

WSR 22-24-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-278—Filed November 28, 2022, 1:40 p.m., effective December 1, 2022]

Effective Date of Rule: December 1, 2022.

Purpose: The purpose of this emergency rule is to close salmon seasons in Catch Record Card Area 11, except for year-round piers.

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

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

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

Reasons for this Finding: The current estimate of Chinook harvest through November 22 is 845 of the total encounter limit of 1,093 (77 percent), 690 of the total sublegal encounter limit of 732 (94 percent), and 216 of the total unmarked encounter limit of 256 (85 percent) set during the 2022 North of Falcon season setting process. The Washington department of fish and wildlife fisheries managers anticipate that all encounter limits will be reached after the current short week opening, scheduled through Wednesday November 30, 2022. Salmon fishing in Marine Area 11 will be closed for the remainder of the winter Chinook season to stay within agreed-to management thresholds. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 28, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000M Puget Sound salmon—Saltwater seasons and daily limits. Effective December 1 through December 31, 2022, salmon seasons and retention rules for Catch Record Card Area 11 shall be modified as described herein. All other provisions of WAC 220-313-060

not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 11: Salmon:

(a) Entire area except year-round piers listed in subsection (b): Closed.

(b) Dash Point Dock, Les Davis Pier, Des Moines Pier, Redondo Pier, and Point Defiance Boathouse Dock:

Open daily. Daily limit 2. Up to 1 Chinook may be retained.

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REPEALER

The following section of the Washington Administrative Code is repealed, effective December 1, 2022:

WAC 220-313-06000K Puget Sound salmon—Saltwater seasons and daily limits. (22-257)

WSR 22-24-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-277—Filed November 30, 2022, 3:52 p.m., effective December 1, 2022]

Effective Date of Rule: December 1, 2022.

Purpose: The purpose of this emergency rule is to implement steelhead conservation measures in coastal tributaries. This rule will prohibit fishing from a floating device in most coastal tributaries that are open to fishing, reduce steelhead daily limit to two hatchery fish in areas that typically have a three fish limit, require the release of wild rainbow trout, and will implement selective gear rules (except only one single point barbless hook allowed) in all waters listed within the WAC text of this filing. In addition, many areas will close to all recreational fishing earlier than planned.

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

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

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

Reasons for this Finding: These emergency rules are necessary to protect wild steelhead stocks. Numerous coastal wild steelhead runs are expected to return well below escapement targets as they have the past five seasons and have failed to meet management objectives. Outside of the Hoh and Quillayute systems which just met escapement goals in the 2021/2022 season, the rest of the coastal systems (Willapa, Chehalis, Humptulips, Upper Quinault, and Queets/Clearwater) have consistently failed to meet their total escapement goal (20,206) for wild steelhead. Forecasted 2022/2023 coastwide steelhead returns (28,406) are again expected to fall short of escapement goals for wild steelhead in many rivers. The rules contained in this filing are expected to result in a reduction of wild steelhead encounters relative to permanent rules in place.

Rules for this year's season follows similar actions as last season to help achieve conservation objectives, including restricting the use of bait and fishing from a boat (in most areas), and enacting early closures to help increase the number of wild steelhead that returned to the spawning grounds.

Enacting these rules follows an extensive public engagement process, which included a three-part virtual town hall series during summer and fall 2022. Hundreds of people joined the Washington department of fish and wildlife (WDFW) fishery managers during these virtual meetings, and many provided feedback on WDFW's coastal steelhead management web page.

Tribal comanagers along the coast have also taken similar steps alongside WDFW to advance recovery of wild steelhead.

WDFW continues to operate under its statewide steelhead management plan, which requires WDFW to prioritize the sustainability of wild coastal steelhead runs by focusing on healthy levels of abundance, productivity, diversity, and distribution.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 30, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000Y Freshwater exceptions to statewide rules—

Coast. Effective December 1, 2022, until further notice, the following provisions of WAC 220-312-020, regarding gamefish seasons, 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 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

1. Bear River (Pacific Co.):

(a) Effective December 1, 2022 through February 28, 2023:

(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 wild rainbow trout.

(b) Effective March 1, 2023, until further notice: All species: Closed.

2. Big River (Clallam Co.), outside Olympic National Park:

(a) Effective January 1 through February 28, 2023:

(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 wild rainbow trout.

(b) Effective March 1, 2023, until further notice: All species: Closed.

3. Black River (Grays Harbor Co.), from the mouth to bridge on 128th Ave SW: Effective December 1 through December 31, 2022:

All species: Closed.

4. Bogachiel River (Clallam Co.): Effective December 1, 2022, until further notice:

(a) From the mouth to Mill Creek:

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

(ii) Steelhead: Daily limit is 2 hatchery steelhead

(b) From Mill Creek to Olympic National Park Boundary:

(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) Steelhead: Daily limit is 2 hatchery steelhead.

5. Calawah River (Clallam Co.): Effective December 1, 2022, until further notice:

(a) From the mouth to the Hwy. 101 Bridge:

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

(ii) Steelhead: Daily limit is 2 hatchery steelhead.

(b) From the Hwy. 101 Bridge to the forks:

(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) Steelhead: Daily limit is 2 hatchery steelhead.

6. Calawah, South Fork (Clallam Co.), from the mouth to Olympic National Park boundary: Effective December 1, 2022 through February 28, 2023:

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

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

7. Cedar Creek (Jefferson Co.), outside Olympic National Park boundary: Effective December 1, 2022 through February 28, 2023:

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

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

(c) Release wild rainbow trout.

8. Chehalis River (Grays Harbor Co.):

(a) From the mouth to WDFW Oakville boat launch:

(i) Effective December 1 through December 15, 2022:

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

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

(ii) Effective December 16, 2022, until further notice:

All species: Closed.

(b) From the WDFW Oakville boat launch upstream, including all forks: Effective December 1, 2022, until further notice:

All species: Closed.

9. Cloquallum Creek (Grays Harbor/Mason Co.), from the mouth to the outlet at Stump Lake: Effective December 1, 2022 through February 28, 2023:

All species: Closed.

10. Copalis River (Grays Harbor Co.): Effective December 1, 2022 through February 28, 2023:

All species: Closed.

11. Dickey River (Clallam Co.), from the Olympic National Park boundary upstream including the East and West forks: Effective December 1, 2022, until further notice:

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

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

12. Elk Creek (Lewis/Pacific Co.): Effective January 1, 2023, until further notice:

All species: Closed.

13. Elk River (Grays Harbor Co.): Effective December 1, 2022 through February 28, 2023:

All species: Closed.

