College intends to offer the evidence at the hearing.

[]

NEW SECTION

WAC 132E-122-460 Rights of parties. (1) Everett Community College's student conduct procedures and this supplemental procedure shall apply equally to all parties.

(2) Everett Community 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 Everett Community College's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

WAC 132E-122-470 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 132E-122-480 Initial order. The student conduct committee will be responsible for conferring and drafting an initial order that:

- (1) Identifies the allegations of sexual harassment;
- (2) 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;
- (3) Makes findings of fact supporting the determination of responsibility;
- (4) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
- (5) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
- (6) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
- (7) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Everett Community College's education programs or activities; and
- (8) Describes the process for appealing the initial order to Everett Community College's president.
- (9) The committee chair will serve the initial order on the parties simultaneously.

[]

NEW SECTION

- WAC 132E-122-490 Title IX appeals.** (1) The parties have the right to appeal from the determination of responsibility and/or from a Title IX dismissal, in whole or part, of a formal complaint, as set forth in the initial order.
- (2) The president or the president's delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.
- (3) If a request for reconsideration is received, the Title IX coordinator shall respond within seven business days. The Title IX coordinator shall either deny the request or, if the Title IX coordinator determines that the request for reconsideration has merit, issue amended findings.
- (4) If any of the grounds in the request for appeal do not meet the grounds in this policy, that request will be denied and the parties and their advisors will be notified in writing of the denial and the rationale.
- (5) If any of the grounds in the request for appeal meet the grounds in this policy, then the other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be notified of the decision.
- (6) The other party(ies) and their advisors, and, when appropriate, the investigators and/or the original decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and be provided seven business days to submit a response to the portion of the appeal that was approved and involves

them. All responses will be forwarded by the appeal decision-maker(s) to all parties for review and comment.

(7) The nonappealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the appeal decision-maker(s) and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the investigator(s) and/or original decision-maker(s), as necessary, who will submit their responses in seven business days, which will be circulated for review and comment by all parties.

(8) Neither party may submit any new requests for appeal after this time period. The appeal decision-maker(s) will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than seven business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

(9) A notice of appeal outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The notice of appeal outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the recipient is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the recipient is permitted to share under state or federal law.

(10) Notification will be made in writing and may be delivered by one or more of the following methods: In person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' recipient-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

(11) The grounds for appeal are as follows:

(a) Procedural irregularity that affected the outcome of the matter;

(b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(c) The Title IX coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter.

(12) All decisions reached through this process are final. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

(13) If no request for reconsideration is received within seven days, the findings become final.

(14) Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

(15) Appeals are not intended to provide for a full rehearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

(16) An appeal is not an opportunity for appeal decision-maker(s) to substitute their judgment for that of the original decision-maker(s) merely because they disagree with the finding and/or sanction(s).

(17) Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand except in the case of a new hearing.

(18) Any amended findings are final and no further reconsideration is available.

[]

WSR 21-07-015

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed March 5, 2021, 9:37 a.m., effective March 5, 2021, 9:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-056 Schedule V, the pharmacy quality assurance commission (commission) is adopting emergency rules to remove Epidiolex from the list of Schedule V controlled substances in Washington state. This emergency rule was originally filed on May 20, 2020, under WSR 20-11-078. It was refiled most recently on November 6, 2020, under WSR 20-23-013. Epidiolex is an FDA-approved cannabidiol with less than 0.3% tetrahydrocannabinol (THC). Descheduling the drug from Schedule V will maintain the emergency rule. It also aligns Washington state rule with the federal decision to exclude all hemp products with less than 0.3% THC from the definition of marijuana.

Citation of Rules Affected by this Order: Amending WAC 246-945-056.

Statutory Authority for Adoption: RCW 18.64.005, 69.50.201.

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

Reasons for this Finding: The immediate amendment of this existing rule is necessary for the preservation of public health, safety, and general welfare. Epidiolex is an FDA-approved cannabidiol with less than 0.3% THC used to help treat some seizure disorders. The 2018 Agricultural Improvement Act amended the Controlled Substances Act and declassified hemp products with less than 0.3% THC from Schedule I; however, Epidiolex was placed on Schedule V until April 6, 2020, when the United States drug enforcement agency announced that it would be descheduled as a federally controlled substance. This emergency rule will maintain the emergency rule already in effect and update Washington rule to align with the federal decision. Emergency rules are necessary to reduce burdens on practitioners prescribing Epidiolex and allow patients easier access to the care they need. This rule may also help reduce pressure on the health system during the ongoing COVID-19 pandemic. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. The commission has initiated permanent rule making to deschedule Epidiolex.

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

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

Date Adopted: March 5, 2021.

Tim Lynch, PharmD, MS, FABC, FASHP
Commission Chair

OTS-2392.1

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

WAC 246-945-056 Schedule V. The commission finds that the following substances have low potential for abuse relative to substances in Schedule IV under RCW 69.50.210 and WAC 246-945-055 and have currently accepted medical use in treatment in the United States and that the substances have limited physical dependence or psychological dependence liability relative to the substance in Schedule IV. In addition to the substances listed in RCW 69.50.212, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule V.

Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide); also referred to as BRV; UCB-34714; Briviact;

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester].

~~((3) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols, also known as Epidiolex.))~~

[Statutory Authority: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590. WSR 20-12-072, § 246-945-056, filed 6/1/20, effective 7/1/20.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

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

WSR 21-07-016

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed March 5, 2021, 9:44 a.m., effective March 5, 2021, 9:44 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-010 Prescription labeling, records, and advertising—Minimum requirements, the pharmacy quality assurance commission (commission) is adopting emergency rules to reduce burdens on practitioners prescribing Schedule II substances during the coronavirus disease (COVID-19) outbreak. This emergency rule was originally filed on April 21, 2020, under WSR 20-09-133. It was refiled most recently on November 5, 2020, under WSR 20-23-012. This emergency rule will continue the existing emergency rule amending WAC 246-945-010 to increase the duration of time a practitioner has to deliver a signed prescription of a Schedule II substance to the pharmacy from seven days to fifteen days when a prescription is dispensed in an emergency. It also defines what a "signed prescription" means and allows for a practitioner to accomplish this requirement through paper, electronic transmission, facsimile, photograph, or scanned copy. These alternative methodologies support patients, practitioners, and pharmacists' efforts to practice social distancing and to help mitigate communal spread.

Citation of Rules Affected by this Order: Amending WAC 246-945-010.

Statutory Authority for Adoption: RCW 18.64.005; chapter 69.50 RCW.

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

Reasons for this Finding: The immediate amendment of this existing rule is necessary for the preservation of public health, safety, and general welfare. Stakeholders and leaders from the pain community have highlighted this is an immediate need for Washingtonians. This emergency rule has been in effect since April 21, 2020. This emergency rule allows more time and more avenues for complying with the requirements during the ongoing COVID-19 pandemic, reducing burdens on practitioners and pharmacists, and sustaining patient access during this difficult time. The emergency rules follow guidance from the United States drug enforcement agency and will help address this problem and reduce barriers for providers and patient populations in need of Schedule II prescriptions throughout this public health emergency. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to 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 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: March 5, 2021.

Tim Lynch, PharmD, MS, FABC, FASHP
Commission Chair

OTS-2391.1

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

WAC 246-945-010 Prescription and chart order—Minimum requirements. (1) For the purposes of this section, prescription does not include chart orders as defined in RCW 18.64.011(3).

(2) For the purposes of WAC 246-945-010 through 246-945-013, prescription includes written and electronic prescriptions.

(3) A prescription for a noncontrolled legend drug must include, but is not limited to, the following:

(a) Prescriber's name;

(b) Name of patient, authorized entity, or animal name and species;

(c) Date of issuance;

(d) Drug name, strength, and quantity;

(e) Directions for use;

(f) Number of refills (if any);

(g) Instruction on whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted, unless substitution is permitted under a prior-consent authorization;

(h) Prescriber's manual or electronic signature, or prescriber's authorized agent signature if allowed by law; and

(i) If the prescription is written, it must be written on tamper-resistant prescription pad or paper approved by the commission pursuant to RCW 18.64.500;

(4) A prescription for a controlled substance must include all the information listed in subsection (1) of this section and the following:

(a) Patient's address;

(b) Dosage form;

(c) Prescriber's address;

(d) Prescriber's DEA registration number; and

(e) Any other requirements listed in 21 C.F.R., Chapter II.

(5) A chart order must meet the requirements of RCW 18.64.550 and any other applicable requirements listed in 21 C.F.R., Chapter II.

(6) A controlled substance listed in Schedule II can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011 unless there is an "emergency."

(a) For the purposes of this subsection, an "emergency" exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it

is not possible for the practitioner to provide a written or electronic prescription for the drug at that time.

(b) If a Schedule II drug is dispensed in an emergency, the practitioner must deliver a signed prescription to the dispenser within ~~((seven))~~ fifteen days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the ~~((seven))~~ fifteen day period, and further the pharmacist must note on the prescription that it was filled on an emergency basis.

(c) For the purposes of this subsection, a "signed prescription" shall be either:

(i) A paper prescription;

(ii) An electronic prescription;

(iii) A copy of the paper prescription sent via facsimile to the pharmacy; or

(iv) A photograph or scanned copy of the paper prescription sent to the pharmacy.

(7) A controlled substance listed in Schedule III, IV, or V, can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a controlled substance listed in Schedule III, IV, or V must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

(8) A noncontrolled legend drug can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a noncontrolled legend drug must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

[Statutory Authority: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590. WSR 20-12-072, § 246-945-010, filed 6/1/20, effective 7/1/20.]

WSR 21-07-017

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed March 5, 2021, 10:30 a.m., effective March 5, 2021, 10:30 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-930-010 sex offender treatment provider. The department of health (department) is continuing the emergency rule amendment to WAC 246-930-010 to remove the words "face-to-face" from the definition of sex offender treatment, enabling sex offenders to continue accessing telehealth treatment and enabling increased social distancing during the coronavirus disease (COVID-19) declared emergency.

These rules continue the initial emergency rules that were filed on July 9, 2020, as WSR 20-15-057 and subsequently extended under WSR 20-23-011 on November 6, 2020. As part of the department's continuing response to the evolving COVID-19 public health threat, continuing this emergency rule will allow sex offenders to maintain access to care to prevent recidivism, while mitigating the COVID-19 public health threat while vaccine distribution efforts are ongoing.

Citation of Rules Affected by this Order: Amending WAC 246-930-010.

Statutory Authority for Adoption: RCW 18.155.040.

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

Reasons for this Finding: The immediate continuation of this emergency rule is necessary for the preservation of public health, safety, and general welfare. By extending the emergency rule amendment, the department will continue allowing sex offender treatment to occur through telehealth. By allowing treatment through telehealth rather than face-to-face, the department will support both the health of sex offenders, who require access to treatment, and the welfare of the public, who are at risk if offenders recidivate. Additionally, allowing telehealth treatment will help reduce community transmission of COVID-19. Telehealth treatment is not an ideal substitute for in-person group or individual therapy sessions; however, it is a tool that will allow sex offenders to maintain access to care and will mitigate public health concerns created by COVID-19 while vaccine distribution is in progress.

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: February 25, 2021.

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

OTS-2368.1

AMENDATORY SECTION (Amending WSR 07-09-092, filed 4/18/07, effective 5/19/07)

WAC 246-930-010 General definitions. In these rules, the following terms shall have the definition described below, unless another definition is stated:

(1) "Affiliate sex offender treatment provider" or "affiliate" means an individual who has satisfactorily passed the examination, met the education requirements, and has been issued a certificate to evaluate and treat sex offenders under chapter 18.155 RCW, and under the supervision of a certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.

(2) "Certified sex offender treatment provider" or "provider" means an individual who has satisfactorily passed the examination, met the education and experience requirements, and has been issued a certificate by the department to evaluate and treat sex offenders under chapter 18.155 RCW.

(3) "Client" means a person who has been investigated by law enforcement or child protective services for committing or allegedly committing a sex offense, or who has been convicted of a sex offense.

(4) "Committee" means the sex offender treatment providers advisory committee.

(5) "Community protection contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.

(6) "Co-therapy hours" means the actual number of hours the applicant spent facilitating a group session.

(7) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(8) "Department" means the department of health.

(9) "Evaluation" means a comprehensive assessment or examination of a client conducted by a provider or affiliate that examines the client's offending behavior. Evaluation results must be detailed in a written report. Examples of evaluations include forensic, SSOSA, and SSODA evaluations. Standards for assessment and evaluation reports, and evaluation experience credit are located in WAC 246-930-320 and 246-930-340.

(10) "Parties" means the defendant, the prosecuting attorney, and the supervising officer.

(11) "Secretary" means the secretary of the department of health, or designee.

(12) "SSODA" means special sex offender disposition alternative, authorized under RCW 13.40.160.

(13) "SSOSA" means special sex offender sentencing alternative, authorized under RCW 9.94A.670.

(14) "Supervising officer" is the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, for example, a community corrections officer or a juvenile probation officer.

(15) "Treatment" means (~~face-to-face~~) individual, group, or family therapy, provided by an affiliate or provider, to a client. Treatment is focused on the client's offending behavior.

(16) "Treatment plan" means a written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.

[Statutory Authority: RCW 18.155.040. WSR 07-09-092, § 246-930-010, filed 4/18/07, effective 5/19/07; WSR 94-13-179, § 246-930-010, filed 6/21/94, effective 7/22/94; WSR 92-12-027 (Order 275), § 246-930-010, filed 5/28/92, effective 6/28/92; WSR 91-23-076 (Order 212), § 246-930-010, filed 11/19/91, effective 12/20/91; WSR 91-11-063 (Order 168), § 246-930-010, filed 5/16/91, effective 6/16/91.]

WSR 21-07-025

EMERGENCY RULES

GRAYS HARBOR COLLEGE

[Filed March 8, 2021, 2:09 p.m., effective March 8, 2021, 2:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures; WAC 132B-120-320, 132B-120-325, 132B-120-330, 132B-120-335, 132B-120-340, 132B-120-345, 132B-120-350, 132B-120-355 and 132B-120-360; and repealing WAC 132B-120-300, 132B-120-305, 132B-120-310, and 132B-120-315.

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

Under RCW 34.05.350 the agency for good cause finds that 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: Grays Harbor College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 4; 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 9, Amended 0, Repealed 4.

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

Date Adopted: March 8, 2021.

Darin Jones
Human Resources Chief

OTS-2508.1

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132B-120-320 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 Grays Harbor College's standard disciplinary procedures, WAC 132B-120-010 through 132B-120-220, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132B-120-325 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, Grays Harbor 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 Grays Harbor College employee conditioning the provision of an aid, benefit, or service of Grays Harbor 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 Grays Harbor 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 132B-120-330 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Grays Harbor 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 Grays Harbor 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 Grays Harbor 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 Grays Harbor College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of Grays Harbor College's student conduct code, chapter 132B-120 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 132B-120-335 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 Title IX conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

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

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

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

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

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

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

(ii) An advisor may be an attorney; and

(iii) Grays Harbor 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 132B-120-340 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the Title IX conduct committee will send a hearing notice to all parties, in compliance with WAC 132B-120-120. 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 132B-120-345 Rights of parties. (1) Grays Harbor College's student conduct procedures, chapter 132B-120 WAC, and this supplemental procedure shall apply equally to all parties.

(2) Grays Harbor 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 132B-120-350 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 132B-120-355 Initial Order. (1) In addition to complying with WAC 132B-120-143, the Title IX conduct committee:

(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 Grays Harbor College's education programs or activities; and

(h) Describes the process for appealing the initial order to the Grays Harbor College president.

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

[]

NEW SECTION

WAC 132B-120-360 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 132B-120-145.

(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.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132B-120-300 Supplemental sexual misconduct procedures.
- WAC 132B-120-305 Supplemental definitions.
- WAC 132B-120-310 Supplemental complaint process (sexual misconduct).
- WAC 132B-120-315 Supplemental appeal rights.

WSR 21-07-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-30—Filed March 9, 2021, 9:33 a.m., effective March 9, 2021, 9:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close recreational fisheries in coastal streams and systems where wild steelhead escapement goals are unlikely to be met. This rule has been written to clarify WSR 21-07-003, so as not to imply that 2021 salmon seasons have been set.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000H; and amending WAC 220-312-020.

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

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

Reasons for this Finding: These measures are being taken to protect wild steelhead stocks. Most coastal wild steelhead runs are expected to return below escapement targets as they have the past four seasons and have failed to meet management objectives. In-season information and increased concern for meeting conservation objectives has lead to a closure in coastal rivers where escapement goals are unlikely to be met while maintaining emergency measure[s] already in place for the Hoh and Quillayute systems.

This rule has been updated so as not to imply that potential upcoming salmon seasons will be closed in the Sol Duc and Quillayute rivers. Salmon seasons have not yet been set and no determination has been made regarding salmon seasons in these two rivers, this will happen after comanagement meetings for the North of Falcon season setting process has concluded.

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: March 4, 2021.

Kelly Susewind
Director

NEW SECTION**WAC 220-312-02000I Freshwater exceptions to statewide rules—**

Coast. Effective Immediately, until further notice the following provisions of WAC 220-312-020, regarding gamefish seasons, steelhead daily limits, fishing from a floating device, and gear and hook restrictions for coastal tributaries, including tributaries of Grays Harbor and Willapa Bay shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

- 1. Bear River (Pacific Co.):** Effective immediately through March 31, 2021: All species: Closed.
- 2. Bogachiel River (Clallam Co.),** from the mouth to Olympic National Park boundary:
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
- 3. Calawah River: (Clallam Co.),** from the mouth to the forks:
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
- 4. Chehalis River (Grays Harbor Co.),** from the mouth upstream, including all forks: Effective immediately through April 15, 2021: All species: Closed.
- 5. Clearwater River (Jefferson Co.),** from the mouth to Snahapish River: Effective immediately through April 15, 2021: Closed.
- 6. Dickey River (Clallam Co.),** from the Olympic National Park boundary upstream to the confluence of the east and west forks:
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
- 7. Dickey River, East Fork (Clallam Co.):**
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
- 8. Dickey River, West Fork (Clallam Co.):**
 - (a) Effective immediately through March 31, 2021:
 - (i) All species: Fishing from a floating device is prohibited.
 - (ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (iii) Release all rainbow trout.
 - (b) Effective April 1 through April 30, 2021: All species: Closed
- 9. Elk Creek (Lewis/Pacific Co.):** Effective immediately through March 31, 2021: All species: Closed.

10. Fork Creek (Pacific Co.), from Fork Creek Hatchery rack upstream 500 feet at fishing boundary sign: Effective immediately through March 31, 2021: All species: Closed.

11. Hoh River (Jefferson Co.), from Olympic National Park boundary upstream to Olympic National Park boundary below mouth of South Fork Hoh:

(a) Effective immediately through March 31, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective April 1 through April 15, 2021: All species: Closed

12. Hoh River, South Fork (Jefferson Co.), outside of Olympic National Park boundary:

(a) Effective immediately through March 31, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective April 1 through April 15, 2021: All species: Closed

13. Humptulips River (Grays Harbor Co.), from the mouth to confluence of East and West forks: Effective immediately through March 31, 2021: All species: Closed.

14. Humptulips River, West Fork (Grays Harbor Co.), from the mouth to Donkey Creek: Effective immediately through March 31, 2021: All species: Closed.

15. Naselle River (Pacific Co.), from the Hwy. 101 Bridge to the North Fork: Effective immediately through April 15, 2021: All species: Closed.

16. Nemah River, Middle (Pacific Co.): Effective immediately through March 31, 2021: All species: Closed

17. Nemah River, North (Pacific Co.), from Hwy. 101 Bridge to Cruiser Creek: Effective immediately through March 31, 2021: All species: Closed

18. Nemah River, South (Pacific Co.): Effective immediately through March 31, 2021: All species: Closed

19. Newaukum River, including South Fork (Lewis Co.), from mouth to Hwy. 508 Bridge near Kearny Creek: Effective immediately through March 31, 2021: All species: Closed.

20. Newaukum River, Middle Fork (Lewis Co.), from mouth to Taucher Rd. Bridge: Effective immediately through March 31, 2021: All species: Closed.

21. Newaukum River, North (Lewis Co.), from mouth to 400' below Chehalis City water intake: Effective immediately through March 31, 2021: All species: Closed.

