

WSR 16-01-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-437—Filed December 2, 2015, 1:33 p.m., effective December 2, 2015, 1:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-310-19000N; and amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 section of the Green River had been closed to protect Chinook and coho salmon. This regulation reopens the area for retention of winter hatchery steelhead through January 31, 2016. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: December 2, 2015.

Joe Stohr
 for J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-19000S Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190:

(1) Effective immediately through January 31, 2016, it is permissible to fish in the waters of the Green/Duwamish River, from the mouth of Cristy Creek (at Flaming Geyser State Park) to the water pipeline walk bridge (1/2 mile downstream of Tacoma Headworks Dam).

(a) Trout - Daily limit of two; minimum size 14 inches,

(b) Other game fish statewide minimum size/daily limits apply.

(2) Green River (King Co.): From the mouth of the Green River upstream to the mouth of Cristy Creek (at Flaming Geyser State Park): Daily limit 3 adult salmon, release Chinook and coho.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19000N Freshwater exceptions to statewide rules. (15-382)

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

WSR 16-01-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-438—Filed December 3, 2015, 9:30 a.m., effective December 3, 2015, 9:30 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Nooksack River.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Restrictions are needed on the Nooksack River as the Kendall Creek Hatchery and Whatcom Creek Hatchery programs did not release hatchery steelhead smolts in 2014 and thus are relying on fish returning from the 2013 release. Retention restrictions are needed to collect sufficient fish to meet egg take needs. 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 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: December 3, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19000T Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, effective December 5, 2015, until further notice:

- (1) The following waters are closed to fishing:
 - (a) Waters of the Middle Fork Nooksack from mouth to city of Bellingham diversion dam; and
 - (b) Waters of the North Fork from mouth to Nooksack Falls.
- (2) The following waters are closed to hatchery steelhead retention:
 - (a) Waters of the mainstem Nooksack River from Lummi Indian Reservation boundary to the confluence of the North and South Forks;
 - (b) Waters of the South Fork Nooksack River from mouth to Skookum Creek; and
 - (c) Whatcom Creek from the mouth to the yellow markers below the foot bridge below Dupont Street.

WSR 16-01-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-439—Filed December 4, 2015, 4:25 p.m., effective December 4, 2015, 4:25 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend coastal recreational crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000V.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 reopening of Willapa Bay to crab fishing is possible after routine testing showed domoic acid levels in crab are now below standards established by the Washington department of health. Domoic acid, a natural toxin produced by certain types of marine algae, can be harmful or even fatal if consumed in sufficient quantities. 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 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: December 4, 2015.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-33000V Crabs—Areas and seasons. (15-417)

WSR 16-01-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-440—Filed December 8, 2015, 8:11 a.m., effective December 9, 2015]

Effective Date of Rule: December 9, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500E and 220-310-19500Q.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Lower Columbia adult coho hatchery returns have been met, and surplus hatchery coho are available for harvest. There is no longer a need to restrict fisheries. This reverts back to permanent regulations. 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 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 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: December 7, 2015.

J. W. Unsworth
Director

REPEALER

The following sections of the Washington Administrative Code are repealed effective December 9, 2015:

WAC 220-310-18500E Freshwater exceptions to statewide rules—Southwest. (15-404)

WAC 220-310-19500Q Freshwater exceptions to statewide rules—Eastside. (15-419)

WSR 16-01-031
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-441—Filed December 8, 2015, 2:08 p.m., effective December 10, 2015]

Effective Date of Rule: December 10, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000I; and amending WAC 220-310-180.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: An emergency rule is needed as the concerns about the predominate low flow conditions present in the Willapa Bay Basin earlier in the fall have subsided during the last few weeks with substantial amounts of rainfall. There is also a need to increase the effectiveness of the recreational steelhead fishery and their ability to remove hatchery steelhead from the system. 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 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: December 8, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000M Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-310-180, effective December 10, 2015, until further notice, it is unlawful to take, fish for, or possess salmon taken by angling for personal use in Willapa Bay tributaries except:

(1) Naselle River (Pacific/Wahkiakum counties): Open for salmon only from the Highway 401 Bridge to the Crown Mainline (Salme) Bridge. Daily limit 2. Release all salmon except chum and hatchery coho.

(2) Willapa River (Pacific County): Open for salmon only from the Highway 6 Bridge to Fork Creek. Daily limit 2. Release all salmon except chum and hatchery coho.

(3) Fork Creek (Pacific County): Open for salmon. Salmon daily limit 2. Release all salmon except chum and hatchery coho.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 10, 2015:

WAC 220-310-18000I Freshwater exceptions to statewide rules—Coast. (15-414)

WSR 16-01-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-442—Filed December 11, 2015, 2:53 p.m., effective December 15, 2015, 8:00 a.m.]

Effective Date of Rule: December 15, 2015, 8:00 a.m.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04600P and 220-69-24000N; and amending WAC 220-52-040, 220-52-046, and 220-69-240.

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

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

Reasons for this Finding: The provisions of this rule will reopen the commercial harvest areas in Puget Sound. There is sufficient allocation available in all of the commercial

regions to accommodate this opening. These provisions are in conformity with agreed management plans and addendums with applicable tribes. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. There is insufficient time to adopt permanent rules.

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 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 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: December 11, 2015.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04000H Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Effective 8:00 a.m. December 15, 2015, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1 and Region 3-1. Region 1 includes Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B. Region 3-1 includes Marine Fish-Shellfish Catch Reporting Areas 23A and 23B.

(2) Effective 8:00 a.m. December 15, 2015, until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 30 pots per license per buoy tag number in Crab Management Region 2 East, Region 2 West and Region 3-2. Region 2 East includes Marine Fish-Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D and 26A-East. Region 2 West includes Marine Fish-Shellfish Catch Reporting Areas 25B, 25D and 26A-West. Region 3-2 includes Marine Fish-Shellfish Catch Reporting Areas 23D, 25A and 25E.

(3) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

(4) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits: No commercial gear is allowed in that portion of

Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

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

NEW SECTION

WAC 220-52-04600Q Puget Sound crab fishery— Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 8:00 a.m. December 15, 2015, until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

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

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

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(e) Port Gardner: That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(f) Possession Point to Glendale: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line that extends true north from the green #1 buoy at Possession Point to Possession Point, and west of a line from the green #1 buoy at Possession Point extending northward along the 200-foot depth contour to the Glendale dock.

(g) Langley: That portion of Marine Fish-Shellfish Management and Catch Reporting Area 24C shoreward of the 400-foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(2) Effective 8:00 a.m. December 15, 2015, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

NEW SECTION

WAC 220-69-2400P Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective 8:00 am, December 15, 2015, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

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

REPEALER

The following sections of the Washington Administrative code are repealed effective 8:00 a.m. December 15, 2015:

WAC 220-52-04600P Puget Sound crab fishery—Seasons and areas (15-401)

WAC 220-69-24000N Duties of commercial purchasers and receivers (15-365)

WSR 16-01-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-443—Filed December 11, 2015, 3:06 p.m., effective December 14, 2015]

Effective Date of Rule: December 14, 2015.