- 14. Fork Creek (Pacific Co.):** from Fork Creek Hatchery rack upstream 500 feet at fishing boundary sign, Effective December 1, 2022, until further notice:
- (a) All species: Fishing from a floating device is prohibited.
 - (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (c) Release wild rainbow trout.
- 15. Goodman Creek (Jefferson Co.),** outside of Olympic National Park boundary: Effective December 1, 2022 through February 28, 2023:
- (a) All species: Fishing from a floating device is prohibited.
 - (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (c) Release wild rainbow trout.
- 16. Hoh River (Jefferson Co.),** from Olympic National Park boundary upstream to Olympic National Park boundary below mouth of South Fork Hoh: Effective December 1, 2022, until further notice:
- (a) All species: Fishing from a floating device is prohibited.
 - (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (c) Steelhead: Daily limit is 2 hatchery steelhead.
- 17. Hoh River, South Fork (Jefferson Co.),** outside of Olympic National Park boundary: Effective December 1, 2022, until further notice:
- (a) All species: Fishing from a floating device is prohibited.
 - (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- 18. Hoquiam River including West and East forks (Grays Harbor Co.):** Effective December 1, 2022 through February 28, 2023:
All species: Closed.
- 19. Humptulips River (Grays Harbor Co.):**
- (a) From the mouth to Hwy. 101 Bridge:
 - (i) Effective December 1 through December 15, 2022:
 - (A) All species: Fishing from a floating device is prohibited.
 - (B) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (ii) Effective December 16, 2022, until further notice:
All species: Closed.
 - (b) From the Hwy 101 Bridge to confluence of East and West forks and West Fork from mouth to Donkey Creek: Effective December 1, 2022, until further notice:
All species: Closed.
- 20. Joe Creek (Grays Harbor Co.),** from the mouth to Ocean Beach Rd. Bridge: Effective December 1 through December 31, 2022:
All species: Closed.
- 21. Johns River (Grays Harbor Co.),** from the mouth (Hwy. 105 Bridge) to Ballon Creek: Effective December 1, 2022 through February 28, 2023:
All species: Closed.
- 22. Kalaloch Creek (Jefferson Co.),** outside Olympic National Park boundary: Effective December 1, 2022 through February 28, 2023:
- (a) All species: Fishing from a floating device is prohibited.
 - (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (c) Release wild rainbow trout.
- 23. Moclips River (Grays Harbor Co.),** from the mouth to Quinault Indian Reservation boundary: Effective December 1, 2022 through February 28, 2023:

All species: Closed.

24. Mosquito Creek (Jefferson Co.), from Olympic National Park boundary upstream to Goodman 3000 Mainline Bridge: Effective December 1, 2022 through February 28, 2023:

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

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

(c) Release wild rainbow trout.

25. Naselle River (Pacific Co.), from the Hwy. 101 Bridge to the North Fork: Effective December 1, 2022, until further notice:

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

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

(c) Release wild rainbow trout.

26. Naselle River, South (Pacific Co.), from the mouth to Bean Creek: Effective December 1, 2022 through February 28, 2023:

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

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

(c) Release wild rainbow trout.

27. Nemah River, Middle (Pacific Co.):

(a) Effective December 1, 2022 through February 28, 2023:

(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 wild rainbow trout.

(b) Effective March 1, 2023, until further notice: All species: Closed

28. Nemah River, North (Pacific Co.), from Hwy. 101 Bridge to Cruiser Creek:

(a) Effective December 1, 2022 through February 28, 2023:

(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 wild rainbow trout.

(b) Effective March 1, 2023, until further notice: All species: Closed

29. Nemah River, South (Pacific Co.):

(a) Effective December 1, 2022 through February 28, 2023:

(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 wild rainbow trout.

(b) Effective March 1, 2023, until further notice: All species: Closed

30. Newaukum River, including South Fork (Lewis Co.), from mouth to Hwy. 508 Bridge near Kearny Creek: Effective December 1, 2022, until further notice:

All species: Closed.

31. Newaukum River, Middle Fork (Lewis Co.), from mouth to Taucher Rd. Bridge: Effective December 1, 2022, until further notice:

All species: Closed.

32. Newaukum River, North (Lewis Co.), from mouth to 400' below Chehalis City water intake: Effective December 1, 2022, until further notice:

All species: Closed.

33. North River (Grays Harbor/Pacific Co.), from the Hwy. 105 bridge to Raimie Creek: Effective December 1, 2022 through February 28, 2023:

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

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

(c) Release wild rainbow trout.

34. Palix River (Pacific Co.):

(a) From Hwy. 101 Bridge to the mouth of the Middle Fork:

(i) Effective December 1, 2022 through February 28, 2023:

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

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

(C) Release wild rainbow trout.

(ii) Effective March 1, 2023, until further notice: All species: Closed

(b) From the confluence with the Middle Fork upstream (all forks including South fork Palix River and Canon River):

(i) Effective December 16, 2022 through February 28, 2023:

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

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

(C) Release wild rainbow trout.

(ii) Effective March 1, 2023, until further notice: All species: Closed

35. Quillayute River (Clallam Co.), from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers: Effective December 1, 2022, until further notice:

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

(b) Steelhead: Daily limit 2 hatchery steelhead.

36. Quinault River (Grays Harbor/Jefferson Co.), from the mouth at upper end of Quinault Lake upstream to Olympic National Park boundary: Effective December 1, 2022, until further notice:

All species: Closed.

37. Satsop River and East Fork (Grays Harbor Co.):

(a) From the mouth to bridge at Schafer State Park:

(i) Effective December 1 through December 15, 2022:

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

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

(ii) Effective December 16, 2022, until further notice:

All species: Closed.

(b) From 400' below Bingham Creek Hatchery dam to the dam and all Forks: Effective December 16, 2022, until further notice:

(i) Effective December 1 through December 15, 2022:

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

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

(ii) Effective December 16, 2022, until further notice:

All species: Closed.

38. Satsop River, Middle Fork (Grays Harbor Co.), Effective December 1, 2022 through February 28, 2023.

All species: Closed

39. Satsop River, West Fork (Grays Harbor Co.), Effective December 1, 2022 through February 28, 2023.

All species: Closed

40. 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 December 1, 2022, until further notice:

All species: Closed.

41. Smith Creek (near North River) (Pacific Co.): Effective December 1, 2022 through February 28, 2023:

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

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

(c) Release wild rainbow trout.

42. Sol Duc River (Clallam Co.): Effective December 1, 2022, until further notice:

(a) From mouth to the WDFW boat launch at Maxfield Rd:

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

(b) From the WDFW boat launch at Maxfield Rd. to Hwy. 101 Bridge upstream of Klahowya campground:

(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.

43. Sooes River (Clallam Co.), outside of Makah Indian Reservation: Effective December 1, 2022 through February 28, 2023:

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

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

(c) Release wild rainbow trout.

44. Stevens Creek (Grays Harbor Co.), from mouth to Hwy 101 Bridge: Effective December 1, 2022 through February 28, 2023:

All Species: Closed.

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

(a) Effective December 1, 2022 through February 28, 2023:

a. All species: Fishing from a floating device is prohibited.

