

WSR 21-17-063
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

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

Effective Date of Rule: Immediately upon filing.

Purpose: To comply with P.L. 116.260 [116-260], Supporting Youth and Foster Families through the Pandemic Act 2021, the emergency rules:

- Allow youth who are eligible for extended foster care services to voluntarily re-enter the program upon reaching the maximum eligibility age of 21 on or after January 27, 2020;
- Allow program participants to remain in the program, regardless of their age, until September 30, 2021; and
- Relieve program participants from being exited from the program for not being able to participate in required education, training, or employment activities or providing documentation of a medical condition that prevents their participation in these activities.

Citation of Rules Affected by this Order: Amending WAC 110-90-0020, 110-90-0040, 110-90-0110, 110-90-0140, 110-90-0160, 110-90-0190, 110-90-0200, 110-145-1305, 110-147-1305, and 110-148-1305.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: P.L. 116-260, Proclamation of the Governor 21-02.

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: P.L. 116-260 forbids states from refusing foster care services to persons who, during the COVID-19 pandemic, either have or will become too old to be eligible for services and eliminates certain additional eligibility elements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 10, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 11, 2021.

Brenda Villarreal
Rules Coordinator

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

WAC 110-90-0020 What is the purpose of the extended foster care program? The extended foster care program provides an opportunity for young adults who are dependent at age eighteen to voluntarily agree to continue receiving foster care services, ~~(, including placement services, while the youth:~~

- ~~(1) Completes a high school or a high school equivalency program;~~
 - ~~(2) Completes a secondary or post-secondary academic or vocational program;~~
 - ~~(3) Participates in a program or activity designed to promote employment or remove barriers to employment;~~
 - ~~(4) Is engaged in employment for eighty hours or more per month;~~
- or
- ~~(5) Is unable to engage in subsections (1) through (4) of this section due to a documented medical condition.)~~

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0020, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0020, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0502, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0502, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0502, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0502, filed 3/25/13, effective 4/25/13.]

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

WAC 110-90-0040 Who is eligible for extended foster care? (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW and:

- ~~(a) ((Enrolled in school as described in WAC 110-90-0050;~~
- ~~(b) Have applied for, or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program as described in WAC 110-90-0060;~~
- ~~(c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC 110-90-0070;~~
- ~~(d) Engaged in employment for eighty hours or more per month;~~
- ~~(e) Unable to engage in subsection (1)(a) through (d) of this section due a documented medical condition as described in WAC 110-90-0100; or~~
- ~~(f)) Enroll in the extended foster care program; or~~

~~(b) ((Did not enroll))~~ Not enrolled in the extended foster care program; and

(i) Had their dependency dismissed on their eighteenth birthday; and

(ii) Is requesting to enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of twenty-one. ~~((; and~~

~~(iii) Meets one of the criteria found in subsection (1)(a) through (e) of this section.))~~

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

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

(4) If the youth was in the extended foster care program through a VPA and was dismissed from the program between January 27, 2020, and September 30, 2021, because the youth reached the age of twenty-one, the youth may reenroll in the extended foster care program through a VPA until September 30, 2021.

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0040, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 18-01-048, § 388-25-0506, filed 12/12/17, effective 1/12/18; WSR 16-14-065, § 388-25-0506, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0506, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0506, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0506, filed 3/25/13, effective 4/25/13.]

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

WAC 110-90-0110 How does a youth agree to participate in the extended foster care program? (1) An eligible dependent youth can agree to participate by:

(a) Signing an extended foster care agreement; or

(b) For developmentally disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age twenty-one; or

(b) Establishing a nonminor dependency before reaching age twenty-one if the department denied entry into the program.

(3) An eligible nonminor dependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one.

(4) An eligible youth as defined in WAC 110-90-0040 requesting to reenter the program may agree to participate by signing a VPA until September 30, 2021, if the youth was dismissed from the program between January 27, 2020, and September 30, 2021, based solely on reaching the age of twenty-one.

(5) In order to continue receiving extended foster care services after entering into a VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a VPA.

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0110, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0110, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 18-01-048, § 388-25-0528, filed 12/12/17, effective 1/12/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0528, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0528, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0528, filed 3/25/13, effective 4/25/13.]

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

WAC 110-90-0140 If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster care? (1) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as the youth(~~(~~

~~(1) Has)) has not turned twenty-one.((; and))~~

(2) ~~Meets one of the conditions for eligibility in WAC 110-90-0040 (1)(a) through (e))~~. A youth dismissed from the program between January 27, 2020, and September 30, 2021, only because the youth reached the age of twenty-one may reapply for the extended foster care program until September 30, 2021.

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0140, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0140, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416,

and 13.34.030. WSR 18-01-048, § 388-25-0534, filed 12/12/17, effective 1/12/18; WSR 14-13-051, § 388-25-0534, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0534, filed 3/25/13, effective 4/25/13.]

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.

AMENDATORY SECTION (Amending WSR 20-15-066, filed 7/13/20, effective 8/13/20)

WAC 110-90-0160 How does DCYF determine a youth's continuing eligibility for the EFC program? To determine a youth's continuing eligibility for the EFC program, prior to every court review hearing DCYF will determine if the youth continues to:

- (1) Agree to participate in the EFC program;
- ~~(2) ((Meet the eligibility criteria in WAC 110-90-0040 (1)(a) through (f));~~
- ~~(3))~~ (2) Reside in an approved placement; and
- ~~((4))~~ (3) Comply with the youth's responsibilities in WAC 110-90-0190.

