

WSR 24-21-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-215—Filed October 2, 2024, 12:46 p.m., effective October 2, 2024, 12:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule:

(1) Closes Shrimp Management Region 2W to commercial harvest of nonspot shrimp one hour after official sunset on October 4, 2024, due to the projected attainment of available share.

(2) Designates the commercial nonspot shrimp catch accounting periods and biweekly catch limit for harvest from Subregions 1B and 1C and Region 2E.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000A; and amending WAC 220-340-520.

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: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require the adoption of harvest seasons contained in this emergency rule. This emergency rule is necessary to prosecute state commercial shrimp pot fisheries in Puget Sound. This rule closes quota area 2W to commercial harvest following the projected attainment of the available harvest. This rule allows harvesters to respond to dynamic changes in market conditions and promotes full utilization of both the commercial spot and nonspot shares. These rules are in congruence with comanager agreements. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 2, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000B Commercial shrimp pot fishery—Puget Sound.

Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes using pot gear in Puget Sound except as provided for in this section:

(1) Spot Shrimp Pot Harvest:

(a) Spot shrimp harvest is permitted as indicated in the following table opening one hour before official sunrise on the first day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Closed.
Subregion 1B	Closed.
Subregion 1C	Closed.
Region 2E	Closed.
Region 2W	Closed.
Subarea 23A-E	Closed.
Subarea 23A-W	Closed.
Subarea 23A-C and MSFS Catch Area 23B	Closed.
Subarea 23A-S and MSFS Catch Area 23D	Closed.
MFSF Catch Area 23C	Closed.
MFSF Catch Area 25A, excluding the Discovery Bay Shrimp District	Closed.
Discovery Bay Shrimp District	Closed.
MFSF 29 (Straits - Neah Bay)	Closed.
Subarea 26B-1 and MFSF Catch Area 26C	Closed.
Subarea 26B-2	Closed.
Region 5	Closed.
MFSF Catch Area 26D	Closed.
MFSF Catch Areas 28A, 28B, 28C, and 28D	Closed.

(b) The first spot shrimp catch accounting period starts one hour before official sunrise on May 1, 2024, through one hour after official sunset on July 30, 2024.

(c) It is unlawful for the combined total harvest during the first spot shrimp accounting period to have exceeded 4,800 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(d) The second spot shrimp catch accounting period starts one hour before official sunrise on July 31, 2024, through one hour after official sunset on August 20, 2024.

(e) It is unlawful for the combined total harvest during the first and second spot shrimp accounting periods to have exceeded 5,300 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(f) Harvesters may deploy no more than 50 spot shrimp pots per license in Shrimp Management Region 5.

(g) It is lawful to possess deactivated non-spot shrimp pots on-board a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

(2) Non-spot shrimp pot harvests:

(a) Non-spot shrimp pot harvest is permitted as indicated in the following table opening one hour before official sunrise on the first day of the open period. Any closures take effect one hour after official sunset on the closing day of the open period.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Immediately, through October 15, 2024.
Subregion 1B	Closed.
Subregion 1C	Closed.
Region 2E	Closed.
Region 2W	Immediately, through October 4, 2024.
Region 3, not including Discovery Bay Shrimp District	Immediately, through October 15, 2024.
Discovery Bay Shrimp District	Immediately, through October 15, 2024.
Region 4	Closed
Region 5	Closed
Region 6	Closed

(b) The non-spot shrimp catch accounting periods begin one hour before official sunrise and end one hour after official sunset on the date listed in the following table:

Period Number	Start Date	End Date
1	5/1/2024	5/14/2024
2	5/15/2024	5/28/2024
3	5/29/2024	6/11/2024
4	6/12/2024	6/25/2024
5	6/26/2024	7/9/2024
6	7/10/2024	7/23/2024
7	7/24/2024	8/6/2024
8	8/7/2024	8/20/2024
9	8/21/2024	9/3/2024
10	9/4/2024	9/17/2024
11	9/18/2024	10/1/2024
12	10/2/2024	10/15/2024

(c) It is unlawful for total harvest of non-spot shrimp to exceed 1,400 pounds per non-spot shrimp catch accounting period from subregions 1B, 1C, and Region 2E combined during catch accounting periods 1 through 12.

(d) There is no weekly harvest limit of non-spot shrimp from subregion 1A, Region 2W, Region 3, or the Discovery Bay Shrimp District.

(e) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Catch Area 23A and all of its subareas (23AE, 23AW, 23AC, 23AS).

(f) Harvest of non-spot shrimp is not permitted deeper than 175 feet in subregion 1A.

(g) It is unlawful to harvest non-spot shrimp in more than one geographical management unit listed in subsection 3(a) in a single day with the following exceptions:

(i) Non-spot shrimp may be harvested from more than one subregion of Region 1 on the same day.

(ii) Non-spot shrimp may be harvested from Discovery Bay Shrimp District and Region 3 on the same day.

(h) It is lawful to possess deactivated spot shrimp pots on-board of a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for non-spot shrimp.

A deactivated pot is un-baited, has the drawstring or door fastened open, and/or is unable to be readily fished.

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

REPEALER

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

WAC 220-340-52000A Commerical shrimp pot fishery—Puget Sound. (24-160)

WSR 24-21-002

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed October 2, 2024, 1:54 p.m., effective October 2, 2024, 1:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Substance use disorder professionals (SUDP) and trainees; reducing barriers to joining the workforce and streamlining the credentialing process.

The department of health (department) is amending the following SUDPs and SUDP trainees rule in WAC 246-811-010, 246-811-025, 246-811-030, 246-811-035, 246-811-045, 246-811-046, 246-811-048, 246-811-049, 246-811-060, 246-811-070, 246-811-220, 246-811-240, 246-811-260 and 246-811-990; and creating WAC 246-811-310.

The department is adopting these emergency rules to reduce barriers to entering and remaining in the behavioral health workforce, to streamline SUDP and trainee credentialing process, and to implement recent legislation. Legislation being implemented includes 2SHB 1724 (chapter 425, Laws of 2023), E2SHB 2247 (chapter 371, Laws of 2024), and 2SSB 6228 (chapter 366, Laws of 2024).

These emergency rules will streamline the credentialing process by: (1) Allowing certain educational programs to meet the coursework requirements of WAC 246-811-030 without further department review; (2) removing the limit on trainee credential renewals; (3) removing the requirement for trainees to work in behavioral health agencies; (4) removing the seven-year cap on earned trainee experience; (5) lowering the experience requirements for approved supervisors; (6) removing the requirement that supervisors be on site with trainees after the first 50 hours of supervised experience; (7) reducing the minimum continuing education requirements for SUDPs; (8) implementing out-of-state substantial equivalency applicant criteria to align with RCW 18.130.077; and (9) reducing certification and renewal fees to \$100 per year.

The department initially implemented these changes by emergency rule under WSR 24-12-078, filed on June 4, 2024, and is continuing those rules with one correction. In addition to continuing the original emergency rule amendments, the department is correcting WAC 246-811-260 to align with the lower continuing education requirement established in WAC 246-811-240 by the original emergency rules.

These emergency rules are being continued while permanent rule making is in progress under WSR 24-10-011, filed April 18, 2024.

Citation of Rules Affected by this Order: New WAC 246-811-310; and amending WAC 246-811-010, 246-811-025, 246-811-030, 246-811-035, 246-811-045, 246-811-046, 246-811-048, 246-811-049, 246-811-060, 246-811-070, 246-811-220, 246-811-240, 246-811-260, and 246-811-990.

Statutory Authority for Adoption: RCW 18.130.077, 18.130.800, and 18.205.060.

Other Authority: 2SHB 1724 (chapter 425, Laws of 2023), 2SSB 6228 (chapter 366, Laws of 2024), and E2SHB 2247 (chapter 371, Laws of 2024).

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: 2SHB 1724 specifically required the department to adopt emergency rules reducing barriers to the workforce

by July 1, 2024. Additionally, E2SHB 2247 and 2SSB 6228 included provisions that had to be implemented promptly.

2SHB 1724 required the department to remove barriers to obtaining credentials and requires the adoption of emergency rules by July 1, 2024, while permanent rules are in progress. As a result, the department adopted and is continuing emergency rule amendments based on feedback from SUDPs, trainees, and other members of the behavioral health workforce about the barriers they face.

E2SHB 2247 removed the requirement that trainees may work only in licensed behavioral health agencies and removed the limitations on trainee renewals. Because these changes were made based on the department's recommendations under 2SHB 1724, the department implemented amendments promptly, consistent with the required timeline for 2SHB 1724 when possible.

2SSB 6228 capped certification and renewal fees for SUDPs and trainees at \$100, effective starting July 1, 2024. To avoid a conflict between statute and the fee schedule in WAC 246-811-990, the department amended the rule section through emergency rule.

Without emergency rules, the department would be unable to meet the implementation deadlines required by legislation. Additionally, many barriers for SUDPs would persist. For example, some SUDP trainees would be unable to obtain a full credential due to (1) a lack of available renewals for their trainee credential; (2) having obtained experience more than seven years in the past, with no ability to earn recent hours due to a lack of available renewals; or (3) difficulty finding an approved supervisor. Additionally, mobile clinics with SUDPs would be unable to meet requirements for on-site supervision, limiting capacity to provide services during an ongoing opioid crisis.

Through continued emergency rules, credentialing processes will be streamlined by removing requirements that the department conduct coursework reviews for individuals who complete degree programs in substance use disorder counseling; reducing the number of continuing education requirements which must be reviewed; and lowering the amount of time an out-of-state applicant must be credentialed before meeting the experience, education, and examination requirements listed under current rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 14, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 14, Repealed 0.

Date Adopted: October 2, 2024.

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

OTS-5423.3

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

WAC 246-811-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly states otherwise.

- (1) "Agency" means a community behavioral health agency or facility operated, licensed, or certified by the state of Washington, a federally recognized Indian tribe located with the state, a county, a federally qualified health center, or a hospital.
- (2) "Apprentice" means an individual enrolled in an approved and registered apprenticeship program.
- (3) "Approved and registered apprenticeship program" means a substance use disorder apprenticeship program approved by the secretary under chapter 18.205 RCW and registered by the department of labor and industries under chapter 49.04 RCW.
- (4) "Approved school" means any college or university accredited by a state, national, or regional accrediting body, at the time the applicant completed the required education or other educational programs approved by the secretary.
- (5) "Competent instructor" has the same meaning as provided in WAC 296-05-003.
- (6) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee, that offer, assist, or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential.
- (7) "Core competencies of substance use disorder counseling" means competencies oriented to assist individuals with substance use disorder in their recovery. Core competencies include the following nationally recognized areas:
 - (a) Knowledge;
 - (b) Skills;
 - (c) Attitudes of professional practice, including assessment and diagnosis of substance use disorder;
 - (d) Substance use disorder treatment planning and referral;
 - (e) Patient and family education in substance use disorder;
 - (f) Individual and group counseling;
 - (g) Relapse prevention counseling; and
 - (h) Case management.
- (8) "Department" means the department of health.
- (9) "Direct (~~supervision~~) observation" means the supervisor is on the premises and (~~available for immediate consultation~~) within sight and hearing of the trainee.
- (10) "Enrolled" means participating in an approved school or approved and registered apprenticeship program, whether a substance use disorder professional trainee is engaged in or has completed course work as described in WAC 246-811-030 (3)(a) through (w).
- (11) "Individual formal meetings" means a meeting with an approved supervisor, involving one approved supervisor and no more than four supervisees.

(12) "Official transcript" means the transcript from an approved college or school, in an envelope readily identified as having been sealed by the school.

(13) "Out-of-state" means any state or territory of the United States.

(14) "Probationary license" means a temporary license issued to out-of-state applicants qualifying for licensure reciprocity in Washington state under the restrictions and conditions of RCW 18.205.140 and this chapter.

(15) "Reciprocity" means licensure of out-of-state licensed counselors based on substantial equivalence between Washington state scope of practice and the scope of practice of the other state or territory, subject to a probationary licensure period to complete outstanding Washington state licensure requirements as determined necessary by the secretary to gain full licensure.

(16) "Recovery" means a process of change through which individuals improve their health and wellness, live self-directed lives, and strive to reach their full potential. Recovery often involves achieving remission from active substance use disorder.

(17) "Related field" means health education, behavioral science, sociology, psychology, marriage and family therapy, mental health counseling, social work, psychiatry, nursing, divinity, criminal justice, and counseling education.

(18) "Related/supplemental instruction" or "RSI" has the same meaning as provided in WAC 296-05-003.

(19) "Substance use disorder counseling" means employing the core competencies of substance use disorder counseling to assist or attempt to assist individuals with substance use disorder in their recovery.

(20) "Substance use disorder professional" or "SUDP" means an individual certified in substance use disorder counseling under chapter 18.205 RCW and this chapter.

(21) "Substance use disorder professional trainee" or "SUDPT" means an individual credentialed as an SUDPT and working toward the education and experience requirements for certification as a substance use disorder professional under chapter 18.205 RCW and this chapter.

(22) "Substantially equivalent licensing standards" means out-of-state licensing standards evaluated by the department to be consistent with the education, experience, and exam requirements for substance use disorder professional certification under chapter 18.205 RCW and this chapter.

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

WAC 246-811-025 Certification of a substance use disorder professional. (1) An applicant for a substance use disorder professional certificate shall submit to the department:

(a) An application on forms provided by the department;

(b) Official transcripts or apprenticeship certificate of completion to verify meeting educational requirements under WAC 246-811-030;

(c) Verification of meeting supervised experience hour requirements under WAC 246-811-046 or 246-811-050 on forms provided by the department;

(d) Official verification of meeting examination requirements under WAC 246-811-060; and

(e) The fee required under WAC 246-811-990.

(2) An applicant for a substance use disorder professional certificate under the alternative training path shall submit to the department:

(a) An application on forms provided by the department;

(b) Verification of meeting eligibility requirements for the alternative training path under WAC 246-811-076;

(c) Official verification of meeting educational requirements under WAC 246-811-077;

(d) Verification of obtaining the 1,000 supervised experience hours required under WAC 246-811-046 on forms provided by the department;

(e) Official verification of meeting examination requirements under WAC 246-811-060; and

(f) The fee required under WAC 246-811-990.

(3) Out-of-state applicants meeting the requirements of WAC 246-811-310 shall submit to the department:

(a) An application on forms provided by the department;

(b) Verification of out-of-state credential; and

(c) The fee required under WAC 246-811-990.

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

WAC 246-811-030 Educational requirements. Except as provided for in WAC 246-811-077 and 246-811-078, to be eligible for certification as a substance use disorder professional an applicant shall meet the education requirements in this section.

(1) The minimum education requirements for a substance use disorder professional credential are:

(a) An associate's degree in human services or related field from an approved school;

(b) Successful completion of 90 quarter or 60 semester college credits in courses from an approved school; or

(c) Successful completion of an approved and registered apprenticeship program.

(2) The minimum amount of instruction required in topics related to the substance use disorder profession is at least:

(a) Forty-five quarter college credits;

(b) Thirty semester college credits; or

(c) Four hundred fifty hours of related/supplemental instruction provided by a competent instructor in an approved and registered apprenticeship program.

(3) Education and apprenticeship program course work that does not result in an addiction studies or substance use disorder counseling degree must include the following topics specific to individuals with substance use disorder in their recovery:

(a) Understanding addiction;

(b) Pharmacological actions of alcohol and other drugs;

(c) Substance abuse and addiction treatment methods;

(d) Understanding addiction placement, continuing care, and discharge criteria, including American Society of Addiction Medicine (ASAM) criteria;

(e) Cultural diversity including people with disabilities and its implication for treatment;

- (f) Substance use disorder clinical evaluation (screening and referral to include comorbidity);
- (g) HIV/AIDS brief risk intervention for individuals with a substance use disorder;
- (h) Substance use disorder treatment planning;
- (i) Referral and use of community resources;
- (j) Service coordination (implementing the treatment plan, consulting, continuing assessment and treatment planning);
- (k) Individual counseling;
- (l) Group counseling;
- (m) Substance use disorder counseling for families, couples and significant others;
- (n) Client, family and community education;
- (o) Developmental psychology;
- (p) Psychopathology/abnormal psychology;
- (q) Documentation, to include, screening, intake, assessment, treatment plan, clinical reports, clinical progress notes, discharge summaries, and other client related data;
- (r) Substance use disorder confidentiality;
- (s) Professional and ethical responsibilities;
- (t) Relapse prevention;
- (u) Adolescent substance use disorder assessment and treatment;
- (v) Substance use disorder case management; and
- (w) Substance use disorder rules and regulations.

(4) The department considers an associate degree or higher in addiction studies or substance use disorder counseling to meet the coursework requirements in subsection (3) of this section.

(5) An applicant who has been credentialed as a substance use or addiction counselor in another state with substantially equivalent standards under WAC 246-811-310 is considered to meet the education requirements of this section.

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

WAC 246-811-035 Certification of a substance use disorder professional trainee. (1) To apply for a substance use disorder professional trainee certificate an applicant shall:

(a) Submit an application on forms provided by the department, including any written documentation needed to provide proof of meeting the eligibility requirements as indicated on the application;

(b) Declare that they are enrolled in an approved school or approved and registered apprenticeship program and gaining the experience required to receive a substance use disorder professional credential; and

(c) Pay applicable fees in WAC 246-811-990.

(2) To apply for annual renewal, a substance use disorder professional trainee must submit to the department applicable fees in WAC 246-811-990 and a signed declaration with their annual renewal that states they:

(a) Are currently enrolled in an approved educational program or approved and registered apprenticeship program; or

(b) Have completed the educational requirements in WAC 246-811-030 and are obtaining the experience requirements for a sub-

stance use disorder professional credential in WAC 246-811-046 or 246-811-050.

~~((3) A substance use disorder professional trainee certificate can only be renewed four times, except as provided in RCW 18.205.095.))~~

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-045 Accumulation of experience. (1) ~~((The department will consider experience in the field of substance use disorder counseling up to seven years prior to the date of application.~~

~~(2))~~ Accumulation of ~~((the))~~ experience hours is not required to be consecutive.

~~((3))~~ (2) Experience that will count toward certification must meet the requirements outlined in WAC 246-811-046 through 246-811-049.

~~((4))~~ (3) Supervised experience is the practice as referred to in RCW 18.205.090 (1) (c) and is the experience received under an approved supervisor.

~~((5))~~ (4) A practicum or internship taken while acquiring the degree or semester/quarter hours is applicable.

~~((6))~~ (5) Applicants who have held an active substance use disorder credential for ~~((the past five consecutive years or more))~~ at least one year in another state or territory, without a disciplinary record or disqualifying criminal history, are deemed to have met the supervised experience requirements of this chapter for Washington state licensure.

AMENDATORY SECTION (Amending WSR 22-17-097, filed 8/18/22, effective 9/18/22)

WAC 246-811-046 Number of experience hours required for certification as a substance use disorder professional. Except as provided in WAC 246-811-050 and 246-811-070(1), an applicant for substance use disorder professional certification shall complete the following experience requirements based on their level of formal education:

(1) Two thousand five hundred hours of substance use disorder counseling, for individuals who have an associate degree or qualifying coursework;

(2) Two thousand hours of substance use disorder counseling for individuals who have a baccalaureate degree in human services or a related field from an approved school;

(3) One thousand five hundred hours of substance use disorder counseling for individuals who possess a master or doctoral degree in human services or a related field from an approved school; or

(4) One thousand hours of substance use disorder counseling for individuals who are credentialed according to WAC 246-811-076. The experience must be supervised by an approved supervisor meeting the requirements under WAC 246-811-049(8).

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-048 Supervision requirements. (1) All of the experience required for substance use disorder professional certification must be under the direct supervision of an approved supervisor as defined in WAC 246-811-049.

(2) A substance use disorder professional or an individual credentialed according to WAC 246-811-076 may provide substance use disorder assessment, counseling, and case management to patients consistent with his or her education, training, and experience as documented by the approved supervisor.

(a) The first (~~(fifty)~~) 50 hours of any face-to-face patient contact must be under direct (~~(supervision and)~~) observation within sight and hearing of an approved supervisor or a substance use disorder professional designated by the approved supervisor.

(b) An approved supervisor or the approved supervisor's designated certified substance use disorder professional must provide (~~(direct)~~) supervision when a supervisee is providing clinical services to patients (~~(until the approved supervisor documents in the employee file that the supervisee has obtained the necessary education, training, and experience)~~) and be available for consultation.

(3) Approved supervisors must attest to the department that the supervisee has demonstrated competency in the areas listed in WAC 246-811-047(2) on forms provided by the department.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-049 Approved supervisors. (1) An approved supervisor is a certified substance use disorder professional (~~(or)~~) who meets the requirements of this section. Out-of-state experience must be earned under the supervision of a person who meets or exceeds the requirements of a certified substance use disorder professional in the state of Washington, and who would be eligible to take the examination required for certification.

(2) An approved supervisor must have at least (~~(three thousand hours of experience in a state approved substance use disorder treatment agency in addition to the supervised experience hours required to become a substance use disorder professional.~~

~~(3) An approved supervisor may substitute twenty-eight clock hours of recognized supervisory training for one thousand hours of experience.~~

~~(4) An approved supervisor may substitute five hundred hours of experience with thirty-six hours of education specific to:~~

- ~~(a) Counselor development;~~
- ~~(b) Professional and ethical standards;~~
- ~~(c) Program development and quality assurance;~~
- ~~(d) Performance evaluation;~~
- ~~(e) Administration;~~
- ~~(f) Treatment knowledge; and~~

~~(g) Washington state law regarding substance use disorder treatment)) one year of experience as a certified substance use disorder professional, not including time as a trainee. The substance use dis-~~

order certification shall not be subject to ongoing disciplinary action or restrictions.

~~((5))~~ (3) An approved supervisor is not a blood or legal relative, significant other, cohabitant of the supervisee, or someone who has acted as the supervisee's primary counselor.

~~((6))~~ (4) A substance use disorder professional trainee (SUDPT) must receive documentation of his or her approved supervisor's qualifications before training begins.

~~((7))~~ (5) An approved supervisor or other certified substance use disorder professional must review and sign all substance use disorder professional trainee clinical documentation.

~~((8))~~ (6) An approved supervisor is responsible for all patients assigned to the substance use disorder professional trainee they supervise.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-060 Examination requirements for a substance use disorder professional certification. (1) An applicant must take and pass the National Association of Alcoholism and Drug Abuse Counselor (NAADAC) National Certification Examination for Addiction Counselors or International Certification and Reciprocity Consortium (ICRC) Certified Addiction Counselor Level II or higher examination.

(2) The department will accept the passing score set by the testing company.

(3) An applicant who has been credentialed as a substance use or addiction counselor in another state with substantially equivalent standards under WAC 246-811-310 is considered to meet the examination requirements of this section.

AMENDATORY SECTION (Amending WSR 24-03-139, filed 1/23/24, effective 2/23/24)

WAC 246-811-070 National certification. (1) A person who is certified through the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) or the International Certification and Reciprocity Consortium (ICRC) as an alcohol and drug counselor (ADC) or advanced alcohol and drug counselor (AADC), is considered to meet the experience requirements of WAC 246-811-046.

(2) A person who is certified through NAADAC or ICRC as an ADC or AADC is considered to have met the education requirements of WAC 246-811-030 ~~((2))~~.

(3) Verification of certification must be sent directly to the department from NAADAC or ICRC.

AMENDATORY SECTION (Amending WSR 23-23-034, filed 11/3/23, effective 1/1/24)

WAC 246-811-220 Continuing competency program requirements. A substance use disorder professional, regardless of method of certification, must complete:

- (1) An enhancement plan as described in WAC 246-811-200(7);
- (2) ~~((Twenty-eight))~~ Twelve hours of continuing education as described in WAC 246-811-240; and
- (3) ~~((Twelve))~~ Up to four hours of other professional development activities as described in WAC 246-811-200(7) and 246-811-260.

AMENDATORY SECTION (Amending WSR 23-23-034, filed 11/3/23, effective 1/1/24)

WAC 246-811-240 Number of continuing education hours required.