22. Palix River (Pacific Co.):

(a) From Hwy. 101 Bridge to the mouth of the Middle Fork: Effective immediately through March 31, 2021: All species: Closed

(b) From the confluence with the Middle Fork upstream (all forks including South fork Palix River and Canon River): Effective immediately through March 31, 2021: All species: Closed

23. Quillayute River (Clallam Co.), from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers:

(a) Effective immediately through March 31, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective April 1, 2021, until further notice: All species:

Closed

24. Quinault River, Upper (Grays Harbor/Jefferson Co.), from the mouth at upper end of Quinault Lake upstream to Olympic National Park boundary: Effective immediately through April 15, 2021: Closed.

25. Satsop River and East Fork (Grays Harbor Co.), from the mouth to bridge at Schafer State Park, and from 400' below Bingham Creek Hatchery dam to the dam: Effective immediately through March 31, 2021: All species: Closed.

26. Skookumchuck River (Lewis/Thurston Co.), from mouth to 100' below outlet of TransAlta WDFW steelhead rearing pond located at the base of Skookumchuck Dam: Effective immediately through April 30, 2021: All species: Closed.

27. Sol Duc River (Clallam Co.), from mouth to Hwy. 101 Bridge upstream of Klahowya campground:

(a) Effective immediately through March 31, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective April 1, 2021, until further notice: All species:

Closed

28. Thunder Creek (Clallam Co.), from mouth to D2400 Rd.:

(a) Effective immediately through March 31, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective April 1 through April 30, 2021: All species: Closed

29. Willapa River (Pacific Co.), from mouth (City of South Bend boat launch) to Hwy. 6 Bridge (near the town of Lebam): Effective immediately through March 31, 2021: All species: Closed.

30. Wynoochee River (Grays Harbor Co.): Effective immediately through March 31, 2021: All species: Closed.

[]

REPEALER

The following section of Washington Administrative Code is repealed:

WAC 220-312-02000H Freshwater exceptions to statewide rules—Coast (21-29)

WSR 21-07-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-31—Filed March 9, 2021, 11:27 a.m., effective March 13, 2021]

Effective Date of Rule: March 13, 2021.

Purpose: The Washington department of fish and wildlife (WDFW) is enacting these rules to conform to federal regulations as these rules have been adopted by the National Marine Fisheries Service.

Citation of Rules Affected by this Order: Amending WAC 220-314-010, 220-314-020, 220-314-030, and 220-314-040.

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

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

Reasons for this Finding: These changes are consistent with actions taken by the Pacific Fishery Management Council (PFMC), which includes an extensive stakeholder process. Through the delegation of authority provided by the fish and wildlife commission to the director, WDFW regulatory changes for consistency with PFMC actions may be approved by the director via expedited rule making.

Recreational fisheries in Washington are primarily constrained by yelloweye rockfish. Depth restrictions have been an effective tool for minimizing encounters and keeping catch within state specific harvest guidelines (HG). Largely influenced by the federal yelloweye rockfish annual catch limit, regulatory changes focus on the timing and need for depth and area restrictions. The regulatory changes also consider reducing restrictions on the retention of healthy rockfish species and take an additional incremental step toward the relaxation of depth and area closures that began in 2019 and 2020.

WAC 220-314-040 Bottomfish and halibut—Closed areas, this change would open the Westport Offshore Recreational YRCA and the South Coast Recreational YRCA to fishing for, retaining, and possessing bottomfish or halibut.

WAC 220-314-020 Possession limits—Bottomfish, this change would allow five flatfish in addition to the nine daily bottomfish limit.

WAC 220-314-030 Halibut—Seasons—Daily and possession limits, regulation changes are necessary to revise depth restrictions in Marine Area 1 through 4. Federal harvest quotas for yelloweye rockfish in Washington for 2021 and 2022 are sufficient to allow relaxation of depth restrictions and provides access to healthy lingcod resources that are commonly associated with yelloweye rockfish. The 20-fathom depth restriction in Marine Areas 3 and 4 west of the Bonilla-Tatoosh line would be in place from June 1 through July 31. Yellowtail and widow rockfish retention is allowed seaward of the one-hundred twenty foot depth restriction in July and August in Marine Area 4 east of the Bonilla-Tatoosh line and would be allowed seaward of the twenty fathom depth restriction in Marine Areas 3 and 4 west of the Bonilla-Tatoosh line in the month of July.

In Marine Area 2, the 30-fathom line would be in place from May 1 to May 31.

In Marine Area 1 anglers would be allowed to retain the following bottomfish when halibut is on board: Sablefish, Pacific cod, flatfish, yellowtail, widow, canary, redstriped, greenstriped, silvergray, chilipepper, bocaccio, blue and deacon rockfish, as well as lingcod north of the Washington-Oregon [border].

In Marine Areas 3 and 4, anglers will be allowed to retain lingcod, sablefish, Pacific cod, bocaccio, silvergray, canary, widow, and yellowtail rockfish.

WAC 220-314-040 Lingcod—Areas and seasons, a deepwater closed area is in place in Marine Area 1; this rule change would allow lingcod retention in this deepwater area from June 1 through June 15.

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 4, 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: March 9, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-314-01000A Bottomfish and halibut—Closed areas. Effective March 13, 2021, until further notice the "Westport Offshore Recreational YRCA" and the "South Coast Recreational YRCA" shall be open to fishing for, retaining and possessing bottomfish or halibut and shall follow the rules, seasons and daily limits of the adjacent waters of Marine Area 2. All other provisions of WAC 220-314-010 not addressed herein, or unless otherwise amended by emergency rule, remain in effect.

(1) The "Westport Offshore Recreational YRCA" closed area, defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed: Beginning at 46°54.30'N, 124°53.40'W; thence to 46°54.30'N, 124°51.00'W; thence to 46°53.30'N, 124°51.00'W; thence to 46°53.30'N, 124°53.40'W, thence to the point of origin.

(2) The "South Coast Recreational YRCA" closed area, defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed: Beginning at 46°58.00'N, 124°48.00'W; thence to 46°55.00'N, 124°48.00'W; thence to 46°55.00'N, 124°49.00'W; thence to 46°58.00'N, 124°49.00'W; thence to the point of origin.

[]

NEW SECTION

WAC 220-314-02000H Possession limits—Bottomfish. Effective March 13, 2021, until further notice, in addition to the bottomfish limit in WAC 220-314-020 subsection (1)(b), in Marine Areas 1 through 3 and 4 west of the Bonilla-Tatoosh line, anglers may take 5 flatfish per person, per day, not counted towards the bottomfish limit but in addition to it.

[]

NEW SECTION

WAC 220-314-03000D Halibut—Seasons—Daily and possession limits. Effective March 13, 2021, until further notice the following provisions of WAC 220-314-030, regarding bottomfish seasons and retention during open halibut seasons and coastal fathom restrictions shall be modified as described below. All other provisions of WC 220-314-030 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Yellowtail and widow rockfish retention is permitted seaward of the 120-foot depth restriction from July 1, 2021, until further notice, in Marine area 4 east of the Bonilla-Tatoosh line.

(2) Yellowtail and widow rockfish retention is permitted seaward of the 20-fathom depth restriction line from July 1, 2021, until further notice, in Marine are 4 west of the Bonilla-Tatoosh line.

(3) In Marine Areas 3 and 4 west of the Bonilla-Tatoosh line it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates, from June 1, 2021, until further notice, except on days and times open to halibut fishing, it is permissible to retain lingcod, sablefish, Pacific cod, bocaccio, silvergray, canary, widow, and yellowtail rockfish:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(4) From May 1 through May 31, 2021, in Marine Area 2, it is unlawful to fish for or possess lingcod, seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below. However, a person may fish for and retain lingcod on days open during the primary halibut season:

47°31.70'N. lat., 124°37.03'W. long.

47°25.67'N. lat., 124°34.79'W. long.

47°12.82'N. lat., 124°29.12'W. long.

46°52.94'N. lat., 124°22.58'W. long.

46°44.18'N. lat., 124°18.00'W. long.

46°38.17'N. lat., 124°15.88'W. long.

(5) In Marine Area 1 it is unlawful during any vessel trip to bring into port or land bottomfish, except sablefish, Pacific cod, flatfish, yellowtail, widow, canary, redstriped, greenstriped, silver-gray, chilipepper, bocaccio, blue and deacon rockfish, as well as lingcod north of the Washington-Oregon border if the vessel has brought halibut into port or landed halibut.

[]

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

NEW SECTION

WAC 220-314-04000B Lingcod—Areas and seasons. Effective March 13, 2021, until further notice the following provisions of WAC 220-314-040, regarding lingcod seasons and retention in the Marine Area 1 deepwater lingcod closure area. All other provisions of WC 220-314-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

It is unlawful to fish for, retain, or possess lingcod in Marine Area 1 seaward of a line extending from 46°38.17'N. lat., 124°21.00'W. long. to 46°33.00'N. lat., 124°21.00'W. long. when lingcod is open, except that lingcod may be taken, retained and possessed seaward of the line from June 1 through June 15, 2021.

[]

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

WSR 21-07-032

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed March 9, 2021, 2:24 p.m., effective March 9, 2021, 2:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is revising this section to eliminate the requirement for date and signature from the medicaid client or the client's designee upon delivery of medical equipment and supplies.

Citation of Rules Affected by this Order: Amending WAC 182-543-2200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: As the current public health emergency surrounding the outbreak of the coronavirus disease 2019 (COVID-19) continues, this rule making is necessary to allow delivery of medical equipment and supplies without the requirement of a date and signature from the client or the client's designee in order to avoid contact between the client and delivery person. The current emergency filing under WSR 20-23-038 is set to expire on March 10, 2021. This filing is necessary to continue the emergency rules while the permanent rules are finalized.

Since the previous emergency filing, HCA proceeded with the permanent rule-making process by filing the proposed rules under WSR 21-06-114 and scheduled a virtual public hearing for April 6, 2021. Due to an error with the webinar registration hyperlink for the public hearing HCA withdrew the proposal under WSR 21-07-006. HCA fixed the hyperlink and refiled the proposed rules under WSR 21-07-012. HCA re-scheduled the virtual public hearing for the permanent rules on April 27, 2021.

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

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

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

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

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

Date Adopted: March 9, 2021.

Wendy Barcus
Rules Coordinator

OTS-2149.1

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-2200 Proof of delivery. (1) When a provider delivers an item directly to the client or the client's authorized representative, the provider must furnish the proof of delivery when the medicaid agency requests that information. All of the following apply:

(a) The agency requires a delivery slip as proof of delivery. The proof of delivery slip must:

~~(i) ((Be signed and dated by the client or the client's authorized representative (the date of signature must be the date the item was received by the client);~~

~~(ii))~~ Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name; and

~~((iii))~~ (ii) For medical equipment that may require future repairs, include the serial number.

(b) When the provider or supplier submits a claim for payment to the agency, the date of service on the claim must be one of the following:

(i) For a one-time delivery, the date the item was received by the client or the client's authorized representative; or

(ii) For nondurable medical supplies for which the agency has established a monthly maximum, on or after the date the item was received by the client or the client's authorized representative.

(2) When a provider uses a delivery/shipping service to deliver items which are not fitted to the client, the provider must furnish proof of delivery that the client received the equipment and/or supply, when the agency requests that information.

(a) If the provider uses a delivery/shipping service, the tracking slip is the proof of delivery. The tracking slip must include:

(i) The client's name or a reference to the client's package or packages;

(ii) The delivery service package identification number; and

(iii) The delivery address.

(b) If the provider/supplier does the delivering, the delivery slip is the proof of delivery. The delivery slip must include:

(i) The client's name;

(ii) The shipping service package identification number;

(iii) The quantity, detailed description(s), and brand name or names of the items being shipped; and

(iv) For medical equipment that may require future repairs, the serial number.

(c) When billing the agency, use:

(i) The shipping date as the date of service on the claim if the provider uses a delivery/shipping service; or

(ii) The actual date of delivery as the date of service on the claim if the provider/supplier does the delivery.

(3) A provider must not use a delivery/shipping service to deliver items which must be fitted to the client.

(4) Providers must obtain prior authorization when required before delivering the item to the client. The item must be delivered to the client before the provider bills the agency.

(5) The agency does not pay for medical equipment and related items furnished to the agency's clients when:

(a) The medical professional who provides medical justification to the agency for the item provided to the client is an employee of,

has a contract with, or has any financial relationship with the provider of the item; or

(b) The medical professional who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of medical equipment and related items.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Part 440.70; 42 U.S.C. section 1396 (b) (i) (27). WSR 18-24-021, § 182-543-2200, filed 11/27/18, effective 1/1/19. Statutory Authority: RCW 41.05.021 and 2013 c 178. WSR 14-08-035, § 182-543-2200, filed 3/25/14, effective 4/25/14. WSR 11-14-075, recodified as § 182-543-2200, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 11-14-052, § 388-543-2200, filed 6/29/11, effective 8/1/11. Statutory Authority: RCW 74.08.090, 74.09.530. WSR 02-16-054, § 388-543-2200, filed 8/1/02, effective 9/1/02; WSR 01-01-078, § 388-543-2200, filed 12/13/00, effective 1/13/01.]

WSR 21-07-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-32—Filed March 10, 2021, 1:03 p.m., effective March 10, 2021, 1:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends coastal commercial crab rules.

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

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

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

Reasons for this Finding: Mandatory, minimum meat recovery requirements for coastal crab will be achieved by the opening dates contained herein. The Washington department of health has determined that while the meat in Dungeness crab in all areas of the Washington coast is safe for human consumption, the viscera from crab caught between the Washington/Oregon border and Point Chehalis, Washington including Willapa Bay and Grays Harbor are unsafe for human consumption and have issued a recommendation requiring evisceration of all crab caught in this area. To strengthen the enforcement of an evisceration requirement needed to protect public health, all crab landed into Washington from any west coast area south of Point Chehalis, Washington and Willapa Bay and Grays Harbor must be eviscerated. Domoic acid levels in the crab viscera in the area north of Point Chehalis, Washington (except in Grays Harbor) are below federal action levels and are considered safe for human consumption, landings of crab from this area do not require similar processing restrictions to remove the viscera necessary to protect public health. However, restrictions on where fishermen may fish their gear are needed to ensure that crab are not harvested from areas with high domoic acid in the viscera (south of Point Chehalis, Washington and Willapa Bay and Grays Harbor) and reported as landings from areas where domoic acid in viscera are low (north of Point Chehalis, Washington). Further delaying the opening of the coastal commercial Dungeness crab fishery until domoic acid in crab viscera is below federal action levels, which could take several months, would cause significant economic harm to the coastal crab industry and to the coastal communities dependent on this highly valuable fishery. In addition, delaying the season into spring poses an additional risk to marine mammals including Endangered Species Act listed humpback whales and Marine Mammal Protection Act Gray whales which are more abundant off the Washington coast in the spring by increasing the risk of entanglement with commercial crab gear. Emergency rules are necessary to implement a longer gear set period which will allow for safer fishing conditions and improved enforceability of area restrictions when gear is set. A delay due to elevated marine toxins aligns with the Tri-State Crab Agreement and similar rules in Oregon and California. Tribal Special Management Area descriptions conform with recent state/tribal agreements. There is insufficient time to adopt permanent rules. The Westport Boat Basin is closed to commercial

crab fishing to prevent conflicts with vessel traffic in a limited area. New hold inspections will provide flexibility by allowing fishers to access different markets. This rule makes it clear that any new hold inspection certificate issued will supersede any previous version issued to the same license or vessel to allow accurate tracking.

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

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

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

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

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

Date Adopted: March 10, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000H Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful to land, or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel hold inspection certificate numbers are recorded on all shellfish fish receiving tickets completed for coastal Dungeness crab landings until further notice and;

(b) The vessel has a valid Oregon vessel inspection certificate or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with an individual inspection number that includes the letters "EVS" indicating that evisceration is required for all crab sold by this license or the letters "NOR" indicating north of Point Chehalis, WA (46°53.18 N. Lat) (except Grays Harbor) and evisceration is not required.

(c) A Washington vessel inspection certificate is only valid when signed by an authorized WDFW employee.

(d) A Washington vessel hold inspection certificate dated on or after March 18, 2021 supersedes any hold inspection certificate previously issued to the same license or associated designated vessel.

(2) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) All crab caught north of Point Arena, CA and south of Point Chehalis, WA (46°53.18 N. Lat) including Willapa Bay and Grays Harbor must be delivered to a processing facility with an approved Hazard Analysis and Critical Control Point (HACCP) plan and eviscerated or;

(b) Dungeness crab are delivered to a Washington Department of Fish and Wildlife licensed Fish Dealer and/or Wholesale Fish Buyer and transported or sold to a facility with an approved HACCP plan and eviscerated. The vessel inspection number must accompany the crab to the final designation where it will be eviscerated.

(3) It is unlawful to donate, sell or attempt to sell to retailers or consumers live or whole Dungeness crab when caught north of Cape Falcon, OR (45°46'00" N. Lat) and south of Point Chehalis, WA (46°53.18 N. Lat), and Willapa Bay and Grays Harbor.

(5) Unless otherwise amended all other provisions of the permanent rule remain in effect

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

NEW SECTION

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

(1) Open area: The area from the WA/OR border (46°15.00) to the US-Canadian border.

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

(2) No license or vessel may set gear south of Point Chehalis, WA (46°53.18 N. Lat) and Willapa Bay and Grays Harbor unless they have been issued a valid Oregon vessel inspection certificate dated on or after February 15, 2021 or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "EVS" indicating that evisceration is required for all crab landed by this license or vessel until further notice.

(3) Licenses or vessels issued a valid Washington crab vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "NOR" may land crab for live, whole cooked or evisceration.

(4) It unlawful for licenses and vessels with a vessel inspection number that includes the letters "NOR" to deploy or operate shellfish pots south of Point Chehalis, WA (46°53.18 N. Lat) and Willapa Bay and Grays Harbor.

(5) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine biotoxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(6) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00' N. Lat. 124°20.70' W. Lon.

(b) Northwest Corner: 47°28.00' N. Lat. 124°34.00' W. Lon.

(c) Southwest Corner: 47°08.00' N. Lat. 124°25.50' W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00' N. Lat. 124°11.20' W. Lon.

(4) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(5) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15' N. Lat. and 48°19.50' N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner (Tatoosh Island)

(b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.

(c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.

(d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

(6) It is unlawful to fish for Dungeness crab in the Westport Boat Basin as defined in WAC 220-300-320.

(7) Unless otherwise amended all other provisions of the permanent rule remain in effect.

[]

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-42000G Commercial crab fishery—Unlawful acts. (21-26)

WAC 220-340-45000W Commercial crab fishery—Seasons and areas—Coastal. (21-26)

WSR 21-07-040

EMERGENCY RULES

SKAGIT VALLEY COLLEGE

[Filed March 10, 2021, 3:46 p.m., effective April 7, 2021]

Effective Date of Rule: April 7, 2021.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's code of student conduct to be compliant with federal regulations.

Citation of Rules Affected by this Order: New Code of student conduct WAC 132D-150-500, 132D-150-510, 132D-150-520, 132D-150-530, 132D-150-540, 132D-150-550, 132D-150-560, 132D-150-570 and 132D-150-580; and amending WAC 132D-150-010, 132D-150-020, 132D-150-030, 132D-150-090, 132D-150-110, 132D-150-130, 132D-150-150, 132D-150-170, 132D-150-230, 132D-150-250, 132D-150-270, 132D-150-290, 132D-150-310, and 132D-150-410.

Statutory Authority for Adoption: RCW 28B.50.150.

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: Skagit Valley College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 15, 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 9, Amended 15, Repealed 0.

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

Date Adopted: March 9, 2021.

Lisa Radeleff
Rules Coordinator

OTS-2506.1

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student ((affairs)) services or designee. The student conduct of-

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

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-010, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-020 Statement of jurisdiction. (1) The code of student conduct shall apply to student conduct that occurs:

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

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

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

(2) Jurisdiction extends to, but is not limited to, locations in which students 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, on-line 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 application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college 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.50.150. WSR 16-04-102, § 132D-150-020, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-030 Definitions. The following definitions shall apply for purpose of this student conduct code:

(1) "Student conduct officer" is a college administrator designated by the president or vice president for student services to be responsible for implementing and enforcing the student conduct code. The president or vice president for student services is authorized to re-assign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(2) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of

student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(3) "The president" is the president of the college. The president is authorized to delegate any of (~~his or her~~) their responsibilities as set forth in this chapter as may be reasonably necessary, and reassign any and all duties or responsibilities as set forth in this chapter as may be reasonably necessary.