[Statutory Authority: 2017 c 6. WSR 20-15-066, § 110-90-0160, filed 7/13/20, effective 8/13/20. WSR 18-14-078, recodified as § 110-90-0160, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0540, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0540, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0540, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0540, filed 3/25/13, effective 4/25/13.]

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.

AMENDATORY SECTION (Amending WSR 20-15-066, filed 7/13/20, effective 8/13/20)

WAC 110-90-0190 What must youth do to remain in the EFC program? To remain in the EFC program, unless otherwise authorized by court order, the youth must:

- (1) Agree to participate in the program as expressed in the written EFC agreement;
- (2) ~~((Maintain the standard of eligibility as set by the youth's academic program, employment related program, employment status, or documented medical condition;~~

~~(3))~~ Participate in the case plan, including monthly health and safety visits;

~~((4))~~ (3) Acknowledge that DCYF has responsibility for the youth's care and placement by authorizing DCYF to have access to records related to court-ordered medical, mental health, drug/alcohol treatment services, additional necessary services, educational records needed to determine continuing eligibility for the program, medical records related to a documented medical condition for purposes of qualifying for EFC under WAC 110-90-0040 (1)(f); and

~~((5))~~ (4) Remain in the approved foster care placement and follow placement rules as follows:

(a) Stay in the placement identified by DCYF or approved by the court;

(b) Obtain approval from their caseworker and notify their caregiver for extended absences from the placement of more than three days; and

(c) Comply with court orders and any specific rules developed in collaboration by the youth, caregiver and caseworker.

[Statutory Authority: 2017 c 6. WSR 20-15-066, § 110-90-0190, filed 7/13/20, effective 8/13/20. WSR 18-14-078, recodified as § 110-90-0190, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0546, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0546, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0546, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0546, filed 3/25/13, effective 4/25/13.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 20-15-066, filed 7/13/20, effective 8/13/20)

WAC 110-90-0200 When is a youth no longer eligible for the EFC program? A youth is no longer eligible for the EFC program and DCYF will ask the court to dismiss the nonminor dependency, when the youth:

~~(1) ((Graduates from high school or equivalency program and has not demonstrated intent to timely enroll in a post-secondary academic or vocational program;~~

~~(2) Graduates from a post-secondary education or vocational program;~~

~~(3) Reaches their twenty-first birthday))~~ Reaches the age of twenty-one or older before January 27, 2020;

~~((4) Is no longer participating or engaging in any of the eligibility criteria under WAC 110-90-0040 (1)(a) through (f);))~~

~~((5))~~ (2) No longer agrees to participate in EFC services; or

((+6)) (3) Fails or refuses to comply with youth responsibilities outlined in WAC 110-90-0190; or

(4) Only after September 30, 2021, a youth who is twenty-one years of age or older will no longer be eligible for the EFC program and DCYF will ask the court to dismiss the nonminor dependency.

[Statutory Authority: 2017 c 6. WSR 20-15-066, § 110-90-0200, filed 7/13/20, effective 8/13/20. WSR 18-14-078, recodified as § 110-90-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0548, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0548, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0548, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0548, filed 3/25/13, effective 4/25/13.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

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

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

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

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

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

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

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

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

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

"Chapter" means chapter 110-145 WAC.

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

(a) Under eighteen years old;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"DOH" means the department of health.

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

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

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour

basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to

care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

- (a) A decision issued by an administrative law judge;
- (b) A final determination, decision, or finding made by an agency following an investigation;
- (c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;
- (d) A revocation, denial, or restriction placed on any professional license; or
- (e) A final decision of a disciplinary board.

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

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

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

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-145-1305, filed 2/7/20, effective 3/9/20.]

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

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

WAC 110-147-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understanding these requirements:

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

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

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

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

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

"CA" means children's administration.

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

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

"Certification" means a licensed child placing agency (CPA) review that a foster home being supervised by that CPA meets licensing regulations. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-147 WAC.

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

(1) Under eighteen years of age;

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

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

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

(5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child placing agency" or "(CPA)" means an agency licensed to place children for foster care or adoption.

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

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

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

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four-hour care in their home to children.

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

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

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

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

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

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

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

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

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

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

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

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

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

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

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

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

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

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

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

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

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

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

[WSR 18-14-078, recodified as § 110-147-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-147-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-147-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1305, filed 12/11/14, effective 1/11/15.]

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

WAC 110-148-1305 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understanding these requirements:

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

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

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

"CA" means children's administration.

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

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

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

"Certification" means either:

(1) Our review of whether you meet the licensing requirements, even though you do not need to be licensed; or

(2) A licensed child placing agency (CPA) representing that a foster home being supervised by that CPA meets licensing requirements. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-148 WAC.

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

(1) Under eighteen years of age;

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

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

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

(5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

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

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

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

"Department or DSHS" means the department of social and health services.

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

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four-hour care in their home to children.

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

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

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

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

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

"License" means a permit issued by us confirming that you and your home meet the licensing standards established in this chapter.

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

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

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

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

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

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

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

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means your buildings and grounds adjacent to your residential property that are owned or managed by you.

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

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

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

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

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

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

[WSR 18-14-078, recodified as § 110-148-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-148-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1305, filed 12/11/14, effective 1/11/15.]