Purpose: Amend recreational fishing rules for Grays Harbor tributaries.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000U and 220-310-18000J; and amending WAC 232-28-620 and 220-310-180.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: An emergency rule is needed to open areas that were closed in emergency rule filing WSR 15-22-041 and 15-23-018 as hatchery steelhead are returning to Grays Harbor tributaries. Wild coho salmon remain well below the escapement goals necessitating release of all wild salmon. However, historical catch data indicate that only a small percent of the recreational coho catch occurs after November and therefore the impact to wild coho will be very small with these 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 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: December 11, 2015.

James B. Scott, Jr.
for J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62000W Coastal salmon—Saltwater seasons. Notwithstanding the provisions of WAC 232-28-620, effective December 14, 2015, until further notice, it is unlawful to take, fish for, or possess salmon taken for personal use in Grays Harbor except:

Westport Boat Basin and Ocean Shores Boat Basin: Salmon daily limit 1. Release all salmon except hatchery coho.

NEW SECTION

WAC 220-310-18000N Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective December 14, 2015, until further notice, it is unlawful to take, fish for, or possess salmon taken for personal use in Grays Harbor tributaries except the following waters are open to salmon as provided below:

(1) Humptulips River (Grays Harbor County): From mouth to confluence of East and West forks. Salmon daily limit 1. Release all salmon except hatchery coho.

(2) **Wishkah River (Grays Harbor County):** From mouth to Wishkah rearing ponds. Salmon daily limit 1. Release all salmon except hatchery coho.

(3) **Hoquiam River including West Fork (Grays Harbor County):** From mouth to Dekay Rd. Bridge. Salmon daily limit 1. Release all salmon except hatchery coho.

(4) **Hoquiam River, East Fork (Grays Harbor County):** From mouth to confluence of Berryman Creek. Salmon daily limit 1. Release all salmon except hatchery coho.

(5) **Chehalis River (Grays Harbor/Thurston/Lewis Co.):** From mouth to the high bridge on Weyerhaeuser 1000 line. Salmon daily limit 1. Release all salmon except hatchery coho.

(6) **Van Winkle Creek (Grays Harbor County):** From mouth to 400' below outlet of Lake Aberdeen Hatchery. Salmon daily limit 1. Release all salmon except hatchery coho.

(7) **Wynoochee River (Grays Harbor/Jefferson Co.):** From mouth to WDFW White Bridge Access Site. Salmon daily limit 1. Release all salmon except hatchery coho.

(8) **Satsop River and East Fork (Grays Harbor/Mason Co.):** From mouth to bridge at Schafer State Park. Salmon daily limit 1. Release all salmon except hatchery coho.

(9) **Satsop River, East Fork (Grays Harbor/Mason Co.):** From 400' below Bingham Creek Hatchery dam to dam. Salmon daily limit 1. Release all salmon except hatchery coho.

(10) **Black River (Grays Harbor/Thurston Co.):** From Hwy. 12 bridge to bridge on 128th Ave SW. Salmon daily limit 1. Release all salmon except hatchery coho.

(11) **Skookumchuck River (Lewis/Thurston Co.):** From mouth to 100' below outlet of WDFW steelhead rearing pond located at the base of Skookumchuck Dam. Salmon daily limit 1. Release all salmon except hatchery coho.

(12) **Newaukum River, including south fork (Lewis County):** From mouth to Leonard Road. Salmon daily limit 1. Release all salmon except hatchery coho.

REPEALER

The following sections of the Washington Administrative Code are repealed effective December 14, 2015:

WAC 232-28-62000U Coastal salmon—Saltwater seasons. (15-405)

WAC 220-310-18000J Freshwater exceptions to statewide rules—Coastal. (15-416)

**WSR 16-01-077
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed December 14, 2015, 3:16 p.m., effective December 14, 2015, 3:16 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These new rules, codified at chapter 392-900 WAC, will implement sections 5026 and 5028, chapter 3, Laws of 2015, which create two pilot school construction grant programs for class size reduction and STEM facilities. The rules define the procedures that school districts must follow to receive funding under these new pilot programs.

Statutory Authority for Adoption: RCW 28A.525.020.

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

Reasons for this Finding: Legislation enacted in 2015, sections 5026 and 5028, chapter 3, Laws of 2015, requires the office of superintendent of public instruction (OSPI) to implement two pilot school construction grant programs during the 2015-17 biennium. OSPI's current school construction rules do not provide a process that would allow OSPI to timely or effectively award these grant funds during the biennium. New grant funding procedures are necessary to preserve the general welfare by allowing OSPI to proceed with the grants and distribution of funding to school districts in accordance with the legislature's intent.

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

Number of Sections Adopted at 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: December 14, 2015.

Randy Dorn
Superintendent of
Public Instruction

Chapter 392-900 WAC

PILOT GRANT PROGRAMS

**STEM AND K-3 CLASS SIZE REDUCTION PILOT
GRANT PROGRAMS ESTABLISHED IN THE 2015-17
WASHINGTON STATE CAPITAL BUDGET 2EHB
115.SL.**

NEW SECTION

WAC 392-900-010 Authority. This chapter is adopted pursuant to RCW 28A.525.020, which authorizes the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, condi-

tions, and disbursements of state funding assistance to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provisions of chapter 28A.525 RCW currently applicable to state funding assistance for school facilities are RCW 28A.525.030, 28A.525.040, 28A.525.050, 28A.525.162 through 28A.525.178.

NEW SECTION

WAC 392-900-020 Purpose. The purpose of this chapter is to set forth provisions applicable to approval of STEM pilot project grants and K-3 class size reduction grants as provided for in sections 5026 and 5028, chapter 3, Laws of 2015 3rd sp. sess. (2EHB 1115 (2015)).

NEW SECTION

WAC 392-900-030 Eligibility. Eligibility for school construction assistance program funding through the STEM grant program will be based on a school district's ability to demonstrate a lack of sufficient space for science classrooms and labs to enable students to meet Washington state graduation requirements. The STEM grant award will constitute the district's local funding for purposes of eligibility for the school construction assistance program under RCW 28A.525.166.

Eligibility for the K-3 class size reduction grant program will be based on a school district's ability to demonstrate a need for additional K-3 classrooms as outlined in chapter 41, Laws of 2015, 3rd sp. sess. (2ESSB 6080 (2015)), regardless of any available eligibility for school construction assistance program funding. The K-3 class size reduction grant award may not constitute local funding in the school construction assistance program under RCW 28A.525.166.

NEW SECTION

WAC 392-900-040 Funding assistance percentage. (1) The state funding assistance percentage for the STEM pilot program is the computed state ratio defined in RCW 28A.525.166 plus twenty percent of the percent of district head count eligible and enrolled in the district's free and reduced school lunch program, plus the following additional percentage points:

- Ten for second class school districts;
- Ten for school districts with funding assistance percentages of more than fifty percent.

(2) The enhanced funding assistance percentage for the K-3 class size reduction grant program is the computed state ratio defined in RCW 28A.525.166 plus twenty percent of the percent of district head count eligible and enrolled in the free and reduced school lunch program.

NEW SECTION

WAC 392-900-050 Construction cost allocation (CCA). The eligible construction cost in the STEM grant program shall be calculated by multiplying the approved square foot area of the projects as set forth in WAC 392-900-040 by the construction cost allocation as set forth in WAC 392-343-060.

NEW SECTION

WAC 392-900-060 Eligible square footage. (1) Eligible area for STEM pilot projects is one thousand four hundred forty square feet per science lab or classroom combination, or both; and one thousand forty square feet per science classroom. The total eligible area per STEM project must not exceed fifteen thousand eight hundred forty.