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

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

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

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

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

(b) By sending the document via first class mail to the party's last known address; or

(c) By sending the document by email via Skagit Valley College's online student conduct software. It is the responsibility of each student to regularly check their official Skagit Valley College email address.

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

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

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

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

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

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

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

(11) "Business day" means a weekday, excluding weekends and college holidays.

(12) "Calendar day" means days on the calendar including weekends and holidays.

(13) "Sexual misconduct" has the meaning ascribed to this term in WAC 132D-150-050.

Note: "Day" refers to calendar days unless otherwise specified.

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-030, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-090 Initiation of disciplinary action. (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

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

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

~~((4))~~ (5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132D-150-070.

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

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-090, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-110 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten business days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

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

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

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

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

(b) Dismissals; and

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

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

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

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

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the

complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

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

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-110, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-150 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

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

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

(3) The conduct review officer shall serve an initial decision upon both the parties within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within (~~twenty-one~~) ten calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

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

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-150, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-170 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

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

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

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

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

(6) In cases involving allegations of sexual misconduct, the president on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-170, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-230 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing no less than seven days in advance of the hearing date (~~(, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045)~~). The chair may shorten this notice period if

both parties agree, and also may continue the hearing to a later time for good cause shown.

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

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

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

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

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

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

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

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

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

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-230, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-250 Student conduct committee hearings—Presentations of evidence.

(1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

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

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

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

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

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

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-250, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-270 Student conduct committee—Initial decision.

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

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student con-

duct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

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

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

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-270, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-290 Appeal from student conduct committee initial decision. (1) A (~~respondent~~) party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within (~~twenty-one~~) ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

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

(3) The president shall provide a written decision to all parties within (~~forty-five~~) twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

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

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-290, filed 2/2/16, effective 3/4/16.]

AMENDATORY SECTION (Amending WSR 16-04-102, filed 2/2/16, effective 3/4/16)

WAC 132D-150-310 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 28B.50.150. WSR 16-04-102, § 132D-150-310, filed 2/2/16, effective 3/4/16.]

NEW SECTION

WAC 132D-150-500 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 Skagit Valley College's standard disciplinary procedures, WAC 132D-150-010 through 132D-150-410, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132D-150-510 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 Skagit Valley 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 132D-150-520 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
- (b) Occurred during a Skagit Valley 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, WAC 132D-150-010 through 132D-150-410.

(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 132D-150-530 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and

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

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

[]

NEW SECTION

WAC 132D-150-540 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 132D-150-230. 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 132D-150-550 Rights of parties. (1) The college's student conduct procedures, WAC 132D-150-010 through 132D-150-410, 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 Skagit Valley College's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

WAC 132D-150-560 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 132D-150-570 Initial order. (1) In addition to complying with WAC 132D-150-270, 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 132D-150-580 Appeals. 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 132D-150-290.

(1) 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).

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

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WSR 21-07-043
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 11, 2021, 8:29 a.m., effective March 12, 2021]

Effective Date of Rule: March 12, 2021.

Purpose: In light of the public health emergency, the Centers for Medicare and Medicaid Services waived rules requiring in-person assessments. In addition, this change clarifies instances in which in-person interviews are not required. Therefore, the department is amending WAC 388-106-0050 What is an assessment?

Citation of Rules Affected by this Order: Amending WAC 388-106-0050.

Statutory Authority for Adoption: RCW 74.09.520.

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 department wants to continue providing personal care services to vulnerable people during the pandemic. To do that, federal medicaid law requires an assessment of the person's functional eligibility. Because of the COVID-19 pandemic, in-person assessments increase the risk of transmission and the beneficiaries are often in high risk groups. Immediate amendment of this rule is necessary for the preservation of the public health and safety because without it the department may not be able to safely assess vulnerable adults so that they can receive needed medicaid services. Without the amendment it may be difficult for the department to comply with medicaid regulations and receive federal financial participation. Existing federal law allows for the assessment to be performed remotely if the person agrees. The requirement that the beneficiary agrees to a remote assessment has been temporarily waived by the Centers for Medicaid and Medicare services. The amendment aligns the state rule with federal requirements. The amendment is remedial and curative and is intended to be applied retroactively.

The department filed a CR-102 Proposed rule making on February 1, 2021, as WSR 21-04-107 for a public hearing on March 9, 2021. This emergency filing allows the emergency rule to remain in effect while the department completes the permanent rule-making process.

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

Date Adopted: March 8, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4839.1

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home, current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least every twelve months, or more often when there are significant changes necessitating revisions to your CARE plan, or at your request. If your assessment did not take place in the residence where you receive services, the department must visit that residence to evaluate your living situation and environment, for you to continue to receive services.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

(4) An assessment interview does not need to be in-person under the following circumstances:

(a) You agree to the interview being conducted remotely, and have adequate support to participate in the assessment if you need it; or

(b) An in-person interview is not required by the applicable federal regulation or the requirement is waived by the centers for medicare and medicaid services.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.400 and 42 C.F.R. § 441.500-590. WSR 16-04-020, § 388-106-0050, filed 1/22/16, effective 2/22/16. Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-0050, filed 8/29/13 and 8/21/13, effective 10/1/13. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-106-0050, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0050, filed 5/17/05, effective 6/17/05.]

WSR 21-07-045
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 11, 2021, 9:18 a.m., effective March 13, 2021]

Effective Date of Rule: March 13, 2021.

Purpose: The department is extending emergency amendments to WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation, which temporarily exempt participants from mandatory WorkFirst participation. This emergency rule is effective March 13 through June 30, 2021.

Citation of Rules Affected by this Order: Amending WAC 388-310-0350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010.

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

Reasons for this Finding: This subsequent filing is necessary to extend existing emergency rules, which provide relief in response to health and economic impacts of COVID-19. The department is actively undertaking appropriate procedures to adopt the rule as a permanent rule. The department filed a CR-101 Preproposal statement of inquiry as WSR 20-14-104 on June 30, 2020; a CR-102 Proposed rule making as WSR 20-23-040 on November 10, 2020; and held a public rule-making hearing on December 22, 2020.

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

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

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

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

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

Date Adopted: March 9, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4789.1

AMENDATORY SECTION (Amending WSR 15-24-056, filed 11/24/15, effective 1/1/16)

WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?

Except as provided in subsection (4) of this section, you are exempt from mandatory participation if you are:

(a) A caretaker relative as defined by WAC 388-454-0010, included in the assistance unit and:

(i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below:

(i) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than ten hours a week and is expected to last at least twelve months. Your disability and ability to participate must be verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), behavioral health organization (BHO), and/or regional service area (RSA), or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, school professional, one of the medical or mental health professionals listed in subsection (2) of this section, HCS, MHD, BHO, and/or an RSA to require specialized care or treatment that prevents you from participating in work activities for more than ten hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) You are unable to participate in work activities for more than ten hours per week because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, BHO and/or an RSA, or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(e) A resident of Washington state during a declared state of emergency related to COVID-19.

(2) What types of medical or mental health professionals can provide medical evidence when I have a disability?

We accept medical evidence from the following sources when considering disability:

- (a) For a physical impairment:
 - (i) A physician, which includes:
 - (A) Medical doctor (M.D.); and
 - (B) Doctor of osteopathy (D.O.);
 - (ii) An advanced registered nurse practitioner (ARNP) for physical impairments;
 - (iii) A physician's assistant (P.A.);
 - (iv) A doctor of optometry (O.D.) for visual acuity impairments;

or

- (v) Doctor of podiatry (D.P.) for foot disorders;
- (b) For a mental impairment:
 - (i) A psychiatrist;
 - (ii) A psychologist;
 - (iii) An ARNP certified in psychiatric nursing;
 - (iv) A mental health professional provided the person's training and qualifications at a minimum include a master's degree; or
 - (v) A physician who is currently treating you for a mental impairment.

(c) We do not accept medical evidence from the medical professionals listed in subsections (2)(a) and (b), unless they are licensed in Washington state or the state where the examination was performed.

(3) Who reviews and approves an exemption from participation?

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(4) If I am an adult who is exempt due to my severe and chronic disability, can I still be required to participate in the WorkFirst program?

When you are exempt due to your severe and chronic disability, you may be required to:

(a) Pursue SSI or another type of federal disability benefit; and/or

(b) Participate in available treatment that is recommended by your treating medical or mental health provider or by a chemical dependency professional.

(5) Can I participate in WorkFirst while I am exempt?

(a) You may choose to fully participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(6) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?

Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit as described in WAC 388-484-0005.

(7) How long will my exemption last?

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(8) What happens when I am no longer exempt?

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(9) For time-limited extensions, see WAC 388-484-0006.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-310-0350, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-310-0350, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.08A.340. WSR 09-16-079, § 388-310-0350, filed 7/31/09, effective 9/1/09; WSR 03-24-057, § 388-310-0350, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-310-0350, filed 5/31/02, effective 6/1/02.]

WSR 21-07-046
EMERGENCY RULES
CLARK COLLEGE

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

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's code of student conduct to be compliant with federal regulations.

Citation of Rules Affected by this Order: New Discipline Procedures for Cases Involving Allegations of Violation of Title IX; WAC 132N-125-300, 132N-125-305, 132N-125-310, 132N-125-315, 132N-125-320, 132N-125-325, 132N-125-330, 132N-125-335, and 132N-125-340.

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

Under RCW 34.05.350 the agency for good cause finds that 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: Clark College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 0, Repealed 0.

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

Date Adopted: March 10, 2021.

Bob Williamson
Special Projects Administrator

OTS-2504.1

**DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF
TITLE IX**

NEW SECTION

WAC 132N-125-300 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 Clark College's standard disciplinary procedures, WAC 132N-125-005 through 132N-125-225, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132N-125-305 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, Clark 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 Clark 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 132N-125-310 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Clark 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 Clark 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 Clark College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132N-125-200.

(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 132N-125-315 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

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

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

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

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

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

(ii) An advisor may be an attorney; and

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

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

[]

NEW SECTION

WAC 132N-125-320 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 132N-125-125. 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 Clark College intends to offer the evidence at the hearing.

[]

NEW SECTION

WAC 132N-125-325 Rights of parties. (1) Clark College's student conduct procedures, WAC 132N-125-120, 132N-125-125, 132N-125-130, and 132N-125-200, 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 132N-125-330 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 132N-125-335 Initial order. (1) In addition to complying with WAC 132N-125-135, 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 Clark College's education programs or activities; and

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

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

[]

NEW SECTION

WAC 132N-125-340 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 132N-125-215.

(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 21-07-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-33—Filed March 12, 2021, 10:49 a.m., effective March 12, 2021, 11:59 p.m.]

Effective Date of Rule: March 12, 2021, 11:59 p.m.

Purpose: The purpose of this emergency rule is to open Puget Sound Crab Management Region 3-1 to commercial crab harvest and to rescind reporting requirements set forth in WSR 21-01-079.

Citation of Rules Affected by this Order: Repealing WAC 220-352-34000H, 220-340-45500U; and amending WAC 220-340-455.

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

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

Reasons for this Finding: The provisions of this emergency rule:

- (1) Open Region 3-1 to commercial crab harvest following an extended closure.
- (2) Continue to permit commercial crab harvest in Puget Sound within Crab Management Regions 1, 3-2, and 3-3.
- (3) Maintain the closure of Regions 2 East and 2 West.
- (4) Set a pot limit of twenty-five pots per license in Region 3-1.
- (5) Maintain current pot limits in Regions 1, 3-2, and 3-3.
- (6) Set closure dates for state commercial harvest in Region 1 as agreed to by tribal comanagers.

Region 3-1 will open to allow a coordinated cleanup of the remaining quota. Catch Areas Region 21A, 21B and 22B will close on March 31, 2021, and Catch Areas 22A, 20A and 20B will close on April 15, 2021, based on the hard closure date outlined in historical comanagement harvest agreements. In Regions 1, 3-1, 3-2, and 3-3 the available quota is sufficient to accommodate continued commercial harvest. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound Dungeness crab commercial fishing season is structured to meet harvest allocation objectives negotiated between state and tribal comanagers and outlined in related management plans.

There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: March 12, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500V Commercial crab fishery—Seasons and areas—Puget Sound. Effective 11:59 p.m. on March 12, 2021, until further notice, the following provisions of WAC 220-340-455 regarding Puget Sound commercial crab fishing seasons are modified as written below, all other provisions of WAC 220-340-455 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is illegal to harvest Dungeness crab for commercial purposes in Crab Management Regions 2 East, 2 West.

(2) It is permissible to harvest Dungeness crab for commercial purposes in Crab Management Regions 1, 3-1, 3-2, and 3-3.

(3) It is permissible to harvest Dungeness crab for commercial purposes in the following areas in Crab Management Region 1:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) It is unlawful for any person to deploy more than 75 pots per license per buoy tag number in Crab Management Regions 3-2, and 3-3 with the intent of harvesting Dungeness crab for commercial purposes.

(3) It is unlawful for any person to deploy more than 50 pots per license per buoy tag number in Crab Management Region 1 with the intent of harvesting Dungeness crab for commercial purposes.

(4) It is unlawful for any person to deploy more than 25 pots per license per buoy tag number in Crab Management Region 3-1 with the intent of harvesting Dungeness crab for commercial purposes.

(5) All remaining, undeployed buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

(6) Effective 11:59 p.m. on March 31, 2021 until further notice, it is illegal to harvest Dungeness crab for commercial purposes in Catch Areas 21A, 21B and 22B within Crab Management Region 1.

(7) Effective 11:59 p.m. on April 15, 2021 until further notice, it is illegal to harvest Dungeness crab for commercial purposes in Catch Areas 22A, 20A and 20B within Crab Management Region 1.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed effective 11:59 p.m. March 12, 2021:

- WAC 220-352-34000H Puget Sound crab—Additional reporting requirements. (20-256)
- WAC 220-340-45500U Commercial crab fishery—Seasons and areas—Puget Sound. (21-10)

WSR 21-07-068

EMERGENCY RULES

BELLINGHAM TECHNICAL COLLEGE

[Filed March 16, 2021, 1:06 p.m., effective March 16, 2021, 1:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New Supplemental Title IX Student Conduct Procedures; WAC 495B-121-155, 495B-121-165, 495B-121-175, 495B-121-185, 495B-121-195, 495B-121-205, 495B-121-210, 495B-121-215 and 495B-121-225; and repealing WAC 495B-121-150, 495B-121-160, 495B-121-170, and 495B-121-180.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; RCW 28B.50.130.

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: Bellingham Technical College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020. An emergency rule extension is requested in order for Bellingham Technical College to comply with all assistant attorney general requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, Amended 0, Repealed 4; 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 9, Amended 0, Repealed 4.

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

Date Adopted: March 16, 2021.

Rhonda Laughlin
Executive Assistant
to the President

OTS-2580.3

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-010 Definitions. The following definitions shall apply for the purpose of this student conduct code.

(1) "Board" means the board of trustees of Bellingham Technical College.

(2) "College" means Bellingham Technical College.

(3) "Student conduct officer" is a Bellingham Technical College ~~((administrator))~~ employee designated by the president or vice president of student services to be responsible for implementing and enforcing the student conduct code. ~~((The president or vice president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.))~~

(4) "Conduct review officer" is the vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. ~~((The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.))~~

(5) "The president" is the president of ~~((the))~~ Bellingham Technical College. The president is authorized to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) "Day" (~~and~~) means a calendar day, except when a "business day" is specified. "Business day" means a weekday, excluding weekends and college holidays.

(14) (~~"Alcohol" or "alcoholic beverages" means the definition of liquor as contained within RCW 66.04.010 as now law or hereinafter amended.~~

~~(15) "Drugs" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.201 through 60.50.212, or a legend drug as defined in RCW 69.41.010.)~~ A "complainant" is an alleged victim of sexual misconduct.

(15) "Sexual misconduct" has the meaning ascribed to this term in WAC 495B-121-255(13).

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-010, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of Bellingham Technical College the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student services or their designee. (~~The vice president of student services or~~) Unless otherwise specified, the student conduct officer, or their delegee shall serve as the principal investigator and administrator for alleged violations of this code.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-020, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-040 Prohibited student conduct. (~~Prohibited student conduct for which~~) The college may impose ((sanctions includes, but is)) 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, any of the following:

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

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

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

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

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

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

(b) Tampering with an election 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 of)) disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

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

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

(4) Assault, intimidation, harassment. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, ((stalking)) or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this ((subsection:

~~(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.~~

~~(b) Stalking is intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent)) code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law, that intentionally humiliates, harms, or intimidates the victim.~~

(5) Cyber misconduct. Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's

email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

~~(6) ((Attempted or actual 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; or~~

~~(c) Any other person or organization, or possession of such property or money after it has been stolen.)) Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.~~

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

~~(8) ((Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.~~

~~(9)) Weapons. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, 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 ((his or her)) their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; ((or))~~

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

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

~~((11) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing to-~~

~~bacco, personal vaporizers, vape pens, electronic nicotine delivery systems and snuff.~~

~~(12) Alcohol. Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.~~

~~(13) Marijuana. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling, or delivering any product containing 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.~~

~~(14) Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional.~~

~~(15) Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.~~

~~(16) Conduct that is disorderly, lewd, or obscene.~~

~~(17) Breach of the peace.~~

~~(18) Discriminatory action)) (10) Alcohol, drug, and tobacco violations.~~

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

(b) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

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

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, or windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems, and snuff.

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

(12) Discriminatory conduct. Conduct which harms or adversely affects any ((student or college employee)) member of the college community because of ((his/her race,)) their race; color((τ)); national origin((τ)); sensory, mental, or physical disability((τ)); use of a

service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation(, age, creed, or religion.

~~(19) Sexual violence. Sexual or gender-based misconduct perpetrated against a person's will or where a person is incapable of giving consent including, but not limited to, rape, sexual assault, sexual battery, gender-based stalking, and sexual coercion, regardless of the relationship between the perpetrator and the victim.~~

~~(20) Sexual harassment. Conduct that includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other sexual conduct, including verbal, nonverbal, electronic or social media communication, or physical touching that would substantially interfere with a reasonable person's ability to participate in or benefit from the college's program, or to create an intimidating, hostile, or offensive educational environment.~~

~~(21) Other harassment. Conduct that has the purpose or effect of substantially interfering with a reasonable person's work or educational performance or creating an intimidating, hostile or offensive working or educational environment, when such conduct is directed at an individual because of race, national origin, disability, age, religion, sexual orientation, gender or any other legally protected classification.); gender identity; veteran's status; or any other legally protected classification.~~

(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495B-121-330 (supplemental Title IX student conduct procedures).

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

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

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

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

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

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

(i) Nonconsensual sexual intercourse. Any actual or attempted 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. 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 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 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 conduct indicating freely given agreement to have sexual intercourse or sexual contact.

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 conduct.

(14) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical

disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status, or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

~~((22))~~ (15) Retaliation. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

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

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

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

~~((23))~~ (17) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

~~((24) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:~~

~~(a) Failure to obey a subpoena;~~

~~(b) Falsification or misrepresentation of information;~~

~~(c) Disruption or interference with the orderly conduct of a proceeding;~~

~~(d) Interfering with someone else's proper participation in a proceeding;~~

~~(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;~~

~~(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or~~

~~(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.~~

~~(25) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.~~

~~(26))~~ (18) Safety violations. ((Safety violation includes any)) Nonaccidental conduct that interferes with or otherwise compromises

any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((27))~~ (19) 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.

~~((28))~~ (20) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

~~((29) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.))~~

In addition to initiating discipline proceedings for violations 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.50.130. WSR 16-08-029, § 495B-121-040, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-050 Disciplinary sanctions and terms and conditions. (1) The following disciplinary ~~((actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495B-121-070 through 495B-121-200.~~

~~(1))~~ sanctions may be imposed upon students found to have violated the student conduct code.