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 21-18-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-152—Filed August 19, 2021, 7:36 a.m., effective August 19, 2021, 7:36 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes commercial spot shrimp pot harvest in Shellfish Management Areas 1, 2E, 2W, 3, and Marine Fish/Shellfish Catch Area 26D effective immediately.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000J and 220-340-03000N; and amending WAC 220-340-520 and 220-340-030.

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

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

Reasons for this Finding: (1) Closes Shellfish Management Areas 1, 2E, 2W, 3, and Marine Fish/Shellfish Catch Area 26D to commercial spot harvest effective immediately.

(2) Closes Shrimp Management Area 2E to all commercial shrimp harvest.

(3) Defines the shrimp management areas and regions open to spot and nonspot commercial harvest.

(4) Defines spot pot gear requirements.

(5) Defines nonspot gear requirements.

(6) Implements labeling requirements for groundline pot gear.

(7) Implements restrictions for the concurrent use of spot shrimp and onspot [nonspot] shrimp pot gear.

(8) Implements a fishing declaration requirement for all shrimp pot fisheries in Puget Sound.

(9) Sets harvest restrictions for and opens the nonspot commercial pot fishery.

(10) Sets harvest restrictions for, and opens, the spot commercial pot fishery.

(11) Sets the harvest and gear limitations for, and opens, the Puget Sound shrimp trawl fishery.

(12) Requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

The emergency regulation closes spot shrimp pot harvest in all areas of Puget Sound while commercial clean-up targets are being determined and coordinated. Sections of this regulation define open areas to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and nonspot shares while also achieving the 50/50 harvest defined by the federal court order. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort.

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

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

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

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

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

Date Adopted: August 18, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000K Puget Sound shrimp pot and trawl fishery—

Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2W and 3 are open to the harvest of non-spot shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) Sub-area 23A-S of Marine Fish/Shellfish Catch Reporting Area 23A are closed to the commercial harvest of non-spot shrimp until the harvestable share available for the state managed commercial spot shrimp fishery is taken.

(b) There is no minimum size limit for spot shrimp or non-spot shrimp.

(c) Shrimp pot gear used for commercial harvest must meet the following requirements:

(i) A shrimp pot may not exceed a maximum 153 inch bottom perimeter and a maximum of 24 inch height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(iv) Spot shrimp may only be harvested using pots with a minimum mesh size of 1 inch. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(v) Non-spot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the dis-

tance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(d) Buoys must have the number of pots deployed per groundline recorded on each end-buoy of a groundline.

(e) It is lawful to concurrently deploy spot shrimp pots and non-spot pots with the following restrictions:

(i) Spot pots and non-spot pots may not be deployed concurrently within the same Catch Reporting Area, with the following exceptions:

Spot and non-spot pots may be concurrently deployed in Catch Area 23A but not within the same sub-area (23A-E, 23A-W, 23A-C, or 23A-S).

Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Area 25A south of a line true west from Travis Spit to the Miller Peninsula, concurrently with spot shrimp pots in the remaining portion of 25A outside of Sequim Bay.

(ii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.

(f) Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and the amount of pounds that are being targeted prior to the deployment of any shrimp gear to either shrimp.report@dfw.wa.gov, by text message to 360-302-6372, or by other electronic means designated by the Department.

(g) It is unlawful to harvest non-spot and spot shrimp in the same day.

(h) It is unlawful to harvest shrimp in more than one catch area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly, from 12:00a.m. on Wednesdays through 11:59 p.m. on Tuesdays.

(b) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 1000 pounds per non-spot shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

(c) Harvest of non-spot shrimp is not permitted deeper than 150 feet in Region 2E. Region 2E is comprised of Catch Areas 24A, 24B, 24C, 24D, and 26AE (26A northerly of a line drawn from the southern tip of Possession Point on Whidbey Island 110° true to the shipwreck on the opposite shore).

(d) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Region 2W. Region 2W is comprised of Catch Areas 25B, 25C, 25D, and 26AW.

(3) Shrimp Spot Pot Harvest Restrictions:

(a) All waters of Puget Sound are closed to commercial spot shrimp harvest.

(4) Shrimp trawl Harvest Restrictions:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open effective immediately, until further notice.

(c) The waters of south Lopez Sound (the portion of Catch Area 22A south of a line projected east and west from the northern tip of Trump Island) will open at 12:00 a.m. on July 10, 2021.

(d) The remaining portion of Shrimp Management Area 1B and Catch Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until further notice.

(e) Catch Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) will open at 12:00 a.m. on July 1, 2021.

(f) Catch Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) will open at 12:00 a.m. on August 1, 2021

(g) Trawling is allowed only in waters deeper than 120 feet in Catch Area 20A.

(5) All shrimp taken under this section must be sold to licensed Washington State wholesale fish dealers.

[]

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.