(2) Additional square footage funded through the STEM grant program will be excluded from the school district's inventory of instructional space as defined in WAC 392-343-019 for determining eligibility for state assistance until the date of the final review of the latest study and survey of the affected school district following acceptance of the project by the school district board of directors, or for a period of five years, whichever is earliest.

(3) Additional square footage funded through the K-3 class size reduction grant program becomes part of a school district's inventory of instructional space for determining eligibility as defined in WAC 392-343-019 and shall be ineligible for state funding assistance for modernization for thirty years as described in WAC 392-347-015(4).

(4) Districts receiving funding through the STEM and class size reduction grants may modernize facilities that were previously closed pursuant to WAC 392-347-042.

NEW SECTION

WAC 392-900-070 Process requirements. (1) The following documents and information will be required to be submitted to the office of the superintendent of public instruction before STEM grant awards are finalized:

- New-in-lieu resolution (if applicable);
- Intent to construct board resolution;
- Five-year use/thirty-year life board resolution; and
- Certification letter from school district that any excess costs above STEM grant award and enhanced state assistance funding will be covered with local funding.

(2) Upon completion of all STEM projects, the following shall be submitted to the office of the superintendent of public instruction:

- Certified letter from architect verifying final square footage of project; and
 - Final acceptance of completion board resolution.
- (3) The following documents and information will be required to be submitted to the superintendent of public instruction before K-3 class size reduction grants awards are finalized:

- Five-year use/thirty-year life board resolution;
- Project assurances board resolution;
- Certification that the school district has authorized local funds to complete the project(s);
- Certification that the school district has an available site(s) for the project(s);
- Certification that additional classrooms will achieve progress towards the average class size objectives for the 2017-18 school year enumerated in RCW 28A.150.260 in effect as of October 31, 2014, and all-day kindergarten as funded pursuant to RCW 28A.150.315.

(4) Upon completion of all K-3 class size reduction grant projects, the following shall be submitted to the superintendent of public instruction:

- (a) Name of school facility;
- (b) Number of classrooms added, renovated or modernized;
- (c) Gross square footage added, renovated or modernized;
- (d) Total project budget amount (construction and soft costs);
- (e) Final construction contract amount;
- (f) Site plan;
- (g) Floor plan(s);
- (h) Area analysis;
- (i) If applicable, high-performance scorecard and credit cost analysis (chapter 39.35D RCW);
- (j) If applicable, high-performance ELCCA executive summary (chapter 39.35D RCW);
- (k) If applicable, apprenticeship reporting documentation (RCW 39.04.320); and
- (l) Final acceptance of completion board resolution.

NEW SECTION

WAC 392-900-080 State funded combination projects. Eligible STEM grant projects that are undertaken in conjunction with another school construction assistance program project must follow all applicable requirements defined in chapters 392-342 through 392-347 WAC. State construction assistance funding and STEM grant awards for eligible area within the STEM grant project will be calculated separately in accordance with this chapter.

NEW SECTION

WAC 392-900-090 Waiver of rules to facilitate pilot grant programs. Subject to factual determinations by the superintendent of public instruction, the provisions of chapters 392-341 through 392-347 WAC which supplement statutory requirements are hereby deemed waived to the extent any provision would prevent or delay the implementation of legislative allocations, grant programs or pilot grant programs.

WSR 16-01-088

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 15, 2015, 11:01 a.m., effective December 15, 2015, 11:01 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule creates a habilitative services section (WAC 182-545-400) as required under the Patient Protection and Affordable Care Act. WAC 182-545-900 and 182-551-2110 must be updated to reflect the creation of habilitative services.

Citation of Existing Rules Affected by this Order: Amending 182-545-900 and 182-551-2110.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148).

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: This rule is necessary to create a habilitative services section by January 1, 2014, to comply with service requirements in the Patient Protection and Affordable Care Act, and to update related sections to reflect the creation of habilitative services. The agency has scheduled a public hearing on January 5, 2016, and should finalize the permanent rule-making process shortly thereafter.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 2, 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 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 2, Repealed 0.

Date Adopted: December 15, 2015.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-545-400 Habilitative services. (1) Habilitative services are medically necessary services to assist the client in partially or fully attaining, learning, maintaining, or improving developmental-age appropriate skills that were not fully acquired as a result of a congenital, genetic, or early acquired health condition, and are required to maximize, to the extent practical, the client's ability to function in his or her environment.

(2) Eligibility is limited to clients who are enrolled in the alternative benefits plan defined in WAC 182-501-0060 and who have a diagnosis which is one of the qualifying conditions listed in the medicaid provider guide for habilitative services. Clients enrolled in an agency-contracted managed care organization (MCO) must arrange for habilitative services through their MCO.

(3) The following licensed health professionals may enroll with the agency to provide habilitative services within their scope of practice to eligible clients:

- (a) Psychiatrists;
- (b) Occupational therapists;
- (c) Occupational therapy assistants supervised by a licensed occupational therapist;
- (d) Physical therapists;

(e) Physical therapist assistants supervised by a licensed physical therapist;

(f) Speech-language pathologists who have been granted a certificate of clinical competence by the American Speech, Hearing and Language Association; and

(g) Speech-language pathologists who have completed the equivalent educational and work experience necessary for such a certificate.

(4) The agency pays for habilitative services that are:

(a) Covered within the scope of the client's alternative benefit plan under WAC 182-501-0060;

(b) Medically necessary;

(c) Within currently accepted standards of evidence-based medical practice;

(d) Ordered by a physician, physician assistant, or an advanced registered nurse practitioner;

(e) Begun within thirty calendar days of the date ordered;

(f) Provided by one of the health professionals listed in subsection (3) of this section;

(g) Authorized under this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and published provider notices;

(h) Billed under this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and published provider notices; and

(i) Provided as part of a habilitative treatment program:

(i) In an office or outpatient hospital setting;

(ii) In the home, by a home health agency as described in chapter 182-551 WAC; or

(iii) In a neurodevelopmental center, as described in WAC 182-545-900.

(5) For billing purposes under this section:

(a) Each fifteen minutes of timed procedure code equals one unit.

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(c) Duplicate services for habilitative services are not allowed for the same client when both providers are performing the same or similar procedure on the same day.

(d) The agency does not reimburse a health care professional for habilitative services performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.

(6) For eligible clients twenty years of age and younger, the agency covers unlimited outpatient habilitative services.

(7) For eligible clients twenty-one years of age and older, the agency covers limited outpatient habilitative services that include an ongoing management plan for the client or the client's caregiver to support continued client progress. The agency limits outpatient habilitative services as follows:

(a) Occupational therapy, per client, per year:

(i) Without authorization:

(A) One occupational therapy evaluation;

(B) One occupational therapy reevaluation at time of discharge; and

(C) Twenty-four units of occupational therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to

continue treatment when the client's diagnosis is cerebral palsy and the therapy is required as part of a botulinum toxin injection protocol when botulinum toxin has been authorized by the agency.

(b) Physical therapy, per client, per year:

(i) Without authorization:

(A) One physical therapy evaluation;

(B) One physical therapy reevaluation at time of discharge; and

(C) Twenty-four units of physical therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment when the client's diagnosis is cerebral palsy and the therapy is required as part of a botulinum toxin injection protocol when botulinum toxin has been authorized by the agency.