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

~~((2))~~ (b) Written reprimand ~~((+))~~. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

~~((3))~~ (c) Disciplinary probation ~~((+))~~. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student, subject to a deferred disciplinary sanction, is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction(s) or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. ~~((A student who is on disciplinary probation may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:~~

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

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

~~(4)) (d) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

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

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

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

~~((5) Disciplinary suspension: Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(6)) (b) Professional evaluation((+)). Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of re-entering the college and complying with the rules of conduct.~~

~~((7) Dismissal: The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.~~

~~(8) Refund of fees: Refund of fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund policy.~~

~~A student suspended on the basis of conduct that disrupted the orderly operation of the campus or any facility of the college may be denied access to all or any part of the campus or other college facility.~~

~~(9)) (c) Not in good standing. A student may be deemed "not in good standing" with the college. If so, that student shall be subject to the following restrictions:~~

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

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

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

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-050, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-060 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On Bellingham Technical College premises and facilities(~~(, to conduct that occurs)~~);

(b) At or in connection with college-sponsored activities(~~(, or to off-campus conduct that)~~); or

(c) Off-campus, and which, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students 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 application for admission)~~) notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college 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.50.130. WSR 16-08-029, § 495B-121-060, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-065 Statement of purpose. (1) Bellingham Technical College is maintained by the state of Washington for the provision of programs of instruction in higher education and related community

services. Like any other institution having its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, it has special expectations regarding the conduct of the various participants in the college community.

(2) Admission to the college carries with it the prescription that the student will conduct (~~(himself or herself)~~) themselves as a responsible member of the college community. This includes an expectation that the student will obey appropriate laws, will comply with the rules of the college and its departments, and will maintain a high standard of integrity and honesty.

(3) Sanctions for violations of college rules or conduct that interferes with the operation of college affairs may be applied by the college, and the college may impose sanctions independently of any action taken by civil or criminal authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

(4) The rules and regulations prescribed in this title shall be observed by guests and visitors while on campus, at all college functions and events, and on or within any other college-controlled or college-owned property. Guests and visitors who willfully refuse to obey college security or other duly designated college authorities to desist from conduct prohibited by such rules and regulations may be ejected from the premises. Refusal to obey such an order may subject the person to arrest under the provisions of the Washington criminal trespass law, in addition to such other sanctions as may be applicable.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-065, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-070 Initiation of disciplinary action. (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing (~~(him or her)~~) them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or condi-

tions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

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

~~((4))~~ (5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC ~~((495B-121-040))~~ 495B-121-255;

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

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that the disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-070, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-080 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ~~((twenty-one))~~ ten business days of service ~~((to))~~ of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

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

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

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

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

(b) Dismissals; and

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

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

~~(a) Suspensions of ten instructional days or less;~~

~~(b) Disciplinary probation;~~

~~(c) Written reprimands; and~~

~~(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions)~~ subject to the procedures outlined in WAC 495B-121-275 through 495B-121-285.

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

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

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

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

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

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

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-080, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-090 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which ~~((he or she is))~~ they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

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

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

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

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

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

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-090, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-100 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided ~~((the respondent))~~ a party files a written request for review with the conduct review officer within ~~((twenty-one))~~ ten business days of service of the initial decision.

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

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decisions and must be served on the parties within twenty business days of the initial decision or of the request for review, whichever is later. The decision on review

will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty business days after the request is submitted.

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

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-100, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-110 Student conduct committee. (1) The student conduct committee shall consist of five members:

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

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

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

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness ~~((τ))~~ i in which they have direct or personal interest, prejudice, or bias ~~((τ))~~ i or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-110, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-120 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW (~~, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control~~).

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date (~~, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045~~). The chair may shorten this notice period if both parties agree, and (~~also~~) may also continue the hearing to a later time for good cause shown.

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

(4) (~~Upon request,~~) If a request for a document exchange is filed at least five business days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

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

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

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

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

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

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

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of (~~his/her~~) their choice. A respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at (~~his or her~~) their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the

committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-120, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-125 Student conduct appeals committee hearings—

Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision; or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

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

(3) The chair shall cause the hearing to be recorded by a method that ~~((he/she))~~ they select~~((s))~~, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

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

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

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

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross-examine the other. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-125, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-130 Student conduct committee—Initial decision.

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

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

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

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

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to the respondent. The notice will also inform the complainant of their appeal rights.

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-130, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-135 Appeal from student conduct committee initial decision. (1) A (~~respondent~~) party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within (~~twenty-one~~) ten business

days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

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

(3) The president shall provide a written decision to all parties within (~~forty-five~~) twenty-one business days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) (~~The president may, at his or her discretion, suspend any disciplinary action and/or impose interim sanctions pending review of the merits of the findings, conclusions, and disciplinary actions imposed.~~) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

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

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-135, filed 3/30/16, effective 4/30/16.]

AMENDATORY SECTION (Amending WSR 16-08-029, filed 3/30/16, effective 4/30/16)

WAC 495B-121-140 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety or welfare of members of the college community; or
- (c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

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

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

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

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

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

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

~~((a) The hearing will be conducted as a brief adjudicative proceeding.))~~

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

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

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

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

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

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

[Statutory Authority: RCW 28B.50.130. WSR 16-08-029, § 495B-121-140, filed 3/30/16, effective 4/30/16.]

~~((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MIS-
CONDUCT))~~

NEW SECTION

WAC 495B-121-275 Brief adjudicative proceedings authorized.

This chapter is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) Student conduct appeals involving the following disciplinary actions:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands;

(d) Any condition or term imposed in conjunction with one of the foregoing disciplinary actions;

(e) Summary suspensions; and

(f) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(2) Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

[]

NEW SECTION

WAC 495B-121-290 Brief adjudicative proceedings—Agency record.

The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

[]

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURESNEW SECTION

WAC 495B-121-325 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 Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-230 through 495B-121-320, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 495B-121-330 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 495B-121-335 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

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

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment 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, WAC 495B-121-230 through 495B-121-320.

(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 495B-121-340 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 Title IX hearing committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

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

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

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

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

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

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

(ii) An advisor may be an attorney; and

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

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

[]

NEW SECTION

WAC 495B-121-345 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the Title IX hearing committee will send a hearing notice to all parties, in compliance with WAC 495B-121-300. 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 495B-121-350 Rights of parties. (1) The college's student conduct procedures, WAC 495B-121-230 through 495B-121-320 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 495B-121-355 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 495B-121-360 Initial order. (1) In addition to complying with WAC 495B-121-310 the Title IX hearing 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, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college educational 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 495B-121-365 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495B-121-315.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction(s) and condition(s)

imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction(s) and/or condition(s).

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

[]

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
495B-121-010	495B-121-245
495B-121-020	495B-121-230
495B-121-030	495B-121-250
495B-121-040	495B-121-255
495B-121-050	495B-121-260
495B-121-060	495B-121-235
495B-121-065	495B-121-240
495B-121-070	495B-121-265
495B-121-080	495B-121-270
495B-121-090	495B-121-280
495B-121-100	495B-121-285
495B-121-110	495B-121-295
495B-121-120	495B-121-300
495B-121-125	495B-121-305
495B-121-130	495B-121-310
495B-121-135	495B-121-315
495B-121-140	495B-121-320

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495B-121-150	Supplemental sexual misconduct— Procedures.
WAC 495B-121-160	Supplemental sexual misconduct— Definitions.
WAC 495B-121-170	Supplemental complaint process.
WAC 495B-121-180	Supplemental appeal rights.
WAC 495B-121-190	Brief adjudicative proceedings authorized.

WAC 495B-121-200 Brief adjudicative proceedings—Agency record.

OTS-2518.2

~~((DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MIS-
CONDUCT))~~ SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 495B-121-155 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 Bellingham Technical College's standard disciplinary procedures, WAC 495B-121-010 through 495B-121-140, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 495B-121-165 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, 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 495B-121-175 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

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

(2) For purposes of this supplemental procedure, an "education program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the re-

spondent 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, WAC 495B-121-010 through 495B-121-140.

(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 495B-121-185 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 Title IX hearing committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

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

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

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

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

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

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

(ii) An advisor may be an attorney; and

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

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

[]

NEW SECTION

WAC 495B-121-195 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the Title IX hearing committee will send a hearing notice to all parties, in compliance with WAC 495B-121-120. In no event will the hearing date be 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. The 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 495B-121-205 Rights of parties. (1) The college's student conduct procedures, WAC 495B-121-010 through 495B-121-140 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 495B-121-210 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 495B-121-215 Initial order. (1) In addition to complying with WAC 495B-121-130, the Title IX hearing 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, the complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college 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 495B-121-225 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495B-121-135.

(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) The president's office shall serve the final decision on the parties simultaneously.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495B-121-150	Supplemental sexual misconduct— Procedures.
WAC 495B-121-160	Supplemental sexual misconduct— Definitions.
WAC 495B-121-170	Supplemental complaint process.
WAC 495B-121-180	Supplemental appeal rights.

WSR 21-07-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-34—Filed March 16, 2021, 1:12 p.m., effective March 16, 2021, 1:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for Puget Sound commercial sea urchins.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000C; 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 4 (23C) 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. Immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: March 16, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000D Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, effective immediately, until further notice:

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

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-75000C Commercial sea urchin fisheries.
(21-27)

WSR 21-07-073
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-35—Filed March 16, 2021, 4:24 p.m., effective March 19, 2021]

Effective Date of Rule: March 19, 2021.

Purpose: Amends freshwater fishing rules for Columbia River sturgeon.

Citation of Rules Affected by this Order: Repealing WAC 220-312-0600G [06000G]; 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 John Day Pool. Creel data indicates harvest is nearing the quota of one hundred five 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: March 16, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000I Freshwater exceptions to statewide rules—Columbia River. Effective March 19, 2021, until further notice, the provisions of WAC 220-312-060 regarding white sturgeon retention seasons from Bonneville Dam to McNary 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.

(3) **From John Day Dam to McNary Dam:** Sturgeon retention is prohibited.

[]

REPEALER

The following section the Washington Administrative Code is repealed, effective March 19, 2021:

WAC 220-312-06000G Freshwater exceptions to statewide rules—Columbia River. (21-04)

WSR 21-07-076

EMERGENCY RULES

STATE BOARD OF EDUCATION

[Filed March 17, 2021, 11:25 a.m., effective March 17, 2021, 11:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The state board of education is reviewing chapter 180-111 WAC to implement recently passed legislation, make changes as necessary to align rule to current policy or practice, correct references to law, improve readability of the rule, or make other changes identified during the review. The purpose of this chapter is to establish an emergency waiver program to allow school districts as defined in WAC 180-111-020, and private schools, to waive certain graduation requirements on an individual student basis and emergency waiver of certain requirements for private schools in WAC 180-111-060. The intent is to help prevent students from being unduly impacted by unforeseen disruptions to coursework and assessments resulting from an "emergency or disaster" as defined in RCW 38.52.010. "Emergency" may also include a national declaration of emergency by an authorized federal official.

Citation of Rules Affected by this Order: New WAC 180-111-060; and amending WAC 180-111-010, 180-111-020, 180-111-030, 180-111-040, and 180-111-050.

Statutory Authority for Adoption: Chapter 7, Laws of 2021 (EHB 1121); RCW 28A.195.040, 28A.195.010, 28A.230.090, 28A.150.220(7).

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: Chapter 7, Laws of 2021 (EHB 1121) and RCW 28A.195.040 authorize the state board of education to engage in rule making to provide flexibility in response to the novel coronavirus (COVID-19) emergency. Immediate adoption and amendment of rule is necessary for the preservation of the public health, safety, and general welfare during the public health crisis due to continued disruptions caused by the COVID-19 pandemic, 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. There is an immediate need for an emergency waiver program to prevent students from being unduly impacted by the unforeseen disruptions to coursework and assessments that are beyond the students' control. Public health and safety responses to COVID-19 have caused disruption to student coursework to complete graduation requirements. This waiver preserves the general welfare of graduating cohorts who were affected by disruptions due to those public health and safety responses to the COVID-19 pandemic.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 5, 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 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 0.

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

Date Adopted: March 11, 2021.

Dr. Randy Spaulding
Executive Director

OTS-2954.4

Chapter 180-111 WAC

EMERGENCY WAIVER OF CERTAIN REQUIREMENTS ((IN RESPONSE TO NOVEL CORONAVIRUS))

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-010 Authority and purpose. (1) ~~((The authority for this chapter is sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965) which authorizes the state board of education to administer an emergency waiver program.~~

~~(2))~~ The purpose of this chapter is ~~((:~~

~~(a))~~ to establish an emergency waiver program to ((grant local education agencies and private schools flexibility so that students in the graduating class of 2020 or earlier who were on track to graduate before the gubernatorial declaration of emergency of February 29, 2020, the proclamation of statewide school closures on March 13, 2020, and any subsequent amendments to these proclamations, are not negatively impacted by measures taken by the local education agency or private school in response to the novel coronavirus (COVID-19); and

~~(b) To allow flexibility from instructional hour or school day requirements for the 2019-20 school year for private schools that close due to the novel coronavirus.~~

~~(3) This chapter expires July 31, 2020))~~ allow school districts as defined in WAC 180-111-020, and private schools, to waive certain graduation requirements on an individual student basis and emergency waiver of certain requirements for private schools in WAC 180-111-060. The intent is to help prevent students from being unduly impacted by unforeseen disruptions to coursework and assessments resulting from an "emergency or disaster" as defined in RCW 38.52.010. "Emergency" may also include a national declaration of emergency by an authorized federal official.

(2) These emergency rules are for the novel coronavirus emergency, in response to the gubernatorial declaration of emergency on February 29, 2020. They apply to the classes of 2020 and 2021 in the 2020-21 school year.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-111-010, filed 12/10/20, effective 1/10/21.]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-020 Definitions. The definitions in this section apply throughout this chapter.

(1) (~~"Good faith effort" means the local education agency or private school considered and implemented options, determined appropriate by the local education agency or private school, to support individual students in meeting credit requirements. Options for helping students meet credit requirements or waive credit requirements include, but are not limited to:~~

~~(a) Recommendations provided by the office of the superintendent of public instruction in its published guidance on supporting seniors during long term school closures, as outlined in Bulletin Number 022-20 issued on March 20, 2020, and Bulletin Number 024-20 issued on March 23, 2020, and any related subsequent bulletins.~~

~~(b) Awarding or waiving of credits through existing authority of local education agencies and private schools:~~

~~(i) Local graduation requirements under WAC 180-51-020 may be waived at local discretion without approval of the state board of education.~~

~~(ii) Local education agencies and private schools that have implemented state credit requirements under WAC 180-51-068 (the twenty-four credit graduation requirement framework) have the authority to award a two credit waiver of flexible credits for individual student circumstances.~~

~~(iii) Students may be excused from physical education, provided they demonstrate competency/mastery in the knowledge portion of the required one and one-half credits, as articulated in WAC 180-51-056 (1)(e), 180-51-067(6), and 180-51-068(6).~~

~~(iv) Per WAC 180-51-056 (1)(e)(ii), 180-51-067 (4)(b), and 180-51-068 (4)(b)(i) and (ii), the noncredit requirement of Washington state history can be waived for students who either have completed a state history course in another state, or for eleventh or twelfth grade students who have not completed the course because of previous residence in another state.~~

~~(v) Credits may be awarded based on the student's demonstrated proficiency/competency of the state's learning standards under WAC 180-51-050.~~

~~(2) "Local education agency" means a school district, charter school established under chapter 28A.710 RCW, or tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW. References within this chapter to local education agency shall also apply to community and technical college colleges per WAC 180-51-015.~~

~~(3) "On track to graduate" means the individual student's earned credits and current or planned enrollment as of the gubernatorial declaration of emergency of February 29, 2020, would have been sufficient, as determined by the student's local education agency or private school, for the student to meet the applicable state minimum~~

~~graduation requirements (as defined in WAC 180-51-056, 180-51-067, and 180-51-068) by the end of the 2019-20 school year as defined by RCW 28A.150.203.)~~ "Demonstrated postsecondary preparation" means the student has demonstrated skills and knowledge indicating preparation for the next steps identified in their high school and beyond plan under RCW 28A.230.090 and for success in postsecondary education, gainful employment, and civic engagement.

(a) The school district shall review the individual student's completed and planned coursework and other information applicable to the individual student and determine if the student has demonstrated postsecondary preparation.

(b) This individual student review may include, but is not limited to, whether the following considerations apply to that student:

(i) The student has completed a graduation pathway option in accordance with RCW 28A.655.250 and WAC 180-51-230.

(ii) The student has completed activities consistent with the criteria for "career prep" or has participated in an approved "career launch" program through career connect Washington.

(iii) The student has completed a preparatory career and technical education course or a course that meets the preparatory standards as defined in RCW 28A.700.030.

(iv) The student has developed and practiced leadership and employability skills through a job, volunteer position, or a career and technical student organization that would enable them to advance in their chosen career field and has obtained external validation from an employer, tribal elder, CTE business or industry advisory committee member, or other community member that can attest to the student's preparation for their next steps.

(v) The student is a participant in a recognized apprenticeship preparation program or registered apprenticeship program or has signed an apprenticeship agreement with an employer.

(vi) The student has earned college credit in a core subject area.

(vii) The student has earned an industry recognized credential.

(viii) The student has completed minimum college admission standards for four-year institutions of higher education, in accordance with RCW 28B.77.020 (7) (a).

(ix) The student placed into a college-level math or English course at an institution of higher education.

(x) The student completed a summer bridge program or a senior transition course (bridge to college).

(xi) The student has completed an option permissive under RCW 28A.655.065 (5) (c) (i), including:

(A) A college-level class in the relevant subject area;

(B) Admission to a higher education institution or career preparation program;

(C) Award of a scholarship for higher education; or

(D) Enlistment in a branch of the military.

(2) "Eligible student" means:

(a) The student was reasonably expected to graduate in the school year when the emergency waiver is being considered;

(b) The student has demonstrated postsecondary preparation as defined in subsection (1) of this section; and

(c) The student experienced a significant disruption to their ability to complete graduation requirements due to the emergency, which could include, but is not limited to: Inability for the student to access the school building or other education facility due to clo-

sure or, if online learning is a part of the school program, the student did not have a reliable internet connection or sufficient technology within their household, had to support their family by working during the emergency, had to care for family members during the emergency, illness of the student or student's household member, or other circumstances that directly compromised the student's ability to complete the credit requirements or a graduation pathway option.

(3) "Emergency" means the same as the definition for "emergency or disaster" in RCW 38.52.010. "Emergency" may also include a national declaration of emergency by an authorized federal official.

(4) "Good faith effort" means the school district considered and implemented options, determined appropriate by the school district, to support each individual student in meeting credit and pathway requirements.

(a) For each student who is being considered for the emergency waiver, school districts shall provide individual student advising to help each student determine: What supports they need to be successful; how they might meet the graduation requirements, including the feasibility of summer or a partial or full additional year of high school enrollment; and whether the emergency waiver is appropriate for the individual student.

(b) Options for supporting students to meet credit and course-based graduation pathway requirements include, but are not limited to:

(i) Provision of additional academic supports to aid student completion.

(ii) Awarding credits based on the student's demonstrated proficiency/mastery of the state's learning standards under WAC 180-51-050, 180-51-051, and 392-410-300, including credits, grades, and courses transcribed on the high school transcript.

(iii) Awarding credit through expanded learning opportunities, dual credit programs, work-based learning (WAC 392-410-315), traditional online, summer learning, CTE course equivalencies, and other local credit options for awarding credit outside of school.

(c) Options for supporting students to meet the exam-based graduation pathway requirement include, but are not limited to: Efforts to ensure students are aware of, and can access, online or by other alternative access options, the SAT, ACT, ASVAB, AP, IB, Cambridge International, and state assessments (if applicable). School districts are encouraged to reduce or eliminate any cost to students in using these options.

(5) "Reasonably expected to graduate" means the individual student's earned credits and current or planned enrollment would have been sufficient, as determined by the school district, for the student to meet the applicable state minimum graduation requirements (as defined in WAC 180-51-056, 180-51-067, 180-51-068, and 180-51-210) by the end of the school year when the emergency waiver is granted if not for the impact of the novel coronavirus disruption.