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

c. Release wild rainbow trout

(b) Effective March 1, 2022, until further notice: All species: Closed

46. Van Winkle Creek (Grays Harbor Co.), from mouth to 400' below outlet of Lake Aberdeen Hatchery: Effective December 1, 2022 through January 31, 2023:

All species: Closed

47. Willapa River (Pacific Co.), from mouth (City of South Bend boat launch) to Hwy. 6 Bridge (near the town of Lebam): Effective December 1, 2022, until further notice:

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

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

(c) Release wild rainbow trout.

48. Willapa River, South Fork (Pacific Co.): Effective December 1, 2022 through February 28, 2023:

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

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

(c) Release wild rainbow trout.

49. Wishkah River (Grays Harbor Co.), from the mouth to 200' below the weir at the Wishkah Rearing Ponds and from 150' upstream to

150' downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary): Effective December 1, 2022 through February 28, 2023:

All species: Closed.

50. Wynoochee River (Grays Harbor Co.): Effective December 1, 2022, until further notice:

All species: Closed.

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WSR 22-24-057
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 1, 2022, 11:48 a.m., effective December 1, 2022, 11:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is adopting WAC 388-439-0005 What is the pandemic EBT program?, 388-439-0015 General information about pandemic EBT benefits, 388-439-0020 Eligibility for pandemic EBT benefits for children under age six, and 388-439-0025 Eligibility for pandemic EBT benefits during the 2022 summer period.

Emergency adoption of these rules supports implementation of the pandemic EBT (P-EBT) program for eligible children who do not have access to regular free or reduced-price school meals or child care meals due to limited onsite learning or attendance in any school year in which there is a federal public health emergency designation (as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act, as amended by Section 1108 of H.R. 1319, American Rescue Plan Act of 2021).

Citation of Rules Affected by this Order: New WAC 388-439-0005, 388-439-0015, 388-439-0020, and 388-439-0025.

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

Other Authority: H.R. 6201, 8337, 133, 1319.

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

Reasons for this Finding: Emergency adoption of these rules is necessary to support implementation of the P-EBT program which protects the health, safety, and general welfare of Washington residents by supporting access to public assistance. The department filed a CR-101 preproposal under WSR 21-23-108.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, 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 4, Amended 0, Repealed 0.

Date Adopted: December 1, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4858.9

Chapter 388-439 WAC
PANDEMIC EBT (P-EBT) PROGRAM

NEW SECTION

WAC 388-439-0005 What is the pandemic EBT program? (1) The pandemic electronic benefits transfer (P-EBT) program is a federally funded nutrition program administered by the department of social and health services (department) and provides food benefits to eligible children who do not have access to meals at a covered childcare center or free or reduced-price school meals due to the COVID-19 public health emergency.

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child;

(b) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(i) Receiving a benefit from a federal-means tested assistance program, including the supplemental nutrition assistance program (SNAP), temporary assistance for needy families (TANF), food distribution program on Indian reservations (FDPIR), some medicaid programs; or

(ii) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program (ECEAP);

(c) "Eligible student" means a child or student, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program (NSLP) and school breakfast program (SBP) during the school year, who is:

(i) Enrolled in a school or registered in a program in Washington state that normally participates in the NSLP;

(ii) Attending a school that has been closed or has reduced attendance or hours for five or more consecutive days during the school year due to the COVID-19 public health emergency designation; and

(iii) Determined by the school to be eligible for free or reduced-priced school meals or attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program. Students are identified as eligible for free or reduced-price school meals using direct certification or free or reduced-price school meals application;

(d) "Free or reduced-price school meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act;

(e) "Meal service" means the typical meals (SBP and NSLP) served when school is in session and consumed onsite as part of the school day. Meal service includes both breakfast and lunch.

(f) "Operating days" are days a school regularly operates, excluding weekends, breaks, and holidays;

(g) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible students or children under age six;

(h) "Public health emergency" means a federal declaration of a public health emergency due to the COVID-19 pandemic as issued by the secretary of health and human services;

(i) "School" means any public or nonprofit private schools, charter schools, and tribal compact schools within the state of Washington;

(j) "School closure" means that the school was closed for in-person or remote learning with no meal service available to students enrolled in the school;

(k) "Summer period" means the months between the end of the school year and the start of the next school year during which there was a public health emergency.

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NEW SECTION

WAC 388-439-0015 General information about pandemic EBT benefits. (1) Pandemic electronic benefit transfer (P-EBT) benefits will be deposited into an account accessible with a debit card called a P-EBT card. A P-EBT card will be issued to each eligible student or child under age six. Each P-EBT card will be:

- (a) Linked to an EBT account for each eligible student or child under age six for P-EBT benefits; and
- (b) Mailed to either:
 - (i) The address on file with the school for the eligible student; or
 - (ii) The address on file with the department for the basic food case for the child under age six.

(2) To use a P-EBT account:

- (a) The P-EBT card can be used by the eligible student or child under age six or responsible household member, such as a parent or caregiver, on behalf of the eligible student or child under age six, to access the benefits in their EBT account;
- (b) A personal identification number (PIN) has to be created that must be used with the P-EBT card to purchase food items;
- (c) P-EBT benefits must be accessed from the P-EBT card of an eligible student or child under age six. P-EBT benefits cannot be transferred to a bank account or issued as a check;
- (d) P-EBT benefits that are not used within 274 days from the last purchase or deposit activity on the eligible child's account will be removed; and
- (e) P-EBT benefits cannot be replaced once redeemed or removed. Families are responsible for keeping the P-EBT card and PIN of an eligible student or child under age six in a safe and secure place.

(3) The purpose of P-EBT benefits is to help low-income families or individuals have a more nutritious diet by providing food benefits to eligible children during the COVID-19 public health emergency.

- (a) P-EBT benefits are used to buy food items for an eligible child (or youth) from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. department of agriculture food and nutrition service (FNS).

(b) Use P-EBT benefits the same as other food benefits under WAC 388-412-0046 (2)(c).

(c) It is not legal to use P-EBT benefits as described under WAC 388-412-0046 (2)(d).

(d) If people intentionally misuse P-EBT benefits, they may be:

(i) Subject to fines; or

(ii) Subject to legal action, including criminal prosecution. Department of social and health services (DSHS) will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking P-EBT benefits.

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NEW SECTION

WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between October 1, 2021, and June 30, 2022;

(b) Under the age of six.

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

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between October 1, 2021, and June 30, 2022.

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

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

(a) Using the full daily meal reimbursement rate of seven dollars and ten cents for breakfast, lunch, and snack;

(b) Multiplied by the statewide average operating days of 18 days per month;

(c) Multiplied using a percentage of benefit reimbursement based on statewide child and adult care food program (CACFP) reported meal service prior to the COVID-19 public health emergency compared to the current school year, a 34 percent reduction, as follows:

Daily Reimbursement Rate	Average Operating Days	Reduction in CACFP Claims	Average Monthly Benefits
\$7.10	18	34%	\$43

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

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as follows:

(a) An initial one-time P-EBT allotment is issued for the months of September 2021 to June 2022;

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

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

(6) Issuance of P-EBT benefits beyond September 30, 2022, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

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NEW SECTION

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2022 summer period. (1) During the summer period of July and August 2022, schools and covered childcare centers will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after the 2021-2022 school year, prior to August 31, 2022, a child must be:

(a) An eligible student as defined under WAC 388-439-0005(c) in June 2022; or

(b) A child under age six, as defined under WAC 388-439-0020(1), between June 1, 2022, and August 31, 2022.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$391 for the 2022 summer period.