(c) Speech therapy, per client, per year:

(i) Without authorization:

(A) One speech language pathology evaluation;

(B) One speech language pathology reevaluation at the time of discharge; and

(C) Six units of speech therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment when:

(A) The client's diagnosis is cerebral palsy and the therapy is required as part of a botulinum toxin injection protocol when botulinum toxin has been authorized by the agency; or

(B) The client has a speech deficit caused by the qualifying condition which requires a speech generating device.

(d) Two durable medical equipment needs assessments, per client, per year. The agency covers devices and other durable medical equipment for habilitative purposes to treat qualified conditions under chapter 182-543 WAC.

(e) Two program units of orthotics management and training of upper and lower extremities, per client, per day.

(f) Two program units for checkout for prosthetic or orthotic use, per established client, per year.

(g) One muscle testing procedure, per client, per day.

(h) One wheelchair-needs assessment, per client, per year.

(8) The agency evaluates requests for outpatient habilitative services that exceed the limitations in this section under WAC 182-501-0169. Prior authorization is required for additional units when:

(a) The criteria for expedited prior authorization do not apply;

(b) The number of available units under the EPA have been used and services are requested beyond the limits; or

(c) The provider requests it as a medically necessary service.

(9) The following services are not covered:

(a) Day habilitation services designed to provide training, structured activities, and specialized services to adults;

(b) Chore services to assist basic needs;

(c) Vocational services;

(d) Custodial services;

(e) Respite;

- (f) Recreational care;
- (g) Residential treatment;
- (h) Social services; and
- (i) Educational services of any kind.

AMENDATORY SECTION (Amending WSR 11-21-066, filed 10/17/11, effective 11/17/11)

WAC 182-545-900 Neurodevelopmental centers. (1)

This section describes:

- (a) Neurodevelopmental centers that may be reimbursed by the agency;
 - (b) Clients who may receive covered services at a neurodevelopmental center; and
 - (c) Covered services that may be provided at and reimbursed to a neurodevelopmental center.
- (2) In order to provide and be reimbursed for the services listed in subsection (4) of this section, the agency requires a neurodevelopmental center provider to do all of the following:
- (a) Be contracted with the department of health (DOH) as a neurodevelopmental center;
 - (b) Provide documentation of the DOH contract to the agency; and
 - (c) Have an approved core provider agreement with the agency.
- (3) Clients, twenty years of age or younger, may receive outpatient rehabilitation and habilitative services (occupational therapy, physical therapy, and speech therapy) in agency-approved neurodevelopmental centers.
- (4) The agency reimburses neurodevelopmental centers for providing the following services to clients:
- (a) Outpatient rehabilitation and habilitative services as described in chapter 182-545 WAC (~~((482-545-200))~~); and
 - (b) Specific pediatric evaluations and team conferences that are:
 - (i) Attended by the center's medical director; and
 - (ii) Identified as payable in the agency's billing instructions.
- (5) In order to be reimbursed, neurodevelopmental centers must meet the agency's billing requirements in WAC 182-502-0020, 182-502-0100 and 182-502-0150.

AMENDATORY SECTION (Amending WSR 11-21-066, filed 10/17/11, effective 11/17/11)

WAC 182-551-2110 Home health services—Covered specialized therapy. The agency covers specialized therapy (~~((also known as outpatient rehabilitation))~~), including outpatient rehabilitation and habilitative services, in an in-home setting by a home health agency. (~~((See chapter 182-545 WAC outpatient rehabilitation for coverage and limitations.))~~) Outpatient rehabilitation and habilitative services are described in chapter 182-545 WAC. Specialized therapy is defined in WAC 182-551-2010.

WSR 16-01-092
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-444—Filed December 15, 2015, 2:35 p.m., effective December 17, 2015, 7:00 a.m.]

Effective Date of Rule: December 17, 2015, 7:00 a.m.

Purpose: Amend recreational fishing rules in Tokul Creek.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000U; and amending WAC 220-310-190.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 section of Tokul Creek is closed in the permanent regulations through January 14, 2016, to allow for winter steelhead broodstock collection at the Tokul Creek Hatchery. The Tokul Creek Hatchery facility has met their egg take goals for winter steelhead allowing for expanded fishing opportunity in Tokul Creek. Opening Tokul Creek early will provide for additional angling opportunity. 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 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: December 15, 2015.

Joe Stohr
 for J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-19000U Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-310-190, effective 7:00 a.m. December 17, 2015, through 5:00 p.m. January 14, 2016, it is permissible to fish in waters of Tokul Creek from the Fish Hatchery Road Bridge upstream to the posted cable boundary marker below the hatchery intake. Unless otherwise amended all permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 15, 2016:

WAC 220-310-19000U Freshwater exceptions to statewide rules—Puget Sound.

**WSR 16-01-115
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-447—Filed December 17, 2015, 3:05 p.m., effective December 17, 2015, 3:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000F; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 for harvest in Razor Clam Area 4. Washington department of health has certified clams from this beach 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 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: December 17, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000F Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for per-

sonal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

(1) Effective 12:01 p.m. December 24, 2015 through 11:59 p.m. December 26, 2015, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) It is unlawful to dig for razor clams at any time in the Copalis Beach Clam sanctuary defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. December 27, 2015:

WAC 220-56-36000F Razor clams—Areas and seasons.

**WSR 16-01-117
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-445—Filed December 17, 2015, 4:00 p.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: Amend recreational fishing rules for hardshell clams and oysters.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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: Increases in clam biomass at Belfair State Park will support a year-round season. Increases in clam biomass at Point Whitney Tidelands and Point Whitney Lagoon will support 2.5 and 4 month seasons. Drayton West is a portion of Drayton Harbor that Washington department of health (DOH) has approved for recreational harvest, and the season has been set to coordinate with DOH conditional closures in the area. Recreational harvest and biomass surveys at Freeland County Park indicate it can support a 2.5 month long season; the timing of this season has been coordinated with DOH and Island County health department. The oyster seasons at Freeland County Park and Drayton West should coincide with the clam seasons on those beaches. 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 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: December 17, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-35000F Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

(1) Belfair State Park: January 1, 2016, until further notice.

(2) Drayton West: All public tidelands of Drayton Harbor are closed year-round, except tidelands identified as conditionally approved by the Department of Health and defined by boundary markers and signs posted on the beach are open February 1, 2016, until further notice.

(3) Freeland County Park: Open March 1, 2016, until further notice.

(4) Point Whitney Lagoon: Open January 1, 2016, until further notice.

(5) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open January 1 through March 15 only.

NEW SECTION

WAC 220-56-38000K Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands, except during the open periods specified herein:

(1) Drayton West: All public tidelands of Drayton Harbor are closed year-round except tidelands identified as conditionally approved by the Department of Health and defined by boundary markers and signs posted on the beach are open February 1, 2016, until further notice.

(2) Freeland County Park: Open March 1, 2016, until further notice.