- (1) A certified substance use disorder professional must complete ~~((28))~~ 12 hours of continuing education (CE) every two years.
 - (a) At least ~~((14))~~ eight hours must be completed in one or more of the topic areas as described in WAC 246-811-030 (3)(a) through (w).
 - (b) At least four hours must be in professional ethics and law.
 - (c) ~~((The additional 10 hours shall be in areas relating to the various phases of their professional career.~~
 - ~~((d))~~ The training in suicide assessment listed in subsection (2) of this section shall count towards meeting the CE requirements.
 - ~~((e))~~ (d) The health equity training listed in WAC 246-811-290 shall count towards meeting the CE requirements.
- (2) Once every six years a certified substance use disorder professional must complete at least three hours of training in suicide assessment, including screening and referral, as specified in WAC 246-811-280.
 - (a) Except as provided in (b) of this subsection, the first training must be completed during the first full CE reporting period after initial certification.
 - (b) An individual applying for initial certification as a substance use disorder professional may delay completion of the first required training for six years after initial certification if they can demonstrate completion of a three-hour training in suicide assessment, including screening and referral that:
 - (i) Was completed no more than six years prior to the application for initial certification; and
 - (ii) Meets the qualifications listed in WAC 246-811-280(1).
- (3) After January 1, 2024, substance use disorder professionals are required to complete two hours of health equity training every four years as specified in WAC 246-811-290.
- (4) Nothing in this section is intended to expand or limit the existing scope of practice of a certified substance use disorder professional or certified substance use disorder professional trainee credentialed under chapter 18.205 RCW.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-260 ((Completion of the twelve hours of other)) Acceptable professional development activities. (1) A substance use disorder professional (SUDP) may obtain up to four hours per continuing education cycle through the following:

- (a) Practicum;
 - (b) Peer-review including serving on a formal peer review panel or committee, or individual review of a sole provider, where the purpose of the review is to determine whether appropriate treatment was rendered;
 - (c) Public presentation including preparing and presenting lectures or education that contribute to the professional competence of a substance use disorder professional. The substance use disorder professional may accumulate the same number of hours obtained for continuing education purposes by attendees as required in WAC 246-12-220. The hours for presenting a specific topic lecture or education may only be used for continuing education credit once during each reporting period;
 - (d) Publication of writings;
 - (e) Other activities as determined by the substance use disorder professional's supervisor;
 - (f) Continuing education; these continuing education hours are in addition to the ((twenty-eight)) 12 hours of continuing education as listed in WAC 246-811-240.
- (2) All documentation must include the dates the continuing competency activity that took place, and if appropriate, the title of the course, the location of the course, and the name of the instructor.

NEW SECTION

WAC 246-811-310 Out-of-state substantial equivalency. (1) An applicant who has been credentialed as a substance use or addiction counselor in another state with substantially equivalent licensing standards, as determined by the department under RCW 18.130.077, is considered to meet:

- (a) The education requirements of WAC 246-811-030;
 - (b) The examination requirements of WAC 246-811-060; and
 - (c) The experience requirements of WAC 246-811-045 through 246-811-047.
- (2) An applicant for substance use disorder professional under subsection (1) of this section is eligible for out-of-state substantial equivalency if they:
- (a) Have held their credential in another state for at least two years immediately preceding their application, with no interruption in licensure lasting longer than 90 days;
 - (b) Have not been subject to disciplinary action for unprofessional conduct or impairment in any state, federal, or foreign jurisdiction;
 - (c) Are not subject to denial of license; and
 - (d) Are not under investigation or subject to charges in any state, federal, or foreign jurisdiction during the pendency of their application.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-990 Substance use disorder professional and substance use disorder professional trainee—Fees and renewal cycle. (1) A substance use disorder professional (SUDP) certificate must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) A substance use disorder professional trainee certificate must be renewed every year to correspond with issuance date.

(3) Except as provided for under subsection (6) of this section, the following nonrefundable fees will be charged for a certified substance use disorder professional:

Title of Fee	Fee
Application	\$260.00
Initial certification	295.00
Active renewal	300.00
Active late renewal penalty	150.00
Retired active renewal	115.00
Retired active late renewal penalty	60.00
Expired certification reissuance	115.00
Duplicate certification	10.00
Verification of certificate	25.00

(4) Except as provided for under subsection (6) of this section, the following nonrefundable fees will be charged for a certified substance use disorder professional trainee:

Title of Fee	Fee
Application and initial certification	\$110.00
Renewal	90.00
Late renewal penalty	50.00
Expired certification reissuance	50.00
Duplicate certification	10.00
Verification of certificate	25.00

(5) Probationary licensure. Except as provided for under subsection (6) of this section, to receive an initial or renewal of a probationary license as described in WAC 246-811-300 (3) and (4), the following nonrefundable fees will be charged:

Title of Fee	Fee
Application and initial certification	\$555.00
Active renewal	300.00
Active late renewal penalty	150.00
Expired certification reissuance	115.00
Duplicate certification	10.00
Verification of certificate	25.00

(6) Subject to appropriations under RCW 43.70.250, application and renewal fees for all substance use disorder professionals and trainees shall not exceed \$100 between July 1, 2024, and June 30, 2029. If funds are not appropriated for this purpose, fees shall be charged under subsections (3) through (5) of this section.

WSR 24-21-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-222—Filed October 2, 2024, 3:48 p.m., effective October 3, 2024]

Effective Date of Rule: October 3, 2024.

Purpose: The purpose of this emergency rule is to return a portion of Skagit River, from Gilligan Creek to Baker River, to permanent rules.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000X.

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: A Skagit River recreational fishing closure from Gilligan Creek to Baker River to avoid gear conflicts with treaty fishers is no longer needed as the treaty fishery has concluded.

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 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: October 2, 2024.

Kelly Susewind
Director

REPEALER

The following section of Washington Administrative Code is repealed, effective October 3, 2024:

WAC 220-312-04000X Freshwater exceptions to statewide rules—Puget Sound. (24-217)

WSR 24-21-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-220—Filed October 2, 2024, 5:14 p.m., effective October 3, 2024]

Effective Date of Rule: October 3, 2024.

Purpose: The purpose of the emergency rule is open commercial gillnet fisheries in Willapa Bay commercial salmon areas 2N and 2M.

Citation of Rules Affected by this Order: Amending WAC 220-354-250.

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

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

Reasons for this Finding: This emergency rule is needed to open the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2N and 2M on October 3, 2024. The catch for the Willapa Bay commercial fishery for Chinook, coho, and chum have been lower than preseason predictions. The estimated preseason impacts for natural origin (NOR) Chinook to-date for the season are 150 fish, or 36.3 percent of the preseason prediction for weeks 33-39 combined.

The total harvest for Willapa Bay commercial coho is 17,430 fish to-date, or 56.0 percent of the preseason prediction through statistical week 39. The commercial fishery in this one-day opener will target additional hatchery coho available.

The total chum harvest in the Willapa Bay commercial fishery to-date is 253 fish, or 0.79 percent of the preseason estimates.

Managers will continue to assess the fishery each opener and make any changes if warranted. All other rules remain in effect.

There is insufficient time to adopt permanent rule.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: October 2, 2024.

Nate Pamplin
for Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000J Willapa Bay salmon fall fishery. Notwithstanding the provisions of WAC 220-354-250, the following seasons for Willapa Bay commercial salmon areas 2N and 2M on October 3, 2024, shall be modified as described herein. All other provisions of WAC 220-354-250, not contained herein remain in effect unless otherwise altered by emergency rule:

Gillnet gear may be used to fish for coho salmon, chum salmon, and adipose clipped Chinook salmon marked with a clipped adipose fin with a healed scar, during dates and times and in areas listed in the table below:

Area	Time	Date	Maximum Mesh Size
2N and 2M	7:00 a.m. through 7:00 p.m.	October 3, 2024	6.5"

WSR 24-21-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-214—Filed October 2, 2024, 5:18 p.m., effective October 7, 2024]

Effective Date of Rule: October 7, 2024.

Purpose: The purpose of this emergency rule is to open green urchin harvest in Districts 1, 3, 4, 5, 6, and 7.

Citation of Rules Affected by this Order: Amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule opens commercial harvest of green sea urchins in Districts 1, 3, 4, 5, 6, and 7 on October 7, with a weekly trip limit of 1500 pounds/license. 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: October 2, 2024.

[Nate Pamplin]
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000H Commercial sea urchin fisheries. Effective October 7, 2024, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

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

(2) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1, District 3, District 4, District 5, District 6, and District 7.

(3) It is unlawful for any harvester to fish for, take, or possess for commercial purposes more than 1,500 pounds of green sea urchin per license for each weekly fishery opening period.

WSR 24-21-014
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed October 3, 2024, 3:40 p.m., effective October 4, 2024]

Effective Date of Rule: October 4, 2024.

Purpose: The legislature enacted changes to the extended foster care (EFC) program that reduces systemic barriers to youth who are dependent at 18 years old and voluntarily enroll in the EFC program by eliminating the federal eligibility requirements for these youth. The changes also include the department of children, youth, and families (DCYF) accepting a youth's voluntary placement agreement (VPA) at 17.5 years old and for the youth to receive a supervised independent living (SIL) payment within one month of signing the VPA. DCYF must provide dependent youth aged 15 years and older with information about the EFC program. DCYF may only use the federal eligibility requirements as a means of receiving federal funding for youth who participate in EFC and meet at least one of the eligibility requirements. SB 5908 allows DCYF to establish an incentive program for those youth who meet one or more of the eligibility requirements. This emergency filing has been in effect since June 6, 2024, under WSR 24-13-010.

Citation of Rules Affected by this Order: New WAC 110-90-0021 and 110-90-0025; repealing WAC 110-90-0100, 110-90-0110, 110-90-0120, 110-90-0130, 110-90-0140, 110-90-0150, 110-90-0160, 110-90-0170, 110-90-0180, 110-90-0190 and 110-90-0200; and amending WAC 110-90-0010, 110-90-0020, 110-90-0040, 110-90-0050, 110-90-0060, 110-90-0070, 110-90-0080, and 110-90-0090.

Statutory Authority for Adoption: SB 5908, RCW 74.13.031 and 13.34.267, and 42 U.S.C. § 671-675.

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 legislative changes are necessary for the preservation of public health, safety, and general welfare through: Eliminating federal eligibility requirements for youth to participate in the EFC program; requiring DCYF to provide an SIL payment to youth participating in the EFC program within one month of signing the VPA; and requiring earlier explanation of the EFC program for youth who are aged 15 and older.

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 2, Amended 8, Repealed 11.

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 2, Amended 8, Repealed 11.

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: October 3, 2024.

Brenda Villarreal
Rules Coordinator

OTS-5477.2

Chapter 110-90 WAC
EXTENDED FOSTER CARE (EFC) PROGRAM

LEGAL BASIS, PURPOSE, AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0010 ~~((What is the))~~ Legal basis ~~((of))~~ for the extended foster care (EFC) program ~~((?))~~. The legal ~~((authorities))~~ basis for the department's EFC program are:

- (1) ~~((Revised Code of Washington:))~~ RCW ~~((74.13.031 and))~~ 13.34.267;
 (2) ~~((United States Code:))~~ RCW 74.13.031;
 (3) 42 U.S.C. ~~((see:))~~ § 671-675; and
~~((3))~~ (4) The U.S. Department of Health and Human Services (DHHS) policy guidelines for states to use in determining a ~~((child's))~~ youth's eligibility for participation in ~~((extended foster care))~~ the EFC program ~~((s))~~.

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0020 ~~((What is the purpose of the extended foster care program?))~~ Purpose. The ~~((extended foster care))~~ EFC program was established to provide ~~((s))~~ an opportunity for young adults who are dependent at age ~~((eighteen))~~ 18 to voluntarily agree to continue receiving foster care services ~~((7))~~ including:

- (1) Placement ~~((services, while the youth:))~~
 (1) ~~Completes a high school or a high school equivalency program;~~
 (2) ~~Completes a secondary or post-secondary academic or vocational program;~~
 (3) ~~Participates in a program or activity designed to promote employment or remove barriers to employment;~~
 (4) ~~Is engaged in employment for eighty hours or more per month;~~
 or

- ~~(5) Is unable to engage in subsections (1) through (4) of this section due to a documented medical condition) in a licensed, relative, or supervised independent living (SIL) setting;~~
- ~~(2) Assistance with meeting their basic needs;~~
 - ~~(3) Independent living services;~~
 - ~~(4) SIL subsidies;~~
 - ~~(5) Medical assistance; and~~
 - ~~(6) Mental health counseling or treatment.~~

NEW SECTION

WAC 110-90-0021 Definitions. The definitions in this section apply throughout this chapter.

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

"Extended foster care program" or **"EFC program"** means the same as defined in RCW 74.13.020.

"Youth" means the same as defined in RCW 13.34.030.

PROGRAM INFORMATION AND ELIGIBILITY

NEW SECTION

WAC 110-90-0025 Information about the EFC program. (1) DCYF must provide youth age 15 and older with:

(a) Written documentation explaining the availability of the EFC program and services; and

(b) Instructions on how to access services after they have reached age 18.

(2) Youth may contact the following for further information on the EFC program:

(a) Their:

(i) Attorney;

(ii) Guardian ad litem (GAL); or

(iii) Caseworker;

(b) Local DCYF office;

(c) EFC website at www.dcyf.wa.gov; or

(d) 1-866-END-HARM.

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0040 ((Who is eligible for extended foster care?))
Eligibility requirements for youth in the EFC program. (1) To be eli-

gible for the (~~extended foster care~~) EFC program, a youth, on (~~his or her eighteenth~~) their 18th birthday must:

- ~~(a) Be dependent under chapter 13.34 RCW; and~~ (~~+~~)
- ~~(a) Enrolled in school as described in WAC 110-90-0050;~~
- ~~(b) Have applied for, or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program as described in WAC 110-90-0060;~~
- ~~(c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC 110-90-0070;~~
- ~~(d) Engaged in employment for eighty hours or more per month;~~
- ~~(e) Unable to engage in subsection (1)(a) through (d) of this section due a documented medical condition as described in WAC 110-90-0100; or~~
- ~~(f) Did not enroll in the extended foster care program; and~~
- ~~(i) Had their dependency dismissed on their eighteenth birthday;~~
- ~~(ii) Is requesting to enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of twenty-one; and~~
- ~~(iii) Meets one of the criteria found in subsection (1)(a) through (e) of this section.~~

~~(2) A dependent youth in the custody of juvenile rehabilitation, the department of corrections, county detention, or jail who otherwise meets the eligibility criteria in subsection (1)(a) through (f) of this section may enroll in the extended foster care program.~~

~~(3) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA before the age of twenty-one. The youth must meet one of the criteria in subsection (1)(a) through (e) when requesting to reenroll in the extended foster care program.)~~

(b) Voluntarily agree to participate in the EFC program by:

- (i) Signing an EFC participation agreement between the ages of 17 1/2 and 18; or
- (ii) Having their dependency dismissed on their 18th birthday and signing a voluntary placement agreement (VPA) prior to reaching age 21.

(2) Youth:

(a) Whose dependency was dismissed on or after their 18th birthday remain eligible to enroll prior to their 21st birthday by:

- (i) Contacting DCYF to request enrollment; and
- (ii) Signing a VPA and EFC participation agreement.

(b) Who are or were in the custody of juvenile rehabilitation division, the department of corrections, county detention, or jail are eligible for enrollment in the EFC program if they meet the criteria in subsections (1) and (2)(a) of this section.

(c) Remain eligible for the EFC program regardless of the number of times they enter or exit the program as long as they:

- (i) Voluntarily agree to participate in the EFC program; and
- (ii) Have not reached their 21st birthday.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0050 (~~((How does a youth demonstrate enrollment in school?))~~) **Youths' participation requirements.** (~~((Enrollment in school is shown by documented registration or acceptance in:~~

~~(1) **Secondary** — A high school, secondary education equivalency program, or a state accredited on-line or other approved secondary education program.~~

~~(2) **Post-secondary** — Post-secondary academic or vocational program.))~~ (1) Youth dependent at age 18 are eligible for EFC and must complete the following to participate in the EFC program, for youth entering:

(a) At age 18, they must voluntarily sign an EFC participation agreement; or

(b) After their minor dependency has closed between the ages of 18 and 21 they must:

(i) Sign an EFC:

(A) VPA; and

(B) Participation agreement;

(ii) Enter into a nonminor dependency action within 180 calendar days of the date they signed an EFC VPA to continue receiving EFC services as outlined in RCW 74.13.336.

(2) Youth participating in the EFC program acknowledge that DCYF has responsibility for their care and placement and the youth may authorize DCYF access to records related to their:

(a) Medical;

(b) Mental health;

(c) Substance use treatment services;

(d) Education records; and

(e) Additional records necessary to provide services.

RIGHTS AND RESPONSIBILITIES

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0060 (~~((How does a youth demonstrate he/she has applied for and intends to timely enroll in a post-secondary program?))~~) **DCYF's responsibilities to youth participating in the EFC program.**

~~((1) Applied for intends to timely enroll in a post-secondary program is demonstrated by the youth:~~

~~(a) Completing and submitting an application to a post-secondary academic or vocational program; or~~

~~(b) Providing proof of Free Application for Federal Student Aid (FAFSA) submission.~~

~~(2) **Timely enroll** means participation in a post-secondary program in the next reasonably available school term.))~~ DCYF must:

(1) Have placement and care authority for EFC youth:

(a) And provide services that include, but are not limited to:

- (i) Transition planning and independent living services;
- (ii) Medical assistance through medicaid;
- (iii) SIL subsidy, if applicable; and
- (iv) Case management as defined in RCW 74.13.020;

(b) For the sole purpose of providing services to them. This does not create a legal responsibility of DCYF for the youths' actions receiving EFC services.

(2) Inform the court of the status of the youth, including:

- (a) Health;
- (b) Safety;
- (c) Welfare; and
- (d) Education status.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0070 ~~((How does a youth demonstrate participation in a program or activity designed to promote employment or remove barriers to employment?))~~ **Youths' rights in the EFC program.** ~~((1) Actively participate in a state, federal, tribal or community program that addresses any barriers to employment that the youth may have and/or prepares or trains individuals for employment; or~~
~~(2) Involved in a self-directed program that will remove any barriers to employment and will prepare a youth for employment; or~~
~~(3) Working less than eighty hours a month.))~~ **Youth who voluntarily agree to participate in the EFC program have a right to:**
(1) A foster care placement;
(2) Medical assistance through medicaid;
(3) Participate in court proceedings as a party to the case;
(4) Have an attorney appointed for them upon filing a notice of intent to file a petition for dependency;
(5) Referrals to community resources, if applicable; and
(6) Enter or exit EFC at any time up to their 21st birthday.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0080 ~~((What if an eligible youth does not want to participate in the extended foster care program?))~~ **EFC youth and their legal rights as an adult.** ~~((Participation in extended foster care is voluntary. A youth who does not agree to participate in extended foster care may request the court to dismiss his or her dependency case.))~~ **The EFC youth is:**
(1) A youth for the purposes of the dependency and must comply with the participation agreement requirements in WAC 110-90-0050.
(2) Responsible for their actions and has the legal status and legal rights of an adult including, but not limited to:
(a) Purchases;
(b) Driving;
(c) Traveling; and
(d) Financial obligations related to the activities they participate in.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-90-0090 (~~((What is a "documented medical condition"?)~~)

Youth exiting the EFC program. (~~(A "documented medical condition" is any physical or mental health condition documented by a licensed health care provider that may be temporary or permanent, including but not limited to, a physical injury or a physical or behavioral health condition. A "documented medical condition" may include physiological, mental, or psychological conditions or disorders, including but not limited to, orthopedic, visual, speech, and hearing impairments.)~~)
Youth participating in the EFC program may voluntarily exit the program at any time prior to their 21st birthday, by notifying their:

- (1) Caseworker; and
- (2) Attorney.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|--|
| WAC 110-90-0100 | How does a youth demonstrate the inability to participate in extended foster care (EFC) activities due to a documented medical condition? |
| WAC 110-90-0110 | How does a youth agree to participate in the extended foster care program? |
| WAC 110-90-0120 | Where do youth obtain information about how to participate in the EFC program? |
| WAC 110-90-0130 | Can an extended foster care participant continue in extended foster care under a different eligibility category? |
| WAC 110-90-0140 | If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster care? |
| WAC 110-90-0150 | What are DCYF's responsibilities to a youth who is participating in EFC? |
| WAC 110-90-0160 | How does DCYF determine a youth's continuing eligibility for the EFC program? |
| WAC 110-90-0170 | What are the legal rights of a dependent youth in EFC to travel out-of-state, buy a car, or engage in other activities as an adult? |
| WAC 110-90-0180 | What are the youth's rights in the extended foster care program? |
| WAC 110-90-0190 | What must the youth do to remain in the EFC program? |
| WAC 110-90-0200 | When is a youth no longer eligible for the EFC program? |

WSR 24-21-018

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed October 4, 2024, 8:46 a.m., effective October 4, 2024, 8:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To delay [extend] the effective date for [WSR 24-12-053] National Institute for Certification in Engineering Technologies (NICET) licensing requirements in the 2021 International Fire Code Section 904 and WAC 51-54A-0904. Editorial corrections are also made to clarify code language.

Citation of Rules Affected by this Order: Amending WAC 51-54A-0904.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

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

Reasons for this Finding: The requirement for NICET licensing will leave the Washington workforce without enough personnel to complete required work on existing automatic fire extinguishing systems. The delay will allow for additional personnel to attain licensure; it will also allow for the state building code council to develop rules that meet the need for qualified persons conducting work under appropriate licenses.

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: September 30, 2024.

Daimon Doyle
Council Chair

WSR 24-21-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-223—Filed October 4, 2024, 10:54 a.m., effective October 4, 2024, 10:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule:

WAC 220-340-45500J closes Puget Sound commercial crab harvest in Crab Management Region 2-West one hour after official sunset on Sunday, October 6 due to projected quota attainment. Crab Management Regions 1, 2-East, 3-1, 3-2, 3-3, and 3-4 will remain open until further notice.

WAC 220-340-47000G increases the pot limit in Crab Management Region 2-East to 35 pots per license.

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

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

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

Reasons for this Finding: Crab Management Region 2-West will close one hour after official sunset on Sunday, October 6 due to projected quota attainment. There is sufficient allocation remaining to allow continued harvest in Puget Sound commercial crab fishery in Regions 1, 2-East, 3-1, 3-2, 3-3, and 3-4, until further notice. These provisions are in conformity with agreed management plans with applicable tribes. Comanagement plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 4, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500J Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455, effective immediately, until further notice:

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

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

NEW SECTION

WAC 220-340-47000G Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas Notwithstanding the provisions of 220-340-470, effective immediately, until further notice:

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	40
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	40
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	35
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	35
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	25
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	20
Subregion 3-1	50
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)).	35

Geographical Management Unit (WAC 220-320-110)	Pot limit
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	50
Subregion 3-4	50

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-340-45500J Commercial crab fishery—Seasons and areas—Puget Sound. (24-209)
- WAC 220-340-47000G Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. (24-209)

WSR 24-21-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-224—Filed October 7, 2024, 11:53 a.m., effective October 9, 2024]

Effective Date of Rule: October 9, 2024.

Purpose: This emergency rule will allow specified purse seine vessels to conduct test fisheries in Puget Sound Salmon Management and Catch Reporting Areas 9, 10, and 11.

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

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

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

Reasons for this Finding: This emergency rule is needed to allow the purse seine vessels, the fishing vessels Harbor Gem, Lisa Marie, and Tradition, to conduct test fisheries in the waters of Puget Sound Salmon Management and Catch Reporting Areas 9, 10, and 11. These test fisheries are necessary to collect GSI [GIS] data and to inform the in-season update models; they have been agreed to by comanagers. This information is necessary to sustainably manage Puget Sound chum fisheries. 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: October 7, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000J Puget Sound salmon—Purse seine—Open periods. Effective October 9 through November 20, 2024, the purse seine vessels the F/V Harbor Gem, the F/V Lisa Marie and the F/V Tradition may carry out purse seine test fishery operations within Puget Sound Salmon Management and Catch Reporting Areas 9, 10 and 11.

(1) Allowed fishing period is from October 9 through November 20, 2024.

(2) Area 11: Only chum salmon may be retained. All other salmon species must be released. WDFW staff must be onboard vessel while fishing.

(3) Area 9/10 Apple Cove Test Fishery: Administered by Northwest Indian Fisheries Commission staff. All salmon species may be retained.

(4) Weekly schedule by Area and vessel:

Week	F/V Harbor Gem Apple Cove/Kingston Area 9/10	F/V Tradition Command Point; Area 11; West Pass	F/V Lisa Marie Point Beals; Area 11; East Pass
41	Wed 10/9/2024		
42	Wed 10/16/2024	Wed 10/16/2024	Wed 10/16/2024
43	Wed 10/23/2024	Wed 10/23/2024	Wed 10/23/2024
44	Wed 10/30/2024	Wed 10/30/2024	Wed 10/30/2024
45	Wed 11/06/2024	Wed 11/06/2024	Wed 11/06/2024
46	Wed 11/13/2024	Wed 11/13/2024	Wed 11/13/2024
47	Wed 11/20/2024		

WSR 24-21-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-226—Filed October 8, 2024, 3:00 p.m., effective October 9, 2024]

Effective Date of Rule: October 9, 2024.

Purpose: The purpose of this emergency rule is to open recreational fishing seasons in the lower Cascade River seven days per week.

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

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

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

Reasons for this Finding: This rule is necessary to open recreational fishing seasons daily in the lower Cascade River. Treaty fisheries for coho in this section of the Cascade River have concluded for the season; therefore, Sunday through Tuesday closures to avoid gear conflicts between recreational anglers and treaty fishers are no longer necessary.

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: October 8, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Y Freshwater exceptions to statewide rules—Puget Sound. Effective October 9 through October 31, 2024, the following provisions of WAC 220-312-040 recreational fishing seasons for the Cascade River, shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

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

Gamefish and salmon open daily, October 9 through October 31:

- (a) Anti-snagging rules.
- (b) Night closure.
- (c) Salmon: Daily limit 4 coho. Release all other salmon.
- (d) Game fish: Statewide length/daily limit, except:
 - (i) Cutthroat trout and wild rainbow trout: Minimum length 14 inches.
 - (ii) Dolly Varden/bull trout: Minimum length of 20 inches, count as part of the trout daily limit.

WSR 24-21-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-225—Filed October 9, 2024, 2:35 p.m., effective October 16, 2024]

Effective Date of Rule: October 16, 2024.