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

NEW SECTION

WAC 220-340-03000P Shellfish harvest logs. Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to shrimp.report@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

[]

REPEALER

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

WAC 220-340-52000J Puget Sound shrimp pot and trawl fishery—Season. (21-146)

WAC 220-340-03000N Shellfish harvest logs. (21-146)

WSR 21-18-013

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed August 20, 2021, 7:50 a.m., effective August 20, 2021, 7:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-72-020 Certificate requirements and 246-72-080 Renewals and updating license information. Current certificate requirements for medical marijuana certified consultants (MMCC) under WAC 246-72-020 require an initial applicant to have obtained a cardio-pulmonary resuscitation (CPR) card from a training course that includes both a written examination and skills demonstration test in order to receive a MMCC credential from the department of health (department). The department is amending this section of rule to temporarily suspend the skills demonstration portion of the CPR requirement to allow initial applicants to move forward in the department's application process during the coronavirus disease (COVID-19) response. WAC 246-72-080 Renewals does not specify CPR requirements include a skills demonstration test to be compliant, however the department interprets this requirement to be the same as defined in WAC 246-72-020. Therefore, the department is also revising WAC 246-72-080 in this rule making to clarify that the in-person CPR requirement suspension applies to renewing applicants as well as initial applications. This is the fourth filing of these emergency rules and will replace the previous emergency rules filed on April 23, 2021, under WSR 21-10-011. It remains necessary as the COVID-19 pandemic continues to make in-person courses unavailable.

Citation of Rules Affected by this Order: Amending WAC 246-72-020 and 246-72-080.

Statutory Authority for Adoption: RCW 69.51A.290.

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

Reasons for this Finding: RCW 69.51A.290 provides the department authority to adopt rules and requirements for licensing and regulating the MMCC. Under the COVID-19 pandemic restrictions, in-person CPR training programs have been suspended making it impossible for some current and new applicants to obtain licensure and continue providing services allowed under WAC 246-72-030 to patients in Washington during the COVID-19 pandemic. The skills demonstration portion of the CPR requirement was adopted in rule back in 2017 to address patient concerns relating to certified consultant trainings. A consultant's role includes spending a significant amount of time assisting patients (some with acute or chronic health conditions) with getting registered and product selection.

The immediate amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare. Licensees have shared that they are struggling to meet the CPR requirements to gain or maintain their MMCC. Furthermore, retailers are required to have an MMCC on staff in order to serve patients from the medical marijuana community. If licensees are not able to gain or renew their certification, not only will the MMCC be unable to provide care, but the retail store itself may no longer be able to provide services to medical patients at all, making it very difficult or impossible for

patients to access their medication. By temporarily suspending the skills demonstration portion of the CPR training requirement under WAC 246-72-020 and 246-72-080, both new and renewing applicants will be able to continue with certification and provide the necessary health care services to patients in need. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

Date Adopted: August 19, 2012.

Kristin Peterson, JD
Deputy Secretary for
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-2302.1

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-020 Certificate requirements. An applicant for a medical marijuana consultant certificate must submit to the department:

- (1) A completed initial application on forms provided by the department;
- (2) Fees required under WAC 246-72-110;
- (3) Certificate of successful completion from an approved training program;
- (4) Proof of being age twenty-one or older. Acceptable forms of proof are a copy of the applicant's valid driver's license or other government-issued identification card, United States passport, or certified birth certificate;
- (5) Proof of current CPR certification from a course requiring completion of ~~((both))~~ a written ~~((and skills demonstration))~~ test; and
- (6) Any other documentation required by the secretary.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-020, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-020, filed 3/17/16, effective 3/18/16.]

OTS-2528.1

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-080 Renewals and updating license information. (1)

Certificates must be renewed every year on the certificate holder's birthday. Initial certificates issued within ninety days of the certificate holder's birthday do not expire until the person's next birthday.

(2) Renewals:

(a) Prior to the certificate expiration date, courtesy renewal notices are mailed to the address on file. Certificate holders must return the renewal notice when renewing their credential. Failure to receive a courtesy renewal notice does not relieve or exempt the renewal requirement.

(b) The certificate holder must attest to completion of annual certification requirements, including current CPR certification as outlined in WAC 246-72-020.

(c) Renewal fees are accepted by the department no sooner than ninety days prior to the expiration date.

(3) Duplicate certificate: A certificate holder may obtain a duplicate certificate by submitting a written request to the department and paying the fee as required in WAC 246-72-990.

(4) Name changes: It is the responsibility of each certificate holder to maintain his or her correct name on file with the department. Requests for name changes must be submitted in writing to the department along with documentation showing the name was legally changed.

(5) Address changes: It is the responsibility of each certificate holder to maintain his or her current address on file with the department. Requests for address changes must be made in writing. The mailing address on file with the department will be used for mailing of all official matters to the certificate holder.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-080, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-080, filed 3/17/16, effective 3/18/16.]

WSR 21-18-014

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed August 20, 2021, 8:44 a.m., effective August 20, 2021, 8:44 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending WAC 182-559-100 (within the foundational community supports program chapter) to remove the community support services benefit exclusion for institutes for mental diseases (IMD).

Citation of Rules Affected by this Order: Amending WAC 182-559-100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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 filing is necessary to comply with changes made by the Centers for Medicare and Medicaid Services to the foundational community supports program protocol. These changes permit implementation of supportive housing services in approved IMD facilities under Washington state's 1115 Medicaid Transformation Waiver.

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

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

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

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

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

Date Adopted: August 20, 2021.