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

(5) Issuance of summer period benefits beyond September 30, 2022, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

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WSR 22-24-060
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 2, 2022, 8:43 a.m., effective December 2, 2022, 8:43 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) continues to respond to 2021 legislation establishing employer requirements during a public health emergency for infectious and contagious diseases. The employer requirements are under SSB 5254, codified as RCW 49.17.485, regarding voluntary use of personal protective equipment (PPE) and ESSB 5115, also known as the Health Emergency Labor Standards Act (HELISA) and codified as RCW 49.17.062 and 49.17.064.

The emergency rule maintains requirements under new sections of chapter 296-62 WAC for when there is a public health emergency for an infectious or contagious disease and as such, the requirements are applicable to COVID-19. Under the emergency rule:

- Employers with more than 50 covered employees at a workplace or worksite are required to report infectious or contagious disease outbreaks to L&I;
- Employees are not required to disclose any medical condition or diagnosis to their employer;
- Several definitions were added and/or simplified for implementation;
- Non-health care employers are required to notify employees, as well as their union representative (if any), in writing of potential exposures within one business day;
- Employees and contractors must be permitted to voluntarily use personal protective equipment.

In addition, this emergency rule applies notification requirements to health care facilities as defined in RCW 9A.50.010.

- Employers of health care facilities must notify any employee with known or suspected high-risk exposure to the infectious or contagious disease within 24 hours. With employee authorization, notification must also be sent to the employee's union representative (if any) within 24 hours.
- Period of transmission/isolation requirements have been simplified.
- Requirements for how employees are notified of potential high-risk exposure are clarified.

A CR-101 preproposal statement of inquiry was filed on May 13, 2021 (WSR 21-11-05) and initiated the permanent rule-making process for rules related to infectious diseases, which will include requirements for outbreaks subject to a public health emergency under a national or state-declared state of emergency. This emergency rule supersedes WSR 22-17-009 filed on August 4, 2022.

Citation of Rules Affected by this Order: New WAC 296-62-601, 296-62-602, 296-62-603, 296-62-604, 296-62-605, 296-62-606, 296-62-607, 296-62-608, and 296-62-609.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.60.

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: RCW 49.17.485 became effective April 26, 2021, and RCW 49.17.062 and 49.17.064 became effective on May 11, 2021, requiring L&I to take action to implement both SSB 5254 and ESSB 5115. On September 8, 2022, Governor Inslee rescinded the statewide state of emergency in response to COVID-19 effective October 31, 2022. HELSA remains in effect during a federally declared public health emergency. President Biden continued the national emergency concerning the COVID-19 pandemic with notice published in the Federal Register on February 23, 2022 (87 F.R. 10289). In the event the national emergency declaration is ended, this emergency rule will expire same day.

Washington state continues to battle the COVID-19 disease and a number of variants. These emergency rules are necessary to further respond to and diminish the spread of COVID-19, alert public officials to workers' exposure to COVID-19 to allow for adequate responses to outbreaks, and to reduce the number of outbreaks, keeping Washington workers safe.

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 9, 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 9, Amended 0, Repealed 0.

Date Adopted: December 2, 2022.

Joel Sacks
Director

OTS-3146.9

**PUBLIC HEALTH EMERGENCY REPORTING AND NOTIFICATION REQUIREMENTS FOR
COVID-19**

NEW SECTION

WAC 296-62-601 Purpose and scope. WAC 296-62-601 through 296-62-606 provides requirements for the reporting of COVID-19 outbreaks to L&I's division of occupational safety and health (DOSH) and

notification to employees of potential or high risk exposures to COVID-19 during a public health emergency as defined in WAC 296-62-602(11) and consistent with RCW 49.17.062 and 49.17.064.

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NEW SECTION

WAC 296-62-602 Definitions for WAC 296-62-601 through 296-62-606. The definitions below apply only to WAC 296-62-601 through 296-62-606.

(1) **Airborne infection isolation room (AIIR).** Means a dedicated negative pressure patient-care room with special air handling capability, which is used to isolate persons with a suspected or confirmed airborne-transmissible infectious disease. AIIRs include both permanent rooms and temporary structures (e.g., a booth, tent, or other enclosure designed to operate under negative pressure).

(2) **Clearing time.**

(a) Means the amount of time it takes for an aerosol to be removed from a room with 99.9 percent removal efficiency based on the United States Centers for Disease Control and Prevention's *Guidelines for Environmental Infection Control in Health-Care Facilities (2003)*, Appendix Table B.1, *Air changes/hour (ACH) and time required for airborne-contaminant removal by efficiency*. (See <https://www.cdc.gov/infectioncontrol/guidelines/environmental/appendix/air.html#tableb1>.)

(b) The clearing time is no more than three hours following the conclusion of an aerosol generating procedure.

(c) One hour is sufficient time for aerosols to clear following an aerosol generating procedure in clinical spaces constructed under Washington state department of health clinical facility requirements (six air exchanges per hour).

(d) Fifteen minutes is sufficient time for aerosols to clear following an aerosol generating procedure in an airborne infection isolation room (AIIR).

(3) **Covered employee.** Means any employee of an employer who is employed in the business of their employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is their personal labor for an employer whether by manual labor or otherwise, including employees from a temporary help service, or personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

(4) **Coronavirus Disease 2019 (COVID-19).** Means the respiratory disease caused by severe acute respiratory syndrome coronavirus two (SARS-CoV-2). For clarity and ease of reference, this rule also uses the term "COVID-19" when describing exposures or potential exposures to SARS-CoV-2.

(5) **Health care facility employer.** Means an employer that is a health care facility according to RCW 9A.50.010.

(6) **High risk exposure.** Applies only to health care facilities as defined by RCW 9A.50.010, and means being in any of the following situations without a fit-tested respirator and all other required personal protective equipment:

(a) Sharing the same indoor airspace as a qualifying individual for a cumulative total of 15 minutes or more over a 24-hour period

during the qualifying individual's period of transmission, regardless of the qualifying individual's use of face coverings; or

(b) In the same room as a qualifying individual who is undergoing an aerosol-generating procedure. A list of what are considered aerosol-generating procedures is found in the section *Precautions During and Following Aerosol Generating and Other Procedures*, found on page 16 of the April 22, 2022, version of the Washington state department of health publication *Interim Recommendations for SARS-CoV-2 Infection Prevention and Control in Healthcare Settings* (<https://doh.wa.gov/sites/default/files/2022-06/420-391-HealthcareIPCCOVID.pdf>); or

(c) In the room where a qualifying individual underwent an aerosol-generating procedure, prior to the termination of the clearing time.