Purpose: This emergency rule will open coho and hatchery steelhead seasons in portions of the upper Columbia River and Methow River.
Citation of Rules Affected by this Order: Amending WAC 220-312-060 and 220-312-050.

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

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

Reasons for this Finding: This emergency rule is necessary to open hatchery steelhead and coho seasons in portions of the upper Columbia River and Methow River.

Hatchery steelhead returning to these areas of the Upper Columbia River and Methow River are in excess of spawning escapement and broodstock needs. This conservation fishery will help remove excess hatchery steelhead while increasing the proportion of wild steelhead on the spawning grounds. Returns of coho to the Upper Columbia River [and] Methow River are sufficient to allow recreational angler harvest in-kind with steelhead retention.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 9, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000Y Freshwater exceptions to statewide rules—Columbia River. Effective October 16, 2024, until further notice, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Beebe Bridge (Highway 97) to the Highway 173 Bridge at Brewster, shall be modified as described below, except in

areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

Beebe Bridge (Highway 97) to Highway 173 Bridge at Brewster:

Salmon and steelhead:

- (a) Daily limit 2 salmon or 2 hatchery steelhead or 1 of each. Release all salmon other than coho. Release wild steelhead.
- (b) Mandatory retention of hatchery steelhead.
- (c) Selective gear rules, except use of bait is allowed.
- (d) Night Closure.

NEW SECTION

WAC 220-312-05000A Freshwater exceptions to statewide rules—Eastside.

Effective October 16, 2024, until further notice, the provisions of WAC 220-312-050 regarding recreational salmon and steelhead seasons for Methow River from the mouth to County Road 1535 (Burma Road) Bridge, shall be modified as described below. All other provisions of WAC 220-312-050 not addressed herein remain in effect unless otherwise amended by emergency rule:

Methow River from mouth to County Road 1535 (Burma Road) Bridge:

Salmon and steelhead:

- (a) Daily limit 2 salmon or 2 hatchery steelhead or 1 of each. Release all salmon other than coho. Release wild steelhead.
- (b) Mandatory retention of hatchery steelhead.
- (c) Selective gear rules.
- (d) Night Closure.
- (e) Fishing from a floating device is prohibited from the second powerline crossing (1 mile upstream from the mouth) to the first Highway 153 Bridge (4 miles upstream from the mouth).

WSR 24-21-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-227—Filed October 10, 2024, 3:29 p.m., effective October 10, 2024, 3:29 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule:

WAC 220-340-45500J:

(1) Maintains current closure of Puget Sound commercial crab harvest in Crab Management Region 2W. Crab Management Regions 1, 2-East, 3-1, 3-2, 3-3, and 3-4 will remain open until further notice.

(2) Maintains closure of Port Angeles Harbor to commercial crab harvest due to public health decrees.

WAC 220-340-47000G:

(1) Increases the pot limit in Crab Management Region 3-2 to 45 pots per license.

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

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

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

Reasons for this Finding: The pot limit in Region 3-2 has been increased to 45 pots per license following coordination with industry. There is sufficient allocation remaining to allow continued harvest in Puget Sound commercial crab fishery in Regions 1, 2-East, 3-1, 3-2, 3-3, and 3-4, until further notice. These provisions are in conformity with agreed management plans with applicable tribes. Comanagement plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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

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

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

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

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

Date Adopted: October 9, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500K Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455, effective immediately, until further notice:

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

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

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

NEW SECTION

WAC 220-340-47000H Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas Notwithstanding the provisions of 220-340-470, effective Immediately, until further notice:

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	40
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	40
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	35
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	35
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	25
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	20
Subregion 3-1	50

Geographical Management Unit (WAC 220-320-110)	Pot limit
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	45
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	50
Subregion 3-4	50

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-340-45500J Commercial crab fishery—Seasons and areas—Puget Sound. (24-223)
- WAC 220-340-47000G Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. (24-223)

WSR 24-21-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-228—Filed October 10, 2024, 3:47 p.m., effective October 15, 2024]

Effective Date of Rule: October 15, 2024.

Purpose: This emergency rule opens recreational razor clam seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000U; and amending WAC 220-330-160.

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

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

Reasons for this Finding: Survey results show that adequate clams are available in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from these Razor Clam Areas 1, 3, 4, and 5 to be safe for human consumption. 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: October 10, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000U Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. October 15 through 11:59 p.m. October 21, 2024, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 on dates and times listed below:

Table with 3 columns: Razor Clam Area, Date, Time. Row 1: Area 1, October 15 through October 21, From 12:01 p.m. to 11:59 p.m. Row 2: Area 2, Closed, Closed

Razor Clam Area	Date	Time
Area 3	October 15 through October 21	From 12:01 p.m. to 11:59 p.m.
Area 4	October 16, 17, 20 and 21	From 12:01 p.m. to 11:59 p.m.
Area 5	October 15, 18 and 19	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

(2) It is unlawful to dig for razor clams at any time in the Long Beach and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 22, 2024:

WAC 220-330-16000U Razor clams—Areas and seasons.

WSR 24-21-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-230—Filed October 10, 2024, 7:20 p.m., effective October 10, 2024, 7:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000J; and amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

Reasons for this Finding: This rule sets the 2024 Columbia River treaty fall season commercial fisheries for nontreaty buyers. This rule is consistent with actions of the Columbia River Compact on July 18, August 14, September 4, September 10, September 18, September 25, and October 10, 2024. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp.

at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: October 10, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000K Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately through 6:00 PM October 11
6:00 AM October 14 through 6:00 PM October 17

(b) Gear: Set and Drift Gill nets only, no mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard sanctuaries applicable to gillnet gear. The small Spring Creek Hatchery sanctuary (150-feet around the hatchery ladder) is in place effective immediately through October 4.

(2) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately, until further notice.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead may be sold or kept for subsistence. Shad, yellow perch, bass, walleye, catfish and carp may also be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bon-

neville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(3) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: Immediately, until further notice. Only during days and times opened under tribal rule.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale.

(4) Open Areas: Wind River, Drano Lake, and Klickitat River.

(a) Season: Immediately, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and reel with hook and Line. Gillnets may only be used in Drano Lake.

(c) Allowable sale: Salmon (any species), steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool may be kept for subsistence.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Fish caught during the open period may be sold after the period concludes.

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

REPEALER

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

WAC 220-359-02000J Columbia River salmon seasons above Bonneville Dam. (24-207)

**WSR 24-21-064
EMERGENCY RULES****HEALTH CARE AUTHORITY**

[Filed October 11, 2024, 8:05 a.m., effective October 11, 2024, 8:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (agency) is developing rules under ESSB 5187, section 211(83), 68th legislature, 2023 regular session. This legislation directed the agency to implement a program that began on July 1, 2024, with coverage comparable to the categorically needy medicaid program for certain adults age 19 and older who: (a) Have an immigration status making them ineligible for medicaid or federal subsidies through the health benefit exchange; and (b) are not eligible for another full scope federally funded medical assistance program.

Citation of Rules Affected by this Order: New chapters 182-525, 182-525A and 182-525B WAC; and amending WAC 182-500-120, 182-501-0060, 182-503-0510, 182-503-0515, 182-509-0220, and 182-526-0005.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESSB 5187, section 211(83), 68th legislature, regular session.

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 rules are necessary to implement the agency's apple health expansion program, as directed in ESSB 5187, to provide health care coverage for adults who qualify. The program took effect on July 1, 2024.

The agency previously filed emergency rules under WSR 24-13-067 on June 14, 2024. Those rules are expiring. This filing continues the emergency rules while the permanent rule process is completed. This emergency filing includes additional housekeeping changes and the following revisions:

- Distinguished between MAGI and non-MAGI rules in WAC 182-525-0200.
- Removed the reference to WAC 182-504-0035 in WAC 182-525-0600 (5) (b).
- Identified chapter 182-512 WAC as applicable to apple health expansion (with noted exceptions) in WAC 182-525-0700.
- Removed WAC 182-525-0900(3).
- Added a requirement that providers accept a fee-for-service payment from the agency as payment in full in WAC 182-525-1100(3).
- Removed WAC 182-525A-0200 (1) (d).
- Removed language regarding people age 64 and younger in WAC 182-509-0220 (2) (d) (viii).
- Added subsection WAC 182-503-0510 (3) (a) (vi) to include people age 65 and older.

The agency shared two versions of the draft rules with interested parties in February and May of this year and received substantial comments on each of the drafts. After the agency filed the emergency rules, staff subsequently asked stakeholders to comment on a permanent enrollment process for the apple health expansion program. The agency has created a draft policy, based on stakeholders' input, and staff

are preparing proposed rules that include the permanent enrollment process.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 30, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 30, Amended 6, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 11, 2024.

Wendy Barcus
Rules Coordinator

OTS-5177.3

AMENDATORY SECTION (Amending WSR 13-14-019, filed 6/24/13, effective 7/25/13)

WAC 182-500-0120 Medical assistance definitions—W. "Washington apple health" means the public health insurance programs for eligible Washington residents. Washington apple health is the name used in Washington state for medicaid, the children's health insurance program (CHIP), and state-only funded health care programs.

"Washington apple health expansion" means the state-funded health care program for individuals age 19 and older who do not meet the citizenship or immigration requirements to receive benefits under federally funded programs. Eligibility for this program is limited and is subject to available funds.

"Washington Healthplanfinder" is a marketplace for individuals, families, and small businesses in Washington state to compare and enroll in health insurance coverage and gain access to premium tax credits, reduced cost sharing, and public programs such as Washington apple health. Washington Healthplanfinder is administered by the Washington health benefit exchange.

OTS-5178.3

AMENDATORY SECTION (Amending WSR 23-07-132, filed 3/22/23, effective 4/22/23)

WAC 182-501-0060 Health care coverage—Program benefit packages—Scope of service categories. (1) This rule provides a table that lists:

(a) The following Washington apple health programs:
 (i) The alternative benefits plan (ABP) medicaid;
 (ii) Categorically needy (CN) medicaid;
 (iii) Medically needy (MN) medicaid; (~~and~~)
 (iv) Medical care services (MCS) programs (includes incapacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005; and

(v) Washington apple health expansion (AHE); and

(b) The benefit packages showing what service categories are included for each program.

(2) Within a service category included in a benefit package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefit package:

(a) Are determined in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited prior authorization when allowed by the agency.

(d) Are paid for by the agency or the agency's designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or the agency's designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or the agency's designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Programs not addressed in the table:

(a) Medical assistance programs for noncitizens (see chapter 182-507 WAC); and

(b) Family planning only programs (see WAC 182-532-500 through 182-532-570);

(c) Postpartum and family planning extension (see WAC 182-523-0130(4) and 182-505-0115(5));

(d) Eligibility for pregnant minors (see WAC 182-505-0117); and

(e) Kidney disease program (see chapter 182-540 WAC).

(6) Scope of service categories. The following table lists the agency's categories of health care services.

(a) Under the ABP, CN, and MN headings, there are two columns. One addresses clients 20 years of age and younger, and the other addresses clients 21 years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS	AHE
Ambulance (ground and air)	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Applied behavior analysis (ABA)	Y	Y	Y	Y	Y	Y	N	<u>Y</u>
Behavioral health services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Blood/blood products/related services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Dental services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Diagnostic services (lab and X-ray)	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Early and periodic screening, diagnosis, and treatment (EPSDT) services	Y	N	Y	N	Y	N	N	<u>N</u>
Enteral nutrition program	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Habilitative services	Y	Y	N	N	N	N	N	<u>N</u>
Health care professional services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Health homes	Y	Y	Y	Y	N	N	N	<u>N</u>
Hearing evaluations	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Hearing aids	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Home health services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Home infusion therapy/parenteral nutrition program	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Hospice services	Y	Y	Y	Y	Y	Y	N	<u>Y</u>
Hospital services Inpatient/outpatient	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y	Y	Y	<u>N</u>
Maternity care and delivery services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Medical equipment, supplies, and appliances	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Medical nutrition therapy	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Nursing facility services	Y	Y	Y	Y	Y	Y	Y	<u>Y*</u>
Organ transplants	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Orthodontic services	Y	N	Y	N	Y	N	N	<u>Y**</u>
Out-of-state services	Y	Y	Y	Y	Y	Y	N	<u>Y</u>
Outpatient rehabilitation services (OT, PT, ST)	Y	Y	Y	Y	Y	(N) <u>Y</u>	Y	<u>Y</u>
Personal care services	Y	Y	Y	Y	N	N	N	<u>N</u>
Prescription drugs	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Private duty nursing	Y	Y	Y	Y	Y	Y	N	<u>N</u>
Prosthetic/orthotic devices	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Reproductive health services	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Respiratory care (oxygen)	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
School-based medical services	Y	N	Y	N	Y	N	N	<u>Y**</u>
Vision care Exams, refractions, and fittings	Y	Y	Y	Y	Y	Y	Y	<u>Y</u>
Vision hardware Frames and lenses	Y	N	Y	N	Y	N	N	<u>Y**</u>

¹ Clients enrolled in the Washington apple health for kids and Washington apple health for kids with premium programs, which includes the children's health insurance program (CHIP), receive CN-scope of health care services.

* Medically necessary nursing facility services are covered when the enrollee's condition meets the criteria for rehabilitative or skilled care.

** Only for age 20 and younger.

OTS-5179.5

AMENDATORY SECTION (Amending WSR 23-11-007, filed 5/4/23, effective 6/4/23)

WAC 182-503-0510 Washington apple health—Program summary. (1)

The agency categorizes Washington apple health programs into three groups based on the income methodology used to determine eligibility:

(a) Those that use a modified adjusted gross income (MAGI)-based methodology described in WAC 182-509-0300, called MAGI-based apple health programs;

(b) Those that use an income methodology other than MAGI, called non-MAGI-based apple health programs, which include:

(i) Supplemental security income (SSI)-related apple health programs;

(ii) Temporary assistance for needy families (TANF)-related apple health programs; and

(iii) Other apple health programs not based on MAGI, SSI, or TANF methodologies.

(c) Those that provide coverage based on a specific status or entitlement in federal rule and not on countable income, called deemed eligible apple health programs.

(2) MAGI-based apple health programs include the following:

(a) Apple health parent and caretaker relative program described in WAC 182-505-0240;

(b) MAGI-based apple health adult medical program described in WAC 182-505-0250, for which the scope of coverage is called the alternative benefits plan (ABP) described in WAC 182-500-0010;

(c) Apple health (~~for pregnant women program~~) pregnancy and after-pregnancy coverage described in WAC 182-505-0115;

(d) Apple health for kids program described in WAC 182-505-0210

(3) (a);

(e) Premium-based apple health for kids described in WAC 182-505-0215;

(f) Apple health long-term care for children and adults described in chapter 182-514 WAC; (~~and~~)

(g) Apple health alien emergency medical program described in WAC 182-507-0110 through 182-507-0125 when the person is eligible based on criteria for a MAGI-based apple health program; and

(h) Apple health expansion program for people who are age 64 or younger as described in chapter 182-525 WAC.

(3) Non-MAGI-based apple health programs include the following:

(a) SSI-related programs which use the income methodologies of the SSI program (except where the agency has adopted more liberal rules than SSI) described in chapter 182-512 WAC to determine eligibility:

(i) Apple health for workers with disabilities (HWD) described in chapter 182-511 WAC;

(ii) Apple health SSI-related programs described in chapters 182-512 and 182-519 WAC;

(iii) Apple health long-term care and hospice programs described in chapters 182-513 and 182-515 WAC;

(iv) Apple health medicare savings programs described in chapter 182-517 WAC; (~~and~~)

(v) Apple health alien emergency medical (AEM) programs described in WAC 182-507-0110 and 182-507-0125 when the person meets the age, blindness or disability criteria specified in WAC 182-512-0050; and

(vi) Apple health expansion program for people who are age 65 and older as described in chapter 182-512 WAC.

(b) TANF-related programs which use the income methodologies based on the TANF cash program described in WAC 388-450-0170 to determine eligibility, with variations as specified in WAC 182-509-0001(5) and program specific rules:

(i) Refugee medical assistance (RMA) program described in WAC 182-507-0130; and

(ii) Apple health medically needy (MN) coverage for pregnant ~~((women))~~ people and children who do not meet SSI-related criteria.

(c) Other programs:

(i) Breast and cervical cancer program described in WAC 182-505-0120;

(ii) Family planning only programs described in chapter 182-532 WAC;

(iii) Medical care services described in WAC 182-508-0005;

(iv) Apple health for pregnant minors described in WAC 182-505-0117;

(v) Kidney disease program described in chapter 182-540 WAC; and

(vi) Tailored supports for older adults described in WAC 182-513-1610.

(4) Deemed eligible apple health programs include:

(a) Apple health SSI medical program described in chapter 182-510 WAC, or a person who meets the medicaid eligibility criteria in 1619b of the Social Security Act;

(b) Newborn medical program described in WAC 182-505-0210(2);

(c) Foster care program described in WAC 182-505-0211;

(d) Medical extension program described in WAC 182-523-0100; and

(e) Family planning extension described in WAC 182-505-0115(5).

(5) A person is eligible for categorically needy (CN) health care coverage when the household's countable income is at or below the categorically needy income level (CNIL) for the specific program.

(6) If income is above the CNIL, a person is eligible for the MN program if the person is:

(a) A child;

(b) A pregnant ~~((woman))~~ person; or

(c) SSI-related (aged 65, blind or disabled).

(7) MN health care coverage is not available to parents, caretaker relatives, or adults unless they are eligible under subsection (6) of this section.

(8) A person who is eligible for the apple health MAGI-based adult program listed in subsection (2)(b) of this section is eligible for ABP health care coverage as defined in WAC 182-500-0010. Such a person may apply for more comprehensive coverage through another apple health program at any time.

(9) For the other specific program requirements a person must meet to qualify for apple health, see chapters 182-503 through 182-527 WAC.

AMENDATORY SECTION (Amending WSR 21-19-142, filed 9/22/21, effective 10/23/21)

WAC 182-503-0515 Washington apple health—Social Security number requirements. (1) To be eligible for Washington apple health (medicaid), or tailored supports for older adults (TSOA) described in WAC 182-513-1610, you (the applicant or recipient) must provide your valid Social Security number (SSN) or proof of application for an SSN to the medicaid agency or the agency's designee, except as provided in subsections (2) and (6) of this section.

(2) An SSN is not required if you are:

(a) Not eligible to receive an SSN or may only be issued an SSN for a valid nonwork reason described in 20 C.F.R. 422.104;

(b) A household member who is not applying for apple health coverage, unless verification of that household member's resources is required to determine the eligibility of the client;

(c) Refusing to obtain an SSN for well-established religious objections as defined in 42 C.F.R. 435.910 (h) (3); or

(d) Not able to obtain or provide an SSN because you are a victim of domestic violence.

(3) If you are receiving coverage because you meet an exception under either subsection (2) (c) or (d) of this section, we (the agency) will confirm with you at your apple health renewal, consistent with WAC 182-503-0050, that you still meet the exception.

(4) If we ask for confirmation that you continue to meet an exception in subsection (2) of this section and you do not respond in accordance with subsection (3) of this section, or if you no longer meet an exception and do not provide your SSN, we will terminate your apple health coverage according to WAC 182-518-0025.

(5) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:

(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(i) Your apple health coverage will not be delayed, denied, or terminated while waiting for SSA to send you your SSN. If you need help applying for an SSN, assistance will be provided to you.

(ii) We will ask you every 90 days if your SSN has been issued.

(6) An SSN is not required for the following apple health programs:

(a) Refugee medical assistance program described in WAC 182-507-0130;

(b) Alien medical programs described in WAC 182-507-0115, 182-507-0120, and 182-507-0125;

(c) Newborn medical program described in WAC 182-505-0210 (2) (a);

(d) Foster care program for a child age 18 and younger as described in WAC 182-505-0211(1);

(e) Medical programs for children and pregnant women who do not meet citizenship or immigration status described in WAC 182-503-0535 (2) (e) (ii) and (iii); (~~(e)~~)

(f) Family planning only program described in WAC 182-532-510 if you do not meet citizenship or immigration status for Washington apple health or you have made an informed choice to apply for family planning services only; or

(g) Washington apple health expansion program described in chapter 182-525 WAC.

(7) If you are required to provide an SSN under this section, and you do not meet an exception under subsection (2) of this section, failure to provide your SSN may result in:

(a) Denial of your application or termination of your coverage because we cannot determine your household's eligibility; or

(b) Inability to apply the community spouse resource allocation (CSRA) or monthly maintenance needs allowance (MMNA) for a client of long-term services and supports (LTSS).

OTS-5234.3

AMENDATORY SECTION (Amending WSR 24-03-050, filed 1/10/24, effective 2/10/24)

WAC 182-509-0220 Washington apple health—How resources are considered. (1) A resource is any cash, other personal property, or real property that a person:

(a) Owns;

(b) Has the right, authority, or power to convert to cash (if not already cash); and

(c) Has the legal right to use for (~~his or her~~) their support and maintenance.

(2) There is no resource limit for an applicant or recipient of the following Washington apple health (medicaid) programs:

(a) Apple health for workers with disabilities (HWD) program, as described in chapter 182-511 WAC;

(b) Apple health foster care program (see WAC 182-505-0211);

(c) Medicare savings programs (see WAC 182-517-0100);

(d) All programs that are based on modified adjusted gross income (MAGI) methodologies, as described in WAC 182-503-0510. This includes the following:

(i) Apple health for parents and caretaker relatives (see WAC 182-505-0240);

(ii) Apple health pregnancy coverage (see WAC 182-505-0115);

(iii) Apple health for kids (see WAC 182-505-0210);

(iv) Premium-based apple health for kids (see WAC 182-505-0215);

(v) Apple health long-term care for children and adults (see WAC 182-514-0230);

(vi) Apple health for MAGI-based adult coverage (see WAC 182-505-0250); ~~(and)~~

(vii) Apple health MAGI-based adult alien emergency medical (see WAC 182-507-0110); and

(viii) Apple health expansion coverage.

(3) For all other apple health programs, the resource limits and exclusions can be found in the following chapters:

(a) Apple health SSI-related medical (see chapter 182-512 WAC) with the exception of programs listed in subsection (2) of this section;

(b) Apple health long-term care (see chapters 182-513 and 182-515 WAC);

(c) SSI-related apple health alien medical program (see chapter 182-507 WAC);

(d) Apple health for refugees (see WAC 182-507-0130); and

(e) Medical care services (see WAC 182-508-0005).

(4) The agency or its designee determines how trusts, annuities and life estates affect eligibility for apple health coverage for the programs listed in subsection (3)(a) through (e) of this section by following the rules described in chapter 182-516 WAC.

(5) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations when a resource determination is required by the specific apple health program. If no resource determination is required by the specific apple health program, eligibility is not affected.

OTS-5226.7

Chapter 182-525 WAC

WASHINGTON APPLE HEALTH EXPANSION—COVERAGE BENEFITS

NEW SECTION

WAC 182-525-0100 Overview. This program began on July 1, 2024.

(1) The rules in this chapter and in chapters 182-525A and 182-525B WAC are specific to Washington apple health expansion and govern the administration of apple health expansion benefits.

(2) Apple health expansion benefits are state-funded physical and behavioral health services identified as covered in WAC 182-501-0060 and 182-525-0700.

(a) Coverage of apple health expansion services may be limited or modified based on program rules relating to those services. Information related to noncovered or excluded services may be contained in the program rules applicable to apple health expansion.

(b) An apple health expansion enrollee may receive only those apple health expansion services that are specifically identified as a covered benefit in the apple health expansion program rules.

(c) Services administered or authorized by the department of social and health services are not covered under the apple health expansion benefit package.

(d) The exception to rule process in WAC 182-501-0160 applies only to services that are specified as part of the apple health expansion benefit package in WAC 182-501-0060 and pursuant to the rules of this chapter, and chapters 182-525A and 182-525B WAC.

(3) Health plans, as defined in WAC 182-525-0400, administer apple health expansion benefits under the apple health expansion contract based on the rules in this chapter and chapters 182-525A and 182-525B WAC.

(4) If a service is covered under the apple health expansion program but excluded from administration under the apple health expansion contract, the service is administered by the agency on a fee-for-service basis according to the agency rules for that service.

(5) In order to provide services and receive payments, an apple health expansion provider must be an enrolled provider in accordance with chapter 182-502 WAC and meet the requirements of this chapter and other applicable program rules.

(6) The agency deems that providers enrolled in apple health under chapter 182-502 WAC are enrolled providers for purposes of apple health expansion.

NEW SECTION

WAC 182-525-0200 Applying for the program and income limits.

(1) **How to apply.** A person may apply for Washington apple health expansion coverage by following the process described in WAC 182-503-0005.

(2) **Income.** The agency follows the modified adjusted gross income (MAGI) rules in chapter 182-509 WAC to determine a person's apple health expansion eligibility for people age 19 through 64. For people age 65 and older, the agency follows the non-MAGI rules in chapter 182-512 WAC, with the following exceptions:

(a) The person must have a countable income equal to or below 138 percent of the federal poverty level; and

(b) A resource or asset test is not required.

(3) **Insurance affordability programs.** A person may apply for the insurance affordability programs offered through the agency as described in WAC 182-503-0001.