Wendy Barcus
Rules Coordinator

OTS-3005.1

AMENDATORY SECTION (Amending WSR 18-15-007, filed 7/6/18, effective 8/6/18)

WAC 182-559-100 General. (1) Under the authority of the Medicaid transformation project, RCW 71.24.385, and subject to available funds, the Medicaid agency covers targeted foundational community supports to eligible Medicaid beneficiaries, which include the following benefits:

- (a) Community support services; and
- (b) Supported employment services.
- (2) Community support services include:
 - (a) Pretenancy supports:
 - (i) Conducting a functional needs assessment to:

- (A) Identify the participant's preferences related to housing (type, location, living alone or with someone else, identifying a roommate, accommodations needed, or other important preferences); and
- (B) Identify the participant's needs for support to maintain community integration. This includes what type of setting works best for the client, assistance in budgeting for housing/living expenses, assistance in connecting the client with social services to assist with filling out applications and submitting appropriate documentation in order to obtain sources of income necessary for community living and establishing credit, and in understanding and meeting obligations of tenancy.
- (ii) Assisting clients to connect with social services to help with finding and applying for housing necessary to support the clients in meeting their medical care needs;
- (iii) Developing an individualized community integration plan based upon the assessment as part of the overall person-centered plan;
- (iv) Identifying and establishing short and long-term measurable goal(s), and establishing how goals will be achieved and how concerns will be addressed;
- (v) Participating in person-centered plan meetings at redetermination and revision plan meetings, as needed;
- (vi) Providing supports and interventions according to the person-centered plan.
- (b) Tenancy-sustaining services:
- (i) Service planning support and participating in person-centered plan meetings at redetermination and revision plan meetings as needed;
- (ii) Coordinating and linking the client to services including:
- (A) Primary care and health homes;
- (B) Substance use treatment providers;
- (C) Mental health providers;
- (D) Medical, vision, nutritional and dental providers;
- (E) Vocational, education, employment and volunteer supports;
- (F) Hospitals and emergency rooms;
- (G) Probation and parole;
- (H) Crisis services;
- (I) End of life planning; and
- (J) Other support groups and natural supports.
- (iii) Entitlement assistance including assisting clients in obtaining documentation, navigating and monitoring application process and coordinating with the entitlement agency;
- (iv) Assistance in accessing supports to preserve the most independent living, including skills coaching, financing counseling, anger management, individual and family counseling, support groups, and natural supports;
- (v) Providing supports to assist the client in communicating with the landlord and/or property manager regarding the participant's disability (if authorized and appropriate), detailing accommodations needed, and addressing components of emergency procedures involving the landlord and/or property manager;
- (vi) Coordinating with the client to review, update and modify their housing support and crisis plan on a regular basis to reflect current needs and address existing or recurring housing retention barriers; and
- (vii) Connecting the client to training and resources that will assist the client in being a good tenant and lease compliance, including ongoing support with activities related to household management.
- (c) The community support services benefit does not include:

- (i) Payment of rent or other room and board costs;
 - (ii) Capital costs related to the development or modification of housing;
 - (iii) Expenses for utilities or other regular occurring bills;
 - (iv) Goods or services intended for leisure or recreation;
 - (v) Duplicative services from other state or federal programs;
- and
- (vi) Services to clients in a correctional institution (~~or an institute for mental disease (IMD)~~).
- (d) Community support services must be provided:
 - (i) In an integrated setting of the client's choice; and
 - (ii) In a manner that ensures the client's individual right of privacy, dignity, respect, and freedom from coercion and restraint;
 - (iii) Post tenancy, in settings consistent with home and community-based services, as defined in 42 C.F.R. Sec. 441.530, such as those that:
 - (A) Do not have the qualities of an institution;
 - (B) Are not located in a building that is also a publicly or privately operated facility providing inpatient institutional treatment;
 - (C) Are not on the grounds of, or immediately adjacent to a public institution;
 - (D) Do not have the effect of isolating the client from community members who are not receiving medicaid services; and
 - (E) Are not a licensed residential care facility such as an adult family home or assisted living facility.
- (3) Supported employment, such as individual placement and support (IPS) services, is individualized and includes one or more of the following services:
 - (a) Preemployment services:
 - (i) Prevocational/job-related discovery or assessment;
 - (ii) Person-centered employment planning;
 - (iii) Individualized job development and placement;
 - (iv) Job carving;
 - (v) Benefits education and planning; or
 - (vi) Transportation (only in conjunction with the delivery of an authorized service).
 - (b) Employment sustaining services:
 - (i) Career advancement services;
 - (ii) Negotiation with employers;
 - (iii) Job analysis;
 - (iv) Job coaching;
 - (v) Benefits education and planning;
 - (vi) Transportation (only in conjunction with the delivery of an authorized service);
 - (vii) Asset development; or
 - (viii) Follow-along supports.
 - (c) The IPS benefit does not include:
 - (i) Generalized employer contacts that are not connected to a specific enrolled individual or an authorized service;
 - (ii) Employment support for individuals in subminimum wage, or sheltered workshop settings; and
 - (iii) Facility-based habilitation or personal care services.
 - (d) Supported employment services must be provided in settings consistent with settings defined in 42 C.F.R. 441.530 (a) (1) (i) through (v) and (a) (2).
 - (4) Clients who meet the eligibility criteria for both community support services and supported employment services are able to receive

both services concurrently. See WAC 182-559-300 for community support services eligibility criteria and WAC 182-559-350 for supported employment eligibility criteria.

(5) In order to ensure the demand for services remains within available funds, the agency may impose enrollment wait lists for services. The wait list for foundational community supports services is considered on a first-come first-serve basis using the date the client requests community support services.