(7) **Notice of potential exposure.** Means any of the following:

(a) Notification to the employer from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite; or

(b) Notification to the employer from an employee, or their emergency contact, that the employee is a qualifying individual; or

(c) Notification through a testing protocol of the employer that the employee is a qualifying individual.

(8) **Period of transmission for qualifying individuals at employers that are health care facilities.** For COVID-19, means the period of time between the following start and end points:

(a) Start - The earlier of:

(i) Two days before the qualifying individual felt sick/had symptoms; or

(ii) Two days before the day a positive test specimen was collected.

(b) End - The latest of:

(i) Ten days following the onset of symptoms (where day one is the first full day after symptoms developed), when at least 24 hours have passed since the last fever without use of fever-reducing medications, and symptoms (e.g., cough, shortness of breath) have improved; or

(ii) Ten days following the positive laboratory test for COVID-19 if the qualifying individual never developed symptoms, where day one is the first full day after the positive test specimen was collected; or

(iii) The length of the qualifying individual's isolation period, when the qualifying individual has an isolation period longer than 10 days for reasons such as illness severity, or due to immunocompromise. In such circumstances, the isolation period is not shorter than, but may be longer than, at least 24 hours beyond the last fever without use of fever-reducing medications, and symptoms (e.g., cough, shortness of breath) have improved.

(9) **Period of transmission for qualifying individuals at employers that are not health care facilities.** For COVID-19, means:

(a) The earlier of:

(i) Two days before the qualifying individual felt sick/had symptoms; or

(ii) Two days before the day a positive test specimen was collected;

(b) Until the time the qualifying individual left, or was isolated from, the worksite.

(10) **Positive laboratory test.**

(a) Means a positive or abnormal diagnostic test result for SARS-CoV-2 when the test is cleared, approved, or authorized, including in an Emergency Use Authorization (EUA), by the United States Food and Drug Administration (FDA) to detect current infection with SARS-CoV-2.

(b) Positive laboratory tests include, but are not limited to, antigen tests and molecular tests for SARS-CoV-2.

(c) Tests for current infection that are cleared, approved, or authorized by the FDA that return a positive or abnormal result are positive laboratory tests regardless of where the test sample is collected or where the test is interpreted.

(11) **Public health emergency.** Means a declaration or order concerning any infectious or contagious disease, including a pandemic and is issued as follows:

(a) The President of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(b) The governor of the state of Washington has declared a state of emergency under RCW 43.06.010(12) in every county in the state.

(12) **Qualifying individual.** Means any person who has:

(a) A positive laboratory test for COVID-19; or

(b) A positive diagnosis of COVID-19 by a licensed health care provider; or

(c) An order to isolate by a public health official related to COVID-19; or

(d) Died due to COVID-19, in the determination of a local health department.

(13) **Test-confirmed.** Means receiving a positive laboratory test for SARS-CoV-2 including, but not limited to, antigen tests and molecular tests.

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NEW SECTION

WAC 296-62-603 General guidelines. WAC 296-62-601 through 296-62-606 do not alter or eliminate any other reporting obligations an employer has under state or federal laws.

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NEW SECTION

WAC 296-62-604 Reporting requirements for outbreaks among covered employees during a public health emergency. (1) This section only applies during a public health emergency to employers with more than 50 covered employees at a workplace or worksite. For purposes of this section, workplace or worksite means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control. This includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(2) Outbreaks. Employers must report cases to L&I's division of occupational safety and health (DOSH), whether or not the test-confirmed covered employee cases are considered work-related, within 24 hours of being notified of:

(a) Ten or more test-confirmed covered employees at the workplace or worksite where the test was collected during any period of time the Washington state department of health or a local health jurisdiction communicates to the employer that there is a COVID-19 outbreak at their workplace or worksite; or

(b) Ten or more test-confirmed employees where the test was collected during any period of time between the following start and end points:

(i) Start: When any two or more test confirmed covered employee cases at the workplace or worksite occur within 14 consecutive calendar days of each other.

(ii) End: 28 consecutive calendar days have passed since the last positive test result for any covered employee at the workplace or worksite.

Notes: * Only test-confirmed covered employee cases must be counted. For the purposes of WAC 296-62-604, employers do not need to count test-confirmed cases when the positive laboratory test results are from individuals who are not covered employees.
* Employers must also report to DOSH COVID-19-related workplace deaths and hospitalizations as required by WAC 296-27-031. Different disclosure requirements for employee information apply.

(3) Employers must report to DOSH by calling 1-800-4BE-SAFE (1-800-423-7233), and use the option to report fatalities, hospitalizations, amputations, or loss of an eye.

(4) For purposes of this section, employers must not include any employee names or personal identifying information when reporting test-confirmed covered employee cases.

Exemptions: • Employers that have reported an outbreak according to this section do not need to continue reporting that outbreak to DOSH until the outbreak has ended.
• Employers in an outbreak as defined in this section that later learn intervening cases were false positives are not required to retroactively reevaluate their outbreak status and report to DOSH. They may continue to act as if they were under the same unbroken outbreak.

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NEW SECTION

WAC 296-62-605 Notification requirements related to potential exposures for employers that are not health care facilities. (1) This section only applies to employers other than health care facilities as defined in RCW 9A.50.010. For the purposes of this section, worksite means the building, store, facility, agricultural field, or other location where the qualifying individual worked. "Worksite" does not include any buildings, floors, or other locations of the employer that the qualifying individual did not enter.

(2) If an employer receives notice of potential exposure, the employer must:

(a) Within one business day of potential exposures provide written notice to all covered employees who were on the premises at the same worksite on the same day(s) as the qualifying individual when the qualifying individual may have been infectious or contagious. Written notice must also be provided to:

(i) The union representative, if any, of any covered employees.

(ii) Any temporary help service, employee-leasing service, or personnel supply service employers of a covered employee.

(b) The notice required under this section:

(i) Must state that the covered employee may have been exposed to COVID-19.

(ii) Must be made in a manner the employer normally uses to communicate employment-related information including, but not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending.

(iii) Must be in both English and the language understood by the majority of the employees.

(iv) Must not include any employee names or personal identifying information.

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NEW SECTION

WAC 296-62-606 Notification requirements related to high risk exposures for employers that are health care facilities. (1) This section only applies to employers that are health care facilities defined by RCW 9A.50.010. For purposes of this section, worksite means the building, store, facility, agricultural field, or other location where the qualifying individual worked. "Worksite" does not include any buildings, floors, or other locations of the employer that the qualifying individual did not enter.

(2) Employers that are health care facilities must notify:

(a) Any employee with known or suspected high risk exposure to COVID-19 within 24 hours.

(b) With employee authorization, the union representative, if any, of the employee's known or suspected high risk exposure to COVID-19 within 24 hours.