NEW SECTION

WAC 182-525-0300 Available resources exhausted. (1) Unlike the medicaid program under Title XIX of the Social Security Act and chapter 74.09 RCW, Washington apple health expansion is not an entitlement program with an open-ended right to services and benefits. The provision of services and benefits under apple health expansion is strictly limited by the funding that the legislature appropriates to the agency for the program.

(2) The agency does not have the legal right to spend money on apple health expansion coverage or benefits unless specifically appropriated by the legislature.

(3) The agency determines, in its sole discretion, if and when the available funding for apple health expansion has been or will be exhausted. Upon making any such determination, the agency notifies enrollees, providers, health plans, and the general public through a posting on its website or in any other manner that the agency considers appropriate. The notice will specify the date on which available funding has been or will be exhausted.

(4) A determination by the agency that available funding for apple health expansion is exhausted results in the automatic termination of any authorization, appeals process, independent review, or agency administrative hearing process related to a request to authorize a service or benefit. This is because services and benefits cannot be authorized or paid for without available funding, regardless of medical necessity.

NEW SECTION

WAC 182-525-0400 Definitions. The definitions from chapters 182-500 and 182-538 WAC apply to Washington apple health expansion, along with the following definitions:

- "Enrollment cap" - means the maximum number of people who may be enrolled in apple health expansion.
- "Health plan" - means the same as the term "managed care organization" in WAC 182-538-050.

NEW SECTION

WAC 182-525-0500 Enrollment cap for services. (1) Enrollment in Washington apple health expansion is subject to available funds, as described in this section and in WAC 182-525-0300.

(2) The agency caps apple health expansion enrollment if it determines that accepting additional enrollees would exceed funding appropriated by the legislature. Once the enrollment cap is reached, all applications for apple health expansion will be denied.

(3) If the agency denies a person apple health expansion coverage due to an enrollment cap, that person will be considered for other apple health programs. The person may be eligible for other programs if they:

(a) Meet immigration requirements for other apple health programs;

(b) Qualify due to pregnancy as identified in WAC 182-505-0115;
or

(c) Have a qualifying medical emergency for which federal funding is available.

(4) If apple health expansion enrollment closes due to a cap on enrollment, the agency notifies applicants that their applications are denied.

(5) Applicants who are denied based on the enrollment cap may not appeal the agency's decision to apply the enrollment cap.

(6) (a) If the agency reopens apple health expansion enrollment because enrollment has fallen below the cap and funding is available, the agency fills the available openings as described in (b) and (c) of this subsection.

(b) If the agency determines that additional individuals can be enrolled into apple health expansion, the agency will identify the number of openings available. To fill the available number of openings, the agency selects from the following categories:

(i) Individuals who submitted a completed application and were denied enrollment due to the cap;

(ii) Individuals who were enrolled in the children's health program (CHP), alien emergency medical (AEM), or after-pregnancy coverage programs who met eligibility requirements for apple health expansion and whose coverage ended while the cap was in effect; and

(iii) Individuals who are enrolled in a qualified health plan under the health benefit exchange's section 1332 waiver.

(c) The agency randomly selects individuals from (b) of this subsection to fill the openings, striving to ensure that 90 percent of these individuals are eligible under modified adjusted gross income (MAGI) standards, and 10 percent are non-MAGI.

(d) If the agency is unable to fill the openings available based on (b) and (c) of this subsection, the agency conducts outreach efforts to inform the public of the opportunity to apply.

NEW SECTION

WAC 182-525-0600 Termination of enrollees based on available funds. (1) (a) When the agency determines that available funds are exhausted as described in WAC 182-525-0300, the agency terminates Washington apple health expansion coverage of all enrollees.

(b) The agency sends notice to enrollees in accordance with WAC 182-518-0025 (1), (2), and (3). Continued coverage of apple health expansion benefits is not available.

(2) (a) When the agency determines that available funds are at risk of being exhausted, the agency terminates coverage of enrollees necessary to maintain funding for the program until the number of enrollees receiving coverage is sustainable based on the appropriated funds. The agency terminates apple health expansion enrollees beginning with the people most recently enrolled in apple health expansion, based on the date the agency approved a person for enrollment.

(b) The agency sends notice to enrollees in accordance with WAC 182-518-0025 (1), (2), and (3). Continued coverage of apple health expansion benefits is not available.

(3) Applicants who are denied based on the enrollment cap may not appeal the agency's decision to apply the enrollment cap.

(4) If the cap has been met and the agency denies enrollment due to agency error, the agency may choose not to apply the enrollment cap and enroll or provide coverage if there are available funds.

(5) If the cap has been met and the agency terminates an enrollee due to their failure to submit a completed renewal, the agency may choose not to apply the cap if:

(a) There are available funds to reinstate the enrollee's coverage; and

(b) The enrollee completes their renewal within 90 calendar days of their coverage end date.

NEW SECTION

WAC 182-525-0700 Washington apple health rules applicable to Washington apple health expansion. Agency rules applicable to other Washington apple health programs may also be applicable to Washington apple health expansion. The following agency rules apply to apple health expansion, with any modifications or exceptions as noted:

- (1) Chapter 182-500 WAC;
- (2) Chapter 182-501 WAC, except that the rules relating to early periodic screening, diagnosis, and treatment (EPSDT) services do not apply to apple health expansion.
- (3) Chapter 182-512 WAC, with the exception of WAC 182-512-0600 and 182-512-0960;
- (4) WAC 182-501-0165 applies only to the fee-for-service benefits available under apple health expansion and as noted in the apple health expansion contract.
- (5) Chapter 182-502 WAC, except that WAC 182-525-1100 replaces WAC 182-502-0160;
- (6) Chapter 182-502A WAC;
- (7) Chapter 182-503 WAC, except that the general eligibility requirements in WAC 182-503-0505 and 182-503-0055 do not apply to apple health expansion. (See WAC 182-525-0900.)
- (8) Chapter 182-504 WAC, except that WAC 182-504-0015 does not apply regarding the certification period for apple health expansion.
- (9) Chapter 182-505 WAC;
- (10) Chapter 182-506 WAC;
- (11) Chapter 182-509 WAC;
- (12) Chapter 182-518 WAC, except as otherwise noted in the apple health expansion rules;
- (13) Chapter 182-520 WAC;
- (14) Chapter 182-523 WAC;
- (15) Chapter 182-525 WAC;
- (16) Chapter 182-525A WAC;
- (17) Chapter 182-525B WAC;
- (18) Chapter 182-526 WAC;
- (19) Chapter 182-530 WAC does not apply to apple health expansion, except for the definitions from WAC 182-530-1050 that are incorporated by reference into chapter 182-525B WAC as identified in WAC 182-525B-0300. See chapter 182-525B WAC for the apple health expansion pharmacy benefit and outpatient drug program rules; and
- (20) Chapters 182-531 through 182-537 WAC and chapters 182-539 through 182-560 WAC may be applicable to apple health expansion if the services are provided on a fee-for-service basis or if incorporated by reference in the apple health expansion contract.

NEW SECTION

WAC 182-525-0800 Certification period. (1) A certification period is the length of time the agency determines a person is eligible for Washington apple health expansion coverage, which may be reduced or terminated under WAC 182-525-0600.

(2) The certification period for apple health expansion coverage is 12 months, as long as the person remains eligible according to program rules.

(3) The certification period begins on the first day of the month the person is approved and continues through the end of the 12th month.

(4) If, during a person's certification period, apple health expansion funding is exhausted, as described in WAC 182-525-0300, the agency terminates enrollment for a person based on funding availability according to WAC 182-525-0600.

(5) The agency considers an enrollee's eligibility for all other Washington apple health programs, as well as qualified health plans, health insurance premium tax credits (as defined in WAC 182-500-0045), and cost sharing reductions (as defined in WAC 182-500-0020) before ending the enrollee's apple health expansion coverage.

(6) A person may be eligible for retroactive coverage through the medical assistance programs for noncitizens, as described in WAC 182-507-0110.

NEW SECTION

WAC 182-525-0900 General eligibility requirements. (1) A person must meet the following eligibility criteria for Washington apple health expansion coverage:

(a) Be age 19 or older (see WAC 182-503-0050);

(b) Be a resident of Washington state (see WAC 182-503-0520 and 182-503-0525);

(c) Have net countable income that is at or below 138 percent of the federal poverty level for a household of the applicable size;

(d) Is not entitled to or enrolled in medicare benefits under Part A or B of Title XVIII of the Social Security Act; and

(e) Is not eligible for another full scope medical assistance program.

(2) A person in a public institution, including a correctional facility, is not eligible for apple health expansion coverage until released, unless the person:

(a) Is age 21 or younger or age 65 or older and is a patient in an institution for mental disease (see WAC 182-513-1317(5)); or

(b) Receives inpatient hospital services outside of the public institution or correctional facility.

NEW SECTION

WAC 182-525-1000 Application processing times. Application processing times for Washington apple health expansion follow the application processing times described in WAC 182-503-0060.

NEW SECTION

WAC 182-525-1100 Billing an enrollee. (1) This section specifies the limited circumstances in which:

(a) Washington apple health expansion enrollees can choose to self-pay for health care services; and

(b) Providers, as defined in WAC 182-500-0085, have the authority to bill apple health expansion enrollees for health care services furnished to those enrollees.

(2) The provider is responsible for:

(a) Verifying whether a person is eligible to receive health care services on the date the services are provided;

(b) Verifying whether the person is enrolled with an agency-contracted health plan;

(c) Knowing the limitations of the services within the scope of apple health expansion coverage (see WAC 182-501-0050 (4) (a), 182-501-0060, 182-501-0065, and chapters 182-525, 182-525A, and 182-525B WAC);

(d) Informing the enrollee of those limitations;

(e) Exhausting all applicable agency or agency-contracted health plan processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to enrollees with limited-English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by either:

(a) The agency health plan, for health care services furnished to enrollees; or

(b) The agency, for services provided on a fee-for-service basis.

(4) (a) A provider must not bill an enrollee, or anyone on the enrollee's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the enrollee's health plan, and until the provider has then fully informed the enrollee of their coverage options.

(b) A provider must not bill an enrollee for:

(i) Any services for which the provider failed to satisfy the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the enrollee's health plan;

(ii) A covered service even if the provider has not received payment from the agency or the enrollee's health plan; or

(iii) A covered service when the agency or the enrollee's health plan denies an authorization request for the service because the required information was not received from the provider or the prescriber within 30 calendar days.

(5) If the requirements of this section are satisfied, then a provider may bill an enrollee for a covered service or a noncovered service. The enrollee and provider must sign and date the HCA form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. Form 13-879, including translated versions, is available to download at https://www.hca.wa.gov/assets/billers-and-providers/13_879.pdf. The requirements for this subsection are as follows:

(a) The agreement must:

(i) Indicate the anticipated date the service will be provided, which must be no later than 90 calendar days from the date of the signed agreement;

(ii) List each of the services that will be furnished;

(iii) List treatment alternatives that may have been covered by the agency or the enrollee's health plan;

(iv) Specify the total amount the enrollee must pay for the service;

(v) Specify what items or services are included in this amount (such as preoperative care and postoperative care). See WAC 182-501-0070(3) for payment of ancillary services for a noncovered service;

(vi) Indicate that the enrollee has been fully informed of all available medically appropriate treatment, including services that may be paid for by the agency or the enrollee's health plan, and that the enrollee chooses to get the specified service(s);

(vii) Specify that the enrollee may request an exception to rule (ETR) in accordance with WAC 182-501-0160 when the agency or the enrollee's health plan denies a request for a noncovered service and that the enrollee may choose not to do so;

(viii) Specify that the enrollee may request an administrative hearing in accordance with chapter 182-526 WAC to appeal the agency's denial of a request for prior authorization of a covered service and that the enrollee may choose not to do so;

(ix) Be completed only after the provider and the enrollee have exhausted all applicable agency or health plan processes necessary to obtain authorization of the requested service, except that the enrollee may choose not to request an ETR or an administrative hearing regarding agency or health plan denials of authorization for requested service(s); and

(x) Specify which reason in (b) of this subsection applies.

(b) The provider must select on the agreement form one of the following reasons (as applicable) why the enrollee agrees to be billed for the service(s). The service(s) is:

(i) Not covered by apple health expansion, the ETR process as described in WAC 182-501-0160 has been exhausted, and the service(s) is denied;

(ii) Not covered by apple health expansion and the enrollee has been informed of their right to an ETR and has chosen not to pursue an ETR as described in WAC 182-501-0160;

(iii) Covered by apple health expansion, requires authorization, and the provider completes all the necessary requirements; however, the agency or health plan denied the service as not medically necessary (this includes services denied as a limitation extension under WAC 182-501-0169); or

(iv) Covered by apple health expansion and does not require authorization, but the enrollee has requested a specific type of treatment, supply, or equipment based on personal preference which the agency or health plan does not pay for and the specific type is not medically necessary for the enrollee.

(c) For enrollees with limited-English proficiency, the agreement must be the version translated in the enrollee's primary language and interpreted if necessary. The translator or interpreter must sign the agreement regardless of whether the agreement is translated in writing or orally interpreted;

(d) The provider must give the enrollee a copy of the agreement and maintain the original and all documentation which supports compliance with this section in the enrollee's file for six years from the date of service. The agreement must be made available to the agency for review upon request; and

(e) If the service is not provided within 90 calendar days of the signed agreement, the provider must complete a new agreement, which must be signed by both the provider and the enrollee.

(6) The following are the limited circumstances in which a provider may bill an enrollee without executing form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section:

(a) The enrollee, the enrollee's legal guardian, or the enrollee's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC 182-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third-party insurance carrier for the service.

(b) The person represented that they were paying privately and not enrolled in apple health expansion when they were already enrolled in and receiving benefits under apple health expansion. In this circumstance, the provider must:

(i) Keep documentation of the enrollee's declaration of medical coverage. The declaration must be signed and dated by the enrollee, the enrollee's legal guardian, or the enrollee's legal representative; and

(ii) Give a copy of the document to the enrollee and maintain the original for six years from the date of service, for agency review upon request.

(c) The enrollee is placed in the agency's or a health plan's patient review and coordination (PRC) program and obtains nonemergency services from a nonpharmacy provider that is not an assigned or appropriately referred provider as described in WAC 182-501-0135;

(d) The service is within a service category excluded from the enrollee's benefits package. See WAC 182-501-0060;

(e) The services were noncovered ambulance services (see WAC 182-546-0250(2));

(f) An enrollee chooses to receive nonemergency services from a provider who is not contracted with the agency after being informed by the provider that they are not contracted with the agency and that the services offered will not be paid by apple health expansion; and

(g) An enrollee chooses to receive nonemergency services from providers outside of the health plan's network without authorization from the health plan, i.e., a nonparticipating provider.

(7) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an enrollee and then bill the agency for the covered service that had been furnished. This occurs when the enrollee becomes eligible for a covered service that was already furnished. Providers must then accept as payment in full the amount paid by the agency or the enrollee's health plan for medical services furnished to enrollees. These situations include, but are not limited to, the following:

(a) The person was not enrolled in apple health expansion on the day the service was furnished. The person applies for apple health expansion later in the same month in which the service was provided and the agency makes the person eligible for apple health expansion from the first day of that month;

(b) The enrollee receives a delayed certification for apple health expansion as defined in WAC 182-500-0025; or

(c) The enrollee receives apple health expansion certification for a retroactive period as defined in WAC 182-500-0095.

(8) Regardless of any written and signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from an enrollee, anyone on the enrollee's behalf, or the agency for:

(a) Copying, printing, or otherwise transferring health care information, as the term health care information is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

(i) Medical/dental charts;

(ii) Radiological or imaging films; and

- (iii) Laboratory or other diagnostic test results.
- (b) Missed, canceled, or late appointments;
- (c) Shipping and/or postage charges;
- (d) "Boutique," "conciierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or
- (e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

OTS-5227.5**Chapter 182-525A WAC****WASHINGTON APPLE HEALTH EXPANSION—HEALTH PLAN ADMINISTRATION OF BENEFITS**NEW SECTION

WAC 182-525A-0100 Health plan rules—General. The rules in this chapter govern the administration of benefits under Washington apple health expansion by health plans, as defined in WAC 182-525-0400. Chapter 182-538 WAC is not applicable to apple health expansion, except for the definitions found in WAC 182-538-050, which are incorporated by reference into this chapter.

NEW SECTION

WAC 182-525A-0200 Health plan choice and assignment. The agency requires people enrolled in Washington apple health expansion to enroll in a health plan.

(1) To enroll with a health plan, a person may:

(a) Enroll online via the Washington Healthplanfinder at <https://www.wahealthplanfinder.org>;

(b) Call the agency's toll-free enrollment line at 800-562-3022; or

(c) Go to the ProviderOne client portal at <https://www.waproviderone.org> and follow the instructions.

(2) A person enrolled in apple health expansion must enroll with a health plan available in the regional service area where the person resides.

(3) All family members must be enrolled with the same health plan if contracted to serve apple health expansion enrollees. However, family members of an apple health expansion enrollee placed in the patient review and coordination (PRC) program under WAC 182-501-0135 need not enroll in the same health plan as the family member placed in the PRC program.

(4) An apple health expansion enrollee may be placed into the PRC program by the health plan or the agency. An enrollee placed in the PRC program must follow the enrollment requirements of the program as stated in WAC 182-501-0135.

(5) When a person requests enrollment with a health plan, the agency enrolls them with the earliest possible effective date, based on the requirements of the agency's enrollment system.

(6) The agency assigns a person who does not choose a health plan as follows:

(a) If the person was enrolled with a health plan within the previous six months, the person is reenrolled with the same health plan if:

(i) The agency identifies the prior health plan and the program is available; and

(ii) The person does not have a family member enrolled with a health plan;

(b) If (a) of this subsection does not apply and the person has a family member enrolled with a health plan, the person is enrolled with that health plan;

(c) If the person has a break in eligibility of less than two months, that person will be automatically reenrolled with their previous health plan and no notice will be sent;

(d) If the person cannot be assigned according to (a), (b), or (c) of this subsection, the agency:

(i) Assigns the person based on agency policy, or this rule, or both;

(ii) Does not assign people to any health plan that has a total statewide market share of 40 percent or more of people who are enrolled in apple health expansion coverage. On a quarterly basis, the agency reviews enrollment data to determine each health plan's statewide market share in apple health expansion coverage; and

(iii) Applies performance measures associated with increasing or reducing assignment consistent with this rule and agency policy and its contracts with health plans; or

(e) If the person cannot be assigned to a health plan under (a), (b), or (c) of this subsection, the agency assigns the person as follows:

(i) If a person does not choose a health plan, the agency assigns the person to a health plan available in the regional service area where the person resides. The health plan is responsible for primary care provider (PCP) choice and assignment.

(ii) For people who are newly eligible or who have had a break in eligibility of more than six months, the agency sends a written notice to each household of one or more people who are assigned to a health plan. The assigned person has 10 calendar days to contact the agency, if desired, to change the health plan assignment before enrollment is effective. The notice includes the:

(A) Agency's toll-free number;

(B) Toll-free number and name of the health plan to which each person has been assigned;

(C) Effective date of enrollment; and

(D) Date by which the person must respond to change the assignment.

(7) An apple health expansion enrollee's selection of a PCP or assignment to a PCP occurs as follows:

(a) An apple health expansion enrollee may choose:

- (i) A PCP or clinic that is in the enrollee's health plan and accepting new enrollees; and
 - (ii) A different PCP or clinic participating with the enrollee's health plan for different family members.
- (b) If the enrollee does not choose a PCP or clinic, the health plan assigns a PCP or clinic that meets the access standards in the health plan contract.
- (c) An apple health expansion enrollee may change from one PCP or clinic to a different PCP or clinic participating in the enrollee's health plan for any reason, with the change taking effect no later than the beginning of the month following the enrollee's request.
- (d) An apple health expansion enrollee may file a grievance with the health plan if the health plan does not approve an enrollee's request to change PCPs or clinics.
- (e) Apple health expansion enrollees required to participate in the agency's PRC program may be limited in their right to change PCPs. (See WAC 182-501-0135.)

NEW SECTION

WAC 182-525A-0300 Qualifications to become an agency-contracted health plan for Washington apple health expansion coverage. (1) To provide services under the Washington apple health expansion contract, a health plan must:

- (a) Contract with the agency; and
 - (b) Contract with an agency-contracted behavioral health administrative service organization (BH-ASO) that maintains an adequate provider network to deliver services to enrollees in the apple health expansion regional service areas.
- (2) A health plan must meet the following qualifications to be eligible to contract with the agency:
- (a) Have a certificate of registration from the Washington state office of the insurance commissioner (OIC) that allows the health plan to provide health care services under a risk-based contract;
 - (b) Accept the terms and conditions of the agency's apple health expansion contract;
 - (c) Meet the network and quality standards established by the agency; and
 - (d) Pass a readiness review, including an on-site visit conducted by the agency.
- (3) The agency may periodically conduct a procurement for new apple health expansion health plans or to reduce or expand the use of existing apple health expansion health plans.
- (a) The agency may conduct a procurement when the agency determines in its sole discretion there is a need to:
 - (i) Expand or reduce current health plan contracts;
 - (ii) Enhance current health plan provider networks;
 - (iii) Establish new contracts for apple health expansion coverage in one or more regional services areas; or
 - (iv) Adjust the program to ensure adherence to state and federal law.
 - (b) The agency gives significant weight to the following factors in any procurement process:
 - (i) Demonstrated commitment to, and experience in, serving low-income populations;

(ii) Demonstrated commitment to, and experience in, serving people who have mental illness, substance use disorders, or co-occurring disorders;

(iii) Demonstrated commitment to, and experience in, serving immigrant populations and populations with limited-English proficiency;

(iv) Demonstrated commitment to, and experience with, partnerships with county and municipal criminal justice systems, housing services, and other critical support services necessary to achieve the outcomes established in RCW 70.320.020, 71.24.435, and 71.36.025;

(v) Recognition that meeting apple health expansion enrollees' physical and behavioral health care needs is a shared responsibility of contracted behavioral health administrative services organizations, health plans, service providers, the state, and communities;

(vi) Consideration of past and current performance and participation in other state or federal behavioral health programs as a contractor;

(vii) Quality of services provided to enrollees under previous contracts with the state of Washington or other states;

(viii) Accessibility, including appropriate utilization, of services offered to enrollees;

(ix) Demonstrated capability to perform contracted services, including the ability to supply an adequate provider network; and

(x) The ability to meet any other requirements established by the agency.

(c) The agency may define and consider additional factors as part of any procurement including, but not limited to:

(i) Timely processing of, and payments to, providers in the health plan networks, including reconciliation of outstanding payments; and

(ii) The optimal number of health plans per regional services area, based on population and in the manner that the agency determines most beneficial for the program, enrollees, and providers.

(4) The agency reserves the right not to contract with any otherwise qualified health plan.

NEW SECTION

WAC 182-525A-0400 Health plan payments, corrective action, and sanctions. (1) The agency pays Washington apple health expansion health plans monthly capitated premiums that:

(a) Were developed using generally accepted actuarial principles and practices;

(b) Are appropriate for the covered populations and the services to be furnished under the apple health expansion contract;

(c) Are certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board;

(d) Are based on analysis of historical cost, rate information, or both; and

(e) Are paid based on legislative allocations.

(2) Health plans are solely responsible for payment of apple health expansion-contracted health care services. The agency does not pay for a service that is the health plan's responsibility, even if the health plan has not paid the provider for the service.

(3) The agency pays health plans a service-based enhancement rate for wraparound with intensive services (WISe) administered by a certified WISe provider who holds a current behavioral health agency license issued by the department of health under chapter 246-341 WAC.

(4) For crisis services, the health plan must determine whether the person receiving the services is eligible for apple health expansion or if the person has other insurance coverage.

(5) The agency may require corrective action for:

(a) Substandard rates of clinical performance measures;

(b) Deficiencies found in audits and on-site visits; or

(c) Findings of noncompliance with any contractual, state, or federal requirements.

(6) The agency may:

(a) Impose sanctions for a health plan's noncompliance with any contractual or state requirement; and

(b) Apply a monthly penalty assessment associated with poor performance on selected behavioral health performance measures.

(7) If a health plan fails to meet any material obligation under the apple health expansion contract, the agency may impose the maximum allowable sanction on a per-occurrence, per-day basis until the agency determines the health plan has:

(a) Corrected the violation; and

(b) Remedied any harm caused by the noncompliance.

NEW SECTION

WAC 182-525A-0500 Scope of care. (1) A person enrolled in Washington apple health expansion is eligible only for the scope of services identified in WAC 182-501-0060, which may be modified by other agency rules pertinent to apple health expansion.

(2) The agency does not require the health plan to cover any services outside the scope of covered services in the agency's health plan contract. At its discretion, a health plan may cover services not required under the apple health expansion contract.

(3) Some services included in apple health expansion coverage may be provided on a fee-for-service basis rather than through a health plan.

(4) The health plan is not required to authorize or pay for covered services if services:

(a) Are determined not to be medically necessary, as defined in WAC 182-500-0070, in accordance with the apple health expansion contract;

(b) Are excluded from coverage under the apple health expansion contract;

(c) Are received in a hospital emergency department for nonemergency medical conditions, except for a screening exam;

(d) Are received from a participating provider that require prior authorization from the health plan; or

(e) Are nonemergency services covered under the apple health expansion contract and received from nonparticipating providers that were not prior authorized by the health plan.