(6) Services described in this chapter must be approved under the explicit authority of the medicaid transformation project.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-15-007, § 182-559-100, filed 7/6/18, effective 8/6/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225 § 9 (1)(i) and 2016 1st sp.s c 36 § 213 (1)(f) and (g). WSR 17-11-136, § 182-559-100, filed 5/24/17, effective 7/1/17.]

WSR 21-18-016
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-153—Filed August 20, 2021, 1:47 p.m., effective August 22, 2021]

Effective Date of Rule: August 22, 2021.

Purpose: The purpose of this emergency rule is to close Chinook retention in a portion of Marine Area 10.

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

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

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

Reasons for this Finding: This emergency rule is necessary to close Chinook retention in Marine Area 10, except year-round piers and the Sinclair Inlet Fishery. The current estimate of total Chinook sublegal encounters is 10,509 (159 percent) of the total 6,592 sublegal encounter limit agreed up in this year's list of agreed fisheries. Chinook retention is closing in order to preserve Coho and Pink opportunities in Area 10.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 20, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000L Puget Sound salmon—Saltwater seasons and daily limits. Effective August 22 through August 31, 2021, the following provisions of WAC 220-313-060 regarding Chinook salmon retention in Marine Area 10, except for the Sinclair Inlet Fishery (waters of Sinclair Inlet and Port Orchard south of the Manette Bridge in Bremerton, south of a line drawn true west from Battle Point, and west of a line drawn true south from Point White) and year round fishing piers (Bremerton Boardwalk, Illahee State Park Pier, Seacrest Pier, and Wa-

terman Pier,) shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 10: Salmon: Release all Chinook.

[]

WSR 21-18-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-155—Filed August 20, 2021, 1:58 p.m., effective August 23, 2021]

Effective Date of Rule: August 23, 2021.

Purpose: Closes commercial sea cucumber harvest in sea cucumber management District 5.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000Y; and amending WAC 220-340-730.

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

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

Reasons for this Finding: This emergency rule closes harvest of sea cucumber in sea cucumber management District 5 because the quota in this area has been reached. This closure is needed to fulfill obligations of state and tribal comanager agreements. Immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 20, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000Z Commercial sea cucumber fishery. Effective August 23, 2021, until further notice, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest and sales shall be described below. All other provisions of WAC 220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following catch record areas of Sea Cucumber District 1, Monday through Sunday of each week: 20A, 20B, 21A, 21B, 22A, 22B.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following catch record areas of Sea Cucumber District 2, Monday through Sunday of each week: 29, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,800 pounds per valid designated sea cucumber harvest license.

[]

REPEALER

The following section of Washington Administrative Code is repealed, effective August 23, 2021:

WAC 220-340-73000Y Commercial sea cucumber fishery.
(21-151)

WSR 21-18-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-154—Filed August 20, 2021, 3:23 p.m., effective August 20, 2021]

Effective Date of Rule: August 20, 2021.

Purpose: The purpose of this emergency rule is to increase the Chinook portion of the salmon daily limit in Marine Area 2.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500C; and amending WAC 220-313-075.

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

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

Reasons for this Finding: This rule is needed to increase the Chinook portion of the salmon daily limit in Marine Area 2. Sufficient quota remains available in the fishery to allow retention of two Chinook salmon per angler per day while still meeting the Pacific Coast Salmon Fishery Management Plan goal of continuing recreational salmon fishing into September. This rule is also adopted at the recommendation of the Pacific Fisheries Management Council and has been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 20, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500D Pacific Ocean salmon—Seasons—Closed areas.

Effective 12:01 AM August 21 through September 15, 2021 the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

(1) **Catch Record Card Area 1:**

Open immediately through September 15, 2021:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.

(2) **Catch Record Card Area 2:**

Open immediately through September 15, 2021:

- (a) Daily limit of 2 salmon.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.

(3) **Catch Record Card Area 3:**

Open immediately through September 15, 2021:

- (a) Daily limit of 2 salmon.
- (b) Release wild coho.
- (c) Chinook minimum length 24 inches.
- (d) Coho minimum length 16 inches.

(4) **Catch Record Card Area 4:**

Open immediately through September 15, 2021:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho and chum.
- (c) Chinook minimum length 24 inches.
- (d) Coho minimum length 16 inches.

(e) No chinook retention in waters east of the Bonilla-Tatoosh line.

[]

REPEALER

The following section of Washington Administrative Code is repealed, effective 12:01 AM August 21, 2021:

WAC 220-313-07500C Pacific Ocean salmon—Seasons—Closed areas. (21-138)

WSR 21-18-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-158—Filed August 20, 2021, 4:07 p.m., effective August 24, 2021, 7:00 p.m.]

Effective Date of Rule: August 24, 2021.

Purpose: The purpose of this emergency rule is to modify commercial gill net open periods in Puget Sound salmon management and Catch Reporting Area 7C.

Citation of Rules Affected by this Order: Amending WAC 220-354-160.

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

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

Reasons for this Finding: This emergency rule is needed to adjust commercial gillnet salmon fisheries in Puget Sound salmon management and Catch Reporting Area 7C beginning 7 p.m., August 24, through 8 a.m., August 26, 2021. The reason for the closure is to avoid gear conflicts with tribal crab opening. This action is undertaken through comanager agreement.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 20, 2021.

Kelly Susewind
Director

[NEW SECTION]

WAC 220-354-16000K Puget Sound salmon—Gill net—Open periods.