**WSR 16-01-128
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed December 18, 2015, 11:03 a.m., effective December 18, 2015, 11:03 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule amendment is to allow former charter school students in Washington to transition to alternative learning experiences (ALE) offered by public school districts. The amended rules authorize school districts to claim former charter school students for state apportionment beginning December 2015, and exempt the districts, until January 31, 2016, from ALE rules relating to (1) written student learning plans, (2) weekly student contact with school district certificated employees, (3) monthly education progress evaluations, (4) the adoption of board policies, (5) school district duties and liabilities regarding the students until the student enrolls in another school district, and (6) ALE student enrollment reporting procedures.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-106 and 392-121-182.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.150.400.

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 Washington supreme court's decision in *League of Women Voters v. State*, which invalidated the state's charter school system as set forth in chapter 28A.710 RCW, became final on December 9, 2015. Nine charter schools, operated by not-for-profit entities, were authorized to operate in the state for the 2015-16 school year, and hundreds of students are currently attending these schools. Several charter school operators intend to contract with one or more school districts to continue providing public school education to the students enrolled in the charter schools. A significant number of these students are at-risk, receiving publicly funded special education, English language learning, and supplemental education instruction. Temporarily exempting school districts from ALE enrollment and reporting procedures is necessary for these students' welfare, allowing them to transfer to school districts with minimal disruptions to the students' ongoing public school education.

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; **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 18, 2015.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-106 Definition—Enrolled student. As used in this chapter, "enrolled student" means a person residing in Washington state who:

(1) Is eligible to enroll in the school district's education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250);

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.260; ~~((e))~~

(g) Will be attending a public charter school, as defined by RCW 28A.710.010, located within Washington state; or

(h)(i) Is a former charter school student who has been released from the school district he or she resides in and has been accepted by a school district claiming enrollment in accordance with WAC 392-137-145, and (ii) will be participating in an alternative learning experience offered by the school district pursuant to WAC 392-121-182(11).

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's or charter school's appropriate official to be entered on the school district's or charter school's rolls for the purpose of attending school in grades kindergarten through twelve;

(3) Is under twenty-one years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district or charter school as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-182 Alternative learning experience requirements. (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district or public charter school have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts and charter schools;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts and charter schools must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district or charter school must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources. This section does not apply to alternative learning experiences offered by charter schools pursuant to charter contract terms governing the operation of alternative learning experience in the school.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

(A) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or charter school, or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's or charter school's policy and this chapter.

(ii) The categories of alternative learning experience courses are:

(A) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work;

(c) "Certificated teacher" means an employee of a school district or charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pur-

suant to WAC 392-121-1885, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(h) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(i) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session or when a charter school is in session;

(j) "School-based support staff" means an employee of a school district or a charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

(k) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted or charter school adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(l) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

(m) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan;

(n) "Written student learning plan" means a written plan for learning that includes at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(i) Direct personal contact; or

(ii) In-person instructional contact; or

(iii) Synchronous digital instructional contact.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For stu-

dents whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district or charter school student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts and charter schools must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

(viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educa-

tional program offered by the school district or charter school.

(5) Required school district or charter school board policies for alternative learning experiences: The board of directors of a school district or charter school board claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) or charter school official(s) responsible for overseeing the district's or charter school's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors or charter school board on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's or charter school's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) Alternative learning experience implementation requirements:

(a) School districts or charter schools that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor, or charter school or charter school contractor, to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts and charter schools must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alterna-

tive learning experience courses or course work must be consistent in quality with those available to the district's or charter school's overall student population.

(g) Instructional materials used in alternative learning experience courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district or charter school may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses or course work if the purchase is consistent with the district's or charter school's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's or charter school's regular instructional program. Items so purchased remain the property of the school district or charter school upon program completion.

(i) School districts and charter schools are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's or charter school's regular instructional program. This prohibition extends to a district's or charter school's contracted providers of alternative learning experience programs, and each district and charter school shall be responsible for monitoring the compliance of its contracted providers. Nothing herein shall:

(i) Prohibit school districts or charter schools from contracting with school district or charter school employees to provide services or experiences to students; or

(ii) Prohibit school districts or charter schools from contracting with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts or charter schools that contract with school district or charter school employees to provide services or experiences to students, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this subsection.

(j)(i) A school district or charter school that provides alternative learning experience courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district or charter school and made available for audit.

(ii) In the event a school district or charter school cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district or charter school may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district or charter school does not

obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor, or charter school or charter school contractor, is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district or charter school including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts and charter schools may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district, school district contractor, charter school, or charter school contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district or charter school must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district or charter school.

(n) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts and charter schools offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's or charter school's alternative learning experience courses by the office of the state auditor.

(7) Enrollment reporting procedures: Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district or charter school must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district or charter school in the subsequent month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) Assessment requirements:

(a) All students enrolled in alternative learning experience courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district or charter school. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district or charter school in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident district alternative learning experience courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering

the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

(9) Reporting requirements:

(a) Each school district or charter school offering alternative learning experience courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences. Each school district offering alternative learning experience courses or course work must further report monthly to the superintendent information about the resident and serving districts of such students.

(b) Each school district or charter school offering alternative learning experience courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's or charter school's regular instructional program.

(c) Each school district or charter school offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program; and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(d) Each school district or charter school offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. School districts and charter schools must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(10) Documentation and record retention requirements: School districts and charter schools claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts and charter schools must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors or charter school board as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of contact must include the date of the contact, the method of communication by which the contact was accomplished, and documentation to support the subject of the communication.

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section.

(11) Rules governing enrollment of former charter school students during the 2015-16 school year.

(a) The purpose of this subsection is to exempt school districts from specific requirements of this section for the purpose of facilitating the public school enrollment of former charter school students into alternative learning experiences during the 2015-16 school year. As used in this subsection, "former charter school students" means students who attended authorized charter schools, as defined by RCW 28A.710.010, in the months of September, October, and November 2015.

(b) School districts that enroll former charter school students in alternative learning experiences from December 1, 2015, to December 31, 2015, are exempt from complying with subsections (4), (5), (6)(n), and (7) of this section until January 31, 2016.

(c) To be eligible for the exemptions in (a) of this subsection, school districts enrolling a former charter school student in alternative learning experiences pursuant to this subsection must have in place a memorandum of understanding with the charter school that the student formerly attended. The memorandum of understanding must demonstrate that the charter school intends to explore and draft a contract with the school district for alternative learning experience courses or course work no later than December 31, 2016.

**WSR 16-01-130
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed December 18, 2015, 11:04 a.m., effective December 18, 2015, 11:04 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to allow former charter school students in Washington to expeditiously transition to alternative learning experiences (ALE) offered by nonresident public school districts and to reduce the administrative burden on students, their parents, and resident districts when transferring to the ALE programs.

The amended rules will do two things. First, WAC 392-137-145(3) is amended to clarify that former charter school students who are enrolling in an alternative learning experience offered by a nonresident district for the 2015-16 school year have a *per se* special condition making the students eligible for release. WAC 392-137-145(3) will also specify that the office of superintendent of public instruction (OSPI) will use its standard form developed pursuant to RCW 28A.250.070, the standard choice transfer system, to release the former charter school students to nonresident districts offering ALE.

Second, for former charter school students who seek a release from their resident school districts in accordance with the district's interdistrict transfer policy and procedure, WAC 392-137-155 is amended to provide that: If the resident school district does not act on the student's request for release within five business days, OSPI will consider that the district has not timely acted on the request for release. OSPI will then use its standard form to process the student's request for release without an appeal being filed.