(6) "School district" means any school district, charter school established under chapter 28A.710 RCW, tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW, state schools established under chapter 72.40 RCW, and community and technical colleges granting high school diplomas.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-111-020, filed 12/10/20, effective 1/10/21.]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-030 Application and approval process for public school districts. (1) ~~((Beginning no later than April 15, 2020,))~~ The state board of education ~~((shall))~~ will make an application available to ~~((local education agencies))~~ school districts seeking ~~((this waiver. A local education agency))~~ the emergency waiver of certain graduation requirements for the novel coronavirus emergency. A school district may apply to the state board of education for the authority to waive pathway and credit-based graduation requirements for individual students. The state board of education will accept applications through a deadline to be determined by the state board of education.

(2) ~~((In order))~~ To be granted the waiver authority, the ~~((local education agency must certify the following:~~

~~(a) The local education agency has considered equity in applying for the waiver and will consider equity in administering the waiver. This may include, but is not limited to, an equity analysis, community outreach, or other means to assess and mitigate potential disparate impacts of this waiver.~~

~~(b) The local education agency will grant waivers on an individual student basis to eligible students in accordance with WAC 180-111-040.~~

~~(c) Prior to granting a waiver, the local education agency will make a good faith effort, as defined in WAC 180-111-020, to help individual students address credit deficiencies and meet core course requirements.~~

~~(d) The local education agency will administer the waiver in accordance with program rules as outlined))~~ school district must certify it will administer the waiver in accordance with program rules as stated in this chapter.

(3) The application must be certified by the school district superintendent or equivalent personnel with authority to sign on behalf of the ~~((local education agency))~~ school district.

(4) The state board of education may approve applications that meet the criteria ~~((outlined))~~ stated in subsections (2) and (3) of this section. The board may delegate this authority to its executive director for efficiency per RCW 28A.305.130(7).

(5) The state board of education ~~((shall))~~ will promptly post on its public website ~~((the information collected on the application,))~~ a list of all approved applications ~~((received, and the decision to approve or deny each application)).~~

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-111-030, filed 12/10/20, effective 1/10/21.]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-040 School district implementation of the emergency waiver of ~~((credit-based))~~ certain graduation requirements. (1) Before granting any emergency waivers, the school district board or equivalent governing body shall adopt by resolution a plan that de-

scribes the school district's process for granting and declining emergency waivers for students. The plan must include:

(a) A process for school district staff to initiate a waiver and a process for students to request a waiver if not initiated by the district;

(b) A school district process if an initial decision is made to decline a waiver for an individual student, for further review and recommendations by a panel with at least one counselor and educators with expertise in trauma-informed instruction and culturally responsive education, and if appropriate, special education, instruction for multilingual/English language learners, and a migrant graduation specialist or migrant student advocate;

(c) A process for students to appeal within the school district a decision to not grant an emergency waiver; and

(d) Culturally responsive ways, based on the school district's local community, to communicate with students and families about the waiver and the process to request, appeal, or decline the waiver.

(2) Beginning from the date of approval of its waiver, in accordance with WAC 180-111-030, through ~~((July 31, 2020, in accordance with the establishing legislation, a local education agency))~~ August 31, 2021, a school district may waive subject area credit and pathway graduation requirements ~~((outlined in subsection (2) of this section for individual students))~~ stated in WAC 180-111-050 for eligible students on an individual student basis after completing all of the following requirements:

(a) ~~((The local education agency))~~ Before use of this waiver for graduation credit requirements, school districts shall consider using their existing authority to waive credits through the following ways:

(i) Local graduation requirements under WAC 180-51-020 may be waived at local discretion without approval of the state board of education.

(ii) Two-credit waiver of flexible credits may be granted for individual student circumstances, in accordance with WAC 180-51-068(13) and 180-51-210(2).

(iii) Students may be excused from physical education in accordance with the applicable requirements in WAC 180-51-067(6), 180-51-068(6), and 180-51-210 (4) (f).

(iv) The noncredit requirement of Washington state history may be waived in accordance with WAC 180-51-067 (4) (b), 180-51-068 (4) (b) (i) and (ii), and 180-51-210 (4) (d) (iv) (A) and (B).

(b) The school district shall review the individual student's completed and planned coursework and determine that the student was ~~((on track))~~ reasonably expected to graduate ~~((r))~~ as defined in WAC 180-111-020 and that the student has demonstrated postsecondary preparation as defined in WAC 180-111-020.

~~((b) The local education agency))~~ (c) The school district shall demonstrate a good faith effort, as defined in WAC 180-111-020, to help the individual student ~~((meet credit-based graduation requirements through other options))~~ complete coursework, address credit deficiencies, and meet core course and graduation pathway option requirements through other options that align with their high school and beyond plan. The school district shall document the steps taken to demonstrate this good faith effort in the individual student record.

~~((c) The local education agency))~~ (d) The school district shall consult with the individual student, and make a reasonable effort to consult with a parent or guardian of the student, and shall make a reasonable effort to provide information about this waiver in the pre-

ferred languages of the student, and of the parent or guardian of the student if applicable. The information ((shall)) must include, but is not limited to:

(i) ~~((What is being waived for the individual student;))~~ In the consideration of whether waiver(s) are appropriate for an individual student, and if so what waiver(s), the school district shall advise the student to waive only those credit(s) that are least applicable to the student's postsecondary plans as articulated in the student's high school and beyond plan;

(ii) The potential benefits and limitations that could result from receiving the waiver including impacts on ((high school graduation and)) postsecondary plans((+)) and, if applicable to their high school and beyond plan, the recommendation to contact the student's intended postsecondary institutions or apprenticeship provider regarding potential impacts; and

(iii) The option for the individual student to decline the waiver and for the student to be provided with the opportunity to earn the credits needed or meet their intended pathway option to complete graduation requirements ~~((through))~~ which may include continued enrollment beyond the planned graduation date.

~~((2) Waived credit graduation requirements:~~

~~(a) Waived credit graduation requirements are limited to credits a student would have had the opportunity to earn by the end of the 2019-20 school year including:~~

~~(i) Courses and other credit-earning opportunities the student was enrolled in as of February 29, 2020; and~~

~~(ii) Credits that the student planned to complete by the end of the 2019-20 school year as defined in RCW 28A.150.203 for terms not yet started as of February 29, 2020, that were scheduled to occur during the period of school closure due to the novel coronavirus. These planned credits must be indicated on the student's high school and beyond plan, in course registration records, or in the student's credit attainment or recovery plan.~~

~~(b) Waived graduation requirement credits may include both core credit graduation requirements and flexible credit graduation requirements, as defined in WAC 180-51-210.~~

~~(3) This waiver may apply to individual students participating in the international baccalaureate diploma programme as defined in RCW 28A.230.122 to enable these students to earn a Washington high school diploma.~~

~~(4) Schools operating under the waiver defined in WAC 180-18-055 may waive graduation requirements in a manner consistent with this section.~~

~~(5) Each local education agency shall maintain a record of courses and requirements waived as part of the individual student record and shall report to the state board of education in a manner determined by the state board of education.~~

~~(6) The local education agency shall consider equity in administering the emergency waiver under this section. This consideration should be designed to identify and mitigate potential disparate impacts of the emergency waiver and to determine if any changes to the local education agency's approach in administering the emergency waiver are needed before the conclusion of the 2019-20 school year.)~~ (3) The school district shall ensure equity in administering the emergency waiver. The school district shall disaggregate waiver data by student subgroups as referenced in RCW 28A.300.042(3) and shall conduct further disaggregation of subgroups if data are available to do so. If

disproportionality is found, the school district shall take appropriate actions to ensure equitable administration. This consideration must further be designed to identify and mitigate potential disparate impacts of the emergency waiver and to determine if any changes to the school district's approach in administering the emergency waiver, including supports under WAC 180-111-020(4) to help students meet the requirements, are needed before the conclusion of the school year.

(4) The school district shall:

(a) Maintain a record of the following in the individual student record: Actions taken under the good faith effort to help the student meet the graduation requirements, courses (including the term and amount of credit) and requirements waived, and how the student demonstrated postsecondary preparation;

(b) Include a notation of waived credits and graduation pathway on the student's high school transcript in accordance with RCW 28A.230.125;

(c) Keep a record of the number of waivers requested and not granted;

(d) Report on administration of the emergency waiver to the state board of education in a manner determined by the state board of education; and

(e) Report student level emergency waiver data to the office of the superintendent of public instruction in a manner determined by the superintendent of public instruction in consultation with the state board of education.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-111-040, filed 12/10/20, effective 1/10/21.]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-111-050 Emergency waiver ((for private schools)) of certain requirements in response to novel coronavirus. ~~((1) This section applies to private schools approved to operate in Washington for the 2019-20 school year under chapter 180-90 WAC.~~

~~(2) Private schools may waive credit-based graduation requirements for individual students who were on track to graduate, as defined in WAC 180-111-020, in a manner consistent with the provisions of WAC 180-111-040.~~

~~(3) Private schools that have implemented an online education program consistent with the provisions of RCW 28A.195.090 that provide the remaining curriculum will be considered to have the instructional hour requirements met. Private schools have discretion to determine whether the curriculum has been adequately satisfied.~~

~~(4) The state board of education waives the instructional hours and days requirement under RCW 28A.195.010 for the 2019-20 school year. The number of hours or days offered after February 29, 2020, will not be considered for continued approval of private schools.~~

~~(5) Each private school shall notify the state board of education in a format provided by the board whether the private school is waiving requirements under this section.)~~ (1) Waived credit graduation requirements are limited to the student's classes impacted by the novel coronavirus disruption. The school district shall prioritize stu-

dent completion of core coursework and coursework related to the student's high school and beyond plan under RCW 28A.230.090. Beginning in the 2020-21 school year, school districts may waive credits for eligible students in the classes of 2020 and 2021:

(a) In addition to existing waiver authorities as described in WAC 180-111-040 (2) (a), school districts may waive up to two additional credits under this emergency waiver, provided that students graduate with no fewer than a total of twenty credits.

(b) The emergency waiver in (a) of this subsection may be applied to core credits or flexible credits as defined in WAC 180-51-210, provided that no more than one credit in each core subject area is waived.

(2) A student's graduation pathway requirement may be waived for eligible students in the classes of 2020 and 2021 after a school district has made a good faith effort to help the student meet their pathway requirement, as defined in WAC 180-111-020.

(3) This waiver may apply to individual students participating in the international baccalaureate diploma programme as defined in RCW 28A.230.122 to enable these students to earn a Washington high school diploma.

(4) Schools operating under the waiver defined in WAC 180-18-055 may waive graduation requirements in a manner consistent with this section.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-111-050, filed 12/10/20, effective 1/10/21.]

NEW SECTION

WAC 180-111-060 Emergency waiver of certain requirements in response to novel coronavirus for private schools. (1) This section applies to private schools approved to operate in Washington for the 2020-21 school year under chapter 180-90 WAC.

(2) Private schools may waive credit-based graduation requirements for individual students who have demonstrated postsecondary preparation as defined in WAC 180-111-020, in a manner consistent with the provisions of WAC 180-111-040 and 180-111-050. Private schools are exempt from the reporting requirements listed in WAC 180-111-040 (4) (d) and (e).

(3) Private schools that have implemented an online education program consistent with the provisions of RCW 28A.195.090 will be considered to have met the instructional hour requirements. Private schools have discretion to determine whether the curriculum has been adequately satisfied.

(4) For the 2020-21 school year, the state board of education will maintain a private school's status as an approved private school if, due to a significant disruption caused by the novel coronavirus, the school is unable to fulfill the requirements of RCW 28A.195.010 of a full school year of one hundred eighty days or are unable to fulfill the annual average total instructional hours requirements.

(5) Each private school shall notify the state board of education in a format provided by the board whether the private school is waiving requirements under this section.

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WSR 21-07-077
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed March 17, 2021, 11:29 a.m., effective March 17, 2021, 11:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-12 WAC, General—Applicable to all licensees, the Washington state liquor and cannabis board (WSLCB) (board) has adopted emergency rules that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of violations of any governor's proclamation issued as a result of the COVID-19 outbreak. This filing supersedes and replaces emergency rules filed as WSR 20-23-123 on November 18, 2020.

Citation of Rules Affected by this Order: New WAC 314-12-250 and 314-12-275.

Statutory Authority for Adoption: RCW 66.08.0501 and 66.08.030.

Other Authority: RCW 66.08.150, 66.44.010, 70.155.150, and 70.345.020.

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

Reasons for this Finding: WSLCB has the authority and responsibility to adopt rules for the preservation of public health. The immediate readoption of a rule establishing summary license suspension and petition for stay provisions is necessary for the enforcement of governor's proclamations issued as a result of the COVID-19 outbreak.

On February 29, 2020, Governor Inslee issued Proclamation 20-05 (linked here [contact agency for link]) that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington state, and proclaimed a state of emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 (linked here [contact agency for link]) that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the state. Proclamation 20-13 was based on both guidance from the United States Center[s] for Disease Control and Prevention to reduce the size of gatherings from two hundred fifty persons to fifty persons, and the necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.

On March 23, 2020, Governor Inslee issued Proclamation 20-25, first entitled, "Stay Home - Stay Healthy" (linked here [contact agency for link]), that among other things, imposed limits on conducting or participating in essential activities and employment in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and nonessential businesses in Washington state. Nonessential businesses were prohibited from operation except for performing basic minimum operations. Essential businesses were encouraged to remain open and maintain operations.

Establishments licensed by the board are subject to the restrictions of Governor's Proclamations 20-05, 20-13, and 20-25. Although

some establishments licensed by the board are considered essential, others are not or are subject to specific limitations.

Between March 2020 and January 2021, Governor Inslee issued a series of proclamations in response to the evolving COVID-19 situation, including Proclamations 20-25.01 through 20-25.12, which amended Proclamations 20-05 and 20-25 et seq. and incorporated issued amendatory proclamations, including Proclamation 20-13. The updates are described in sequential order below:

In April and early May 2020, Governor Inslee issued Proclamations 20-25.2 and 20-25.3, making certain adjustments and modifications to the "Stay Home, Stay Healthy" order. (See Proclamation 20-25.2 issued April 27, 2020; and Proclamation 20-25.3 issued May 4, 2020.)

On May 31, 2020, Governor Inslee issued Proclamation 20-25.4,, entitled "Safe Start - Stay Healthy—County-By-County Phased Reopening" (linked here [contact agency for link]; see Proclamation 20-25.4). Limitations established were gradually relaxed based on county-by-county phasing established according to metrics provided by the secretary of health.

On June 24, 2020, the secretary of health first issued Order of the Secretary of Health 20-03 which, among other things, requires (with exceptions) the use of face coverings throughout the state. (See department of health news release dated June 24, 2020.)

On July 1, 2020, Governor Inslee issued Proclamation 20-25.05 (linked here [contact agency for link]), extending and modifying certain statewide restrictions. The following day, on July 2, 2020, Governor Inslee ordered a freeze on all counties moving forward to a subsequent phase due to increased COVID-19 infection rates across the state (see governor's news release dated July 2, 2020).

On July 7, 2020, Governor Inslee issued Proclamation 20-25.06 (linked here [contact agency for link]), again extending and modifying certain statewide restrictions. On July 24, 2020, Governor Inslee issued Proclamation 20-25.07 (linked here [contact agency for link]) and the secretary of health issued Order of the Secretary of Health 20-03.1 (linked here [contact agency for link]), extending the requirement (with exceptions) to use face coverings throughout the state.

On October 7, 2020, Governor Inslee announced several updates to the "Safe Start Washington - Phased Reopening County-by-County" plan (linked here [contact agency for link]; See governor's news release dated October 6, 2020) to align guidance and adjustments to regulations of several industries.

On November 15, 2020, in response to a large surge of new COVID-19 cases and increased hospitalizations and deaths, Governor Inslee issued Proclamation 20-25.8, entitled "Stay Safe - Stay Healthy—Roll-back of County-by-County Phased Reopening Responding to a COVID-19 Outbreak Surge" (See Proclamation 20-25.8).

In December 2020, Governor Inslee amended Proclamation 20-25 several times, extending and modifying some statewide restrictions. (See Proclamation 20-25.9 issued December 10, 2020; Proclamation 20-25.10 issued December 21, 2020; and Proclamation 20-25.11 issued December 30, 2020.)

On January 11, 2021, Governor Inslee issued Proclamation 20-25.12 (linked here [contact agency for link]), entitled "Healthy Washington - Roadmap to Recovery" (see also, PDF document with the same name issued by the office of the governor on February 14, 2021, linked here [contact agency for link]). Proclamation 20-25.12 introduced a new

phased recovery plan with a regional recovery approach that replaced the previous county-by-county approach. Proclamation 20-25.12 was based on evidence of increasing COVID-19 infection rates across the state, evidence of how the virus is spread through very small droplets called aerosols, the known factors that increase the risk for person-to-person COVID-19 transmission, and the knowledge that two vaccines have been approved for use in the United States and efforts to vaccinate vulnerable populations are underway.

These emergency rules serve a two-pronged purpose. These rules are needed to:

- Allow the board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, tobacco, or vapor product licensee has violated any governor's proclamation issued as a result of the COVID-19 outbreak, and that immediate cessation of licensed activities are necessary for the preservation of public health and welfare; and
- Provide a framework and process for an affected WSLCB licensee to petition the board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW.

These rules may be extended, rescinded, or considered for inclusion in adopted rules at a later date as appropriate.

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

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

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

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

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

Date Adopted: March 17, 2021.

David Postman
Chair

OTS-2191.1

NEW SECTION

WAC 314-12-250 Summary license suspension. (1) The board may serve an order of summary suspension of any license under this Title 314 WAC after the board's enforcement division has:

(a) Completed a preliminary staff investigation of a violation of a governor's proclamation; and

(b) Upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this section is effective twenty-four hours after personal service of the summary suspension order on the licensee or employee thereof, unless the licensee becomes compliant as provided in the order before the expiration of the twenty-four hour period.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing will be held within ninety calendar days of the effective date of the summary suspension ordered by the board. The ninety day period may be extended for good cause.

[]

NEW SECTION

WAC 314-12-275 Petition for stay. (1) When the board summarily suspends a license under WAC 314-12-250, an affected licensee may petition the board for a stay of suspension. A petition for a stay of suspension must be received by the board within ten calendar days of service of the summary suspension order on the licensee. The petition for stay must clearly describe the basis for the stay.

(2) A hearing will be held before an administrative law judge within fourteen calendar days of receipt of a timely petition for stay. The hearing is limited to consideration of whether a stay should be granted, or whether the terms of the suspension will be modified to allow the conduct of limited activities under current licenses.

(3) Any hearing conducted under subsection (2) of this section will be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing must consist of the documentary information upon which the summary suspension was based. The licensee is permitted to supplement the record with additional documentation during the brief adjudicative proceeding. The licensee must demonstrate by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, income alone from licensed activities is not deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay is effective immediately upon service unless another date is specified in the order.

[]

WSR 21-07-083
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 18, 2021, 8:11 a.m., effective March 20, 2021]

Effective Date of Rule: March 20, 2021.

Purpose: The department is extending emergency amendments to WAC 388-447-0005 What evidence do we consider to determine incapacity?, 388-447-0010 What medical evidence do I need to provide?, 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end?, 388-449-0010 What evidence do we consider to determine disability?, 388-449-0015 What medical evidence do I need to provide?, and 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?

These amendments are necessary to mitigate impacts to ABD and HEN referral clients and medical providers resulting from the ongoing COVID-19 virus (commonly referred to as the "coronavirus") public health crisis.

Citation of Rules Affected by this Order: Amending WAC 388-447-0005, 388-447-0010, 388-447-0110, 388-449-0010, 388-449-0015, and 388-449-0150.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.0052, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.090, 74.08.043, 74.08.335, 74.09.530, 74.08.025, and 74.08A.100.

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

Reasons for this Finding: This filing is necessary to extend the existing emergency rules filed under WSR 20-08-074, 20-16-015, and 20-24-005 which protect public health, safety, and welfare by mitigating client and medical provider impacts caused by the ongoing COVID-19 pandemic and associated state of emergency in all Washington counties, as proclaimed by Governor Inslee's "Proclamation by the Governor 20-05."

The department filed notice of its intent to adopt the rules as permanent rules by filing a CR-101 Preproposal statement of inquiry under WSR 20-14-107 on June 30, 2020, and filed a CR-102 Proposed rule making as WSR 20-23-075 on November 16, 2020. This CR-103E filing is necessary to extend the existing emergency rules until the CR-103 Permanent rule-making order filed as WSR 21-07-004 on March 4, 2021, takes effect on April 4, 2021.