Effective 7 PM August 24 through 8 AM August 26, 2021, the following provisions of WAC 220-354-160 regarding commercial Gill Net open periods in Puget Sound Salmon Management and Catch Reporting Area 7C shall be as follows. All other provisions of WAC 220-351-210 not contained herein remain in effect unless otherwise altered by emergency rule:

AREA	TIME	DATES	Open/ Closed	Minimum mesh size
Area 7C	7 PM - 8 AM	8/24/2021 - 8/25/2021	Closed	
Area 7C	7 PM - 8 AM	8/25/2021 - 8/26/2021	Open	7"

[]

WSR 21-18-020
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-159—Filed August 20, 2021, 4:57 p.m., effective August 23, 2021]

Effective Date of Rule: August 23, 2021.

Purpose: The purpose of this emergency rule is to open reef net seasons in Puget Sound salmon management and Catch Reporting Areas 7 and 7A.

Citation of Rules Affected by this Order: Amending WAC 220-354-180.

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

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

Reasons for this Finding: This emergency rule is needed to provide for Pacific salmon commission's Fraser River Panel authorized commercial fisheries in Puget Sound salmon management and Catch Reporting Area 7. The Fraser River Panel authorized the fishery during their meeting on August 20, 2021. There is harvest share for pink salmon at current run-size levels. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 20, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-18000L Puget Sound salmon—Reef net open periods.

Effective 5 AM August 23 through 9 PM August 23, 2021, the following provisions of WAC 220-354-180 regarding reef net open periods in Puget Sound Salmon Management and Catch Reporting Area 7 and 7A shall be as follows. All other provisions of WAC 220-354-180 not contained herein remain in effect unless others altered by emergency rule:

Reef nets - Open to reef nets according to the times, dates, and conditions as prescribed and listed below:

Area	Open Periods
7 and 7A	Open 5 AM – 9 PM, Monday, August 23, 2021

It is unlawful to retain any salmon other than pink salmon taken with reef net gear.

[]

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

WSR 21-18-022
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 23, 2021, 9:08 a.m., effective September 1, 2021]

Effective Date of Rule: September 1, 2021.

Purpose: The purpose of the emergency rule amendment to WAC 392-160-015 and 392-160-026 is to provide school districts with additional time for required screening of potential multilingual/English learners. The emergency rule increases the screening time frame from ten days to thirty days and is intended to be effective through December 2021. The 30-day screening period is consistent with current federal screening period. The extended screening time frame allows districts to screen students identified on a provisional status as well as incoming new students within 30 days of on-site attendance when school resumes in the fall.

Citation of Rules Affected by this Order: Amending WAC 392-160-015 and 392-160-026.

Statutory Authority for Adoption: RCW 28A.180.060.

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

Reasons for this Finding: Due to the ongoing global pandemic caused by the COVID-19 virus and the need for many schools to operate fully or partially remotely last school year (2020-2021), students screened were identified on a provisional basis for last school year. The extended screening time frame allows districts to screen students identified on a provisional status as well as incoming new students within 30 days of on-site attendance when school resumes in the fall 2021.

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

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

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

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

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

Date Adopted: August 23, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3242.1

AMENDATORY SECTION (Amending WSR 16-15-100, filed 7/20/16, effective 8/20/16)

WAC 392-160-015 Identification of eligible students. (1) District procedures—Identification of primary language required: Every school district board of directors shall adopt written procedures governing the identification of each student's primary language and the determination of which students with a primary language other than English are eligible students. Such procedures shall include:

(a) A home language survey, completed by the student and the student's parent(s) or guardian(s), which identifies the student's primary language as other than English; and

(b) Provisions for testing students on the state-approved screener.

(2) Deadline for determining eligibility of newly enrolled students: The primary language and eligibility of each newly enrolled student shall be established no later than the (~~tenth~~) thirtieth school day after the date upon which the student registers and commences attendance at a particular school district. Provided that no eligible student shall be required to participate in a transitional bilingual instructional program or an alternative instructional program, if the parent/guardian chooses to opt the student out of program services.

(3) Annual reassessment of all (eligible) students is required: Each school year each school in which an eligible student is enrolled shall conduct an evaluation of the overall academic progress and English language development of the student. This evaluation must include, but not be limited to, the administration of a standardized test in reading, writing, listening and speaking in English as set forth in WAC 392-160-035.

[Statutory Authority: RCW 28A.180.060. WSR 16-15-100, § 392-160-015, filed 7/20/16, effective 8/20/16. Statutory Authority: RCW 28A.180.010. WSR 08-19-039, § 392-160-015, filed 9/10/08, effective 10/11/08; WSR 08-09-071, § 392-160-015, filed 4/16/08, effective 5/17/08. Statutory Authority: Chapter 28A.180 RCW. WSR 91-17-008 (Order 12), § 392-160-015, filed 8/12/91, effective 9/12/91. Statutory Authority: RCW 28A.58.808. WSR 84-20-083 (Order 84-41), § 392-160-015, filed 10/2/84. Statutory Authority: RCW 28A.58.800 through 28A.58.810. WSR 84-13-027 (Order 84-17), § 392-160-015, filed 6/13/84. Statutory Authority: RCW 28A.58.804. WSR 81-15-089 (Order 81-4), § 392-160-015, filed 7/22/81. Statutory Authority: RCW 28A.58.808. WSR 80-07-039 (Order 80-21), § 392-160-015, filed 6/17/80.]