Citation of Existing Rules Affected by this Order: Amending WAC 392-137-145 and 392-137-155.

Statutory Authority for Adoption: RCW 28A.225.230.

Other Authority: RCW 34.05.220.

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 Washington supreme court's decision in *League of Women Voters v. State*, which invalidated the state's charter school system as set forth in chapter 28A.710 RCW, became final on December 9, 2015. Nine charter schools were authorized to operate in the state for the 2015-16 school year, and hundreds of students have been attending these schools. Several charter school operators intend to contract with one or more nonresident school districts to continue providing public school education and related services to students attending the charter schools. A significant number of these students are at-risk, receiving publicly funded special education, English language learning, and supplemental education instruction. If these students are not able to transfer to the nonresident districts contracting with the charter school operators in December 2015, there will be substantial disruptions to the students' ongoing education. Moreover, if OSPI does not directly facilitate the transfer of former charter school students using OSPI's standard choice transfer system, districts would receive hundreds of urgent transfer requests, which if not promptly processed would cause substantial disruption to students. These rules are therefore necessary to preserve the general welfare of former charter school students, their parents, and their resident school districts.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 18, 2015.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 90-19-068, filed 9/17/90, effective 10/18/90)

WAC 392-137-145 Special condition—Ground for release. A district shall release a student if there is a special hardship or detrimental condition. The following shall be considered in applying this section:

(1) The term "special" means a circumstance or factor which is generally not applicable to other students or families.

(2) The terms "hardship" and "detrimental condition" apply to any circumstance or factor harmfully affecting the student or student's immediate family and is not restricted to a financial, educational, safety, or health condition.

(3) The following are judged by the superintendent of public instruction to constitute a special hardship or detrimental condition, the proof of which is a per se hardship or condition for the order of a release:

(a) A student who was enrolled the previous school year in a nonresident district who is scheduled to complete in the same nonresident district during the next school year the highest grade offered in the resident district.

(b) A student who has completed two or more school years in a nonresident district without a release but with the knowledge of such nonresident attendance by the superintendent or any member of the board of directors of the resident district.

(c) A former charter school student who is enrolling in an alternative learning experience offered by a nonresident district for the 2015-16 school year pursuant to WAC 392-121-182(11). The superintendent of public instruction will use the standard form developed pursuant to RCW 28A.250.-070 to release former charter school students to nonresident districts offering an alternative learning experience under WAC 392-121-182(11). As used in this subsection, "former charter school student" means a student who attended an authorized charter school, as defined by RCW 28A.710.010, in the months of September, October, and November 2015.

AMENDATORY SECTION (Amending WSR 90-19-068, filed 9/17/90, effective 10/18/90)

WAC 392-137-155 Appeal to SPI—Denial of release. The decision of a resident school district to not release a resident student may be appealed to the superintendent of public

instruction. The right of appeal is subject to each of the following conditions:

(1) The appeal is filed by the student's parent or a custodial adult or by the student if the student is eighteen years of age or older.

(2) The resident district has denied the release or has failed to consider the request for the release. The following shall apply:

(a) For the purpose of this subsection, a denial is established by one of the following:

(i) A copy of the minutes of the board of directors of the resident district which establishes that the board has denied a request to release the resident student.

(ii) A written statement by the superintendent of the resident district that the board has taken action denying the release.

(b) For the purpose of this subsection a refusal to consider a request for a release is established by:

(i) Copy of correspondence addressed to the superintendent of the resident district requesting a release and which sets forth the grounds for the release.

(ii) An affidavit by the appellant indicating the resident district board of directors has failed to act on the request and that at least forty-five calendar days has transpired since the request for the release was mailed or delivered to the superintendent of the resident district.

(3) The nonresident district has agreed to accept the student. For the purpose of this subsection an acceptance is established by one of the following:

(a) A copy of minutes of the board of directors of the nonresident district that establishes that the nonresident student has been accepted.

(b) A written statement by the superintendent of the district that the nonresident student has been accepted.

(c) Any documentation that the nonresident district has a policy of accepting one or more of the following categories of nonresident students:

(i) All nonresident students.

(ii) All nonresident students who are released by the resident school district.

(iii) All nonresident students who are released by order of the superintendent of public instruction or by the court.

(4) This subsection applies to former charter school students who seek to enroll in an alternative learning experience offered by a nonresident district for the 2015-16 school year pursuant to WAC 392-121-182(11), and who have applied to the student's resident district for release in accordance with the resident district's interdistrict transfer policy and procedure. If a resident school district does not act on a former charter school student's request for release within five business days, the request for release will be deemed to have been granted. The superintendent of public instruction will follow the process in WAC 392-137-145 (3)(c) to process the student's request for release without an appeal being filed. As used in this subsection, "former charter school student" means a student who attended an authorized charter school, as defined by RCW 28A.710.010, in the months of September, October, and November 2015.

WSR 16-01-136
EMERGENCY RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 18, 2015, 2:12 p.m., effective December 18, 2015, 2:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add prior authorization requirements for providers prescribing thickeners to clients younger than one year of age.

Citation of Existing Rules Affected by this Order: Amending WAC 182-554-500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The Food and Drug Administration (FDA) has issued a warning not to give infants thickeners, particularly those born prematurely, because there is substantive evidence it puts them at risk of necrotizing enterocolitis. The recommendation is supported by American Academy of Pediatrics. This rule change is intended to follow the FDA's warning. The agency initiated permanent rule making under WSR 15-02-038 and the proposed rule's public hearing is scheduled for January 5, 2016.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 18, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-554-500 Covered enteral nutrition products, equipment and related supplies—Orally administered—Clients twenty years of age and younger only. (1) The department covers orally administered enteral nutrition products for clients twenty years of age and younger only, as follows:

(a) The client's nutritional needs cannot be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;

(b) The client is able to manage their feedings in one of the following ways:

(i) Independently; or

(ii) With a caregiver who can manage the feedings; and

(c) The client meets one of the following clinical criteria:

(i) Acquired immune deficiency syndrome (AIDS). Providers must obtain prior authorization to receive payment. The client must:

(A) Be in a wasting state;

(B) Have a weight-for-length less than or equal to the fifth percentile if the client is three years of age or younger; or

(C) Have a body mass index (BMI) of:

(I) Less than or equal to the fifth percentile if the client is four through seventeen years of age; or

(II) Less than or equal to 18.5 if the client is eighteen through twenty years of age; or

(D) Have a BMI of:

(I) Less than or equal to twenty-five; and

(II) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(ii) Amino acid, fatty acid, and carbohydrate metabolic disorders.

(A) The client must require a specialized nutrition product; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(iii) Cancer(s).

(A) The client must be receiving chemotherapy and/or radiation therapy or post-therapy treatment;

(B) The department pays for orally administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and

(C) Providers must follow the department's expedited prior authorization process to receive payment.

(iv) Chronic renal failure.

(A) The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(v) Decubitus pressure ulcers.

(A) The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and

(B) Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.

(vi) Failure to thrive or malnutrition/malabsorption as a result of a stated primary diagnosed disease.