NEW SECTION

WAC 182-525A-0600 Health plan administration requirements. For covered services administered through the Washington apple health expansion contracts:

(1) Health plans must subcontract with enough providers to deliver the scope of contracted services in a timely manner.

(2) Health plans must provide new enrollees with written information about how enrollees may obtain covered services.

(3) Health plans must provide covered services to enrollees through their participating providers unless an exception applies. A health plan covers services from a nonparticipating provider when an apple health expansion enrollee obtains:

(a) Emergency services; or

(b) Authorization from the health plan to receive services from a nonparticipating provider.

(4) For nonemergency services, health plans may require:

(a) The enrollee to obtain a referral from the enrollee's primary care provider (PCP); or

(b) The provider to obtain authorization from the enrollee's health plan.

(5) Health plans and their contracted providers must determine whether a requested service is medically necessary, as described in WAC 182-500-0070, given the enrollee's condition, according to the requirements included in the apple health expansion contract.

(6) The health plan must coordinate benefits with other insurers in a manner that does not reduce benefits to the enrollee or result in costs to the enrollee.

(7) A health plan enrollee does not need a PCP referral to receive reproductive health services, as described in chapter 182-532 WAC, from any reproductive health care provider participating with the health plan. Any covered services ordered or prescribed by a reproductive health care provider must meet the health plan's service authorization requirements for the specific service.

(8) For enrollees outside their health plan service area, the health plan must cover enrollees for emergency care and medically necessary covered benefits that cannot wait until the enrollees return to their health plan service area.

(9) A health plan enrollee may obtain specific services described in the apple health expansion contract from either a health plan-contracted provider or a provider with a separate agreement with the agency without a referral from the PCP or health plan.

(10) Health plans must provide new enrollees with written information about covered services. Additionally, the agency sends each enrollee written information about covered services when there is a change in covered services.

(11) An apple health expansion enrollee is entitled to timely access to covered services that are medically necessary as defined in WAC 182-500-0070.

(12) All nonemergency services covered under the apple health expansion contract and received from nonparticipating providers require prior authorization from the health plan.

(13) A provider may bill an apple health expansion enrollee for services only if the requirements of WAC 182-525-1100 are met.

NEW SECTION**WAC 182-525A-0700 Telemedicine and store and forward technology.**

The agency's rules related to the authorized use of telemedicine and store and forward technology are found in WAC 182-501-0300 and are applicable to Washington apple health expansion benefits, including those administered by the health plan.

NEW SECTION

WAC 182-525A-0800 The grievance and appeal system and agency administrative hearings. (1) **Introduction.** This section contains information about the grievance and appeal system and the right to an agency administrative hearing for Washington apple health expansion health plan enrollees.

(2) **Statutory basis and framework.**

(a) Each health plan must have a grievance and appeal system in place for enrollees.

(b) Once a health plan enrollee has completed the health plan appeals process, the enrollee has the option of requesting an agency administrative hearing regarding any adverse benefit determination (as defined in WAC 182-538-050) upheld by the health plan. See chapter 182-526 WAC.

(3) **Health plan grievance and appeal system - General requirements.**

(a) The health plan grievance and appeal system must include:

(i) A process for addressing complaints about any matter that is not an adverse benefit determination, which is a grievance;

(ii) An appeal process to address enrollee requests for review of a health plan's adverse benefit determination; and

(iii) Access to the agency's administrative hearing process for review of a health plan's resolution of an appeal.

(b) Health plans must provide information describing the health plan's grievance and appeal system to all providers and subcontractors.

(c) A health plan must have agency approval for written materials sent to enrollees regarding the grievance and appeal system and the agency's administrative hearing process under chapter 182-526 WAC.

(d) Health plans must inform enrollees in writing within 15 calendar days of enrollment about enrollees' rights with instructions on how to use the health plan's grievance and appeal system and the agency's administrative hearing process.

(e) A health plan must give enrollees any reasonable assistance in completing forms and other procedural steps for grievances and appeals (e.g., interpreter services and toll-free numbers).

(f) A health plan must allow enrollees and their authorized representatives to file grievances and appeals orally as well as in writing.

(g) Methods to file either a grievance or appeal include, but are not limited to, U.S. mail, commercial delivery services, hand delivery, fax, telephone, and email.

(h) Health plans may not require enrollees to provide written follow-up for a grievance the health plan received orally.

(i) The health plan must resolve each grievance and appeal and provide notice of the resolution as expeditiously as the enrollee's

health condition requires and within the time frames identified in this section.

(j) The health plan must ensure that the people who make decisions on grievances and appeals:

(i) Were neither involved in any previous level of review or decision making nor a subordinate of any person who was so involved;

(ii) Are health care professionals with appropriate clinical expertise in treating the enrollee's condition or disease if deciding any of the following:

(A) An appeal of an adverse benefit determination concerning medical necessity;

(B) A grievance concerning denial of an expedited resolution of an appeal; or

(C) A grievance or appeal that involves any clinical issues; and

(iii) Consider all comments, documents, records, and other information submitted by the enrollee or the enrollee's representative without regard to whether the information was submitted or considered in the initial adverse benefit determination.

(4) The health plan grievance process.

(a) Only an enrollee or enrollee's authorized representative may file a grievance with the health plan. A provider may not file a grievance on behalf of an enrollee without the enrollee's written consent.

(b) The health plan must acknowledge receipt of each grievance within two business days. Acknowledgment may be orally or in writing.

(c) The health plan must complete the resolution of a grievance and provide notice to the affected parties as expeditiously as the enrollee's health condition requires, but no later than 45 calendar days after receiving the grievance.

(d) The health plan must notify enrollees of the resolution of grievances within five business days of determination.

(i) Notices of resolution of grievances not involving clinical issues can be oral or in writing.

(ii) Notices of resolution of grievances for clinical issues must be in writing.

(e) Enrollees do not have a right to an agency administrative hearing to dispute the resolution of a grievance unless the health plan fails to adhere to the notice and timing requirements for grievances.

(f) If the health plan fails to adhere to the notice and timing requirements for grievances, the enrollee is deemed to have completed the health plan's appeals process and may initiate an agency administrative hearing.

(5) Health plans' notice of adverse benefit determination.

(a) **Language and format requirements.** The notice of adverse benefit determination must be in writing in the enrollee's primary language and in an easily understood format.

(b) **Content of notice.** The notice of health plan adverse benefit determination must explain:

(i) The adverse benefit determination the health plan has made or intends to make, and any pertinent effective date;

(ii) The reasons for the adverse benefit determination, including citation to legal authority and the health plan criteria that were the basis of the decision;

(iii) The enrollee's right to receive upon request, free of charge, reasonable access to and copies of all documents, records, and other information relevant to the adverse benefit determination, in-

cluding medical necessity criteria and any processes, strategies, or evidentiary standards used in setting coverage limits;

(iv) The enrollee's right to file an appeal of the adverse benefit determination, including information on the health plan appeal process and the right to request an agency administrative hearing;

(v) The procedures for exercising the enrollee's rights;

(vi) The circumstances under which an appeal can be expedited and how to request it; and

(vii) The enrollee's right to have benefits continued pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services.

(c) **Timing of notice.** The health plan must mail the notice of adverse benefit determination within the following time frames:

(i) For termination, suspension, or reduction of previously authorized services, at least 10 calendar days prior to the effective date of the adverse benefit determination. This notice must be mailed by a method that certifies receipt and assures delivery within three calendar days.

(ii) For denial of payment, at the time of any adverse benefit determination affecting the claim. This applies only when the enrollee can be held liable for the costs associated with the adverse benefit determination.

(iii) For standard service authorization decisions that deny or limit services, as expeditiously as the enrollee's health condition requires, but not to exceed 14 calendar days following receipt of the request for service. An extension of up to 14 additional calendar days may be allowed if:

(A) The enrollee or enrollee's provider requests the extension.

(B) The health plan determines, and justifies to the agency upon request, a need for additional information and that the extension is in the enrollee's interest.

(iv) If the health plan extends the time frame for standard service authorization decisions, the health plan must:

(A) Give the enrollee written notice of the reason for the decision to extend and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and

(B) Issue and carry out its determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

(v) For expedited authorization decisions:

(A) In cases involving mental health drug authorization decisions, or where the provider indicates or the health plan determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, the health plan must make an expedited authorization decision and provide notice no later than 72 hours after receipt of the request for service.

(B) The health plan may extend the 72-hour time frame up to 14 calendar days if:

(I) The enrollee requests the extension; or

(II) The health plan determines and justifies to the agency, upon request, there is a need for additional information and it is in the enrollee's interest.

(6) **The health plan appeal process.**

(a) **Authority to appeal.** An enrollee, the enrollee's authorized representative, or the provider acting with the enrollee's written

consent may appeal an adverse benefit determination from the health plan.

(b) **Oral appeals.** A health plan must treat oral inquiries about appealing an adverse benefit determination as an appeal to establish the earliest possible filing date for the appeal.

(c) **Acknowledgment letter.** The health plan must acknowledge in writing receipt of each appeal to both the enrollee and the requesting provider within five calendar days of receiving the appeal request. The appeal acknowledgment letter sent by the health plan serves as written confirmation of an appeal filed orally by an enrollee.

(d) **Standard service authorization - 60-day deadline.** For appeals involving standard service authorization decisions, an enrollee must file an appeal within 60 calendar days of the date on the health plan's notice of adverse benefit determination. This time frame also applies to a request for an expedited appeal.

(e) **Previously authorized service - 10-day deadline.** For appeals of adverse benefit determinations involving termination, suspension, or reduction of a previously authorized service, and when the enrollee is requesting continuation of the service, the enrollee must file an appeal within 10 calendar days of the health plan mailing notice of the adverse benefit determination.

(f) **Untimely service authorization decisions.** When the health plan does not make a service authorization decision within required time frames, it is considered a denial. In this case, the health plan sends a formal notice of adverse benefit determination, including the enrollee's right to an appeal.

(g) **Appeal process requirements.** The health plan appeal process must:

(i) Provide the enrollee a reasonable opportunity to present evidence and allegations of fact or law, in person, by telephone, or in writing. The health plan must inform the enrollee of the limited time available for this in the case of expedited resolution;

(ii) Provide the enrollee and the enrollee's representative the opportunity before and during the appeal process to examine the enrollee's case file, including medical records, other relevant documents and records, and any new or additional evidence considered, relied upon, or generated by the health plan (or at health plan's direction) in connection with the appeal of the adverse benefit determination. This information must be provided free of charge and sufficiently in advance of the resolution time frame for appeals as specified in this section; and

(iii) Include as parties to the appeal:

(A) The enrollee and the enrollee's representative; or

(B) The legal representative of the deceased enrollee's estate.

(h) **Level of appeal.** There is only one level of review in the health plan's appeals process.

(i) **Time frames for resolution of appeals and notice to the enrollee.** Health plans must resolve each appeal and provide notice as expeditiously as the enrollee's health condition requires, and within the following time frames:

(i) For standard resolution of appeals, including notice to the affected parties, no longer than 30 calendar days from the day the health plan receives the appeal. This includes appeals involving termination, suspension, or reduction of previously authorized services.

(ii) For expedited resolution of appeals, including notice to the affected parties, no longer than 72 hours after the health plan re-

ceives the appeal. The health plan may extend the 72-hour time frame up to 14 calendar days if:

(A) The enrollee requests the extension; or

(B) The health plan determines and shows to the satisfaction of the agency, upon request, there is a need for additional information and it is in the enrollee's interest.

(iii) If the health plan fails to adhere to the notice and timing requirements for appeals, the enrollee is deemed to have completed the health plan's appeals process and may request an agency administrative hearing.

(j) Language and format requirements - Notice of resolution of appeal.

(i) The notice of the resolution of the appeal must be in writing in the enrollee's primary language and in an easily understood format.

(ii) The notice of the resolution of the appeal must be sent to the enrollee and the requesting provider.

(iii) For notice of an expedited resolution, the health plan must also make reasonable efforts to provide oral notice.

(k) Content of resolution of appeal.

(i) The notice of resolution must include the results of the resolution process and the date it was completed.

(ii) For appeals not resolved wholly in favor of the enrollee, the notice of resolution must include:

(A) The right to request an agency administrative hearing under chapter 182-526 WAC, and how to request the hearing;

(B) The right to request and receive benefits while an agency administrative hearing is pending, and how to make the request in accordance with subsection (9) of this section and the agency's administrative hearing rules in chapter 182-526 WAC; and

(C) That the enrollee may be held liable for the cost of those benefits received for the first 60 calendar days after the agency or the office of administrative hearings (OAH) receives an agency administrative hearing request if the hearing decision upholds the health plan's adverse benefit determination.

(7) Health plan expedited appeal process.

(a) Each health plan must establish and maintain an expedited appeal process when the health plan determines or the provider indicates that taking the time for a standard resolution of an appeal could seriously jeopardize the enrollee's life, physical or behavioral health, or ability to attain, maintain, or regain maximum function.

(b) The enrollee may file an expedited appeal either orally, according to WAC 182-526-0095, or in writing. No additional follow-up is required of the enrollee.

(c) The health plan must make a decision on the enrollee's request for expedited appeal and provide written notice as expeditiously as the enrollee's health condition requires but no later than two calendar days after the health plan receives the appeal. The health plan must also make reasonable efforts to orally notify the enrollee of the decision.

(d) The health plan may extend the time frame for decision on the enrollee's request for an expedited appeal up to 14 calendar days if:

(i) The enrollee requests the extension; or

(ii) The health plan determines and shows to the satisfaction of the agency, upon its request, that there is a need for additional information and the delay is in the enrollee's interest.

(e) The health plan must make reasonable efforts to provide the enrollee prompt verbal notice and provide written notice for any extension not requested by the enrollee with the reason for the delay.

(f) If the health plan grants an expedited appeal, the health plan must issue a decision as expeditiously as the enrollee's physical or behavioral health condition requires, but not later than 72 hours after receiving the appeal. The health plan may extend the time frame for a decision and to provide notice to the enrollee for an expedited appeal, up to 14 days, if:

(i) The enrollee requests the extension; or

(ii) The health plan determines and shows to the satisfaction of the agency, upon its request, that there is a need for additional information and the delay is in the enrollee's interest.

(g) The health plan must provide written notice for any extension not requested by the enrollee within two calendar days of the decision and inform the enrollee of the reason for the delay and the enrollee's right to file a grievance.

(h) If the health plan denies a request for expedited resolution of an appeal, it must:

(i) Process the appeal based on the time frame for standard resolution;

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial; and

(iii) Provide written notice within two calendar days.

(i) The health plan must ensure that punitive action is not taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

(8) The right to an agency administrative hearing for health plan enrollees.

(a) **Authority to file.** Only an enrollee, the enrollee's authorized representative, or a provider with the enrollee's or authorized representative's written consent may request an administrative hearing. See WAC 182-526-0095 and 182-526-0155.

(b) **Right to agency administrative hearing.** If an enrollee has completed the health plan appeal process and does not agree with the health plan's resolution of the appeal, the enrollee may file a request for an agency administrative hearing based on the rules in this section and in chapter 182-526 WAC.

(c) **Deadline - 120 days.** An enrollee's request for an agency administrative hearing must be filed no later than 120 calendar days from the date of the written notice of resolution of appeal from the health plan.

(d) **Independent party.** The health plan is an independent party and responsible for its own representation in any agency administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(e) **Applicable rules.** The agency's administrative hearing rules in chapter 182-526 WAC apply to agency administrative hearings requested by enrollees to review the resolution of an enrollee appeal of a health plan adverse benefit determination.

(9) Continuation of previously authorized services.

(a) The health plan must continue the enrollee's services if all of the following apply:

(i) The enrollee, or enrollee's authorized representative, or provider with written consent files the appeal on or before the later of the following:

(A) Within 10 calendar days of the health plan mailing the notice of adverse benefit determination; or

(B) The intended effective date of the health plan's proposed adverse benefit determination;

(ii) The appeal involves the termination, suspension, or reduction of previously authorized services;

(iii) The services were ordered by an authorized provider; and

(iv) The original period covered by the original authorization has not expired.

(b) If the health plan continues or reinstates the enrollee's services while the appeal is pending at the enrollee's request, the services must be continued until one of the following occurs:

(i) The enrollee withdraws the health plan appeal;

(ii) The enrollee fails to request an agency administrative hearing within 10 calendar days after the health plan sends the notice of an adverse resolution to the enrollee's appeal;

(iii) The enrollee withdraws the request for an agency administrative hearing; or

(iv) The office of administrative hearings (OAH) issues a hearing decision adverse to the enrollee.

(c) If the final resolution of the appeal upholds the health plan's adverse benefit determination, the health plan may recover from the enrollee the amount paid for the services provided to the enrollee for the first 60 calendar days after the agency or the office of administrative hearings (OAH) received a request for an agency administrative hearing, to the extent that services were provided solely because of the requirement for continuation of services.

(d) Expenditures for continued enrollee services under this section are subject to legislative funding provided specifically for apple health expansion coverage and the health plan's obligation to continue the services will terminate when available funding for apple health expansion is exhausted.

(10) Effect of reversed resolutions of appeals.

(a) **Services not furnished while an appeal is pending.** If the health plan or a final order entered by the agency's board of appeals, as defined in chapter 182-526 WAC, or an independent review organization (IRO) reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the health plan must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires, but not later than 72 hours from the date it receives notice reversing the determination.

(b) **Services furnished while the appeal is pending.** If the health plan reverses a decision to deny authorization of services or the denial is reversed through an IRO or a final order of OAH or the board of appeals and the enrollee received the disputed services while the appeal was pending, the health plan must pay for those services.

(11) **Available resources exhausted.** Any appeals, independent review, or agency administrative hearing process related to a request to authorize or pay for a service will terminate when the available funding for apple health expansion coverage is exhausted, since services cannot be authorized or paid for without funding, regardless of medical necessity.

NEW SECTION**WAC 182-525A-0900 Enrollee request for a second medical opinion.**

(1) A health plan enrollee has the right to a timely referral for a second opinion upon request when:

(a) The enrollee needs more information about treatment recommended by the provider or health plan; or

(b) The enrollee believes the health plan is not authorizing medically necessary care.

(2) A health plan enrollee has a right to a second opinion from a participating provider. At the health plan's discretion, a clinically appropriate nonparticipating provider who is agreed upon by the health plan and the enrollee may provide the second opinion.

NEW SECTION

WAC 182-525A-1000 Quality of care. To assure that health plan enrollees receive quality health care services, the agency requires health plans to comply with quality improvement standards detailed in the agency's health plan contract. Health plans must:

(1) Have a clearly defined quality organizational structure and operation, including a fully operational quality assessment, measurement, and improvement program;

(2) Have effective means to detect overutilization and underutilization of services;

(3) Maintain a system for provider and practitioner credentialing and recredentialing;

(4) Ensure that health plan subcontracts and the delegation of health plan responsibilities align with agency standards;

(5) Ensure health plan oversight of delegated entities responsible for any delegated activity to include:

(a) A delegation agreement with each entity describing the responsibilities of the health plan and the entity;

(b) Evaluation of the entity before delegation;

(c) An annual evaluation of the entity; and

(d) Evaluation or regular reports and follow-up on issues that are not compliant with the delegation agreement or the agency's health plan contract specifications;

(6) Cooperate with an agency-contracted, qualified independent external quality review organization (EQRO) conducting review activities;

(7) Have an effective mechanism to assess the quality and appropriateness of care furnished to enrollees with special health care needs;

(8) Assess and develop individualized treatment plans for enrollees with special health care needs which ensure integration of clinical and nonclinical disciplines and services in the overall plan of care;

(9) Submit annual reports to the agency on performance measures as specified by the agency;

(10) Maintain a health information system that:

(a) Collects, analyzes, integrates, and reports data as requested by the agency;

(b) Provides information on utilization, grievances and appeals, and other areas as defined by the agency;

(c) Retains enrollee grievance and appeal records for a period of no less than 10 years;

(d) Collects data on enrollees, providers, and services provided to enrollees through an encounter data system, in a standardized format as specified by the agency; and

(e) Ensures data received from providers is adequate and complete by verifying the accuracy and timeliness of reported data and screening the data for completeness, logic, and consistency.

(11) Conduct performance improvement projects designed to achieve significant improvement, sustained over time, in clinical care outcomes and services, and that involve the following:

(a) Measuring performance using objective quality indicators;

(b) Implementing system changes to achieve improvement in service quality;

(c) Evaluating the effectiveness of system changes;

(d) Planning and initiating activities for increasing or sustaining performance improvement;

(e) Reporting each project status and the results as requested by the agency; and

(f) Completing each performance improvement project timely so as to generally allow aggregate information to produce new quality of care information every year;

(12) Ensure enrollee access to health care services;

(13) Ensure continuity and coordination of enrollee care; and

(14) Maintain and monitor availability of health care services for enrollees.

NEW SECTION

WAC 182-525A-1100 Notice requirements. The notice requirements in chapter 182-518 WAC apply to Washington apple health expansion. However, when available funds are exhausted, benefits are terminated, and the agency sends notice to enrollees in accordance with WAC 182-518-0025 (1), (2), and (3). Continued coverage of apple health expansion benefits is not available.

NEW SECTION

WAC 182-525A-1200 Enrollee rights. Washington apple health expansion enrollees have the rights described in WAC 182-503-0100, as applicable, and WAC 182-538-180, as applicable.

OTS-5228.3

Chapter 182-525B WAC WASHINGTON APPLE HEALTH EXPANSION OUTPATIENT DRUG PROGRAM

NEW SECTION

WAC 182-525B-0100 Introduction. The rules in this chapter are applicable to the Washington apple health expansion outpatient drug program. Chapter 182-530 WAC is not applicable to apple health expansion, except for the definitions from WAC 182-530-1050 that are incorporated by reference into this chapter as identified in WAC 182-525B-0300.

NEW SECTION

WAC 182-525B-0200 Overview. (1) The Washington apple health expansion outpatient drug program provides medically necessary outpatient drugs, drug-related supplies, and devices to apple health expansion enrollees based on agency rules.

(2) The agency determines the outpatient drugs, vitamins, minerals, drug-related supplies, and devices that are covered under apple health expansion.

(3) The apple health expansion outpatient drug program covers outpatient drugs, vitamins, minerals, drug-related supplies, and devices when:

(a) The items are designated as covered for apple health expansion on the agency's apple health expansion preferred drug list. For covered outpatient drugs, vitamins, minerals, drug-related supplies, and devices, refer to WAC 182-525B-0500. For noncovered outpatient drugs, vitamins, minerals, drug-related supplies, and devices, refer to WAC 182-525B-0600; or

(b) The items are prescribed by a practitioner with prescriptive authority (also known as "prescriber," as defined in WAC 182-525B-0300), unless covered without a prescription as described in WAC 182-525B-0500 for family planning and emergency contraception; and

(c) When the prescriber is a provider:

(i) With an approved core provider agreement;

(ii) Who is enrolled as a servicing provider on an approved core provider agreement; or

(iii) Who is enrolled as a nonbilling provider.

NEW SECTION

WAC 182-525B-0300 Definitions. In addition to the definitions and abbreviations found in chapter 182-500 WAC, the following definitions apply to this chapter:

"Apple health expansion preferred drug list (PDL)" - The list of all drugs in drug classes and each drug's preferred or nonpreferred status as approved by the agency director or designee.

"Compendia of drug information" - See WAC 182-530-1050.

"Drug-related supplies and devices" - See WAC 182-530-1050.

"Medically accepted indication" - See WAC 182-530-1050.

"National drug code (NDC)" - See WAC 182-530-1050.

"Nonpreferred drug" - A drug within a therapeutic class of drugs on the apple health expansion PDL that has not been selected as a preferred drug.

"Obsolete NDC" - See WAC 182-530-1050.

"Outpatient drug" - A prescription or OTC drug, vitamin, mineral, enzyme, or supplement. Covered outpatient drugs will be listed on the apple health expansion PDL.

"Over-the-counter (OTC) drugs" - Outpatient drugs that do not by any applicable federal or state law or regulation require a prescription before they can be sold or dispensed.

"Pharmacist" - See WAC 182-530-1050.

"Pharmacy" - See WAC 182-530-1050.

"Practice of pharmacy" - The practice of and responsibility for:

- (a) Accurately interpreting prescription orders;
- (b) Compounding drugs;
- (c) Dispensing, labeling, administering, and distributing drugs and devices;
- (d) Providing drug information to the enrollee that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;
- (e) Monitoring of drug therapy and use;
- (f) Proper and safe storage of drugs and devices;
- (g) Documenting and maintaining records;
- (h) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and
- (i) Participating in drug use reviews and drug product selection.

"Practitioner" - See WAC 182-530-1050.

"Preferred drug" - A drug within a therapeutic class of drugs on the apple health expansion PDL that has been selected as a preferred drug.

"Prescriber" - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-945-350 for pharmacists' prescriptive authority.

"Prescription" - An order for drugs, vitamins, minerals, enzymes or devices issued by a prescriber, in the course of the prescriber's professional practice, for a legitimate medical purpose.

"Prescription drugs" - Drugs, vitamins, minerals, or enzymes required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

"Terminated NDC" - See WAC 182-530-1050.