(c) Any temporary help service, employee-leasing service, or personnel supply service employers of a covered employee notified within 24 hours.

(3) The notices required under this section:

(a) Must be in writing; and

(b) Must state that the employee had a known or suspected high risk exposure to COVID-19; and

(c) Must include, if feasible, information about the worksite location(s) where the known or suspected high risk exposure(s) are believed to have occurred; and

(d) Must be made in a manner the employer normally uses to communicate employment-related information including, but not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee, union representative, or temporary help service, employee-leasing service, or personnel supply service employer within 24 hours of sending; and

(e) Must be in both English and the language understood by the majority of the employees; and

(f) Must not include any employee names or personal identifying information.

(4) A health care facility employer can meet the requirements of subsection (2)(b) of this section by creating and maintaining a written policy that:

- (a) Anticipates the obligation to notify the union representative; and
- (b) Ensures that prior to distributing notices to the union, employee authorization is obtained from either:
 - (i) The employee; or
 - (ii) The union, if the union has the employee's approval to represent the employee's authorization to the employer.

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PUBLIC HEALTH EMERGENCY VOLUNTARY PERSONAL PROTECTIVE EQUIPMENT USAGE

NEW SECTION

WAC 296-62-607 Purpose and scope for voluntary personal protective equipment usage. WAC 296-62-607 through 296-62-609 provide requirements for employee voluntary use of personal protective equipment during a public health emergency, consistent with RCW 49.17.485. These requirements apply to all employers in Washington state during a public health emergency.

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NEW SECTION

WAC 296-62-608 Definitions for WAC 296-62-607 through 296-62-609. The definitions below apply only to WAC 296-62-607 through 296-62-609.

(1) **Employee.** Means any employee of an employer who is employed in the business of their employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is their personal labor for an employer whether by manual labor or otherwise, including employees from a temporary help service, employee-leasing service, or personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

(2) **Public health emergency.** Means a declaration or order relating to controlling and preventing the spread of any infectious or contagious disease that covers the jurisdiction where the individual or business performs work, and is issued as follows:

(a) The President of the United States has declared a national or regional emergency;

(b) The governor has declared a state of emergency under RCW 43.06.010(12); or

(c) An order has been issued by a local health officer under RCW 70.05.070.

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NEW SECTION

WAC 296-62-609 Voluntary use of personal protective equipment requirements. (1) Every employer that does not require employees or contractors to wear a specific type of personal protective equipment must allow its employee's or contractor's voluntary use of that specific type of protective device or equipment, including gloves, goggles, face shields, and face masks, as the employee or contractor deems necessary. This only applies when:

(a) The voluntary use of these protective devices and equipment does not introduce hazards to the work environment and is consistent with the provisions of both this chapter, and related rules established by the department of labor and industries (L&I) division of occupational safety and health (DOSH); and

(b) The use of facial coverings does not interfere with an employer's security requirements; and

(c) The voluntary use of these protective devices and equipment does not conflict with standards for that specific type of equipment established by the department of health or DOSH.

(2) An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.

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WSR 22-24-070
EMERGENCY RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed December 5, 2022, 8:35 a.m., effective December 5, 2022, 8:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Communities continue to experience a public health crisis related to the outbreak of the novel coronavirus, COVID-19. This WAC change would help clarify the scope of the transitional certificate assignment policy to support educators who face ongoing challenges related to this public health situation and have limited access to clock hours due to the pandemic impact.

Citation of Rules Affected by this Order: Amending WAC 181-82-110.

Statutory Authority for Adoption: Chapter 28A.410 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: Clarify the assignment policy related to the transitional certificate and reduce confusion for educators who face ongoing challenges due to COVID-19.

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

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

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

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

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

Date Adopted: December 5, 2022.

Jisu Ryu
Rules Coordinator

OTS-4023.1

AMENDATORY SECTION (Amending WSR 21-22-104, filed 11/2/21, effective 12/3/21)

WAC 181-82-110 School district response and support for non-matched endorsements to course assignment of teachers. (1) Individuals with initial, residency, endorsed continuing, professional, transitional, or emergency teacher certificates who are employed with a school district may be assigned to classes other than in their areas

of endorsement. If teachers are so assigned, the following shall apply:

(a) A designated representative of the district and any teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(b) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned.

(2) Special education preendorsement waiver:

(a) A teacher who has completed (~~two hundred forty~~) 240 continuing education credit hours under WAC 181-85-030 of course work applicable to a special education, early childhood special education, teacher of the visually impaired, deaf education, or deaf education with ASL proficiency endorsement shall be eligible for a preendorsement waiver from the special education office under chapter 392-172A WAC. Individuals with a preendorsement waiver are considered to have met the requirements for "substantial professional training" for the appropriate endorsement under WAC 392-172A-02090.

(b) All remaining requirements for the special education, early childhood special education, teacher of the visually impaired, deaf education, or deaf education with ASL proficiency endorsement shall be completed within five years.

(3) Teachers are not subject to nonrenewal or probation based on evaluation of their teaching effectiveness in the out-of-endorsement assignments under this section.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-22-104, § 181-82-110, filed 11/2/21, effective 12/3/21; WSR 21-08-024, § 181-82-110, filed 3/29/21, effective 4/29/21; WSR 20-16-144, § 181-82-110, filed 8/4/20, effective 9/4/20. Statutory Authority: RCW 28A.410.210. WSR 14-20-051, § 181-82-110, filed 9/25/14, effective 10/26/14; WSR 14-11-106, § 181-82-110, filed 5/21/14, effective 6/21/14; WSR 12-16-107, § 181-82-110, filed 8/1/12, effective 9/1/12; WSR 08-12-056, § 181-82-110, filed 6/2/08, effective 7/3/08; WSR 06-14-010, § 181-82-110, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-82-110, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 03-04-023, § 180-82-110, filed 1/27/03, effective 2/27/03. Statutory Authority: RCW 28A.150.220(4), 28A.305.130(1), 28A.410.018. WSR 00-18-063, § 180-82-110, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-04-008, § 180-82-110, filed 1/21/99, effective 2/21/99.]

WSR 22-24-076
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed December 5, 2022, 12:49 p.m., effective December 5, 2022, 12:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this filing is to create regulations for the transitional support services provided at the Rainier School.

Citation of Rules Affected by this Order: New WAC 388-829Z-005, 388-829Z-010, 388-829Z-015, 388-829Z-020, 388-829Z-025, 388-829Z-030, 388-829Z-035, 388-829Z-040, 388-829Z-045, 388-829Z-050, 388-829Z-055, 388-829Z-060, 388-829Z-065, 388-829Z-070, 388-829Z-075, 388-829Z-080, 388-829Z-085, and 388-829Z-090.

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

Other Authority: RCW 71A.20.020 and 71A.20.050.