(A) The provider must obtain prior authorization to receive payment; and

(B) The client must have:

(I) A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and

(II) A weight-for-length less than or equal to the fifth percentile if the client is two years of age or younger; or

(III) A BMI of:

(aa) Less than or equal to the fifth percentile if the client is three through seventeen years of age; or

(bb) Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or

(IV) Have a BMI of:

(aa) Less than or equal to twenty-five; and

(bb) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(vii) Medical conditions (e.g., dysphagia) requiring a thickener.

(A) The client must be older than one year of age and:

(I) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and

(II) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.

(B) Providers must follow the ~~((department's))~~ agency's expedited prior authorization process to receive payment.

(C) If prescribing for a child younger than one year of age, providers must request prior authorization and:

(I) Include clinical documentation that supports the medical necessity of the request; and

(II) Include the report recommending a thickener from a speech therapist or occupational therapist who specializes in dysphagia.

(d) If four years of age or younger.

(i) The client must:

(A) Have a certified registered dietitian (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and

(B) Have a signed and dated written notification from WIC indicating one of the following:

(I) Client is not eligible for the women, infants, and children (WIC) program; or

(II) Client is eligible for WIC program, but the need for the oral enteral nutrition product or formula exceeds WIC's allowed amount; or

(III) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific, detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at: <http://www1.dshs.wa.gov/msa/forms/eforms.html>. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight-for-length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral nutrition product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) The medical reason the specific enteral nutrition product, equipment, and/or supply is prescribed;

(ix) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;

(x) The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and

(xi) The client's likely expected outcome if enteral nutritional support is not provided.

(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the enteral nutrition product, equipment, or related supply. This form must not be back-dated; and

(c) Be submitted within three months from the date the prescriber signs the prescription.

(3) Clients twenty years of age and younger must be evaluated by a certified RD within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified RD) while receiving enteral nutrition products. The certified RD must be a current provider with the department.

WSR 16-01-150
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-448—Filed December 21, 2015, 11:51 a.m., effective December 23, 2015]

Effective Date of Rule: December 23, 2015.

Purpose: Amend recreational fishing rules on the Stillaguamish River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000R.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: An emergency rule is needed to remove the restrictions that were put in place with emergency rule WSR 15-24-135 to ensure broodstock needs for early winter steelhead at the Whitehorse Hatchery were met. The egg take goals for early winter steelhead have now been met at the hatchery.

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 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: December 21, 2015.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective December 23, 2015:

WAC 220-310-19000R Freshwater exceptions to statewide rules—Puget Sound. (15-432)

WSR 16-01-160
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 22, 2015, 8:57 a.m., effective December 22, 2015, 8:57 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-107-0001, 388-107-0020, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140, 388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240, 388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, 388-107-1000, and 388-107-1190 in order to address Center for Medicare/Medicaid Services (CMS) home and community-based services (HCBS) and stakeholder concerns with implementation of the requirements stated therein.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-107-0930; amending WAC 388-107-0001, 388-107-0020, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140, 388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240, 388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, 388-107-1000, and 388-107-1190.

Statutory Authority for Adoption: RCW 70.97.230.

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: After receiving input from stakeholders, DSHS's residential care services has revised chapter 388-107 WAC to operationalize the enhanced services facilities (ESF) program.

Immediate Adoption is Necessary for Public Safety and General Welfare. The Washington state operating budget directs the department to implement chapter 70.97 RCW, which requires the establishment of ESF. ESFs are intended to relieve pressure on institutional mental health settings such as Eastern and Western State Hospitals. If certain patients are

relocated to ESFs, more beds will be available to those who need an institutional level of mental health care.

Due to shortage of beds at evaluation and treatment centers and Western and Eastern State Hospitals, some patients have been kept in nonpsychiatric acute care hospital settings such as emergency rooms and medical surgical units. In the case known as *In re: the Detention of D.W., et al. v. Department of Social and Health Service*, the Washington state supreme court found these placements, known as "psychiatric boarding," to be unconstitutional. In order to comply with *D.W.*, DSHS needs to immediately develop alternatives to institutional mental health settings in order to reduce the need for psychiatric boarding. Therefore, adoption of these rules, which will allow ESFs to become licensed and begin operating, is an urgent and time-sensitive matter of public safety and general welfare.

Immediate Adoption is Necessary to Receive Federal Funds. In order to qualify for federal matching funds, the ESF program must conform to federal CMS HCBS requirements. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that payments for ESF services will qualify for federal funding under the HCBS requirements, the proposed rule amendments need to be adopted immediately.

Initial public notice (CR-101) was filed under WSR 15-10-041.

Efforts to adopt the permanent rule will continue by responding to stakeholder comments after the public hearing and comment deadline. Public hearing is scheduled for January 26, 2016, and final rule filing (CR-103) is anticipated to be completed so that permanent rules will be in effect in February 2016.

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 31, Repealed 1.

Number of Sections Adopted at 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 31, Repealed 1.

Date Adopted: December 16, 2015.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-03 issue of the Register.

WSR 16-01-183
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-449—Filed December 22, 2015, 3:04 p.m., effective December 22, 2015, 3:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-040 and 220-52-045.

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

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

Reasons for this Finding: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The department of health has determined that domoic acid levels in Dungeness crab are below the action levels and the crab are safe for human consumption. Provisions in state/tribal management agreements will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management 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 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: December 22, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-040001 Commercial crab fishery. Lawful and Unlawful gear, methods and other unlawful acts.

(1) Notwithstanding the provisions of WAC 220-52-040, effective immediately until further notice, it is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel; and

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings through February 10, 2016.

(c) Inspections for Washington crab vessel-hold inspection certificates will be conducted starting at 12:00 noon on January 3, 2016.

(d) It is permissible for a vessel not designated on a Dungeness crab coastal fishery license to transport or deploy up to 250 pots at any one time for deployment in the coastal crab fishery between Destruction Island (47°40.50) and the Washington/Oregon border. The primary or alternate operator of the crab pot gear named on the license associated with the gear must be on board the vessel when the gear is being deployed. Such a vessel may deploy crab pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date.

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

(a) Vessels that participated in the coastal Dungeness crab fishery from the Oregon/California Border to Destruction Island, WA (47°40.50 N. Lat.), including Willapa Bay and Grays Harbor, may possess crab for delivery into Washington ports north of Destruction Island, WA (47°40.50 N. Lat.), provided the crab were taken south of Destruction Island, WA (47°40.50 N. Lat.)

(b) The vessel does not enter the area north of 47°40.50 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and allows a vessel-hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47°40.50 N. Lat., the vessel operator must call 360-485-8149, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

NEW SECTION

WAC 220-52-04500L Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-045, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) It is permissible to set crab gear in the area between Destruction Island (47°40.50) and the Washington/Oregon border, including Willapa Bay and Grays Harbor, beginning at 8:00 a.m. January 1, 2016.

(2) It is permissible to pull crab gear in the area between Destruction Island (47°40.50) and the Washington/Oregon border, including Willapa Bay and Grays Harbor, beginning at 9:00 a.m. January 4, 2016.

(3) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River

(47°28.00) and Copalis River (47°08.00) according to the following coordinates:

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

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

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

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

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

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

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

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

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

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

(a) Northeast Corner (Tatoosh Island)

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

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

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

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

WSR 16-01-188

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed December 23, 2015, 7:23 a.m., effective January 11, 2016]

Effective Date of Rule: January 11, 2016.