NEW SECTION

WAC 182-525B-0400 Requirements for prescribing and dispensing controlled substances—Prescription monitoring program (PMP). This section identifies the steps prescribers must take before prescribing a controlled substance. This includes the steps pharmacists must take when dispensing a controlled substance from an outpatient pharmacy to check a Washington apple health expansion enrollee's prescription drug history in the prescription monitoring program (PMP) described in chapter 246-470 WAC.

(1) **PMP review required.** Except as identified in subsection (4) of this section, a prescriber, before prescribing, and a pharmacist, when dispensing, must check all the apple health expansion enrollee's

current prescriptions in the PMP, including any prescriptions not paid for under apple health expansion.

(2) **Retrieval by delegates allowed.** A prescriber or pharmacist may delegate the retrieval of the apple health expansion enrollee's PMP information to anyone in their practice setting with authorization to access the PMP, so long as the prescriber or pharmacist reviews all the enrollee's current prescriptions in the PMP before prescribing or when dispensing a controlled substance.

(3) **Documentation.** The prescriber and pharmacist must document in the apple health expansion enrollee's record the date and time of the:

(a) Retrieval of information from the PMP; and

(b) Review of information from the PMP.

(4) **Good faith effort exception.**

(a) If a prescriber, pharmacist, or their delegate is unable to access the apple health expansion enrollee's record in the PMP after a good faith effort, that attempt must be documented in the enrollee's record.

(b) A prescriber or pharmacist must document the reason or reasons they were unable to conduct the check in the apple health expansion enrollee's medical record.

NEW SECTION

WAC 182-525B-0500 Covered drugs, drug-related supplies, and devices. (1) The Washington apple health expansion outpatient drug program covers:

(a) Prescription and over-the-counter (OTC) drugs, vitamins, and minerals as defined in WAC 182-525B-0300, subject to the limitations and requirements in this chapter, when:

(i) The item is approved by the Food and Drug Administration (FDA);

(ii) The item is for a medically accepted indication as defined in WAC 182-525B-0300;

(iii) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS) or the agency has exempted the drug from the rebate requirement based on a determination that the nonrebateable product is medically necessary and essential to the health of the enrollees; and

(iv) The item is not excluded from coverage under WAC 182-525B-0600.

(b) Drugs and drug-related supplies and devices used for family planning per chapter 182-532 WAC are as follows:

(i) OTC drugs, devices, and drug-related supplies used for family planning without a prescription when the agency determines it necessary for enrollee access and safety;

(ii) Contraceptive patches, contraceptive rings, and oral contraceptives, excluding emergency contraception, when dispensed in no less than a one-year supply, unless:

(A) A smaller supply is directed by the prescriber;

(B) A smaller supply is requested by the enrollee; or

(C) The pharmacy does not have adequate stock.

(iii) Family planning drugs that do not meet the federal drug rebate requirement in (a)(iii) of this subsection, on a case-by-case basis.

(c) Prescription or OTC vitamins, minerals, and enzymes listed as preferred on the apple health expansion preferred drug list (PDL) that are:

(i) Prenatal vitamins, iron replacement, or folic acid, when prescribed and dispensed to a pregnant person;

(ii) Recommended by the United States Preventive Services Task Force with an A or B rating;

(iii) Fluoride for enrollees under age 21; or

(iv) Taken for a clinically documented medical condition that causes vitamin, mineral, or enzyme deficiencies, and the deficiency cannot be treated through other dietary interventions.

(d) OTC drugs listed on the apple health expansion PDL that the agency determines to be the least costly therapeutic alternative for a medically accepted indication;

(e) Drug-related supplies and devices that are:

(i) Essential for the administration of an outpatient drug;

(ii) Not excluded from coverage under WAC 182-525B-0600; and

(iii) Medical equipment and supplies covered under chapter 182-543 WAC and available at retail pharmacies, when published on the apple health expansion PDL.

(f) Preservatives, flavoring, or coloring agents, only when used as a suspending agent in a compound;

(g) Prescription drugs and OTC drugs listed as preferred on the apple health expansion PDL to promote tobacco/nicotine cessation; and

(h) Drugs approved by the FDA under an emergency use authorization during a public health emergency.

(2) Apple health expansion does not cover or pay for any drug, vitamin, mineral, enzyme, or drug-related supply or device not meeting the coverage requirements under this section.

NEW SECTION

WAC 182-525B-0600 Noncovered outpatient drugs, drug-related supplies, and devices. (1) The agency does not cover a drug that is:

(a) Not approved by the Food and Drug Administration (FDA);

(b) Prescribed for a condition that is not a medically accepted indication, including a dose or dosage schedule that is not FDA-approved or supported in the Compendia;

(c) Prescribed for:

(i) Weight loss or gain;

(ii) Infertility, frigidity, or impotency;

(iii) Cosmetic purposes or hair growth; or

(iv) Sexual or erectile dysfunction, unless such drugs are used to treat a condition other than sexual or erectile dysfunction and approved by the FDA.

(d) Designated by the FDA as a less-than-effective drug;

(e) An outpatient drug for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee;

(f) An outpatient drug, drug-related supply, or device:

(i) With an obsolete National Drug Code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have a valid NDC approved by the FDA.

- (g) A prescription or OTC drug, vitamin, mineral, or enzyme except as allowed under WAC 182-525B-0500 (1)(h);
 - (h) A drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children);
 - (i) Listed as not covered on the Washington apple health expansion preferred drug list (PDL); or
 - (j) A free pharmaceutical sample.
- (2) A noncovered drug may be requested through the exception to rule process as described in WAC 182-501-0160.

NEW SECTION

WAC 182-525B-0700 Washington apple health expansion preferred drug list (PDL). (1) Outpatient drugs in a drug class on the Washington apple health expansion preferred drug list (PDL) may be designated as preferred, nonpreferred, or not covered drugs.

(2) The agency director or designee makes the final selection of drugs or drug classes included on the apple health expansion PDL.

(3) The agency determines the preferred, nonpreferred, and not covered status of outpatient drugs on the apple health expansion PDL.

(4) A nonpreferred drug may:

(a) Require trial and failure of one or more preferred drugs before the nonpreferred drug will be considered for authorization; or

(b) Require authorization for medical necessity as established by the agency or health plan criteria for the nonpreferred drug instead of the preferred drug.

(5) Drugs in a drug class on the apple health expansion PDL may require authorization regardless of preferred or nonpreferred status.

(6) When a preferred innovator drug or biological product on the apple health expansion PDL loses its patent, the agency may:

(a) Designate an available, equally effective, generic equivalent, or biosimilar biological product as a preferred drug; and

(b) Make the innovator drug or biological product nonpreferred.

OTS-5180.3

AMENDATORY SECTION (Amending WSR 21-11-039, filed 5/12/21, effective 6/12/21)

WAC 182-526-0005 Purpose and scope. (1) This chapter:

(a) Describes the general hearing rules and procedures that apply to((+)

~~(i))~~ the resolution of disputes between an appellant and the health care authority (HCA), an agency designee, or an HCA-contracted managed care organization (MCO) or health plan, or a dispute involving an assessed overpayment by HCA against an HCA-contracted MCO or health plan, involving:

(i) Medical services programs established under chapter 74.09 RCW including, but not limited to, Washington apple health fee-for-service, integrated managed care ((in)) (see chapters 182-538((7

~~182-538A,~~) and 182-538B WAC), and crisis and noncrisis services ((in)) (see chapter 182-538C WAC); ((and))

((ii)) ~~((The resolution of disputes between an appellant and the health care authority (HCA) arising from))~~ Washington apple health expansion (see chapters 182-525, 182-525A, and 182-525B WAC); and

((iii)) The prescription drug pricing transparency program in chapter 182-51 WAC and the all payer health care claims database rules in chapter 182-70 WAC.

(b) Supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(c) Establishes rules encouraging informal dispute resolution between HCA, its authorized agents, or an HCA-contracted ~~((managed care organization -))~~ MCO ~~((+))~~ or health plan, and people or entities who disagree with its actions.

~~((+))~~ (2) Unless specifically excluded by this chapter or program rules, this chapter regulates all hearings involving:

(a) Medical services programs established under chapter 74.09 RCW including, but not limited to, apple health fee-for-service, managed care in chapters 182-538 ~~((, 182-538A,))~~ and 182-538B WAC ~~((,))~~ and crisis and noncrisis services in chapter 182-538C WAC ~~((, unless specifically excluded by this chapter or program rules));~~

(b) Apple health expansion eligibility or services as described in chapters 182-525, 182-525A, and 182-525B WAC; and

(c) Prescription drug pricing transparency program in chapter 182-51 WAC and the all payer health care claims database rules in chapter 182-70 WAC.

~~((+))~~ (3) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

~~((+))~~ (4) If there is a conflict between this chapter and specific program rules, the specific program rules prevail. HCA's hearing rules and program rules prevail over the model hearing rules in chapter 10-08 WAC.

~~((+))~~ (5) The hearing rules in this chapter do not apply to the public employees benefits board or the school employees benefits board programs (see chapters 182-16 and 182-32 WAC).

WSR 24-21-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-232—Filed October 11, 2024, 10:35 a.m., effective October 11, 2024, 10:35 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: The Columbia River technical advisory committee (TAC) recently updated the upriver Chinook return to the Columbia River mouth. Current in-season catch and stock composition projections indicate that sufficient Chinook ESA-impacts remain available to nontreaty commercial fisheries. This rule sets an additional six periods for the late fall nontreaty commercial gill net fishery upstream of the Lewis River confluence. These fisheries are consistent with the 2024 nontreaty fall fisheries plan that was developed in conjunction with the annual North of Falcon management process, the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 18, August 14, September 4, September 10, September 18, September 25, October 1, and October 10, 2024. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

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

Date Adopted: October 11, 2024.

Amy H. Windrope
 Kelly Susewind
 Director

NEW SECTION

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

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

(1) Mainstem Gillnet:

Open Dates	Open Days	Open Time	Open Duration
Immediately - November 1	Sunday, Tuesday, Thursday (nights)	7:00 pm - 7:00 am	12 hrs

(a) **Area:** Catch Reporting Areas 1E and 1D (Zones 4-5). The deadline at the lower end of Area 1E (Zone 4) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore

easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy River.

(b) **Gear:** Drift gillnets only. 8-inch minimum mesh size restriction. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Lighted buoys required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(2) Emerging Commercial Fishery - Mainstem Seine:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday - Friday	6:00 am - 5:00 pm	11 hrs

(a) **Area:** Catch Reporting Areas 1A, 1B, and 1C (Zones 1-3). The deadline at the upper end of Area 1C (Zone 3) is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Elokomina-B, Cowlitz, Kalama-B, Lewis-B and Select Area commercial fishing sites.

(b) **Gear:** Beach seines or purse seines only. Only one seine net per primary vessel. Mesh size restricted to a 3.5-inch maximum (inside of knot to outside of knot using hand tension stretched measure). Net material to consist of 3-strand nylon; twine size ≥#12. Seines may include a bunt of 1.0-2.0 inch knotless mesh. Net length not to exceed 200 fathoms (NOT including associated lead nets). Net depth not to exceed 200 meshes (approximately 50 feet). Seine and lead lines may not be connected. Lead nets must be retrieved daily. No restrictions on corkline, leadline or use of stringers and slackers. A chafing strip panel consisting of non-monofilament webbing (such as nylon seine web or polyethylene trawl web) is allowed on bottom of net; maximum panel depth is 5-feet. Chafing mesh not to exceed 3.5-inch stretched measure for beach and 5-inch stretched measure for purse. There are no restrictions associated with hangings used to connect the net to the chafing panel or the net or chafing panel to the leadline or corkline. Red corks are required at 25-fathom intervals and red corks must be in contrast to the corks used in the remainder of the net. Lead net (optional for both gear types). Only one lead net is allowed per fishing operation. Lead nets may not exceed 100 fathoms in length. Lead nets may be constructed of 3-strand nylon webbing, twine size ≥#12, ≤3.5-inch mesh size (inside of knot to outside of knot using hand tension stretched measure) OR nylon or cotton webbing with mesh size ≥14-inches. Lead nets may not be vertically slackened. Seine net and lead net may not be connected. Lead nets must be retrieved daily.

(c) **Allowable Possession and Sales:** Subject to IFQs as defined on individual permits. Except as noted below, allowable sales limited to adipose fin-clipped Chinook, adipose fin-clipped Coho, sockeye, and pink salmon and shad. All legal adult Chinook and legal adult Coho caught must be kept and sold. Adult salmon defined in WAC 220 300-010. Retained Chinook and Coho must have a healed scar at the location of the adipose-clipped fin.

(d) **Handling of Catch:** Hand sorting or use of a knotless dip net is required when sorting fish. All fish must be sorted and/or released prior to removing entire seine from water. Dry sorting not permitted.

(e) **Sort time not to exceed 75 minutes:**

(i) Beach seine - defined as the elapsed time from when the outer towed end of the net first contacts the shore or block until the net is emptied of fish.

(ii) Purse Seine - defined as the elapsed time from when all rings are pursed and out of the water until the net is emptied of fish.

(f) **Observer Program:** Agency observers must be present during all fishing operations.

(3) Mainstem Tangle Net:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Mondays, Tuesdays, Wednesdays, Thursdays	4:00 am - 10:00 pm	18 hrs
Immediately - October 25	Fridays	4:00 am - 6:00 pm	14 hrs

(a) **Area:** SMCRA 1A ,1B, and 1C. Upper deadline defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries include Elokomina-A, Cowlitz River, Kalama-A and Lewis-A.

(b) **Gear:** Drift nets only. Maximum mesh size is 3.75 inches. Un-slackened, single-wall, multi-filament floater nets only. Monofilament nets are not allowed. Net length not to exceed 150 fathoms. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline. The use of slackers or stringers to slacken the net vertically is prohibited. Rip lines are allowed providing they do not vertically slacken the net.

(c) **Allowable Sales:** Salmon (except chum), and shad; all coho must be adipose fin-clipped.

(d) **Regulations:** Regulations typically in place for mark-selective commercial fisheries are in effect, including but not limited to: net length, use of recovery boxes, limited soak times, red corks, tangle-net certification, etc.

(e) **Soak times,** defined as the time elapsed from when the first of the net web is deployed into the water until the web is fully retrieved from the water, must not exceed 30 minutes.

(f) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers that meet the flow and size requirements standard for the winter/spring season. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. All non-legal fish must be released immediately unharmed to the river or placed into an operating recovery box. All non-legal salmon and all steelhead that are bleeding, lethargic or appear lifeless must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(g) **Measuring mesh size:** Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one knot to the inside of the opposite knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(h) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live capture certification.

(i) **Multiple net rule:** Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

(k) **24-hour** quick reporting required is for Washington wholesale dealers, per WAC 220-352-315. Oregon buyers are required to electronically submit fish receiving tickets pursuant to OAR 635-006-0210. Electronic fish tickets must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours.

(4) Tongue Point/South Channel Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

(ii) The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG

light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be on-board.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

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

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be on-board.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may

be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(5) Blind Slough Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 31	Monday, Tuesday, Wednesday, Thursday (night)	6:00 p.m. - 10:00 a.m.	16 hrs

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

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(6) Deep River Select Area:

Open Dates	Open Days	Open Time	Open Duration
Immediately - October 11	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 14 - October 31	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 4 - November 28	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

(a) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically au-

thorized for use may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum) and shad.

(7) **24-hour quick reporting** is in effect for Washington buyers WAC 220-352-315. Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210.

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

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

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

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

REPEALER

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

WAC 220-358-03000K Columbia River seasons below
Bonnevillle. (24-221)

WSR 24-21-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-231—Filed October 11, 2024, 10:38 a.m., effective October 11, 2024]

Effective Date of Rule: October 11, 2024.

Purpose: The purpose of this emergency rule is to extend recreational Chinook retention seasons in the lower Columbia River.

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

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

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

Reasons for this Finding: The Columbia River technical advisory committee (TAC) recently updated the upriver Chinook return to the Columbia River mouth. Current in-season catch and stock composition projections indicate that sufficient Chinook Endangered Species Act (ESA) impacts remain available which allows for additional Chinook retention in these areas. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowable ESA impact rate and per Washington Fish and Wildlife Policy C-3630. This rule conforms Washington state rules with Oregon state rules and is consistent with Compact Action on September 10, September 18, September 25, and October 10, 2024.

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

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

There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: October 11, 2024.

Amy H. Windrope
Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000Z Freshwater exceptions to statewide rules—Columbia River. Effective October 11 through December 31, 2024, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a true north-south line through Buoy 10 upstream to Highway 395 Bridge at Pasco, shall be modified during the dates listed and as described below. All year-round Closed Waters areas remain in effect. Other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From a true north-south line through Buoy 10 upstream to a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank:

(a) Effective immediately through October 31, 2024: Salmon and steelhead. Daily limit 6. Up to 3 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than hatchery coho.

(b) Effective November 1 through December 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook and no more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

(2) From a line at the west end of Puget Island projected from green navigation marker 39 on the Washington bank to green navigation marker 41, then to red navigation marker 42, and terminating at red navigation marker 44A on the Oregon bank upstream to Beacon Rock:

(a) Effective immediately through October 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective November 1 through December 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chi-

nook and 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

(3) From Beacon Rock upstream to a line from the Hamilton Island boat ramp to an Oregon boundary marker on the westernmost point of Robins Island to a marker on the Oregon mainland shore:

Effective immediately through October 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(4) From a line from the Hamilton Island boat ramp to an Oregon boundary marker on the westernmost point of Robins Island to a marker on the Oregon mainland shore upstream to a point 600 feet below the fish ladder at the new Bonneville Dam Powerhouse:

(a) Effective immediately through October 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(b) Effective November 1 through December 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook and 2 hatchery steelhead. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

(5) From Bonneville Dam upstream to the Hood River Bridge:

(a) Effective immediately through October 15, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho. Anti-snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through October 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(c) Effective November 1 through December 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook and no more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, hatchery coho and hatchery steelhead.

(6) From Hood River Bridge upstream to The Dalles Dam:

(a) Effective immediately through October 15, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and coho. Anti-snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through October 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and hatchery coho.

(c) Effective November 1 through December 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adults including no more than 1 Chinook and no more than 2 hatchery steelhead may be retained. Release all salmon and steelhead other than Chinook, coho and hatchery steelhead.

(7) From The Dalles Dam upstream to Highway 395 Bridge at Pasco:

(a) Effective immediately through October 15, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and coho. Anti-snagging rule in effect. Only fish hooked inside the mouth may be retained.

(b) Effective October 16 through December 31, 2024: Salmon and steelhead: Daily limit 6. Up to 2 adult salmon including no more than 1 Chinook may be retained. Release all salmon and steelhead other than Chinook and coho.

REPEALER

The following section of Washington Administrative Code is repealed, effective October 11, 2024:

WAC 220-312-06000W Freshwater exceptions to statewide rules—Columbia River. (24-206)

WSR 24-21-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-233—Filed October 11, 2024, 2:01 p.m., effective October 11, 2024, 2:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to extend recreational salmon seasons for Cascade River and Skagit River, and to temporarily close a portion of Skagit River to all fishing.

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

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

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

Reasons for this Finding: This rule is necessary to extend recreational salmon seasons in Cascade and Skagit rivers and to set a temporary all species closure in a portion of Skagit River. Cascade and Skagit rivers' coho returns are greater than forecast and are sufficient to allow for an extension of recreational fishing seasons. The temporary closure in Skagit River from Gilligan Creek to Baker River is needed to avoid gear conflicts between recreational anglers and treaty fishers.

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: October 11, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Z Freshwater exceptions to statewide rules—Puget Sound.

Effective immediately, through December 31, 2024, the following provisions of WAC 220-312-040 regarding recreational fishing seasons for the Cascade River and Skagit River, shall be modified as described

below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

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

(a) Immediately through October 31: Gamefish and salmon open daily:

(i) Anti-snagging rules.

(ii) Night closure.

(iii) Salmon: Daily limit 4 coho. Release all salmon other than coho.

(iv) Game fish: Statewide length/daily limit, except:

(A) Cutthroat trout and wild rainbow trout: Minimum length 14 inches.

(B) Dolly Varden/bull trout: Minimum length of 20 inches, count as part of the trout daily limit.

(b) November 1 through November 30: Salmon open daily:

(i) Salmon: Daily limit 4 coho. Release all salmon other than coho.

(ii) Anti-snagging rules.

(iii) Night Closure.

(2) Skagit River (Skagit Co.):

(a) Mouth (a line projected from the terminus of the jetty with McGlinn Island to the white monument on the easterly end of Ika Island, then to a white monument on the westerly end of Craft Island, then to a white monument near the corner of the levee on the westerly side of Dry Slough, and then to a white monument on the easterly side of Tom Moore Slough) to Gilligan Creek:

Salmon: Open immediately through December 31: Daily limit 2. Release all salmon other than coho. Night Closure in effect.

(b) Gilligan Creek to Baker River:

(i) All species: Closed October 13 through 11:59 a.m. October 14.

(ii) Salmon:

(A) Open immediately through October 12: Daily limit 2. Release all salmon other than coho. Night Closure in effect.

(B) Open 12:00 p.m. October 14 through December 31, 2024: Daily limit 2. Release all salmon other than coho. Night Closure in effect.

(c) Baker River to Cascade River Rd. (Marblemount Bridge):

Salmon: Open immediately through December 31: Daily limit 2. Release all salmon other than coho. Night Closure in effect.

REPEALER

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

WAC 220-312-04000Y Freshwater exceptions to statewide rules—Puget Sound. (24-226)

WSR 24-21-070
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-235—Filed October 14, 2024, 9:57 a.m., effective October 14, 2024, 9:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close fox trapping within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National forests to prevent accidental take of state endangered Cascade red fox.

Citation of Rules Affected by this Order: Amending WAC 220-417-010.

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

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

Reasons for this Finding: This rule is necessary to protect Cascade red fox population, which is listed as an endangered species in Washington state. There is insufficient time to adopt permanent rules; however, the department of fish and wildlife filed a rule publication (CR-102) under WSR 24-13-068 on June 14, 2024. This rule is interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: October 11, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-417-01000C Trapping seasons and regulations. Effective immediately, until further notice, the provisions of WAC 220-417-010 regarding trapping seasons for fox shall be modified as described below. All other provisions of WAC 220-417-010 not addressed herein remain in effect unless otherwise amended by emergency rule:

Fox trapping is CLOSED within the exterior boundaries of the Mount Baker-Snoqualmie, Okanogan, Wenatchee, and Gifford Pinchot National forests.

WSR 24-21-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-234—Filed October 14, 2024, 10:16 a.m., effective October 16, 2024]

Effective Date of Rule: October 16, 2024.

Purpose: The purpose of this emergency rule is to close recreational fishing in a portion of the Dungeness River.

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: Unseasonably dry weather has resulted in low water conditions in the Dungeness River system. This closure is necessary to protect Chinook eggs from disruption until river flows are higher and the eggs are more fully developed.

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: October 11, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000M Freshwater exceptions to statewide rules—Coast. Effective October 16 through October 22, 2024, provisions of WAC 220-312-020 regarding fishing seasons for the Dungeness River from the mouth to Woodcock Road Bridge, 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:

Dungeness River (Clallam Co.) from mouth to Woodcock Rd. Bridge:
All species: Closed.

WSR 24-21-078
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-237—Filed October 15, 2024, 2:00 p.m., effective October 15, 2024, 2:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will increase the adult coho portion of the recreational salmon daily limit in the Hanford Reach area of the Columbia River.

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

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

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

Reasons for this Finding: This emergency rule is necessary to increase the adult coho portion of the salmon daily limit in the Hanford Reach area. In-season observations indicate coho returns to Ringold Hatchery are sufficient to allow for an increase in the adult coho daily limit.

There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: October 15, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000A Freshwater exceptions to statewide rules—Columbia River. Effective immediately, through December 31, 2024, the provisions of WAC 220-312-060 regarding recreational salmon seasons from I-182 Bridge at Richland to the Old Hanford townsite powerline crossing, shall be modified as described below. All year-round Closed Waters areas remain in effect. Other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

From I-182 Bridge at Richland to the Old Hanford townsite power-line crossing:

Salmon: Daily limit 6. Up to 2 adults including no more than 1 adult Chinook may be retained. Release all salmon other than Chinook and coho.

WSR 24-21-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-236—Filed October 15, 2024, 2:02 p.m., effective October 16, 2024]

Effective Date of Rule: October 16, 2024.

Purpose: This emergency rule will close Chinook retention in North Fork Toutle River.

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

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

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

Reasons for this Finding: This emergency rule is necessary to close Chinook retention in North Fork Toutle River. Broodstock collection at the North Toutle hatchery is lower than anticipated. Modifying fisheries to restrict Chinook retention will help the hatchery meet broodstock collection goals while allowing continued fishing for coho salmon. 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: October 15, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000G Freshwater exceptions to statewide rules—Southwest. Effective October 16 through November 30, 2024, the provisions of WAC 220-312-030 regarding Toutle River, North Fork salmon fishing seasons shall be modified during times and areas as described below. All other provisions of WAC 220-312-030, not addressed herein, remain in effect unless otherwise amended by emergency rule:

Toutle River, North Fork (Cowlitz Co.): From the mouth to boundary signs posted 400 feet downstream of the fish collection facility:

Salmon: Daily limit 6 hatchery coho, including no more than 3 adults. Release all salmon other than hatchery coho.