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

Reasons for this Finding: Enacting these rules on an emergency basis is necessary for preserving the health, safety, and general welfare of clients receiving emergency transitional support services at Rainier School. Clients currently receiving these services were originally admitted to Rainier School in response to the COVID-19 public health emergency. With the declared state of emergency ending, these rules are intended to inform clients about the service they are receiving and the future of that service.

This is the second emergency filing on these rules. This filing with amended text, is necessary to align background check requirements for staff with those of other people employed at residential habilitation centers. A CR-101 preproposal was filed under WSR 22-23-032.

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 18, 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 18, Amended 0, Repealed 0.

Date Adopted: December 5, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4953.3

Chapter 388-829Z WAC
EMERGENCY TRANSITIONAL SUPPORT SERVICES

NEW SECTION

WAC 388-829Z-005 What definitions apply to this chapter? The following definitions apply to this chapter.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and who DDA has determined eligible to receive services under chapter 71A.16 RCW. For purposes of notification, informed consent, and decision-making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

"DDA" means the developmental disabilities administration, an administration of the department of social and health services, its employees, and authorized agents.

"Direct support professional" means a person who interacts directly with a client while the client receives emergency transitional support services.

"DSHS" or "the department" means the state of Washington department of social and health services, its employees, and authorized agents.

"Legal representative" means a person's legal guardian, limited guardian when the subject matter is within the scope of the limited guardianship, attorney-at-law, attorney-in-fact, or any other person who is authorized by law to act for another person.

"Provider" means the state-operated entity on the Rainier School campus providing emergency transitional support services.

"State of emergency" means an emergency proclaimed as such by the governor pursuant to RCW 43.06.010.

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NEW SECTION

WAC 388-829Z-010 What is the purpose of this chapter? This chapter establishes rules for emergency transitional support services. These state-funded services, administered by DDA at Rainier School, were created in direct response to a state of emergency declared by the governor.

[]

ELIGIBILITYNEW SECTION

WAC 388-829Z-015 Who may receive emergency transitional support services? To receive emergency transitional support services, a person must:

- (1) Be eligible for DDA services under chapter 388-823 WAC;
- (2) Be age 18 or older; and
- (3) Have been admitted to Rainier School on or before October 15, 2022, because:
 - (a) The client was hospitalized, or hospitalization was imminent, without medical need during the declared state of emergency; and
 - (b) There were no safe discharge options immediately available to the client.

[]

PROVIDER QUALIFICATIONSNEW SECTION

WAC 388-829Z-020 What are the minimum requirements for direct support professionals providing emergency transitional support services? To provide emergency transitional support services, a direct support professional must:

- (1) Have a high school diploma or GED equivalent, unless hired before September 1, 1991;
- (2) Be age 18 or older; and
- (3) Have a current background check as required by WAC 388-829Z-025.

[]

NEW SECTION

WAC 388-829Z-025 Who must have a background check? (1) A direct support professional, volunteer, and any other employee who may have unsupervised access to a DDA client must have a background check.

(2) Any person required to have a background check under this section must have a nondisqualifying background check result as required by DSHS.

[]

NEW SECTION

WAC 388-829Z-030 What will disqualify a direct support professional or a volunteer from working in a capacity that may involve access to DDA clients? (1) Criminal convictions and pending charges that disqualify a direct support professional or a volunteer from working with DDA clients are listed in chapter 388-113 WAC.

(2) A volunteer or person employed by an emergency transitional support services provider who receives a DSHS background check with a disqualifying result is prohibited from any unsupervised access to DDA clients.

[]

SERVICE DELIVERY

NEW SECTION

WAC 388-829Z-035 What services and activities must be a part of emergency transitional support services? The provider must provide the following services and activities at no cost to the client:

- (1) A furnished home environment, including a private bedroom;
- (2) Access to a safe outdoor area for recreation;
- (3) Support accessing social and recreational opportunities in the community;
- (4) Access to physical and behavioral health services prescribed by the client's treating professional;
- (5) Three nutritious meals and two snacks per day;
- (6) Bedding and towels;
- (7) Access to laundry facilities; and
- (8) Access to a telephone and a place to make private calls.

[]

NEW SECTION

WAC 388-829Z-040 What policies and procedures must the provider have? (1) The provider must develop and implement policies and procedures that address:

- (a) Client rights, including a client's right to file a complaint or suggestion without interference;
 - (b) Reporting requirements for suspected abuse, neglect, financial exploitation, and abandonment;
 - (c) Client protections when there have been allegations of abuse, neglect, financial exploitation, or abandonment;
 - (d) Emergent situations that may pose a danger or risk to the client or others;
 - (e) Response to a missing person and other client emergencies;
 - (f) Emergency response plans for natural and other disasters;
 - (g) Client access to medical, mental health, and law enforcement resources;
 - (h) Notifications to client's primary caregiver, legal representative, or relatives in case of emergency;
 - (i) Client grievances, including timelines, possible remedies, and information about how to submit unresolved grievances to the department; and
 - (j) Aspects of medication management, including:
 - (i) Supervision of medication; and
 - (ii) Client refusal.
- (2) The provider must train employees on its policies and procedures, maintain current written policies and procedures, and make them available upon request to all employees, clients, client legal representatives, and DDA.

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NEW SECTION

- WAC 388-829Z-045 What requirements must be met before a provider transports a client?** Before transporting a client, a provider or direct support professional must have:
- (1) Automobile insurance coverage under chapter 46.30 RCW; and
 - (2) A valid driver's license under chapter 46.20 RCW.

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NEW SECTION

- WAC 388-829Z-050 How must the provider regulate the water temperature at Rainier School?** (1) The provider must regulate the water temperature at Rainier School as follows:
- (a) Maintain the water temperature in the household between 105 degrees and 120 degrees Fahrenheit; and
 - (b) Check the water temperature at least once every six months.
- (2) The provider must document compliance with these requirements.

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NEW SECTION

WAC 388-829Z-055 What records must the provider keep? (1) For each client, the provider must keep the following information:

- (a) The client's name and address;
 - (b) The name, address, and telephone number of the client's primary guardian or legal representative;
 - (c) A copy of the client's most recent person-centered service plan;
 - (d) Nurse delegation records, if applicable;
 - (e) Progress notes;
 - (f) Incident reports, if applicable;
 - (g) Medication documentation, including a medication intake form and medication administration records, if applicable;
 - (h) A list of the client's personal property upon arrival, acquisition of new property - other than consumables, and property at departure; and
 - (i) A record of money or gift cards managed by the provider on behalf of the client, if applicable.
- (2) An emergency transitional support services provider must also keep the following:
- (a) Water temperature monitoring records;
 - (b) Direct support professional training records; and
 - (c) Direct support professional time sheets specific to locations worked.

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NEW SECTION

WAC 388-829Z-060 How must a provider report suspected abuse and neglect? A provider must immediately report suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults to:

- (1) Adult protective services using the DSHS online reporting tool or by calling 1-877-734-6277 (TTY: 1-800-977-5456); and
- (2) Law enforcement agencies as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

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TERMINATIONNEW SECTION

WAC 388-829Z-065 When may DDA terminate a client's emergency transitional support services? DDA may terminate a client's emergency transitional support services if:

- (1) The client chooses not to receive the service;
- (2) The service no longer meets the client's health and safety needs; or
- (3) The service is not funded by the legislature, or the program lacks sufficient capacity.