Purpose: Update list of moving traffic violations by adding a reference to the marijuana open container violation and minor driver consuming marijuana, due to recent legislative changes.

Citation of Existing Rules Affected by this Order: Amending WAC 308-104-160.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.2891.

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: Computer programming necessary for the department of licensing to implement 2E2SHB 1276 is scheduled to be completed January 11, 2016. It is necessary to coordinate the amendment of the definition of moving traffic violations to include changes made in 2E2SHB 1276 with the implementation of the programming changes in order to conserve state resources.

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

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

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

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

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

Date Adopted: December 23, 2015.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-04-014, filed 1/24/14, effective 2/24/14)

WAC 308-104-160 Moving and nonmoving violations defined. For purposes of RCW 46.20.2891, 46.65.020, and this chapter, the term "moving violation" means any violation of vehicle laws listed in this section that is committed by the driver of a vehicle, while the vehicle is moving. However, being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is also considered a moving violation for the purposes of this section. Parking violations, equipment violations or paperwork violations relating to insurance, registration, licensing and inspection are considered "nonmoving violations." Moving violations are those violations included in the following list or violations of substantially similar laws, administrative regulations, local laws, ordinances, regulations, or resolutions of a political subdivision of this state, the federal government, or any other state:

- (1) Driving while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502;
- (2) Physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.504;
- (3) Vehicular homicide, as defined by RCW 46.61.520;
- (4) Vehicular assault, as defined by RCW 46.61.522;
- (5) Reckless driving, as defined by RCW 46.61.500;

- (6) Racing, as defined by RCW 46.61.530;
- (7) Embracing, as defined by RCW 46.61.665;
- (8) Hit and run (injury, death, striking the body of a deceased person, or occupied vehicle), as defined by RCW 46.52.020;
- (9) Attempting to elude a police vehicle, as defined by RCW 46.61.024;
- (10) Driving while driving privilege suspended or revoked, as defined by RCW 46.20.342, 46.20.345, or 46.20.394;
- (11) Reckless endangerment of roadway workers, as defined in RCW 46.61.527;
- (12) Driver under twenty-one driving or being in physical control of a motor vehicle after consuming alcohol or marijuana, as defined in RCW 46.61.503;
- (13) Driving or in physical control of commercial motor vehicle while having alcohol in system, as defined in RCW 46.25.110;
- (14) Open container violation (driver), as defined by RCW 46.61.519 or 46.61.745;
- (15) Negligent driving in the first degree, as defined by RCW 46.61.5249;
- (16) Negligent driving in the second degree, as defined by RCW 46.61.525 or 46.61.526;
- (17) Hit and run (unattended vehicle or property), as defined by RCW 46.52.010;
- (18) Disobey road sign, as defined by RCW 46.61.050, 46.61.070, or 46.61.450;
- (19) Disobey signalman, officer, or firefighter, as defined by RCW 46.61.015, 46.61.020, 46.61.021, or 46.61.022;
- (20) Disobey school patrol, as defined by RCW 46.61.385;
- (21) Speed too fast for conditions, as defined by RCW 46.61.400;
- (22) Speed in excess of maximum limit, as defined by RCW 46.61.400 or 46.61.460;
- (23) Speeding in a school zone, as defined by RCW 46.61.440;
- (24) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.340, 46.61.345, 46.61.350, 46.61.365, 46.61.370, or 46.61.375;
- (25) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;
- (26) Failure to keep to the right, as defined by RCW 46.61.100 or 46.61.105;
- (27) Wrong way on a one-way street or rotary traffic island, as defined by RCW 46.61.135;
- (28) Improper lane change or travel, as defined by RCW 46.61.140;
- (29) Straddling or driving over centerline, as defined by RCW 46.61.140;
- (30) Driving on the wrong side of the road, as defined by RCW 46.61.150;
- (31) Crossing divider, as defined by RCW 46.61.150;
- (32) Improper entrance to or exit from freeway, as defined by RCW 46.61.155;

- (33) Violating restrictions on a limited access highway while driving a motor vehicle, as defined by RCW 46.61.160;
- (34) High occupancy vehicle lane violation, as defined by RCW 46.61.165;
- (35) Improper overtaking or passing, as defined by RCW 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, or 46.61.428;
- (36) Passing stopped school bus, as defined by RCW 46.61.370;
- (37) Passing stopped private carrier bus, as defined by RCW 46.61.375;
- (38) Following too closely, as defined by RCW 46.61.-145;
- (39) Following fire apparatus, as defined by RCW 46.61.635;
- (40) Crossing fire hose, as defined by RCW 46.61.640;
- (41) Driving on sidewalk, as defined by RCW 46.61.-606;
- (42) Driving through safety zone, as defined by RCW 46.61.260;
- (43) Driving with wheels off roadway, as defined by RCW 46.61.670;
- (44) Impeding traffic, as defined by RCW 46.61.100, 46.61.425, or 46.20.427;
- (45) Improper turn, as defined by RCW 46.61.290;
- (46) Prohibited turn, as defined by RCW 46.61.295;
- (47) Failure to signal or improper signal, as defined by RCW 46.61.305, 46.61.310, or 46.61.315;
- (48) Improper backing, as defined by RCW 46.61.605;
- (49) Unlawful operation of motorcycle on roadway, as defined by RCW 46.61.608, 46.61.612, or 46.61.614;
- (50) Reckless endangerment, as defined by RCW 9A.36.050;
- (51) Failure to maintain control, as defined by RCW 46.61.445;
- (52) Violation of license restriction(s), as defined by RCW 46.20.041 or 46.20.740;
- (53) Violation of instruction permit restrictions, as defined by RCW 46.20.055;
- (54) Violation of out-of-service order, as defined by RCW 46.25.090;
- (55) Obstructed vision or control, as defined by RCW 46.61.615;
- (56) Carrying persons or animals outside of vehicle, as defined by RCW 46.61.660;
- (57) Carrying passenger in towed vehicle, as defined by RCW 46.61.625;
- (58) Coasting on downgrade, as defined by RCW 46.61.-630;
- (59) Violation of child restraint requirements, as defined by RCW 46.61.687;
- (60) Carrying child under the age of five years old on motorcycle, as defined by RCW 46.37.530;
- (61) Carrying passenger improperly on motorcycle, as defined by RCW 46.61.610;
- (62) No helmet, goggles, mirrors, windshield or face shield, as defined by RCW 46.37.530;
- (63) Operating moped on freeway or sidewalk, as defined by RCW 46.61.710;
- (64) Driving without lights, as defined by RCW 46.37.-020;
- (65) Failure to dim lights, as defined by RCW 46.37.230;
- (66) Operating motorcycle without lights, as defined by RCW 46.37.522;
- (67) No lamp, reflector, or flag on extended load, as defined by RCW 46.37.140;
- (68) Wearing earphones or viewing television in vehicle, as defined by RCW 46.37.480;
- (69) Failure to secure load, as defined by RCW 46.37.-490;
- (70) Spilling load, as defined by RCW 46.61.655;
- (71) Improper towing, as defined by RCW 46.44.070;
- (72) Using a hand-held mobile telephone while driving a commercial motor vehicle, as defined by RCW 46.61.667 (1)(b); and
- (73) Texting while driving a commercial motor vehicle, as defined by RCW 46.61.668 (1)(b).