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

Number of Sections Adopted at the Request of a 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 6, Repealed 0.

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

Date Adopted: March 17, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4791.1

AMENDATORY SECTION (Amending WSR 18-05-075, filed 2/20/18, effective 3/23/18)

WAC 388-447-0005 What evidence do we consider to determine incapacity? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

(a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

- (i) Medical doctor (MD);
- (ii) Doctor of osteopathy (DO);
- (iii) Doctor of optometry (OD) for visual disorders;
- (iv) Doctor of podiatry (DP) for foot and ankle disorders;
- (v) Physician assistant (PA) for impairments within their licensed scope of practice;
- (vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;
- (vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice;
- (viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments;
- (ix) Doctor of dental surgery (DDS) or doctor of medical dentistry (DMD) for tooth abscesses or temporomandibular joint (TMJ) disorders; and

(x) Chief of staff of a U.S. Department of Veterans Affairs medical center, or their designee, as authorized in federal law.

(b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

- (i) Psychiatrist;
- (ii) Psychologist;
- (iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;
- (iv) Physician assistant (PA) for impairments within their licensed scope of practice;
- (v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning;
- (vi) Clinical social worker;
- (vii) Mental health professional (MHP); and
- (viii) Physician treating you for a mental impairment.

(2) "Supplemental medical evidence" means information from a licensed health professional who can provide supporting documentation for impairments established by an "acceptable medical source" listed in subsection (1) of this section. "Supplemental medical evidence" sources include, but are not limited to:

- (a) Naturopath;
- (b) Chiropractor;
- (c) Physical therapist; and

(d) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

(3) "Other evidence" means information from sources not listed in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical source" in subsection (1) of this section. Sources of "other evidence" may include public and private agencies, schools, family members, friends, caregivers, and employers.

(4) In the event of a declared state of emergency related to COVID-19, the department may accept a diagnosis of a medically determinable impairment from a "supplemental medical evidence" source in subsection (2) of this section or the predictive risk intelligence system (PRISM).

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, and 74.09.530. WSR 18-05-075, § 388-447-0005, filed 2/20/18, effective 3/23/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0005, filed 11/26/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-447-0010 What medical evidence do I need to provide?

You must provide medical evidence of your impairment(s) and how your impairment(s) affects your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective and complete.

(1) Objective evidence for physical impairments means:

- (a) Laboratory test results;
- (b) Pathology reports;

(c) Radiology findings including results of X-rays and diagnostic imaging scans;

(d) Clinical findings including, but not limited to, ranges of joint motion, blood pressure, temperature or pulse; and documentation of a physical examination; or

(e) Hospital history and physical reports and admission and discharge summaries; or

(f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

(a) Clinical interview observations, including objective mental status exam results and interpretation.

(b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).

(c) Hospital, outpatient and other treatment records related to your current impairments.

(d) Testing results, if any, including:

(i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

(ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for an incapacity determination must be from a medical professional described in WAC 388-447-0005 and must include:

(a) A diagnosis for the impairment, or impairments, based on an examination performed within five years of application;

(b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-447-0001; and

(c) Documentation of how the impairment, or impairments, is currently limiting your ability to work based on an examination performed within ninety days of the date of application or incapacity review. In the event of a declared state of emergency related to COVID-19, the department may accept functional medical evidence beyond ninety days of the date of application or incapacity review, or otherwise waive this requirement in its entirety.

(4) We consider documentation in addition to objective evidence to support the medical evidence provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) If you can't obtain medical evidence sufficient for us to determine if you are incapacitated without cost to you, and you meet the other eligibility conditions defined in WAC 388-447-0001, we pay the costs to obtain objective evidence based on our published payment limits and fee schedules.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0010, filed 11/26/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end? (1) If we determine you are incapacitated and you meet the eligibility requirements in WAC 388-400-0070, you are eligible for referral to the housing and essential needs (HEN) program for a maximum period of twelve months. This is your incapacity authorization period.

(2) Your HEN referral eligibility stops at the end of your incapacity authorization period unless you provide current medical evidence that demonstrates there was no material improvement in your impairment. No material improvement means that your impairment continues to meet the incapacity criteria detailed in WAC 388-447-0001. In the event of a declared state of emergency related to COVID-19, the de-

partment may postpone review of your HEN referral program eligibility beyond the twelve month period if the department determines you are not eligible for the aged, blind, or disabled (ABD) program at the time of your incapacity review. The postponement of this review may occur retroactively to the date the governor declares a state of emergency related to COVID-19.

(3) The medical evidence must meet the criteria defined in WAC 388-447-0010.

(4) We use medical evidence received after your incapacity authorization period has ended when:

(a) The delay was not due to your failure to cooperate;

(b) We receive the evidence within thirty days of the end of your incapacity authorization period; and

(c) The evidence meets the incapacity criteria in WAC 388-447-0001.

(5) Even if your condition has not improved, you aren't eligible for referral to the HEN program when:

(a) We receive current medical evidence that doesn't meet the incapacity criteria in WAC 388-447-0001; or

(b) We determine the prior decision that your condition met incapacity requirements was incorrect because:

(i) The information we had was incorrect or not enough to show incapacity; or

(ii) We didn't apply the rules correctly to the information we had at that time.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0110, filed 11/26/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 18-05-075, filed 2/20/18, effective 3/23/18)

WAC 388-449-0010 What evidence do we consider to determine disability? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

(a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

(i) Medical doctor (MD);

(ii) Doctor of osteopathy (DO);

(iii) Doctor of optometry (OD) for visual disorders;

(iv) Doctor of podiatry (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice; and

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments.

(b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

- (i) Psychiatrist;
- (ii) Psychologist;
- (iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;
- (iv) Physician assistant (PA) for impairments within their licensed scope of practice; and
- (v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning.

(2) We accept medical evidence of how your impairment(s) affect your ability to function from "treating medical sources" once a diagnosis of a medically determinable impairment has been established by an "acceptable medical source" listed in subsection (1) of this section. "Treating medical sources" must be licensed to provide health-care and include, but are not limited to:

- (a) Physician treating you for a mental impairment;
- (b) Clinical social worker;
- (c) Mental health professional (MHP);
- (d) Naturopath;
- (e) Chiropractor;
- (f) Physical therapist; and
- (g) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

(3) "Other evidence" means information from sources not listed in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical source" in subsection (1) of this section. Sources of "other evidence" may include public and private agencies, schools, family members, friends, caregivers, and employers.

(4) In the event of a declared state of emergency related to COVID-19, the department may accept a diagnosis of a medically determinable impairment from a "treating medical source" in subsection (2) of this section or the predictive risk intelligence system (PRISM).

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, and 74.09.530. WSR 18-05-075, § 388-449-0010, filed 2/20/18, effective 3/23/18. 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, § 388-449-0010, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0015 What medical evidence do I need to provide?

You must give us medical evidence of your impairment(s) and how they affect your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective, and complete.

- (1) Objective evidence for physical impairments means:
 - (a) Laboratory test results;
 - (b) Pathology reports;

(c) Radiology findings including results of X-rays and computer imaging scans;

(d) Clinical findings, including but not limited to ranges of joint motion, blood pressure, temperature or pulse, and documentation of a physical examination; and

(e) Hospital history and physical reports and admission and discharge summaries; or

(f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

(a) Clinical interview observations, including objective mental status exam results and interpretation.

(b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the diagnostic and statistical manual of mental disorders (DSM).

(c) Hospital, outpatient and other treatment records related to your current impairments.

(d) Testing results, if any, including:

(i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

(ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for a disability determination must be from a medical professional described in WAC 388-449-0010 and must include:

(a) A diagnosis for the impairment, or impairments, based on an examination performed by an acceptable medical source defined in WAC 388-449-0010 within five years of application;

(b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-449-0005;

(c) Documentation of how long a condition has impaired your ability to perform work related activities;

(d) A prognosis, or written statement of how long an impairment will impair your ability to perform work related activities; and

(e) A written statement from a medical professional (defined in WAC 388-449-0010) describing what you are capable of doing despite your impairment (medical source statement) based on an examination performed within ninety days of the date of application or forty-five days before the month of disability review. In the event of a declared state of emergency related to COVID-19, the department may accept functional medical evidence beyond ninety days of the date of application or forty-five days before the month of disability review, or otherwise waive this requirement in its entirety.

(4) We consider documentation in addition to objective evidence to support the acceptable medical source or treating provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) When making a disability decision, we don't use your report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.

(6) We don't use symptoms related to substance abuse or a diagnosis of chemical dependency when determining disability if we have evidence substance use is material to your impairment(s).

(7) We consider substance use to be material to your impairment(s) if you are disabled primarily because of drug or alcohol abuse or addiction.

(8) If your impairment will persist at least sixty days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment.

(9) If you can't obtain medical evidence sufficient for us to determine if you are likely to be disabled without cost to you, and you meet the other eligibility conditions in WAC 388-400-0060, we pay the costs to obtain objective evidence based on published payment limits and fee schedules.

(10) We determine the likelihood of disability based solely on the objective information we receive. We are not obligated to accept another agency's or person's decision that you are disabled or unemployable.

[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, § 388-449-0015, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end? (1) The maximum period of eligibility for ABD cash is twenty-four months before we must review additional medical evidence. If you remain on ABD cash at the end of the twenty-four month period, we determine your eligibility using current medical evidence. In the event of a declared state of emergency related to COVID-19, the department may postpone review of your ABD cash eligibility beyond the twenty-four month period. The postponement of this review may occur retroactively to the date the governor declares a state of emergency related to COVID-19.

(2) If your application for SSI is denied:

(a) We review your eligibility for the ABD cash program;

(b) We stop your benefits if you do not provide proof you have filed an appeal with SSA within sixty days of a SSI denial for not being disabled.

(3) We stop your benefits after the final decision on your application for SSI/SSA benefits or if you fail to follow through with any part of the SSI/SSA application or appeals process.

[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, § 388-449-0150, filed 4/27/12, effective 6/1/12.]

WSR 21-07-089
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 19, 2021, 8:26 a.m., effective March 19, 2021, 8:26 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: 2019's Clean Energy Transformation Act amends RCW 82.08.962 and 82.12.962 related to sales and use tax remittances for machinery and equipment used in generating electricity (sections 18 and 19, chapter 288, Laws of 2019, E2SSB 5116). Under the amendments, the sales and use tax remittances are available for certain clean energy projects when certified by the department of labor and industries (L&I) that the developer of the project complied with specific labor standard requirements and the machinery and equipment is installed on or after January 1, 2020, and completed by December 31, 2029. L&I is required to adopt emergency rules to define and set minimum requirements for all labor standards associated with the certification for tax remittance; set requirements for all good faith efforts; and set other requirements to documentation and the certification process.

The emergency rules address:

- Standards for certification for:
 - Procurement from and contracts with women-owned, minority-owned, and veteran-owned businesses;
 - Procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations;
 - Apprenticeship utilization;
 - Preferred entry for workers living in the area where the project is being constructed;
 - Payment of prevailing wages; and
 - Project labor agreements and community workforce agreements.
- Requirements and processes related to application, records and documentation, and certification.

An initial emergency rule (WSR 19-24-061) and CR-101 Preproposal statement of inquiry (WSR 19-24-062) were filed on November 27, 2019. A second emergency rule (WSR 20-08-089) was filed on March 27, 2020. A third emergency rule (WSR 20-16-012) was filed on July 23, 2020. A fourth emergency rule (WSR 20-24-020) was filed on November 20, 2020. This rule making renews the emergency rules while the permanent rule-making process continues. This emergency rule is adopted under a new chapter 296-140 WAC, Clean energy labor standards certification. As directed by E2SSB 5116, L&I is continuing work on permanent rule making for these requirements.

Citation of Rules Affected by this Order: New WAC 296-140-001, 296-140-002, 296-140-003, and 296-140-004.

Statutory Authority for Adoption: Sections 18 and 19, chapter 288, Laws of 2019; RCW 82.08.962 and 82.12.962 (E2SSB 5116).

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

Reasons for this Finding: An initial emergency rule (WSR 19-24-061) and CR-101 Preproposal statement of inquiry (WSR 19-24-062)

were filed on November 27, 2019. A second emergency rule (WSR 20-08-089) was filed on March 27, 2020, and a third emergency rule (WSR 20-16-012) was filed on July 23, 2020. A fourth emergency rule (WSR 20-24-020) was filed on November 20, 2020. This rule making renews the emergency rules while the permanent rule-making process continues.

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 4, 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: March 19, 2021.

Joel Sacks
Director

OTS-1924.3

**Chapter 296-140 WAC
CLEAN ENERGY LABOR STANDARDS CERTIFICATION**

NEW SECTION

WAC 296-140-001 Definitions. (1) "Category 1 clean energy project" means a project to:

(a) Construct a facility capable of generating not less than 1000 watts AC of electricity using any of the following principal sources of power: Fuel cells; wind; biomass energy; geothermal resource; tidal or wave energy; or technology that converts otherwise lost energy from exhaust; or

(b) Construct solar energy systems capable of generating not less than 500 kilowatts AC of electricity.

(2) "Category 2 clean energy project" means a project to construct solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.

(3) "Community workforce agreement (CWA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the CWA must be a single agreement covering all labor organizations representing the building and construction em-

ployees involved in the project and covers all contractors and subcontractors working on the project.

(4) "Department" means the department of labor and industries.

(5) "Good faith efforts" means the efforts by the project developer or its designated principle contractor that maximize the likelihood that the project will be built in compliance with the standards for certification. The totality of the circumstances and factors will be reviewed to determine good faith. Good faith efforts are not necessary when the standard requirements have been met.

(6) "Labor hours" means the total hours of laborers, workers, or mechanics receiving an hourly wage who are directly employed by the contractor and all subcontractors working upon the project. Labor hours does not include hours worked by foremen, superintendents, or owners except where the hours worked are counted in satisfying the required apprentice to journey supervision ratio as required by apprenticeship standards.

(7) "Local resident" means Washington laborers, workers, or mechanics receiving an hourly wage who live within fifty miles of the project being constructed unless the project is being constructed in a rural county, then it is defined as Washington workers who live within two hundred miles of the project.

(8) "Minority-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a minority business enterprise (MBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(9) "Project labor agreement (PLA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the PLA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

(10) "Registered apprentice" means an apprentice registered in an apprenticeship program approved by the Washington state apprenticeship and training council according to chapter 49.04 RCW.

(11) "Rural county" has the same definition as RCW 82.14.370(5).

(12) "Women-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a women business enterprise (WBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(13) "Veteran-owned business" means a business certified by the Washington state department of veteran affairs under RCW 43.60A.190 or a business considered a veteran-owned business under 38 C.F.R. Part 74.

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NEW SECTION

WAC 296-140-002 Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962. (1) To qualify for the department certification for the fifty percent tax remit-

tance for a Category 1 clean energy project, the project must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Have twenty-one percent of the contracts awarded to women-owned businesses, minority-owned businesses, or veteran-owned businesses; or

(ii) Good faith efforts which include, but are not limited to:

(A) Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(D) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(E) Apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation and where possible, establishing flexible time frames for performance to encourage participation;

(F) Adequately researching interested subcontractors and their capabilities before rejecting their proposals; and

(G) Not relying on price alone in the selection of subcontractors and considering reasonable quotes from women, minority, and veteran-owned businesses, even if other quotes are less expensive.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the twenty-four month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws.

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals.

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of fifteen percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of thirty-five percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of twenty percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Requesting the dispatch of local workers through union halls;

(C) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(D) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(E) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for the department certification for the seventy-five percent tax remittance for a Category 1 clean energy project, the project must meet the following minimum requirements:

(a) Meet the standards for certification for the fifty percent tax remittance under WAC 296-140-002(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for the department certification for the one hundred percent remittance for a Category 1 clean energy project, the project must have: A signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the fifty percent and seventy-five percent tax remittance under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[]

NEW SECTION

WAC 296-140-003 Labor standard certification for Category 2 clean energy projects under RCW 82.08.962 and 82.12.962. To qualify for the department certification for the fifty percent tax remittance for a Category 2 clean energy project, the project must meet the standards for procurement from and contracts with women, minority, or veteran-owned businesses, procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations, apprenticeship utilization, and preferred entry for workers living in the area where the project is being constructed under WAC 296-140-002 (1) and (4).

[]

NEW SECTION

WAC 296-140-004 Application, records and documentation, and certification. (1) Businesses applying for the department certification must complete an application in a form required by the department prior to the start of the project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) Documentation and evidence to support good faith efforts as necessary; and

(iv) Other records and documentation requested by the department.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

- (v) Other records and documentation requested by the department.
 - (c) Standard for apprenticeship utilization.
 - (i) The name, occupational title, and registration number for each registered apprentice;
 - (ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;
 - (iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
 - (iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;
 - (v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;
 - (vi) Documentation and evidence to support good faith efforts as necessary; and
 - (vii) Other records and documentation requested by the department.
 - (d) Standard for preferred entry by local workers.
 - (i) The total number of workers performing labor hours on the project;
 - (ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;
 - (iii) Employment records that contain the address of individuals hired to work on the project;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
 - (e) Standard for payment of prevailing wages.
 - (i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and
 - (ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.
 - (f) Records and documents for a standard for a PLA or CWA. A signed copy of the PLA or CWA for the project.
- (3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.
- (4) For Category 1 clean energy projects seeking certification for the fifty and seventy-five percent tax remittance and Category 2 clean energy projects seeking certification for the fifty percent tax remittance, businesses must submit notice of project completion in a form required by the department. After receiving the notice of competition, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.
- (5) For Category 1 clean energy projects seeking certification for the one hundred percent tax remittance, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project.

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WSR 21-07-093
EMERGENCY RULES
OLYMPIC COLLEGE

[Filed March 19, 2021, 3:23 p.m., effective March 19, 2021, 3:23 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and took effect on August 14, 2020, requiring emergency updates to the college's student conduct code to be compliant with federal regulations. The repeal of the college grievance procedures (chapter 132C-285 WAC) permits the college to revise them to ensure they properly address sexual misconduct that falls outside of Title IX. This seeks to extend the emergency adoption and repeal to enable the completion of permanent rule making.

Citation of Rules Affected by this Order: New WAC 132C-120-320, 132C-120-325, 132C-120-330, 132C-120-335, 132C-120-340, 132C-120-345, 123C-120-350, 132C-120-355 and 132C-120-360; and repealing chapter 132C-285 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

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

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

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

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

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

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

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

Date Adopted: March 16, 2021.

Martin Cavalluzzi
President

OTS-2526.2

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132C-120-320 Order of precedence. These supplemental procedures apply 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 Olympic College's standard disciplinary procedures, WAC 132C-120-010 through 132C-120-315 these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132C-120-325 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 these supplemental procedures, "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 132C-120-330 Title IX jurisdiction. (1) These supplemental procedures apply 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 these supplemental procedures.

(2) For purposes of these supplemental procedures, 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, WAC 132C-120-065.

(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 132C-120-335 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 complainant and the respondent 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 132C-120-340 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 132C-120-122. 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 132C-120-345 Rights of parties. (1) The college's student conduct procedures, WAC 132C-120-010 through 132C-120-315 and these supplemental procedures 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 132C-120-350 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 132C-120-355 Initial order. (1) In addition to complying with WAC 132C-120-122, 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 132C-120-360 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 132C-120-139.

(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.

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WSR 21-07-096
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed March 21, 2021, 1:02 p.m., effective March 21, 2021, 1:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 110-310 WAC, Emergency child care and early learning licensing, establishes emergency child care license requirements.

Citation of Rules Affected by this Order: New WAC 110-310-0001, 110-310-0005, 110-310-0010, 110-310-0015, 110-310-0020, 110-310-0025, 110-310-0030, and 110-310-0035.

Statutory Authority for Adoption: RCW 43.216.065.

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

Reasons for this Finding: 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. Department of children, youth, and families' ability to issue emergency child care licenses will better ensure a safe and healthy supply of child care services during the pandemic. Chapter 110-310 WAC was adopted on an emergency basis on March 25, 2020, under WSR 20-08-044, on July 23, 2020, under WSR 20-16-018, and again on November 20, 2020, under WSR 20-24-032. Circumstances changed under Proclamations 20-25 through 20-25.12 Roadmap to Recovery, but conditions prompting the State of Emergency declaration still exist and justify the need for the chapter 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 8, 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: March 21, 2021.