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NEW SECTION

WAC 388-829Z-070 What are a client's notice and appeal rights?

- (1) DDA must provide 30 days' advance notice for termination of emergency transitional support services.
- (2) A client does not have a right to appeal termination of emergency transitional support services if the basis for termination is a lack of funding or lack of capacity.

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CERTIFICATION

NEW SECTION

WAC 388-829Z-075 What are the certification requirements for providers of emergency transitional support services? (1) The provider of emergency transitional support services must be certified by DDA no more than 90 days after the first date of service delivery.

- (2) DDA certifies the provider through a certification evaluation.
- (3) DSHS-contracted evaluators conduct the certification evaluations.
- (4) The provider must participate in a certification evaluation at least once every 12 months.

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NEW SECTION

WAC 388-829Z-080 What if the emergency transitional support services provider disagrees with a certification evaluation or certification decision? If an emergency transitional support services provider disagrees with a certification evaluation or certification decision under this chapter, the provider may request an informal dispute resolution meeting with DDA by:

- (1) Submitting a written request to DDA no more than 10 days after receiving the final certification letter and report; and
- (2) Including a written statement that identifies the challenged action, describes the provider's concerns, and lists regulations and contract standards cited.

[]

NEW SECTION

WAC 388-829Z-085 What happens if the provider is found to be out of compliance? (1) If DDA finds in its evaluation that the emergency transitional support services provider is out of compliance with any part of this chapter, the provider and DDA must develop a plan of correction.

(2) The plan of correction must:

- (a) Outline methods for the provider to comply with the required corrections; and
- (b) Provide a time frame for the provider to complete the corrective actions.

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NEW SECTION

WAC 388-829Z-090 When may DDA stop admission authorization for emergency transitional support services? DDA may stop admission authorization for emergency transitional support services if:

- (1) The provider demonstrates inadequate performance or inability to deliver quality care that jeopardizes the client's health, safety, or well-being;
- (2) The provider does not complete the corrective actions within the agreed upon time frame;
- (3) The provider fails to comply with the requirements of this chapter; or
- (4) DDA has substantial evidence that a client's health, safety, or well-being is at risk.

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WSR 22-24-080
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-279—Filed December 5, 2022, 4:05 p.m., effective December 5, 2022, 4:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to reopen commercial crab fishing in crab management subregion 3-2.

WAC 220-340-45500R: (1) Opens Puget Sound commercial crab harvest in crab management subregion 3-2 on December 6, 2022, at 8:00 a.m.; (2) maintains the closure of Region 2E to commercial harvest; and (3) implements hard closure dates that may close with 120 days.

WAC 220-340-42000L: Permits barging of pots from December 6, 2022, at 8:00 a.m. through 7:59 a.m. on December 8, 2022, in subregion 3-2 only.

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

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500Q, 220-340-42000K and 220-340-47000M; and amending WAC 220-340-455, 220-340-420, and 220-340-470.

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

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

Reasons for this Finding: There is sufficient allocation available in Regions 1 and 2-West and subregions 3-1, 3-3, and 3-4 to accommodate continued commercial harvest. This rule opens subregion 3-2 following comanager agreement on a quota increase, providing additional harvest opportunity. 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 commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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

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

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

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

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

Date Adopted: December 5, 2022.

Kelly Susewind
Director

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

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

Geographical Management Unit (WAC 220-320-110)	Open Period
Region 1, MFSF Catch Areas 21A, 21B, and 22B	Immediately, through March 31, 2023.
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	Immediately, until further notice.
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	Closed
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	Closed
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	Immediately, through February 15, 2023.
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	Immediately, through February 15, 2023.
Subregion 3-1	Immediately, through March 31, 2023.
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	8:00 am December 6, 2022, through March 31, 2023.
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	8:00 am December 6, 2022, through March 31, 2023.
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	8:00 am December 6, 2022, through March 31, 2023.
22-340-455 Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Closed, due to on-going public health concerns.
Subregion 3-3	Immediately, until further notice.
Subregion 3-4	Immediately, until further notice.

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NEW SECTION

WAC 220-340-42000L Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420:

(1) Effective 8:00 a.m. December 6, 2022 until 7:59 a.m. December 8, 2022 it is permissible to deploy Dungeness crab pots for commercial purposes in Crab Management Subregion 3-2 from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and prior notice has been given as provided below. Crab pots may only be deployed during daylight hours.

(2) Puget Sound commercial crab license holders that intend to barge must send an email to crab.report@dfw.wa.gov, detailing the following information:

(a) Name and license number of licensed owner.

(b) Name of designated primary operator if different from licensed owner.

- (c) Name of alternate operator if used to deploy pots from a non-designated vessel.
- (d) Buoy brand number and number of pots to be deployed from a non-designated vessel.
- (e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.
- (f) Region or Set Location

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NEW SECTION

WAC 220-340-47000N Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas.

Notwithstanding the provisions of 220-340-470:

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

Geographical Management Unit (WAC 220-320-110)	Pot limit
Region 1, MFSF Catch Areas 21A, 21B, and 22B	30
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	30
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	30
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	20
Subregion 3-1	30
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	30
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	20
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	20
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	0
Subregion 3-3	30
Subregion 3-4	30

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

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REPEALER

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

WAC 220-340-45500Q Commercial crab fishery—Seasons and areas—Puget Sound. (22-255)

WAC 220-340-42000K Commercial crab fishery—unlawful acts.
(22-273)

WAC 220-340-47000M Commercial crab fishery—Gear limits—
Puget Sound and Marine Fish-Shellfish
Management and Catch Reporting Areas.
(22-273)

WSR 22-24-084
EMERGENCY RULES
PIERCE COLLEGE

[Filed December 5, 2022, 6:07 p.m., effective December 5, 2022, 6:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Pierce College is utilizing the WAC emergency rule to update the student conduct code chapter 132K-135 WAC in order to be in compliance with the United States Department of Education federal rules regarding Title IX.

Citation of Rules Affected by this Order: Amending WAC 132K-135-360 and 132K-135-380.

Statutory Authority for Adoption: RCW 28B.50.140(13).

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

Reasons for this Finding: The United States Department of Education requires institutions of higher education to be in compliance with Title IX and make appropriate policy and procedure 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 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 30, 2022.

Michele Johnson
Chancellor

OTS-3738.1

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

WAC 132K-135-360 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

~~((6))~~ (5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-360, filed 5/13/21, effective 6/13/21.]

AMENDATORY SECTION (Amending WSR 21-11-045, filed 5/13/21, effective 6/13/21)

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 28B.50.140(13). WSR 21-11-045, § 132K-135-380, filed 5/13/21, effective 6/13/21.]