WSR 24-21-081

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed October 15, 2024, 4:43 p.m., effective November 11, 2024]

This memo serves as notice that effective November 11, 2024, the pharmacy quality assurance commission (commission) is rescinding the CR-103E for Naloxone nasal spray as over-the-counter status, WAC 246-945-030 and 246-945-034, which was filed on August 1, 2024, and published in WSR 24-16-085.

The commission is rescinding this CR-103E because permanent rule making has been completed to update these two WAC sections. The permanent rule was filed as WSR 24-21-069 on October 11, 2024, and becomes effective November 11, 2024.

Individuals requiring information on this rule should contact Ha-leigh Mauldin, pharmacy quality assurance commission program consultant, at PharmacyRules@doh.wa.gov.

Tami M. Thompson
Regulatory Affairs Manager

WSR 24-21-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-238—Filed October 16, 2024, 4:04 p.m., effective October 17, 2024]

Effective Date of Rule: October 17, 2024.

Purpose: This emergency rule will open commercial gillnet seasons in Willapa Bay commercial salmon areas 2T and 2M.

Citation of Rules Affected by this Order: Amending WAC 220-354-250.

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

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

Reasons for this Finding: This emergency rule is needed to open the commercial fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2T on October 17, 2024, and 2M on October 18, 2024. There appears to be a larger than expected run of chum returning to Willapa Bay based on recent landings. Currently, the commercial fishery has harvested 9,286 chum, or 29.1 percent of the predicted seasons total. The catch of natural origin coho is 3,015 to date, or 33.7 percent of predicted season total, and based on the coho in-season update model, the natural origin coho escapement is expected to be larger than preseason expectations.

The commercial fishery in these additional areas will target the abundant chum available in the harbor.

Managers will continue to assess the fishery each opener and make any changes if warranted. All other rules remain in effect.

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: October 16, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-25000K Willapa Bay salmon fall fishery. Notwithstanding the provisions of WAC 220-354-250, the following seasons for Willapa Bay commercial salmon areas 2T on October 17 and 2M on October 18, 2024, shall be modified as described herein. All other provisions of WAC 220-354-250, not contained herein remain in effect unless otherwise altered by emergency rule:

Gillnet gear may be used to fish for coho salmon, chum salmon, and adipose clipped Chinook salmon marked with a clipped adipose fin with a healed scar, during dates and times and in areas listed in the table below:

Area	Time	Date	Maximum Mesh Size
2T	7:00 a.m. through 7:00 p.m.	October 17, 2024	6.5"
2M	7:00 a.m. through 7:00 p.m.	October 18, 2024	6.5"

WSR 24-21-091
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 17, 2024, 8:57 a.m., effective October 18, 2024]

Effective Date of Rule: October 18, 2024.

Purpose: The department of social and health services (department) is extending emergency amendments to WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work? These amendments are necessary to better align aged, blind, or disabled (ABD) program rules with Social Security Administration's (SSA) revision of the definition of "past relevant work" by reducing the relevant work period from 15 to five years.

Citation of Rules Affected by this Order: Amending WAC 388-449-0080.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.100, 74.09.035, 74.09.530, 74.62.030.

Other Authority: C.F.R. 404.1560 and 416.965.

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

Reasons for this Finding: Emergency adoption of these rules is necessary to better align ABD program rules with SSA federal regulations. Effective June 22, 2024, SSA revised the definition of "past relevant work" by reducing the relevant work period from 15 to five years. Related emergency rules are in place via WSR 24-13-110.

The department is concurrently proceeding with the permanent rule-making process; refer to CR-101 filed as WSR 24-13-124 on June 20, 2024, and CR-102 filed as WSR 24-18-038 on August 26, 2024.

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

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

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

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

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

Date Adopted: October 15, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5038.1

AMENDATORY SECTION (Amending WSR 15-03-031, filed 1/12/15, effective 2/12/15)

WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?

(1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past (~~(fifteen)~~) five years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.

WSR 24-21-100
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-239—Filed October 17, 2024, 2:52 p.m., effective October 18, 2024]

Effective Date of Rule: October 18, 2024.

Purpose: This emergency rule closes commercial chum salmon fisheries in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A.

Citation of Rules Affected by this Order: Amending WAC 220-354-120, 220-354-160, and 220-354-180.

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

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

Reasons for this Finding: This emergency rule is needed to close scheduled openings for commercial gillnet, purse seine, and reef net fisheries in Puget Sound Management and Catch Reporting Areas 7 and 7A. The nontreaty share of chum catch for the season, in the 7/7A commercial fishery, has been attained. 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 3, 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: October 17, 2024.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

Effective October 18 through November 9, 2024, the following provisions of WAC 220-354-120 regarding commercial purse seine open periods in Puget Sound Salmon Management and Catch Reporting areas 7 and 7A shall be as follows. All other provisions of WAC 220-354-120 not contained herein remain in effect unless otherwise altered by emergency rule:

Area(s)	Date(s)	Open/Closed	Daily open period
7, 7A	10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9	Closed	NA

NEW SECTION

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

Effective October 18 through November 9, 2024, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Puget Sound Salmon Management and Catch Reporting areas 7 and 7A shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area(s)	Date(s)	Open/Closed	Daily open period	Minimum mesh size
7, 7A	10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9	Closed	NA	NA

NEW SECTION

WAC 220-354-18000H Reef net open periods. Notwithstanding the provisions of WAC 220-354-180, effective October 18 through November 9, 2024, it is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Open to reef net gear according to the times, dates and conditions contained herein:

Area(s)	Date(s)	Open/Closed	Daily open period
7	10/18-11/9	Closed	NA

REPEALER

The following section of Washington Administrative Code is repealed, effective October 18, 2024:

WAC 220-354-18000G Reef net open periods. (24-187)

WSR 24-21-107

EMERGENCY RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2024-03.01—Filed October 18, 2024, 1:11 p.m. effective October 18, 2024, 1:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (agency) is refiling two new sections, WAC 182-30-5000 School employees benefits board employer groups, and 182-30-5010 School board members participation in school employees benefits board health plans, as authorized in SSB 5275, chapter 13, Laws of 2023, 68th legislature, 2023 regular session.

Citation of Rules Affected by this Order: New WAC 182-30-5000 and 182-30-5010.

Statutory Authority for Adoption: SSB 5275, chapter 13, Laws of 2023, 68th legislature, 2023 regular session.

Other Authority: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This emergency rule making is necessary by establishing rules for the school employees benefits board employer groups and the school board members to implement SSB 5275, chapter 13, Laws of 2023, while the agency conducts the permanent rule-making process.

This filing continues the emergency rules under WSR 24-14-007, filed on June 21, 2024, to cover the gap between the expiration of the emergency rules and the effective date of the permanent rules. The agency adopted permanent rules under WSR 24-15-107 on July 22, 2024, to be effective January 1, 2025.

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 2, 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 2, Amended 0, Repealed 0.

Date Adopted: October 18, 2024.

Wendy Barcus
Rules Coordinator

OTS-4678.1

NEW SECTION**WAC 182-30-5000 School employees benefits board employer groups.**

(1) The following definitions apply to this section:

(a) "School employee" means an employee of an employee organization representing school employees and an employee of a tribal school as defined in RCW 28A.715.010.

(b) "Employer group" has the same meaning as defined in RCW 41.05.011 (9)(b).

(2) This section applies to all employer group applications received through December 31, 2024.

(3) Employer groups may apply to obtain school employees benefits board (SEBB) insurance coverage through a contract with the authority for SEBB insurance coverage to begin January 1, 2024, if they meet the group application process and requirements in a similar way as described in WAC 182-08-235. All documents and information required with the application must be submitted to the SEBB program.

(4) Employer groups that apply for participation in SEBB insurance coverage as described in subsection (3) of this section will have a one-time opportunity to request inclusion of retired employees who are covered under its retiree health plan at the time of application in a similar way as described in WAC 182-08-237. The retirees included will be enrolled in public employees benefits board (PEBB) retiree insurance coverage.

(5) The authority will review the employer group application based on the documents submitted by the employer group and the employer group evaluation criteria in a similar way as described in WAC 182-08-240.

(6) Employer groups must meet the participation requirements, including requirements for terminating participation in SEBB insurance coverage, in a similar way as described in WAC 182-08-245.

(7) Employer groups that enter into a contractual agreement with the authority on or after May 4, 2023, and whose contractual agreement is subsequently terminated, shall make a one-time payment to the authority for each of the employer group's retired or disabled employees who continue their participation in insurance plans and contracts under RCW 41.05.080 (1)(a)(ii).

(a) For each of the employer group's retired or disabled employees who will be continuing their participation, the authority shall determine the one-time payment by:

(i) Calculating the difference in cost between the rate charged to retired or disabled employees as described in RCW 41.05.080(2); and

(ii) The actuarially determined value of the medical benefits for retired and disabled employees who are not eligible for Parts A and B of medicare; and

(iii) Multiplying that difference by the number of months until the retired or disabled employee would become eligible for medicare.

(b) Employer groups shall not be entitled to any refund of the amount paid to the authority as described in this subsection.

(8) Employer groups may appeal a decision of the authority to deny an employer group application in a similar way as described in WAC 182-16-2060. The appeal must be sent to the SEBB appeals unit.

(9) School employees may appeal a decision made by the employer group in a similar way as described in WAC 182-16-2010(2), 182-16-2030(2), and chapter 182-32 WAC.

(10) All rules in chapters 182-30, 182-31, and 182-32 WAC apply to employer groups and enrollees, except for WAC 182-30-100, 182-30-120, 182-30-130, 182-30-140, 182-31-030, and 182-31-060.

NEW SECTION

WAC 182-30-5010 School board members participation in school employees benefits board health plans. (1) In this section, "school board member" means the board of directors of a school district as governed by chapter 28A.343 RCW or the board of directors of an educational service district as governed by chapter 28A.310 RCW.

(2) Effective January 1, 2024, a school board member may enroll in health plans offered by the school employees benefits board (SEBB) by self-paying the premium and applicable premium surcharges set by the health care authority (HCA). A school board member must enroll in SEBB medical, SEBB dental, and SEBB vision.

(3) A school board member may participate in SEBB health plan coverage for the duration of their elected term as a school board member as long as premiums and applicable premium surcharges continue to be paid as described in WAC 182-30-040 and may renew their participation at the start of each subsequent term as a school board member.

(4) A school board member may elect to enroll in SEBB health plan coverage by submitting the required forms and first premium payments to the SEBB program, and they must be received as follows:

(a) Currently elected or appointed school board members have between November 1, 2023, and February 29, 2024, to submit the required forms to the SEBB program.

(i) If the required forms are received on or before December 31, 2023, SEBB health plan coverage will begin January 1, 2024. The first premium payment and applicable premium surcharges must be received no later than 45 days after January 1, 2024.

(ii) If the required forms are received between January 1, 2024, and February 29, 2024, SEBB health plan coverage will begin the first day of the month following the day the SEBB program receives the required forms. The first premium payment and applicable premium surcharges must be received no later than 45 days after the 60-day election period ends.

(b) Newly elected school board members must submit their required forms no later than 60 days from the beginning of their elected or appointed term. The school board member's SEBB health plan coverage will begin the first day of the month following the day the SEBB program receives the required forms. The first premium payment and applicable premium surcharges must be received no later than 45 days after the 60-day election period ends.

(5) A school board member's account may incur the tobacco use premium surcharge or the spousal premium surcharge in addition to their monthly medical premium, and the subscriber must attest as described in WAC 182-30-050 (1) and (2). A premium surcharge will be applied if the school board member does not attest. If the attestation results in a premium surcharge, it will take effect the same date as SEBB medical begins.

(6) If a school board member is reelected for a new term consecutive from their previous term, the school board member will not be required to make new elections.

(7) A school board member may enroll eligible dependents as described in WAC 182-31-140 and must include the dependent's enrollment information on the required form. If the school board member elects to enroll a dependent in SEBB health plan coverage, the dependent will be enrolled in the same SEBB medical, SEBB dental, and SEBB vision plans as the school board member.

(8) If a school board member is terminated due to no longer paying the premium and applicable premium surcharges as described in WAC 182-30-040 (1)(c) or requests to voluntarily terminate their enrollment in SEBB health plan coverage prior to the end of their elected term, they are no longer eligible under this section to participate in SEBB health plan coverage for the remainder of their elected term. Those who request to voluntarily terminate their SEBB health plan coverage must do so in writing. SEBB health plan coverage will end on the last day of the month in which the SEBB program receives the termination request or on the last day of the month specified in the school board member's termination request, whichever is later. If the termination request is received on the first day of the month, SEBB health plan coverage will end on the last day of the previous month.

(9) A school board member may make enrollment changes on the same terms and conditions as a continuation coverage subscriber as described in WAC 182-30-085, 182-30-090, and 182-31-150.

(10) A school board member must update their address with the SEBB program as described in WAC 182-30-075.

(11) A school board member is limited to one enrollment per individual in SEBB health plan coverage, as described in WAC 182-31-070.

(12) A school board member may appeal a decision made by the SEBB program as described in chapter 182-32 WAC.

(13) The requirements in WAC 182-31-160 about National Medical Support Notice apply.

(14) A school board member may receive the SEBB wellness incentive as described in WAC 182-31-190.

(15) A school board member is not eligible for public employees benefits board retiree insurance coverage.

(16) The eligibility criteria for a school board member in this section replaces the eligibility criteria found in WAC 182-08-235, 182-08-245, 182-12-111, and 182-12-146 effective January 1, 2024.

WSR 24-21-109
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-241—Filed October 18, 2024, 4:38 p.m., effective October 24, 2024]

Effective Date of Rule: October 24, 2024.

Purpose: This emergency rule adjusts the Puget Sound purse seine test fishing schedule for week 43.

Citation of Rules Affected by this Order: Repealing WAC 220-354-12000J; and amending WAC 220-354-120.

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

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

Reasons for this Finding: This emergency rule is needed to adjust the preseason purse seine vessel test fishing schedule for the following vessels (F/V), the F/V Harbor Gem, the F/V Lisa Marie, and the F/V Tradition in week 43 from Wednesday to Thursday, to conduct test fisheries in the waters of Puget Sound Salmon Management and Catch Reporting Areas 9, 10, and 11. The schedule adjustment is necessary to accommodate changes to openings in Puget Sound commercial fisheries. These test fisheries are necessary to collect genetic stock identification data and to inform the in-season update models, and have been agreed to by comanagers. This information is necessary to sustainably manage Puget Sound chum fisheries. 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: October 18, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000M Puget Sound salmon—Purse seine—Open periods. Effective October 24 through November 27, 2024, the purse seine vessels the F/V Harbor Gem, the F/V Lisa Marie and the F/V Tradition may

carry out purse seine test fishery operations within Puget Sound Salmon Management and Catch Reporting Areas 9, 10 and 11.

(1) Allowed fishing period is from October 24 through November 27, 2024.

(2) Area 11: Only chum salmon may be retained. All other salmon species must be released. WDFW staff must be onboard vessel while fishing.

(3) Area 9/10 Apple Cove Test Fishery: Administered by Northwest Indian Fisheries Commission staff. All salmon species may be retained.

(4) Weekly schedule by Area and vessel:

Week	F/V Harbor Gem Apple Cove/Kingston Area 9/10	F/V Tradition Command Point; Area 11; West Pass	F/V Lisa Marie Point Beals; Area 11; East Pass
43	Thurs 10/24/2024	Thurs 10/24/2024	Thurs 10/24/2024
44	Wed 10/30/2024	Wed 10/30/2024	Wed 10/30/2024
45	Wed 11/06/2024	Wed 11/06/2024	Wed 11/06/2024
46	Wed 11/13/2024	Wed 11/13/2024	Wed 11/13/2024
47	Wed 11/20/2024		

REPEALER

The following section of Washington Administrative Code is repealed:

WAC 220-354-12000J Puget Sound salmon—Purse seine—Open periods. (24-224)

WSR 24-21-110
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 24-240—Filed October 18, 2024, 5:16 p.m., effective October 21, 2024]

Effective Date of Rule: October 21, 2024.

Purpose: This emergency rule adjusts commercial purse seine openings in Puget Sound Salmon Management and Catch Reporting Areas 10, 11, 12, and 12B.

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

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

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

Reasons for this Finding: This emergency rule is needed to adjust scheduled openings for commercial purse seine and gillnet fisheries in Puget Sound Management and Catch Reporting Areas 10, 11, 12, and 12B. To date, Puget Sound commercial chum catch and landings have been higher than expected. Additional time between openings is necessary to accommodate landing and processing capacity for the fleet. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 18, 2024.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-12000L Puget Sound salmon—Purse seine—Open periods. Effective October 21 through October 22, 2024, the following provisions of WAC 220-354-120 regarding commercial purse seine open periods in Puget Sound Salmon Management and Catch Reporting areas 10, 11, 12 and 12B shall be as follows. All other provisions of WAC 220-354-120 not contained herein remain in effect unless otherwise altered by emergency rule:

Area(s)	Date(s)	Open/Closed	Daily open period
10, 11, 12, and 12B	10/21	Closed	NA
10, 11, 12 and 12B	10/22	Open	7AM - 6PM

NEW SECTION

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

Effective October 22 through October 24, 2024, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Puget Sound Salmon Management and Catch Reporting areas 10, 11, 12, and 12B shall be as described below. All other provisions of WAC 220-354-160 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area(s)	Date(s)	Open/Closed	Daily open period	Minimum mesh size
10, 11, 12, and 12B	10/22	Closed	NA	NA
10, 11	10/23	Open	5PM - 9AM	6 1/4"
12, 12B	10/23	Open	7AM - 8PM	6 1/4"

WSR 24-21-138

EMERGENCY RULES

STATE BOARD OF HEALTH

[Filed October 22, 2024, 12:02 p.m., effective October 22, 2024, 12:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Testing of drinking water contaminants; state action levels (SALs) and state maximum contaminant levels (MCLs) in WAC 246-290-315.

The state board of health (board) has authority under RCW 43.20.050 to adopt rules for group A public water systems that are necessary to ensure safe and reliable public drinking water and to protect the public health. Chapter 246-290 WAC, Group A public water supplies, establishes standards and requirements for these water systems. The department of health (department) administers the rules.

To ensure safe drinking water, water must be tested for contaminants. The board establishes SALs and MCLs to ensure contaminate levels are below a certain threshold. The board sets criteria for the adoption of SALs and MCLs in WAC 246-290-315 and includes criteria that would apply upon federal adoption of MCLs. WAC 246-290-315(8) states that upon federal adoption of an MCL, the MCL will supersede a less stringent SAL and associated requirements, including monitoring and public notice.

The EPA published new federal standards for per- and polyfluoroalkyl substances (PFAS) on April 10, 2024, with an adoption date of June 25, 2024. These new standards include MCLs. This affects the board's rule and triggers the provision in WAC 246-290-315(8). The federal standards, however, have delayed effective dates for criteria and public health protections that are currently in place for Washington. According to the Washington state rules associated with the SALs, public water systems must notify customers of detections of PFAS above the SAL within 30 days of that detection. This is necessary to allow people the opportunity to protect themselves by using bottled water, securing a filter, or taking other measures. Thirty-day public notification is not effective for MCLs in the federal standard until April 2029. Without this amendment to WAC 246-290-315, customers served by group A public water systems will no longer be notified of dangerous levels of PFAS in their drinking water, which is a significant reduction in protections.

The board adopted an emergency rule on June 12, 2024, to amend WAC 246-290-315 such that the criteria would apply on the effective date of an MCL as set in the federal standard, not the adoption date, in order to maintain vital public health protections for drinking water safety. Along with the emergency rule making, the board initiated a permanent rule making to amend the rule language to align with the emergency provision and explore other protections. The CR-101, preproposal statement of inquiry, for the permanent rule making was filed as WSR 24-20-093 on September 30, 2024. This second emergency rule continues the emergency rule originally filed on June 24, 2024, as WSR 24-14-016, without change.

Citation of Rules Affected by this Order: Amending WAC 246-290-315.

Statutory Authority for Adoption: RCW 43.20.050 (2)(a).

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 com-

ment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The federal adoption date of the standards was June 25, 2024, at which point the MCLs and relative protections would have superseded the SALs. Because of the delayed effective date, currently active public health protections would have ended on that date. The board finds that emergency adoption of this rule is necessary to preserve public health.

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

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

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

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

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

Date Adopted: October 22, 2024.

Michelle A. Davis, MPA
Executive Director

OTS-5531.1

AMENDATORY SECTION (Amending WSR 21-23-097, filed 11/17/21, effective 1/1/22)

WAC 246-290-315 State action levels (SALs) and state maximum contaminant levels (MCLs). (1) The department shall consider the following criteria to select a contaminant for developing a SAL:

(a) Drinking water contributes to human exposure to the contaminant.

(b) The contaminant is known or likely to occur in public water systems at levels of public health concern. Sources of occurrence information include, but are not limited to:

(i) Washington state department of agriculture;

(ii) Washington state department of ecology; and

(iii) Monitoring results reported in accordance with 40 C.F.R. 141.35.

(c) The contaminant has a possible adverse effect on the health of persons exposed based on peer-reviewed scientific literature or government publications, such as:

(i) An EPA health assessment such as an Integrated Risk Information System assessment;

(ii) Agency for Toxic Substances and Disease Registry toxicological profiles;

(iii) State government science assessment; and

(iv) EPA guidelines for exposure assessment such as the EPA exposure factors handbook.

(d) A certified drinking water lab can accurately and precisely measure the concentration of the contaminant in drinking water at and below the level of public health concern using EPA-approved analytical methods.

(2) After consideration of the criteria in subsection (1) of this section, the department may develop a SAL based on the following:

(a) Evaluation of available peer-reviewed scientific literature and government publications on fate, transport, exposure, toxicity and health impacts of the contaminant and relevant metabolites;

(b) An assessment based on the most sensitive adverse effect deemed relevant to humans and considering susceptibility and unique exposures of the most sensitive subgroup such as pregnant women, fetuses, young children, or overburdened and underserved communities; and

(c) Technical limitations to achieving the SAL such as insufficient analytical detection limit achievable at certified drinking water laboratories.

(3) The state board of health shall consider the department's findings under subsections (1) and (2) of this section when considering adopting a SAL under this chapter.

(4) Contaminants with a SAL.

(a) If a SAL under Table 9 of this section is exceeded, the purveyor shall take follow-up action as required under WAC 246-290-320. For contaminants where the SAL exceedance is determined based upon an RAA, the RAA will be calculated consistent with other organic contaminants per WAC 246-290-320(6) or other inorganic contaminants per WAC 246-290-320(3).

TABLE 9
STATE ACTION LEVELS

Contaminant or Group of Contaminants	SAL	SAL Exceedance Based On:
Per- and polyfluoroalkyl substances (PFAS)		
PFOA	10 ng/L	Confirmed detection
PFOS	15 ng/L	Confirmed detection
PFHxS	65 ng/L	Confirmed detection
PFNA	9 ng/L	Confirmed detection
PFBS	345 ng/L	Confirmed detection

(b) If a system fails to collect and submit a confirmation sample to a certified lab within ten business days of notification of the sample results, or as required by the department, the results of the original sample will be used to determine compliance with the SAL.

(5) The department shall consider the following when developing a state MCL:

(a) The criteria in subsection (1) of this section;

(b) Whether regulating the contaminant presents a meaningful opportunity to reduce exposures of public health concern for persons served by public water systems;

(c) The need for an enforceable limit to achieve uniform public health protection in Group A public water systems; and

(d) The need for an enforceable limit to support source water investigation and clean-up of a contaminant in drinking water supplies by responsible parties.

(6) In addition to the requirements in subsection (5) of this section, the department shall:

(a) Meet the requirements of subsection (2) of this section;

(b) Comply with the requirements in RCW 70A.130.010 to establish standards for chemical contaminants in drinking water;

(c) Consider the best available treatment technologies and affordability taking into consideration the costs to small water systems; and

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs.

(7) The state board of health shall consider the department's findings under subsections (5) and (6) of this section and follow the requirements under chapters 34.05 and 19.85 RCW when adopting a state MCL under this chapter.

(8) (~~Upon federal adoption of an MCL~~) When a federal MCL takes effect, the federal MCL will supersede a SAL or a less stringent state MCL, and the associated requirements, including for monitoring and public notice. If the federally adopted MCL is less stringent than a SAL or state MCL, the board may take one of the following actions:

(a) Adopt the federal MCL; or

(b) Adopt a state MCL, at least as stringent as the federal MCL, using the process in subsections (6) and (7) of this section.

WSR 24-21-139
EMERGENCY RULES
BIG BEND
COMMUNITY COLLEGE

[Filed October 22, 2024, 12:22 p.m., effective November 27, 2024]

Effective Date of Rule: November 27, 2024.

Purpose: To bring Big Bend Community College's (college) student conduct code (code) into compliance with a new final rule governing sex discrimination grievance procedures recently adopted by the United States Department of Education and to update the code to ensure its prohibited conduct and procedures adequately protect the interests of the college community and the constitutional and procedural rights of individual students.

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

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: On April 19, 2024, the United States Department of Education released its final rule under Title IX. This rule requires institutions of higher education to adopt student disciplinary procedures addressing sex discrimination, including sex-based harassment. The deadline for implementing this new rule is August 1, 2024.