Brenda Villarreal
Rules Coordinator

NEW SECTION

WAC 110-310-0001 Emergency child care license—Intent and authority. (1) The department of children, youth, and families (or "the

department") was established under chapter 6, Laws of 2017. Chapter 43.216 RCW establishes the department's responsibility and authority to set and enforce licensing requirements and ECEAP standards, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) On February 29, 2020, the governor proclaimed a state of emergency in Washington state in response to the first case of the novel coronavirus disease 2019 (COVID-19). See proclamation by the governor no. 20-05. As of March 11, 2020, the world health organization has classified COVID-19 as a pandemic. See proclamation by the governor no. 20-08. The pandemic spreads easily and rapidly from person-to-person and may result in serious illness or death. See proclamation by the governor no. 20-16.

(3) In response to this pandemic Washington's citizens including, but not limited to, first responders, healthcare workers, retail workers, public works employees, and other professionals in Washington state are working each day to: curtail the spread of COVID-19, treat victims of this disease, supply citizens with goods to properly "social distance" themselves from others, and continue the regular operation of everyday services and utilities.

(4) As a result of this pandemic, and under the authority granted to the department under RCW 43.216.065 (2)(c) the department shall issue emergency child care licenses to ensure a safe and healthy supply of child care services during the pandemic.

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

NEW SECTION

WAC 110-310-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" shall have the same meaning as described in RCW 43.216.010.

(2) "Department" means the Washington state department of children, youth, and families.

(3) "Early learning" shall have the same meaning as described in RCW 43.216.010.

(4) "Emergency Child Care license" means a license authorized under this chapter that allows a person, firm, partnership, association, or corporation to provide child care in an approved home or residence that is occupied by the licensee, or in an approved facility that is not used as a home or residence.

(5) "Emergency license agreement" means the agreement described in WAC 110-310-0020.

(6) "Enforcement action" shall have the same meaning as described in RCW 43.216.010.

(7) "Seasonal camp" for the purposes of emergency child care licensing and the exemption listed in RCW 43.216.010 (2)(g) means a program of three months' or less duration engaged primarily in recreational or educational activities conducted on a closely supervised basis, owned by any person or persons, organization, association, corporation, or agency of federal, state, county or municipal government,

and operated, maintained, or offered for use within the state of Washington either free of charge or by payment of a fee.

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NEW SECTION

WAC 110-310-0010 Emergency child care license—License required.

(1) Pursuant to RCW 43.216.250(6), any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's home must be licensed. Individuals and entities that may be exempt from licensing are described in RCW 43.216.010(2).

(2) Pursuant to RCW 43.216.365, an agency operating without an appropriate license shall be guilty of a misdemeanor. Under RCW 43.216.360 the department may issue a penalty of one hundred fifty dollars per day for each day a family day care home provided care without being licensed and two hundred fifty dollars for each day a child day care center provided care without being licensed.

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NEW SECTION

WAC 110-310-0015 Emergency child care license—Application. (1)

To be eligible for an emergency child care license, an applicant must:

- (a) Be at least 18 years of age;
 - (b) Submit a paper or electronic application to the department for an emergency child care license; and
 - (c) Sign and submit to the department an affidavit stating that upon the issuance of an emergency child care license the applicant will comply with the requirements described in chapter 43.216 RCW, this chapter, and emergency license agreement that is prepared and authorized by the department.
- (2) Pursuant to RCW 43.216.260, an application must include the following information:
- (a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;
 - (b) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children;
 - (c) The number of qualified persons required to render the type of care for which an agency seeks a license;
 - (d) The health, safety, cleanliness, and general adequacy of the premises to provide for the comfort, care, and well-being of children;
 - (e) The provision of necessary care and early learning, including food, supervision, and discipline; physical, mental, and social well-being; and educational and recreational opportunities for those served;
 - (f) The financial ability of an agency to comply with minimum requirements established under chapter 43.216 RCW and this chapter; and

(g) The maintenance of records pertaining to the care of children.

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NEW SECTION

WAC 110-310-0020 Licensing rules. (1) To protect the health and safety of children in care as authorized under this chapter the provider must agree, enter into, and comply with the terms and conditions of an emergency license agreement prepared and authorized by the department.

(2) The Emergency license agreement shall require compliance with the following minimum terms and conditions:

(a) Compliance with the requirements described in chapter 43.216 RCW;

(b) Compliance with the requirements described in this chapter;

(c) Compliance with the background check requirements described in chapter 43.43 RCW, chapter 43.216 RCW, and the regulations contained in chapter 110-06 WAC that are listed in section (3) of this section;

(d) Compliance with the regulations contained in chapter 110-300 WAC that are listed in section (3) of this section; and

(e) Compliance with all other requirements described in the emergency license agreement.

(3) The licensee must comply with the following regulations contained in chapter 110-06 WAC and chapter 110-300 WAC:

(a) WAC 110-06-0010, 110-06-0020, 110-06-0040, 110-06-0041, 110-06-0041, 110-06-0043, 110-06-0045, 110-06-0050, 110-06-0070, 110-06-0080, 110-06-0090, 110-06-0100, 110-06-0110, 110-06-0115, and 110-06-0120; and

(b) WAC 110-300-0005, 110-300-0147, 110-300-0165, 110-300-0166, 110-300-0175, 110-300-0185, 110-300-0200, 110-300-0205, 110-300-0210, 110-300-0215, 110-300-0221, 110-300-0230, 110-300-0236, 110-300-0240, 110-300-0241, 110-300-0245, 110-300-0260, 110-300-0270, 110-300-0280, 110-300-0281, 110-300-0290, 110-300-0291, 110-300-0295, 110-300-0296, 110-300-0330, 110-300-0331, 110-300-0350, 110-300-0354, 110-300-0420, 110-300-0435, 110-300-0436, 110-300-0440, 110-300-0443, 110-300-0455, 110-300-0475, and 110-300-0485.

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

NEW SECTION

WAC 110-310-0025 Denial, modification, suspension, and revocation of an emergency child care license—Right of review. (1) A license authorized to be issued under this chapter may be denied pursuant to chapter 43.216 RCW, this chapter, and chapter 110-06 WAC.

(2) A license issued under this chapter may be suspended, modified, or revoked if the licensee fails to comply with the requirements contained in chapter 43.216 RCW, this chapter, or chapter 110-06 WAC.

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

NEW SECTION

WAC 110-310-0030 Process for seeking review. (1) Pursuant to RCW 43.216.250 and RCW 43.216.325, the department is authorized to take enforcement action against an applicant or licensee if the licensee fails to comply with this chapter, chapter 110-06 WAC or chapter 43.216 RCW.

(2) An applicant or licensee has the right to appeal an enforcement action by requesting an adjudicative proceeding (or "hearing") pursuant to the hearing rules codified in chapter 110-03 WAC.

(3) The department must issue a notice of violation to an early learning provider when taking enforcement actions. A notice of violation must be sent certified mail or personal service and must include the following information:

- (a) The reason why the department is taking the action;
- (b) The rules the provider failed to comply with;
- (c) The provider's right to appeal enforcement actions; and
- (d) How the provider may appeal and request a hearing.

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

NEW SECTION

WAC 110-310-0035 Emergency rules and emergency child care license termination date. (1) If this chapter is not extended by emergency or permanent rule, this chapter shall expire pursuant to RCW 34.05.350.

(2) If this chapter is not extended by emergency or permanent rule, an emergency child care license issued under this chapter shall expire six months on the date calculated in subsection (1) of this section.

(3) At the department's discretion, an emergency child care license issued under this chapter on or after March 25, 2020 may be extended for a period of time consistent with the requirements described in section (1) of this section; or for one six-month period if this rule becomes permanent under chapter 34.05 RCW.

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

WSR 21-07-097
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed March 21, 2021, 1:07 p.m., effective March 21, 2021, 1:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend WAC 110-15-0280 to align with department of children, youth, and families' (DCYF) emergency administrative hearing rules chapter 110-03 WAC.

Citation of Rules Affected by this Order: Amending WAC 110-15-0280.

Statutory Authority for Adoption: RCW 43.216.905, 43.216.906.

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: DCYF has conflicting WAC regarding an administrative appeal process that impacts the general welfare. Observing the time requirements for notice and comment 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 0, Amended 0, Repealed 0.

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

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

Date Adopted: March 21, 2020 [2021].

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0280 Right to request an administrative hearing. (1) WCCC consumers have a right to request ((a hearing under chapter ~~388-02~~ WAC)) administrative hearings on any action affecting WCCC benefits.

(2) Child care providers may request administrative hearings ((under chapter ~~388-02~~) WAC) only for WCCC overpayments. A provider's burden of proof is a preponderance of the evidence.

(3) To request a hearing, a consumer or provider:

(a) Contacts the ((~~DSHS~~)) DCYF office which sent them the notice;
or

(b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers;
or

(ii) Twenty-eight days of the date a decision is received for providers.

(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in (~~WAC 388-02-0217~~) chapter 110-03 WAC. Initial orders may be appealed to a DSHS review judge under chapter (~~388-02~~) 110-03 WAC.

(5) To request a hearing under the seasonal child care program, see WAC (~~170-290-3860 and 170-290-3865~~) 110-15-3860 and 110-15-3865.

[WSR 18-14-078, recodified as § 110-15-0280, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0280, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0280, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0280, filed 10/28/09, effective 12/1/09.]

WSR 21-07-100
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-36—Filed March 22, 2021, 9:50 a.m., effective March 22, 2021, 9:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open the commercial crab fishery in the Makah special management area (SMA).

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

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

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

Reasons for this Finding: Mandatory, minimum meat recovery requirements for coastal crab will be achieved by the opening dates contained herein. The Washington department of health has determined that while the meat in Dungeness crab in all areas of the Washington coast is safe for human consumption, the viscera from crab caught between the Washington/Oregon border and Point Chehalis, Washington including Willapa Bay and Grays Harbor are unsafe for human consumption and have issued a recommendation requiring evisceration of all crab caught in this area. To strengthen the enforcement of an evisceration requirement needed to protect public health, all crab landed into Washington from any west coast area south of Point Chehalis, Washington and Willapa Bay and Grays Harbor must be eviscerated. Domoic acid levels in the crab viscera in the area north of Point Chehalis, Washington (except in Grays Harbor) are below federal action levels and are considered safe for human consumption; landings of crab from this area do not require similar processing restrictions to remove the viscera necessary to protect public health. However, restrictions on where fishermen may fish their gear are needed to ensure that crab are not harvested from areas with high domoic acid in the viscera (south of Point Chehalis, Washington and Willapa Bay and Grays Harbor) and reported as landings from areas where domoic acid in viscera are low (north of Point Chehalis, Washington). Further delaying the opening of the coastal commercial Dungeness crab fishery until domoic acid in crab viscera is below federal action levels, which could take several months, would cause significant economic harm to the coastal crab industry and to the coastal communities dependent on this highly valuable fishery. In addition, delaying the season into spring poses an additional risk to marine mammals including Endangered Species Act listed humpback whales and Marine Mammal Protection Act Gray whales which are more abundant off the Washington coast in the spring by increasing the risk of entanglement with commercial crab gear. Emergency rules are necessary to implement a longer gear set period which will allow for safer fishing conditions and improved enforceability of area restrictions when gear is set. A delay due to elevated marine toxins aligns with the Tri-State Crab Agreement and similar rules in Oregon and California. Tribal SMA descriptions conform with recent state/tribal agreements. There is insufficient time to adopt permanent

rules. The Westport Boat Basin is closed to commercial crab fishing to prevent conflicts with vessel traffic in a limited area. New hold inspections will provide flexibility and allow fishers to access different markets. This rule makes it clear that any new hold inspection certificate issued will supersede any previous version issued to the same license or vessel to allow accurate tracking. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 22, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000I Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful to land, or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel hold inspection certificate numbers are recorded on all shellfish fish receiving tickets completed for coastal Dungeness crab landings until further notice and;

(b) The vessel has a valid Oregon vessel inspection certificate or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with an individual inspection number that includes the letters "EVS" indicating that evisceration is required for all crab sold by this license or the letters "NOR" indicating north of Point Chehalis, WA (46°53.18 N. Lat) (except Grays Harbor) and evisceration is not required.

(c) A Washington vessel inspection certificate is only valid when signed by an authorized WDFW employee.

(d) A Washington vessel hold inspection certificate dated on or after March 18, 2021 supersedes any hold inspection certificate previously issued to the same license or associated designated vessel.

(2) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) All crab caught north of Point Arena, CA and south of Point Chehalis, WA (46°53.18 N. Lat) including Willapa Bay and Grays Harbor must be delivered to a processing facility with an approved Hazard Analysis and Critical Control Point (HACCP) plan and eviscerated or;

(b) Dungeness crab are delivered to a Washington Department of Fish and Wildlife licensed Fish Dealer and/or Wholesale Fish Buyer and transported or sold to a facility with an approved HACCP plan and eviscerated. The vessel inspection number must accompany the crab to the final designation where it will be eviscerated.

(3) It is unlawful to donate, sell or attempt to sell to retailers or consumers live or whole Dungeness crab when caught north of Cape Falcon, OR (45°46'00" N. Lat) and south of Point Chehalis, WA (46°53.18 N. Lat), and Willapa Bay and Grays Harbor.

(4) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning immediately, until 8:00 A.M. April 17, 2021. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Robert Morgan at 360-249-1229;
- E-mail to Robert Morgan at Robert.Morgan@dfw.wa.gov; or
- Telephone call to Robert Morgan at 360-249-1206.

(5) Unless otherwise amended all other provisions of the permanent rule remain in effect

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

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

NEW SECTION

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

(1) Open area: The area from the WA/OR border (46°15.00) to the US-Canadian border. For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(2) No license or vessel may set gear south of Point Chehalis, WA (46°53.18 N. Lat) and Willapa Bay and Grays Harbor unless they have been issued a valid Oregon vessel inspection certificate dated on or after February 15, 2021 or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "EVS" indicating that evisceration is required for all crab landed by this license or vessel until further notice.

(3) Licenses or vessels issued a valid Washington crab vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "NOR" may land crab for live, whole cooked or evisceration.

(4) It unlawful for licenses and vessels with a vessel inspection number that includes the letters "NOR" to deploy or operate shellfish pots south of Point Chehalis, WA (46°53.18 N. Lat) and Willapa Bay and Grays Harbor.

(5) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine biotoxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(6) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00' N. Lat. 124°20.70' W. Lon.

(b) Northwest Corner: 47°28.00' N. Lat. 124°34.00' W. Lon.

(c) Southwest Corner: 47°08.00' N. Lat. 124°25.50' W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00' N. Lat. 124°11.20' W. Lon.

(7) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(8) Effective immediately the Makah special management area (SMA) is open to fishing. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner (Tatoosh Island)

(b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.

(c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.

(d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

(9) It is unlawful to fish for Dungeness crab in the Westport Boat Basin as defined in WAC 220-300-320.

(10) Unless otherwise amended all other provisions of the permanent rule remain in effect.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-42000H Commercial crab fishery—Unlawful acts.
(21-32)

WAC 220-340-45000X Commercial crab fishery—Seasons and
areas—Coastal. (21-32)

WSR 21-07-103
EMERGENCY RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-02—Filed March 22, 2021, 12:45 p.m., effective March 22, 2021,
12:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Temporarily prohibiting the use of credit history to determine premiums and eligibility for coverage in private automobile, homeowners, and renter's insurance products.

Citation of Rules Affected by this Order: New WAC 284-24A-088 and 284-24A-089.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.480, 48.19.020, 48.19.035, 48.19.080.

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 commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory, and with enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory.

Insurance companies which use credit-based insurance scoring claim that credit scoring is a predictive tool to identify risk of loss from a specific consumer. This credit-based insurance score is then used to determine premiums charged to each consumer.

On February 29, 2020, the governor of the state of Washington issued Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States. On March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) the President of the United States declared a national emergency concerning the novel coronavirus disease (COVID-19) outbreak in the United States. Addressing the state of emergency caused by the coronavirus pandemic has required difficult steps that have had a severe financial impact on large groups within our state.

In part to mitigate the financial impacts of the COVID-19 pandemic to individual households, on March 27, 2020, the President of the United States signed the CARES Act (P.L. 116-136). Section 4021 of the CARES Act addresses credit reporting during the pandemic. The CARES Act requires financial institutions to report consumers as current if they were not previously delinquent or, for consumers that were previously delinquent, not to advance the level of delinquency, for credit obligations for which the furnisher makes payment accommodations to consumers affected by COVID-19 and the consumer makes any payments the accommodation requires. Section 4022 of the CARES Act requires certain lenders to offer forbearance options to borrowers, and imposed a moratorium on foreclosures for certain home loans. In addition, section 3513 of the CARES Act specifically addresses the furnishing of federally-held student loans for which payments are suspended. This provision results in all nondefaulted federally-held student loans being reported as current.

In addition, the governor of the state of Washington has issued several emergency proclamations limiting state agencies from charging late fees and penalties, and placing a moratorium on garnishment actions (Emergency Proclamation 20-49, and subsequent amendments) and evictions (Emergency Proclamation 20-19, and subsequent amendments). The critical consumer protections included in these proclamations have also had the effect of preventing creditors from taking actions that are otherwise reportable on a consumer's credit history.

The result of the CARES Act is that all credit bureaus are collecting a credit history that is objectively inaccurate for some consumers and therefore results in an unreliable credit score being assigned to them. Consequently, this untrustworthy credit score degrades any predicative value that may be found in a consumer's credit-based insurance score.

The commissioner finds that the current protections to consumer credit history at the state and federal level have disrupted the credit reporting process. This disruption has caused credit-based insurance scoring models to be unreliable and therefore inaccurate when applied to produce a premium amount for an insurance consumer in Washington state. This makes the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

There is evidence that the negative economic impacts of the pandemic have disproportionately fallen on people of color. Therefore, when the CARES Act protections are eliminated, and negative credit information can be fully reported again, credit histories for people of color will have been disproportionately eroded by the pandemic.

Remaining consumer credit protections in the CARES Act will expire after the national state of emergency. When the CARES Act fully expires, a large volume of negative credit corrections will flood consumer credit histories. This flood of negative credit history has not been accounted for in the current credit scoring models. Without data to demonstrate that the predictive ability of credit scoring models based on pre-pandemic credit and claims histories is unchanged, the predicative ability of current credit scoring models cannot be assumed. This will make the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

It is impossible to know precisely when the state and federal states of emergency will end. Insurance companies must have an alternative to the currently unreliable credit scoring models they have in place before the protections of the CARES Act end. Therefore, it is necessary to immediately implement changes to the use of credit scoring.

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

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

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

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

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

Date Adopted: March 22, 2021.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-24A-88 Findings and intent of temporary prohibition (1)

The Commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory, and with enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory.

(2) Insurance companies which use credit-based insurance scoring claim that credit scoring is a predictive tool to identify risk of loss from a specific consumer. This credit-based insurance score is then used to determine premiums charged to each consumer.

(3) On February 29, 2020, the Governor of the State of Washington issued Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States. On March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) the President of the United States declared a national emergency concerning the novel coronavirus disease (COVID-19) outbreak in the United States. Addressing the state of emergency caused by the coronavirus pandemic has required difficult steps that have had a severe financial impact on large groups within our state.

(4) In part to mitigate the financial impacts of the COVID 19 pandemic to individual households, on March 27, 2020, the President of the United States signed the CARES Act (P.L. 116-136). Section 4021 of the CARES Act addresses credit reporting during the pandemic. The CARES Act requires financial institutions to report consumers as current if they were not previously delinquent or, for consumers that were previously delinquent, not to advance the level of delinquency, for credit obligations for which the furnisher makes payment accommodations to consumers affected by COVID-19 and the consumer makes any payments the accommodation requires. Section 4022 of the CARES Act requires certain lenders to offer forbearance options to borrowers, and imposed a moratorium on foreclosures for certain home loans. In addition, section 3513 of the CARES Act specifically addresses the furnishing of federally-held student loans for which payments are suspended. This provision results in all non-defaulted federally-held student loans being reported as current.