In addition to complying with the new final rule, the college is updating its student conduct code to address the standard of the model code. These new definitions of prohibited behavior and updated procedures are necessary to address conduct that may pose a threat to the general welfare of the college community and/or college operations and to protect the constitutional and procedural rights of individual students.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 16, 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: October 22, 2024.

Chandra Rodriguez
Executive Assistant to the President

OTS-5634.1

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

WAC 132R-04-015 Definitions. For the purposes of this chapter, terms are defined as follows:

(1) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code. The vice president of learning and student success will serve as the student conduct officer or may appoint a designee.

(2) "Conduct review officer" is a college administrator designated by the president to be responsible for ~~((receiving and facilitating))~~ reviewing or referring appeals ~~((from))~~ of student disciplinary actions ~~((and for reviewing initial decisions issued in a brief adjudicative proceeding. The conduct review officer shall be designated by the president and shall be authorized to grant appropriate relief upon review))~~ as specified in this code. The director of student programs will serve as the conduct review officer, unless otherwise designated by the president.

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

(4) "Disciplinary action" is the process by which discipline is imposed by the student conduct officer against a student for a violation of the student conduct code. A written or verbal warning is not disciplinary action.

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

(6) "Pregnancy or related conditions" means:

(a) Pregnancy, childbirth, termination of pregnancy, or lactation;

(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or

(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

(7) "Program" or "programs and activities" means all operations of the college.

(8) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.

(9) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.

~~((10))~~ (10) "Respondent" is the student ((against whom disciplinary action is being taken)) who is alleged to have violated the student conduct code.

~~((7))~~ (11) "Service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

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

(b) By sending the document ~~((to the college assigned))~~ by email, once one has been generated, and by certified mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed, if possible, and deposited into the mail.

~~((8))~~ (12) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review by a presiding officer. Unless expressly specified otherwise, filing shall be accomplished by:

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

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

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

~~((9))~~ (13) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

~~((10))~~ (14) "Student" is defined as all persons taking courses at or through the college, including those concurrently attending secondary or postsecondary institutions and college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses (excluding those trainings occurring through the Center for Business and Industry Service and the Japanese Agriculture Training Program), irrespective of modality. Persons who withdraw after allegedly violating the student code of conduct, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for the purposes of this chapter. "Continuing relationship" is established when a student is registered for an upcoming term or has indicated an intent to do so via a transaction, such as submitting a financial aid application for an upcoming term.

~~((11))~~ (15) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.

(16) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:

(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or

(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class, work, housing, or extra-curricular or any other activity regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.

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

~~((12))~~ (18) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations, and informal resolution processes, and coordinating supportive measures, in accordance with college policy.

(19) "Business day" means a weekday, excluding weekends and college holidays. If a time period is not specifically stated in business days, then calendar days apply.

~~((13))~~ (20) "Complainant" means ((any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the college when the college files the complaint)) the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:

(a) A student or employee; or

(b) A person other than a person or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.

~~((14))~~ (21) "Sexual misconduct" has the meaning ascribed to this term in WAC 132R-04-057.

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

WAC 132R-04-017 Statement of jurisdiction. (1) The student conduct code shall apply to conduct by students and student groups that occurs:

(a) On college premises; or

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

(c) To off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives or the ability of a student or staff to participate in the college's programs and activities.

(2) Jurisdiction extends to, but is not limited to, locations in which students or student groups are engaged in official college programs or activities including, but not limited to, foreign or domestic

travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities and college-sanctioned housing.

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

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

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

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-053 Authority. The Big Bend Community College (BBCC) board of trustees, acting according to RCW 28B.50.140(14), delegates to the president of the college the authority to administer student disciplinary action. Administration of the student disciplinary procedures is the responsibility of the vice president of learning and student success. The vice president of learning and student success will serve as the student conduct officer, or appoint a designee, except in the cases involving allegations of sex discrimination including sex-based harassment when the Title IX coordinator or designee will serve as the student conduct officer. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

WAC 132R-04-057 (~~(Student code of conduct violations.)~~) Prohibited student conduct. The college may impose sanctions against a student or student group who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit an act(s) of misconduct, which includes, but is not limited to, any of the following:

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

(a) Cheating includes, but is not limited to, any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes, but is not limited to, taking and using as one's own, without proper attribution, the ideas, writings, or work of another person, or artificial intelligence in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

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

(d) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

(e) This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for academic dishonesty.

(2) **Other dishonesty.** Acts of dishonesty include, but are not limited to:

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

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

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

(d) Knowingly making a false statement or submitting false information in relation, or in response, to a college academic or disciplinary investigation or process.

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

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

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

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

(5) **Cyber misconduct.** Cyber misconduct including, but not limited to: Cyberstalking, cyberbullying, or online harassment.

(a) Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, applications (apps), and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person.

(b) Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third-parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person.

Property for the purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

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

(8) **Weapons.** Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device or any other weapon apparently capable of producing bodily harm, unless previously authorized by the vice president of learning and student success. This policy does not apply to the possession of a personal protection spray device, as authorized by RCW 9.91.160. This policy is subject to the following exceptions:

(a) Commissioned law enforcement personnel in the state of Washington, legally authorized military personnel while in performance of their duties, and other persons or entities authorized by contract to carry firearms in the course of their employment;

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

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

(9) **Hazing.**

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

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

~~(ii) Any pastime or amusement engaged in with respect to such a student group; or~~

~~(iii) That causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.~~

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

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

~~(ii) Humiliation by ritual act;~~

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

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

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

~~(c) "Hazing" does not include customary athletic events or other similar contests or competitions. See RCW 28B.10.900.~~

~~(d) Consent is not a valid defense against hazing.)~~ Hazing is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a college sponsored student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or

living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions. Consent is not a valid defense against hazing. Examples of hazing include, but are not limited to:

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

(b) Humiliation by ritual act;

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

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

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

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

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

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

(c) Drugs. The use, possession, production, delivery, sale, or being observably under the influence of any legend drug (including anabolic steroids, androgens, or human grown hormones), narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, except in accordance with a lawful prescription for that student by a licensed health care professional.

(d) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college, or in any location where such use is prohibited, or in any location other than the parking lots, including 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas.

"Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Disorderly conduct.** Conduct which is disorderly, lewd, indecent, or obscene, that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+);

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132R-04-103.

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

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

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

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

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

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

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

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

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

(iv) Statutory rape. Consensual intercourse between a person who is 18 years of age or older, and a person who is under the age of 16.

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

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

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

(B) Suffer substantial emotional distress.

(viii) Consent. Clear, knowing, and voluntary permission by word or action to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be actual words or conduct indicating freely given agreement to the act at the time of the act. Consent cannot be inferred from silence, passivity, or lack of active resistance. Consent can be withdrawn by either party at any point. Consent to engage in one activity, or past agreement to engage in a particular activity, cannot be presumed to constitute consent to engage in a different activity or to engage in the same activity again. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person cannot consent if they are unable to understand what is happening or are disoriented, or if they are asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapable of consent has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Discriminatory harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, not otherwise protected by law, that is directed at a person because of such person's protected status and that is sufficiently (~~serious~~) severe, persistent, or pervasive, so as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program and/or social programs and/or student housing; alter the terms of an employee's employment; or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; presence of any sensory, mental or physical disability; use of a trained service animal; (~~gender~~) sex, including pregnancy; marital status; age (40+); religion; creed; sexual orientation; gender identity or expression; veteran's or military status; HIV/AIDS and hepatitis C status; or membership in any other ((legally)) group protected ((classification)) by federal, state, or local law. See supplemental definitions: "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications not otherwise protected by law.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation of federal, state, or

local law, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

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

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

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

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

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

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

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

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

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

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

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

(18) **Safety violations.** Safety violation includes any nonaccidental, reckless, or unsafe conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Abuse of process.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena or order to appear at a hearing;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct, of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student disciplinary committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(20) **Unsafe vehicle operation.** Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

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

(22) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the stu-

dent is taking a course or is pursuing as an educational goal or major.

(23) **Aiding or abetting.** Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

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

(24) **Sex discrimination.** The term "sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis (insignificant) harm on the basis of sex.

(a) **Sex-based harassment.** "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:

(i) **Quid pro quo harassment.** A student, employee, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

(ii) **Hostile environment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;

(B) The type, frequency, and duration of the conduct;

(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;

(D) The location of the conduct and the context in which the conduct occurred; and

(E) Other sex-based harassment in the college's education program or activity.

(iii) **Sexual violence.** "Sexual violence" includes nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.

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

(B) **Nonconsensual sexual contact (fondling)** is any actual or attempted sexual touching, however slight, with any body part or object,

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

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

(D) **Statutory rape (rape of a child)** is nonforcible sexual intercourse with a person who is under the statutory age of consent.

(E) **Domestic violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington.

(F) **Dating violence** is physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

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

(G) **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or to suffer substantial emotional distress.

(b) **Consent.** For purposes of this code "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.

(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

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

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

(c) **Title IX retaliation** means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testi-

fied, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.

AMENDATORY SECTION (Amending WSR 23-11-048, filed 5/11/23, effective 6/11/23)

WAC 132R-04-061 Hazing (~~(prohibited)~~) sanctions. (1) Hazing by a student or a student group is prohibited pursuant to WAC 132R-04-057.

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

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages. RCW 28B.10.901(3).

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

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

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

AMENDATORY SECTION (Amending WSR 19-21-080, filed 10/14/19, effective 11/14/19)

WAC 132R-04-063 Corrective action, disciplinary ((actions)) sanctions terms and conditions. One or more corrective actions or disciplinary ((actions)) sanctions include, but are not limited to, the following sanctions that may be imposed alone or in conjunction upon students found to have committed the violations in WAC 132R-04-057. The college may impose additional sanctions on a student who fails to comply with any imposed sanctions including, but not limited to, preventing that student from registering for classes.

(1) Warning: A verbal or written statement to a student that there is a violation and that continued violation may be cause for

further disciplinary action. Warnings are corrective actions, not disciplinary, and may not be appealed.

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

(3) Disciplinary probation: Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. Other conditions and restrictions may include, but not be limited to, restrictions from being present on certain parts of the campus or in certain college buildings; restriction from attending certain college activities or participation in extra-curricular activities; orders of no contact between the student under probation and other students, college employees, or other persons.

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

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

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

(5) **Education.** The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's behavior such as anger management or counseling.

(6) **Loss of privileges.** Denial of specified privileges for a designated period of time.

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

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

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

(10) Professional evaluation: Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with

recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(11) **Expulsion:** Permanent separation of the student from the college with no promise (implied or otherwise) that the student may return at any future time. There will be no refund of tuition or fees for the quarter in which the action is taken. The student will also be barred from college premises. Expulsion actions will be accomplished by issuing both an order of expulsion and a notice of trespass pursuant to WAC 132R-117-020(2). The notice of trespass may be given by any manner specified in chapter 9A.52 RCW.

(12) **Trespass or restriction.** A student may be restricted from any or all college premises and/or college-sponsored activities based on the violation.

(13) **Residence hall suspension or termination.** Removal from a residence hall for a specified period or permanently. Conditions may be imposed before a student is permitted to return to a residence hall.

More than one of the disciplinary terms and conditions listed above may be imposed for any single violation.

If a student withdraws from the college or fails to reenroll before completing a disciplinary sanction or condition, the disciplinary sanction or condition must be completed either prior to or upon the student's reenrollment, depending on the nature of the sanction, condition, and/or the underlying violation. Completion of disciplinary sanctions and conditions may be considered in petitions for readmission to the college.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-064 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

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

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or
- (c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

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

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

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

(b) The date, time, and location when the respondent must appear before the chair of the student disciplinary committee for a hearing on the summary suspension; and

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

(5) (a) The conduct review officer or designee shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

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

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

(d) If the notice of summary suspension proceedings has been served upon the respondent in accordance with these rules and the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a brief statement of findings of fact and conclusions of law, the policy reasons justifying imposition of the summary suspension. If summary suspension is upheld and/or other discipline imposed, the order shall inform the respondent of the duration of the summary suspension or the nature of the disciplinary action(s), conditions under which the summary suspension may be terminated or modified, and procedures by which the order may be appealed.

(f) The interim suspension shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim suspension.

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

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

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-112 Initiation of disciplinary action. (~~((1) All disciplinary proceedings will be initiated by the student conduct officer or a designee. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.~~

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

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

~~(4) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the specific student conduct code provisions alleged to have been violated, the action taken, and a notice of appeal rights (if any).~~

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

~~(a) Exonerate the respondent and terminate the proceeding;~~

~~(b) Dismiss the case after providing appropriate counseling and advice to the respondent. Such action is final and is not subject to review on appeal;~~

~~(c) Issue a verbal warning to the respondent directly. Such action is final and is not subject to review on appeal;~~

~~(d) Impose a disciplinary action(s), as described in WAC 132R-04-063. Such actions are subject to review on appeal as provided in this chapter. Any decision imposing a disciplinary action(s) must state the facts and conclusions supporting the student conduct officer's decision, the specific student conduct code provision(s) found to have been violated, the details of the discipline imposed, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal;~~

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

~~(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions~~

~~imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.)~~ (1) Any member of the college community may file a complaint against a student or student group for possible violations of the student conduct code.

(2) The student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the student conduct code.

(a) **Sex discrimination, including sex-based harassment.** The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. Allegations of sex discrimination, including sex-based harassment, by a student shall be addressed through the student conduct code. Allegations involving employees or third parties associated with the college will be handled in accordance with college policies.

(b) **Hazing by student groups.** A student conduct officer, or designee, may review and investigate any complaint or allegation of hazing by a student group. A student group will be notified through its named officer(s) and address on file with the college. A student group may designate one representative who may speak on behalf of a student group during any investigation and/or disciplinary proceeding. A student group will have the rights of a respondent as set forth below.

(3) Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(4) If a student conduct officer determines that a complaint appears to state a violation of the student conduct code, the student conduct officer will consider whether the matter might be resolved through agreement with the respondent or through alternative dispute resolution proceedings involving the complainant and the reporting party.

(a) Informal dispute resolution shall not be used to resolve sex-based harassment complaints without written permission from both the complainant and the respondent.

(b) If the parties elect to mediate a dispute through informal dispute resolution, either party shall be free to discontinue mediation at any time.

(5) If the student conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or informal dispute resolution, the student conduct officer may initiate disciplinary action against the respondent.

(6) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.

(7) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

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

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

(10) Within 10 calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal. This period may be extended at the sole discretion of the student conduct officer, if additional information is necessary to reach a determination. The student conduct officer will notify the parties of any extension period and the reason therefore.

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

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), with or without conditions, as described in WAC 132R-04-063; or

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

(12) In cases involving allegations of sex discrimination, the student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.

(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct committee.

(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct committee.

(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.

(d) The student conduct officer shall promptly notify the other party of the request.

(e) In cases involving sex discrimination, the student conduct officer may recommend dismissal of the complaint if:

(i) The college is unable to identify respondent after taking reasonable steps to do so;

(ii) Respondent is not participating in the college's educational programs or activities;

(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint;

(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or

(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.

(f) In cases involving allegations of sex-based harassment, the college must obtain the complainant's voluntary withdrawal in writing before the matter can be dismissed.

(g) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the date of the written recommendation.

(h) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.

(i) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-113 Appeal from disciplinary action. (1) Except as specified for cases involving allegations of sex discrimination, as set forth in WAC 132R-04-057, the respondent may appeal ((the results of)) a disciplinary action by filing a written notice of appeal with the conduct review officer within ((twenty)) 21 calendar days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's order shall be deemed final.

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

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

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

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

(6) In the event of a conflict between this student conduct code and the Administrative Procedure Act, chapter 34.05 RCW, this student conduct code will govern.

~~((6))~~ (7) The college hereby adopts the Model rules of procedure, chapter 10-08 WAC, by reference. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

~~((7))~~ (8) Imposition of discipline for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

~~((8))~~ (9) The student disciplinary committee shall hear the following cases as fully adjudicated proceedings:

- (a) Appeals from suspensions in excess of ten instructional days;
- (b) Appeals from dismissals;
- (c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president; and
- (d) Cases in which students request to have their discipline case heard by the committee.

~~((9))~~ (10) Student conduct appeals involving the following disciplinary actions shall be reviewed as brief adjudicative proceedings:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Reprimands; and
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-116 Brief adjudicative proceedings—Initial hearing.

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

(2) The parties to a brief adjudicative proceeding are the respondent and the student conduct officer. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the college's view of the matter and (b) an opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon all the parties within ~~((ten-business))~~ 10 calendar days of consideration of the initial hearing. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ~~((twenty-one))~~ 21 calendar days of service of the initial decision, the initial decision shall be deemed the final order.

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

an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-1170 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president or his or her designee, provided the respondent files a written request for review with the conduct review officer within (~~twenty-one~~) 21 calendar days of service of the initial decision.

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

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

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

(5) If the president or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than (~~ten~~) 10 instructional days or expulsion, the matter shall be referred to the student disciplinary committee for a disciplinary hearing. The president or designee may enter an interim order suspending the student until a hearing can be held by the student disciplinary committee. The interim order shall provide a brief explanation as to facts supporting the interim order of suspension and give the necessary notices that the case has been referred to the student disciplinary committee.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-125 Student (~~(disciplinary)~~) conduct committee—General. (1) The student (~~(disciplinary)~~) conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members recommended by the faculty association and appointed by the president;

(c) The conduct review officer or other member of the administration appointed by the president at the beginning of the academic year.

(2) The conduct review officer shall serve as the committee chair and may take action on preliminary hearing matters prior to the appointment of the committee. The committee chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

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

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

(5) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct committee must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.

(6) The college may, in its sole discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct committee and/or committee chair.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-130 Student disciplinary committee—((Hearing)) Pre-hearing. (1) The student conduct administrative panel will conduct full adjudicative proceedings in accordance with the provisions of this standards of conduct for students code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC) including a hearing, determination of findings, conclusions, and sanctions. To the extent there is a conflict between the conduct code and the model rules, this student conduct code shall control.

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

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

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

(5) The committee chair may provide to the committee members in advance of the hearing copies of (i) the student conduct officer's notification of imposition of discipline (or referral to the committee) and (ii) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

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

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

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

(10) In circumstances involving more than one accused student, the student conduct officer may permit joint or separate hearings upon request by a party.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-131 Student disciplinary committee hearing—Presentation of evidence. (~~((1) Upon the failure of any party to attend or participate in a hearing, the committee may either (a) proceed with the hearing and issuance of its order or (b) serve an order of default~~

in accordance with RCW 34.05.440. If an accused student, with notice, does not appear before a student conduct administrative panel hearing, the information in support of the complaint is presented and considered in the absence of the accused student.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record or in writing that some or all of the proceedings should be open, the committee chair shall determine any extent to which the hearing will be open. For hearings involving sexual misconduct allegations, complainant, accused student, and their respective attorney representatives may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student disciplinary committee. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The committee chair shall cause the hearing to be recorded by a method that the committee chair selects, in accordance with RCW 34.05.449. Panel deliberations are not recorded. The recording, or a copy, is property of the college, but will be made available to the respondent upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by the respondent. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The committee chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee, and make rulings on the admissibility of evidence, motions, objections, and on challenges to the impartiality of board members, unless a hearing examiner is appointed as provided below. These rulings shall be made on the record. The Washington rules of evidence shall serve as guidelines for those rulings on the admissibility of evidence, in conjunction with the Administrative Procedure Act, chapter 34.05 RCW. Questions related to the order of the proceedings are also determined by the committee chair.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for disciplinary action. The facts justifying any such action must be established by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation. The panel chair determines which records, exhibits, and written statements may be accepted as information for consideration by the panel. These rulings shall be made on the record. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) The president of the college or designee, the chair of the student disciplinary committee, the administrators assigned to the student disciplinary committee, deans, and/or the student conduct officer have the authority to issue subpoenas.

(8) The accused student and the student conduct officer may arrange for witnesses to present pertinent information to the student disciplinary committee. Each party is responsible for informing their witnesses of the time and place of the hearing.

(9) The committee chair may accommodate concerns for the personal safety, well-being or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means. In making such accommodations, the rights of the other parties must not be prejudiced and must have the opportunity to participate effectively in, to hear, and, if technically economically feasible, to see the entire proceeding while it is taking place.

~~(10) In cases involving allegations of sexual misconduct, neither party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be submitted in writing to the committee chair, who in his or her discretion shall pose the questions on the party's behalf.~~

~~(11) At the conclusion of the hearing, the committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee may also permit each party to propose findings, conclusions, and/or an order for its consideration.)~~ (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

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

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

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

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

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

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the college's case.

(6) All testimony shall be given under oath or affirmation. Except as otherwise provided in this section, evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.

(a) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.

(b) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.

(c) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;
(ii) Attorney-client communications and attorney work product privilege;
(iii) Clergy privileges;
(iv) Medical or mental health providers and counselor privileges;
(v) Sexual assault and domestic violence advocate privileges; and
(vi) Other legal privileges set forth in RCW 5.60.060 or federal law.

(d) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

(e) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

(8) Except in cases involving allegations of sex-based harassment, the chair has the discretion to determine whether a respondent may directly question any witnesses; and if not, to determine whether questions must be submitted to the chair to be asked of witnesses, or to allow questions to be asked by an attorney or advisor for the respondent.

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-150 Appeal from student ((disciplinary)) conduct committee initial decision. ~~((1) A respondent who is aggrieved by the findings or conclusions issued by the student disciplinary committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty calendar days of service of the committee's initial decision.~~

~~(2) The notice of appeal must assign error to specific findings of fact and/or conclusions of law in the initial decision and must contain argument regarding why the appeal should be granted. The president's review on appeal shall be limited to a review of those issues and arguments raised in the notice of appeal. Review shall be restricted to the record created below.~~

~~(3) The president shall provide a written order to all parties within forty-five calendar days after receipt of the notice of appeal. The president's decision shall be final.~~

~~(4) The president may exercise discretion to suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.~~

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

~~(6) Respondents and complainants in a case involving allegations of sexual misconduct shall have the right to be accompanied by an at-~~

~~torney or nonattorney assistant of their choosing during the appeal process, but will be deemed to have waived that right unless they file with the president a written notice of the attorney's identity and participation within twenty calendar days of service of the committee's initial decision.~~

~~(7) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.~~

~~(a) In addition to the appeal rights provided to the respondent above, a complainant may also appeal the following actions by the student conduct officer:~~

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

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

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

~~(c) The president will serve complainant a written notice indicating that the appeal has been resolved on the same date that the final order is served upon the respondent. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.)~~ (1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the president's office within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final.

(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:

(a) Procedural irregularity that would change the outcome;

(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and

(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.

(3) Upon receiving a timely appeal, the president or a designee will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.

(4) If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the appeal.

(5) The president shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. The president's decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.

(6) In cases involving allegations of sex-based harassment, the president's decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.

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

AMENDATORY SECTION (Amending WSR 21-08-012, filed 3/26/21, effective 4/26/21)

WAC 132R-04-320 Prehearing procedure. (~~((1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132R-04-130. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.~~

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

~~(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.)~~ (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

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

- (a) A copy of the student conduct code;
- (b) The basis for jurisdiction;
- (c) The alleged violation(s);
- (d) A summary of facts underlying the allegations;
- (e) The range of possible sanctions that may be imposed; and
- (f) A statement that retaliation is prohibited.

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

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

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

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

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

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

(7) (Optional: The student conduct officer shall provide reasonable assistance to the respondent and complainant in procuring the presence of college students, employees, staff, and volunteers to appear at a hearing, provided the respondent and complainant provide a witness list to the student conduct officer no less than three business days in advance of the hearing. The student conduct officer shall notify the respondent and complainant no later than 24 hours in advance of the hearing if they have been unable to contact any prospective witnesses to procure their appearance at the hearing. The committee chair will determine how to handle the absence of a witness and shall describe on the record their rationale for any decision.)

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

(9) (Optional: In cases heard by the committee, each party may be accompanied at the hearing by an advisor of their choice, which may be an attorney retained at the party's expense.)

(10) (Optional: For any matters involving a disciplinary sanction of suspension of more than one quarter, dismissal, or sex-based harassment, the college shall provide an advisor to the respondent and any complainant, if they have not otherwise identified an advisor to assist them during the hearing.) The committee will ordinarily be advised by an assistant attorney general or their designee. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may be represented by an assistant attorney general.

(11) Attorneys for students must file a notice of appearance with the committee chair at least four business days before the hearing. Failure to do so may, at the discretion of the committee chair, result in a waiver of the attorney's ability to represent the student at the hearing, although an attorney may still serve as an advisor to the student.

(12) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:

(a) **Notice.** The college must provide a notice that includes all information required in subsection (2) of this section, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.

(b) **Advisors.** The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.

(c) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the

hearing date, in accordance with the procedures set forth in subsection (13)(b) of this section.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(13) In cases involving allegations of sex-based harassment, the following additional procedures apply:

(a) **Notice.** In addition to all information required in subsection (2) of this section, the notice must also inform the parties that:

(i) The respondent is presumed not responsible for the alleged sex-based harassment;

(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;

(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;

(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and

(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.

(b) **Extensions of time.** The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.

(c) **Advisors.** The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.

(d) **Evidence.** In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.

(e) **Confidentiality.** The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process which may include, but are not limited to, directives by the student conduct officer or chair issuing

directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.

(f) **Separate locations.** The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.

(g) **Withdrawal of complaint.** If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.