(5) In addition, the Governor of the State of Washington has issued several emergency proclamations limiting state agencies from charging late fees and penalties, and placing a moratorium on garnishment actions (Emergency Proclamation 20-49, and subsequent amendments) and evictions (Emergency Proclamation 20-19, and subsequent amendments). The critical consumer protections included in these proclamations have also had the effect of preventing creditors from taking actions that are otherwise reportable on a consumer's credit history.

(6) The result of the CARES Act is that all credit bureaus are collecting a credit history that is objectively inaccurate for some consumers and therefore results in an unreliable credit score being

assigned to them. Consequently, this untrustworthy credit score degrades any predicative value that may be found in a consumer's credit-based insurance score.

(7) The Commissioner finds that the current protections to consumer credit history at the state and federal level have disrupted the credit reporting process. This disruption has caused credit-based insurance scoring models to be unreliable and therefore inaccurate when applied to produce a premium amount for an insurance consumer in Washington state. This makes the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

(8) There is evidence that the negative economic impacts of the pandemic have disproportionately fallen on people of color. Therefore, when the CARES Act protections are eliminated, and negative credit information can be fully reported again, credit histories for people of color will have been disproportionately eroded by the pandemic.

(9) Remaining consumer credit protections in the CARES Act will expire after the national state of emergency. When the CARES Act fully expires, a large volume of negative credit corrections will flood consumer credit histories. This flood of negative credit history has not been accounted for in the current credit scoring models. Without data to demonstrate that the predictive ability of credit scoring models based on pre-pandemic credit and claims histories is unchanged, the predicative ability of current credit scoring models cannot be assumed. This will make the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

(10) It is impossible to know precisely when the state and federal states of emergency will end. Insurance companies must have an alternative to the currently unreliable credit scoring models they have in place before the protections of the CARES Act end. Therefore, it is necessary to immediately implement changes to the use of credit scoring.

[]

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 284-24A-88 is probably intended to be WAC 284-24A-088.

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

NEW SECTION

WAC 284-24A-89 Temporary prohibition of use of credit history

(1) Notwithstanding any other provision of this chapter, this section applies to all personal insurance pertaining to private passenger automobile coverage, renter's coverage, and homeowner's coverage issued in the state of Washington while this rule is effective.

(2) The insurance commissioner finds that as a result of the broad negative economic impact of the coronavirus pandemic, the disproportionately negative economic impact the coronavirus pandemic has had on communities of color, and the disruption to credit reporting caused by both the state and federal consumer protections designed to alleviate the economic impacts of the pandemic, for private passenger automobile coverage, renter's coverage, and homeowner's coverage is-

sued in the state of Washington, the use of insurance credit scores results in premiums that are excessive, inadequate, or unfairly discriminatory within the meaning of RCW 48.19.020 and RCW 48.18.480.

(3) For all private passenger automobile coverage, renter's coverage, and homeowner's coverage issued in the state of Washington, insurers shall not use credit history to determine personal insurance rates, premiums, or eligibility for coverage.

(4) For purposes of this section, insurers shall not use credit history to place insurance coverage with a particular affiliated insurer or insurer within an overall group of affiliated insurance companies.

(5) In order to comply with this section, insurers subject to this rule may substitute any insurance credit score factor used in a rate filing with a neutral rating factor.

(a) For purposes of this section, "neutral factor" means a single constant factor calculated such that, when it is applied in lieu of insurance-score-base rating factors to all policies in an insurer's book of business, the total premium for the book of business is unchanged.

(b) For purposes of this section, insurers may, but are not required to, implement the neutral factor by peril or coverage.

(6) Insurers may not include rate stability rules in filings submitted to comply with this section.

(7) The prohibitions in this rule shall apply to all new policies effective and existing policies processed for renewal on or after June 20, 2021. Each insurer must submit rate filings to amend its current rating plans with the insurance commissioner for all insurance policies covered by this rule by May 6, 2021. If the policy application form refers to the use of consumer credit information, an amended form filing must also be submitted by May 6, 2021. The amendments should be limited to the changes required by this rule.

(8) This rule takes effect immediately. To the extent this rule is adopted as a permanent rule it shall remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.

[]

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 284-24A-89 is probably intended to be WAC 284-24A-089.

WSR 21-07-106
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 22, 2021, 4:01 p.m., effective March 22, 2021, 4:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The continuing disproportionate impact of COVID-19 on nursing facilities has put a strain on the staffing availability at these facilities. Because staff time is required to complete and file a Nursing Facility Medicaid Cost Report, the department is extending the period of time during which a facility may request a 2020 cost report deadline extension. Specifically, as currently written, the WAC requires a request be received ten days before the due date of a cost report. The department will, due to the COVID-19 pandemic, allow extension requests to be filed through close of business on the due date of the cost report. The department is amending WAC 388-96-107 Requests for extensions in response to this need.

Citation of Rules Affected by this Order: Amending WAC 388-96-107.

Statutory Authority for Adoption: RCW 74.46.800(1).

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

Reasons for this Finding: The increased staffing needs due to the pandemic, combined with the increased likelihood of staff contracting COVID-19, means that duties like direct care and billing are prioritized. The department wishes to recognize the potential need for facilities to have more time to complete their medicaid cost report without penalization. The penalties outlined in WAC would not be conducive to the ability of these facilities to respond properly to the pandemic and not in line with current recognized priorities. A facility may not recognize the need for more time, or experience an emergent situation that prevents timely completion, later than usual due to the unique pandemic circumstances.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: March 17, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4856.1

AMENDATORY SECTION (Amending WSR 17-22-037, filed 10/24/17, effective 11/24/17)

WAC 388-96-107 Requests for extensions. (1) A contractor may request in writing an extension for submitting cost reports. Contractor requests must:

(a) Be addressed to the manager, nursing facility rates program;
and

(b) State the circumstances prohibiting compliance with the report due date (~~;~~ and

~~(c) Be received by the department at least ten days prior to the due date of the report).~~

(2) The department may grant two extensions of up to thirty days each, only if the circumstances, stated clearly, indicate the due date cannot be met and the following conditions are present:

(a) The circumstances were not foreseeable by the provider; and

(b) The circumstances were not avoidable by advance planning.

[Statutory Authority: RCW 74.46.800, 74.46.561(1). WSR 17-22-037, § 388-96-107, filed 10/24/17, effective 11/24/17. Statutory Authority: RCW 74.09.180 and 74.46.800. WSR 89-01-095 (Order 2742), § 388-96-107, filed 12/21/88. Statutory Authority: RCW 74.09.120. WSR 83-19-047 (Order 2025), § 388-96-107, filed 9/16/83; Order 1262, § 388-96-107, filed 12/30/77.]

WSR 21-07-107
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 22, 2021, 4:15 p.m., effective March 25, 2021]

Effective Date of Rule: March 25, 2021.

Purpose: The department is extending emergency amendments to WAC 388-484-0006 TANF/SFA time limit extensions, that add a temporary assistance for needy families (TANF) time limit extension hardship category related to impacts of the COVID-19 pandemic (commonly known as the "coronavirus"). This emergency rule is effective March 25 through June 30, 2021.

Citation of Rules Affected by this Order: Amending WAC 388-484-0006.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; chapters 74.08A and 74.12 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: This filing is necessary to extend existing emergency amendments filed under WSR 20-09-001, and subsequently extended by WSR 20-16-082 and 20-24-061, which protect public health, safety, and welfare by providing relief in response to health and economic impacts of COVID-19. The department filed notice of its intent to adopt the rule as a permanent rule and is actively undertaking appropriate procedures to adopt the rule as a permanent rule.

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

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

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

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

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

Date Adopted: March 22, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4800.1

AMENDATORY SECTION (Amending WSR 20-05-046, filed 2/13/20, effective 3/15/20)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least sixty-five years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless as described in RCW 43.185C.010(12); or

(vii) A resident of Washington state during a declared state of emergency related to COVID-19.

(3) Who reviews and approves a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter

388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) How long will a hardship TANF/SFA time limit extension last?

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

- (i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every twelve months;
- (ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

[Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-484-0006, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-484-0006, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapters 74.08A and 74.12 RCW, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 2. WSR 12-05-039, § 388-484-0006, filed 2/10/12, effective 3/12/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-484-0006, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.08A RCW. WSR 06-10-034, § 388-484-0006, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 03-24-057, § 388-484-0006, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-484-0006, filed 5/31/02, effective 6/1/02.]

WSR 21-07-109
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 23, 2021, 8:22 a.m., effective March 24, 2021]

Effective Date of Rule: March 24, 2021.

Purpose: The department is extending the emergency rules listed below to assure [ensure] long-term care programs are not significantly impeded during the hiring process due to inability to access the tuberculosis (TB) testing required as a part of the hiring process. This will help to increase the number of long-term care workers necessary to provide essential services to some of Washington's most vulnerable adults during the outbreak of COVID-19. The situation continues that currently clinics providing TB testing are short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state.

The department filed a CR-101 Preproposal statement of inquiry as WSR 20-16-069 on July 29, 2020, to begin the permanent rule-making process. In addition, under the rule development phase of rule making, the department is in discussions about adding language to the regulations to account for the timeline in which COVID[-19] led to the suspension of rules.

Citation of Rules Affected by this Order: Repealing WAC 388-76-10265, 388-76-10285, 388-78A-2484 and 388-107-0490; and amending WAC 388-76-10290(1), 388-78A-2480(1), 388-78A-2485(1), 388-101D-0650(1), 388-101D-0660(3), and 388-107-0460(1).

Statutory Authority for Adoption: RCW 70.128.040, 71A.12.030; chapters 18.20, 70.97 RCW.

Other Authority: Chapters 70.128, 71A.12, 74.34 RCW.

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

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Although the state has a phased reopening plan, the situation continues that currently clinics providing TB testing are short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state.

Ongoing communication with stakeholders indicates a continuance of these suspended rules is needed as the COVID[-19] pandemic is still impacting the ability of long-term care facilities to meet these requirements. While vaccinations are beginning to be distributed, the

program is still in its infancy stage and has not yet improved staffing needs in long-term care facilities.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 4.

Date Adopted: March 8, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4796.2

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10290 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the adult family home must:

- (1) ~~((Ensure that the person has a chest X-ray within seven days; (2)))~~ Ensure each resident or employee with a positive test result is evaluated for signs and symptoms of tuberculosis; and
~~((3))~~ (2) Follow the recommendation of the person's health care provider.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10290, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10290, filed 10/16/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2480 Tuberculosis—Testing—Required. ~~((1) The assisted living facility must develop and implement a system to ensure each staff person is screened for tuberculosis within three days of employment.~~

~~(2))~~ For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any assisted living facility employee or temporary employee of the assisted living facility, excluding volunteers and contractors.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2480, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2480, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 18.20.090. WSR 06-24-073, § 388-78A-2480, filed 12/4/06, effective 1/4/07; WSR 06-01-047, § 388-78A-2480, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. WSR 04-16-065, § 388-78A-2480, filed 7/30/04, effective 9/1/04.]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2485 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the assisted living facility must:

- (1) ~~((Ensure that the staff person has a chest X-ray within seven days;~~
~~(2)))~~ Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and
~~((3)))~~ (2) Follow the recommendation of the resident or staff person's health care provider.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2485, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2485, filed 1/15/10, effective 2/15/10.]

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0650 What must a group training home do to detect and manage tuberculosis? To detect and manage tuberculosis, a group training home must:

- (1) ~~((Ensure each employee has a tuberculin test no more than three days after beginning to work with clients unless otherwise exempt under this chapter;~~
~~(2)))~~ Implement policies and procedures that comply with tuberculosis standards set by the Centers for Disease Control and Prevention and applicable state laws;
~~((3)))~~ (2) Comply with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection; and
~~((4)))~~ (3) Comply with chapter 296-842 WAC requirements to protect the health and safety of clients who may come into contact with people who have infectious tuberculosis.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.12.040 and 71A.22.010. WSR 18-23-101, § 388-101D-0650, filed 11/20/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0660 When is a group training home employee not required to complete a tuberculin test? (1) A group training home employee is not required to complete a tuberculin test if the employee:

- (a) Has documentation of an FDA-approved tuberculin test with negative results from within the last twelve months;
 - (b) Has documentation of a positive FDA-approved tuberculin test with documented evidence of:
 - (i) Adequate therapy for active disease; or
 - (ii) Completion of treatment for latent tuberculosis infection preventive therapy;
 - (c) Self-reports a history of positive test results under subsection (2) or (3) of this section.
- (2) If a group training home employee self-reports a history of positive test results with chest X-ray results from the last twelve months, the employee must:
- (a) Provide a copy of the normal X-ray results to the group training home; and
 - (b) Be evaluated for signs and symptoms of tuberculosis.
- ~~(3) ((If a group training home employee self-reports a history of positive test results without chest X-ray results, the employee must:~~
- ~~(a) Be referred to a medical provider;~~
 - ~~(b) Complete a chest X-ray within seven days; and~~
 - ~~(c) Be cleared by a medical professional before returning to work if the X-ray is abnormal and consistent with tuberculosis.~~
- ~~(4))~~ A group training home volunteer working less than four hours a month is exempt from tuberculin test requirements.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.12.040 and 71A.22.010. WSR 18-23-101, § 388-101D-0660, filed 11/20/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0460 Tuberculosis (TB)—Testing—Required. The enhanced services facility must:

- ~~((1) Develop and implement a system to ensure staff have TB testing upon employment or starting service; and~~
- ~~(2))~~ Ensure that staff have an annual risk assessment completed using the Washington state department of health approved criteria.

[Statutory Authority: Chapter 70.97 RCW. WSR 14-19-071, § 388-107-0460, filed 9/12/14, effective 10/13/14.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10265 Tuberculosis—Testing—Required.

WAC 388-76-10285 Tuberculosis—Two step skin testing.
WAC 388-78A-2484 Tuberculosis—Two step skin testing.
WAC 388-107-0490 Tuberculosis (TB)—Two-step skin testing.

WSR 21-07-130
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-37—Filed March 23, 2021, 4:13 p.m., effective March 24, 2021]

Effective Date of Rule: March 24, 2021.

Purpose: The purpose of this emergency rule is to open white sturgeon retention seasons in the Columbia River estuary.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000I; and amending WAC 220-3112-060 [220-312-060].

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

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

Reasons for this Finding: This rule is needed to allow a limited harvest of white sturgeon in the Columbia River estuary. The legal-size population is large enough to allow for a retention fishery within the lower Columbia River. This action is consistent with decisions made by the states of Washington and Oregon on March 23, 2021. 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: March 23, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000J Freshwater exceptions to statewide rules—Columbia River. Effective March 24, 2021, until further notice, the provisions of WAC 220-312-060 and WAC 220-316-110 regarding white sturgeon retention seasons from Buoy 10 upstream to McNary 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 Buoy 10 upstream to Wauna Powerlines, including Youngs Bay, and all adjacent Washington tributaries:**

a. It is permissible to retain white sturgeon on the following dates: May 10, 12, 15, 17, 19, 22, 24, 26, 29, 31, and June 2, 5, 2021.

b. On days open to white sturgeon retention the daily limit of white sturgeon is one fish between 44-inches minimum and 50-inches maximum fork length.

c. Closed to angling for sturgeon at 2:00pm daily on dates open to sturgeon retention.

d. Catch and release angling is permissible on days not open to sturgeon retention.

(2) **From Bonneville Dam to McNary Dam:** Sturgeon retention is prohibited.

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REPEALER

The following section of Washington Administrative Code is repealed, effective March 24, 2021:

WAC 220-312-06000I Freshwater exceptions to statewide rules—Columbia River. (21-35)

WSR 21-07-131
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 19-38—Filed March 23, 2021, 4:20 p.m., effective March 23, 2021, 4:20 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: Modifies 2021 commercial select area spring seasons and extends summer seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact actions of February 16 and March 23, 2021. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide

the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: March 23, 2021.

Kelly Susewind
Director

NEW SECTION

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

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

(1) Tongue Point and South Channel:

Open_Dates	Open_Days	Open_Time	Open_Duration
Apr 20	Tue (morning)	12:30 a.m. - 4:30 a.m.	4 hrs
Apr 23	Fri (morning)	4:00 a.m. - 8:00 a.m.	4 hrs
Apr 27 - Apr 30	Tue, Thur (nights)	7:00 p.m. - 7:00 a.m.	2 nights
May 3 - Jun 15	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	19 nights
Jun 17 - Jul 2	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	5 nights

Tongue Point only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 25	Thu (night)	5:30 p.m. - 9:30 p.m.	4 hrs

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 29	Mon (night)	8:00 p.m. - 12:00 a.m.	4 hrs

South Channel only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 25 - Mar 26	Thu-Fri (night)	7:00 p.m. - 7:00 a.m.	12 hrs
Mar 29	Mon (night)	8:00 p.m. - 12:00 a.m.	4 hrs
Apr 1 - Apr 2	Fri-Sat (night)	11:00 p.m. - 3:00 a.m.	4 hrs
Apr 6	Tue (morning)	3:30 a.m. - 7:30 a.m.	4 hrs
Apr 8	Thu (night)	6:30 p.m. - 10:30 p.m.	4 hrs
Apr 12 - Apr 13	Mon-Tue (night)	8:30 p.m. - 12:30 a.m.	4 hrs
Apr 14 - Apr 15	Thu-Fri (night)	9:30 p.m. - 1:30 a.m.	4 hrs

(a) Area:

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

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

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

(b) Gear: Gillnets:

Winter season (Through Apr 18): 7-inch minimum mesh size restriction

Spring and Summer seasons (Apr 20 - Jun 18): 9 3/4-inch maximum mesh size restriction

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

In the Tongue Point winter-spring subarea and the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom;

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

(2) Blind Slough and Knappa Slough:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 25 - Mar 26	Thu-Fri (night)	7:00 p.m. - 7:00 a.m.	12 hrs
Apr 19 - Apr 23	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
Apr 27 - Apr 30	Tue, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
May 3 - Jun 15	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	19 nights
Jun 17 - Jul 2	Mon, Thu (night)	7:00 p.m. - 7:00 a.m.	5 nights

Blind Slough only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 29 - Apr 13	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	5 nights
Apr 14 - Apr 15	Wed-Thu (night)	7:00 p.m. - 7:00 a.m.	12 hrs

Knappa Slough only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 29 - Mar 30	Mon-Tue (night)	7:00 p.m. - 7:00 a.m.	12 hrs
Apr 1 - Apr 2	Thu-Fri (night)	7:00 p.m. - 7:00 a.m.	12 hrs
Apr 6	Tue (morning)	3:30 a.m. - 7:30 a.m.	4 hrs
Apr 8	Thu (night)	6:30 p.m. - 10:30 p.m.	4 hrs
Apr 12 - Apr 13	Mon-Tue (night)	8:30 p.m. - 12:30 a.m.	4 hrs
Apr 14 - Apr 15	Wed-Thu (night)	9:30 p.m. - 1:30 a.m.	4 hrs

(a) Area:

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

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

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed. Prior to May 3, the western (downstream) boundary in Knappa Slough is a north-south line projec-

ting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(b) Gear: Gillnets:

Winter season (through Apr 15): 7-inch minimum mesh size restriction.

Spring and Summer seasons (Apr 19 - Jun 18): 9 3/4-inch maximum mesh size restriction.

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

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

(c) Miscellaneous:

Permanent transportation rules in effect. In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) Deep River Select Area:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 25 - Apr 1	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	3 nights
Apr 19 - Apr 23	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
Apr 27 - Apr 30	Tue, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
May 3 - Jun 15	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	19 nights

(a) Area:

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

(b) Gear: Gillnets:

Winter season (through Apr 1): 7-inch minimum mesh size restriction.

Spring and Summer seasons (Apr 19 - Jun 15): 9 3/4-inch maximum mesh size restriction.

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

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

Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream, or channel any net longer than three-fourths the width of the stream (WAC 220-20-015(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of nets, whether fishing singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department WAC 220-20-010(17).

(c) Miscellaneous:

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

Winter season: fishers are required to call 360-846-5268 or 360-795-0319 to confirm the place and time of sampling.

Spring season: a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

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

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315).

Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

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

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

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

REPEALER

The following section of Washington Administrative Code is repealed:

WAC 220-358-03000X Columbia River seasons below
Bonnevillle. (21-14)

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