AMENDATORY SECTION (Amending WSR 08-09-071, filed 4/16/08, effective 5/17/08)

WAC 392-160-026 District application. Each school district that seeks an allocation of state funds for a transitional bilingual instruction program or alternative instructional program shall submit a program approval application to the superintendent of public instruction no later than (~~August~~) September 1 of each year: Provided, That in the case of extenuating circumstances or in the case of a change in circumstances such as the unexpected enrollment of eligible students

the superintendent of public instruction may allow the belated submission of an application or the submission of a modification to a previously approved application. The application shall apply to programs to be conducted during the ensuing school year and shall provide data and information in accordance with instructions and forms now or hereafter established and published by the superintendent of public instruction in bulletins distributed to school districts.

[Statutory Authority: RCW 28A.180.010. WSR 08-09-071, § 392-160-026, filed 4/16/08, effective 5/17/08. Statutory Authority: RCW 28A.58.808. WSR 84-20-083 (Order 84-41), § 392-160-026, filed 10/2/84. Statutory Authority: RCW 28A.58.800 through 28A.58.810. WSR 84-13-027 (Order 84-17), § 392-160-026, filed 6/13/84.]

WSR 21-18-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-156—Filed August 23, 2021, 10:43 a.m., effective August 25, 2021]

Effective Date of Rule: August 25, 2021.

Purpose: The purpose of this emergency rule is to close fishing from a floating device in a section of Drano Lake.

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

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

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

Reasons for this Finding: Steelhead fishing and retention in Drano Lake was closed from July through October 2021, based on low pre-season forecasts of summer steelhead returning to the Columbia River. Despite this closure, creel surveys and law enforcement contacts have found that some anglers continue to target steelhead in this area, primarily from watercraft. This rule is needed to ensure that summer steelhead impacts occurring in sport fisheries remain within guidelines defined in the 2018-2027 *US v. Oregon* Management Agreement.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 20, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000A Freshwater exceptions to statewide rules—Southwest. Effective August 25 through October 31, 2021 fishing from a floating device is unlawful in waters of Drano Lake located between a line projected through shoreline markers (located on north and west shores) approximately 2,000 feet downstream of the Little White Salmon National Fish Hatchery, upstream to the deadline markers at the mouth of the Little White Salmon River immediately below the fish hatchery.

Anglers may only fish from the bank with hand cast lines in this section. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule.

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WSR 21-18-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-160—Filed August 23, 2021, 12:48 p.m., effective September 1, 2021]

Effective Date of Rule: September 1, 2021.

Purpose: The purpose of this emergency rule is to open commercial razor clam seasons in Razor Clam Area 2.

Citation of Rules Affected by this Order: Repealing WAC 220-340-12000G; and amending WAC 220-340-120.

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

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

Reasons for this Finding: Based on the current catch rate and on-site inspection, there are adequate clams to support a four week extension of the commercial razor clam season. Washington department of health has confirmed biotoxin levels currently fall below the regulatory threshold. This emergency rule is needed to open the commercial razor clam season in Razor Clam Area 2. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 23, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-12000G Commercial razor clams. Notwithstanding the provisions of WAC 220-340-120, effective September 1 through September 30, 2021, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 2 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter Point.

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REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2021:

WAC 220-340-12000G Commercial razor clams.

WSR 21-18-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-161—Filed August 23, 2021, 12:51 p.m., effective August 24, 2021]

Effective Date of Rule: August 24, 2021.

Purpose: Opens commercial spot shrimp pot clean-up fisheries in Shellfish Management Areas 1C, 2E, 3, and Marine Fish/Shellfish Catch Areas 26B and 26D effective August 24 at 12:00 a.m.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000K and 220-340-03000P; and amending WAC 220-340-520 and 220-340-030.

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

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

Reasons for this Finding: (1) Opens Shellfish Management Areas 1C, 2E, 2W, 3, and Marine Fish/Shellfish Catch Areas 26B and 26D to commercial spot shrimp pot harvest effective August 24 at 12:00 a.m.

(2) Closes Shellfish Management Areas 1A, 1B, 2W, and Sub-area 23A-W of Marine Fish/Shellfish Catch Reporting Area 23A to commercial harvest of spot shrimp.

(3) Closes Shrimp Management Area 2E and Marine Fish/Shellfish Catch Reporting Areas 26B and 26D to commercial harvest of nonspot shrimp.

(4) Defines the shrimp management areas and regions open to spot and nonspot commercial harvest.

(5) Defines spot pot gear requirements.

(6) Defines nonspot gear requirements.

(7) Implements labeling requirements for groundline pot gear.

(8) Implements restrictions for the concurrent use of spot shrimp and onspot [nonspot] shrimp pot gear.

(9) Implements a fishing declaration requirement for all shrimp pot fisheries in Puget Sound.

(10) Sets harvest restrictions for and opens the nonspot commercial pot fishery.

(11) Sets harvest restrictions for and opens the spot commercial pot fishery.

(12) Sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery.

(13) Requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

The emergency regulation opens Puget commercial clean-up spot shrimp pot harvest in multiple areas of Puget Sound. Sections of this regulation define open areas to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and nonspot shares while also achieving the 50/50 harvest defined by the federal court order. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 23, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000L Puget Sound shrimp pot and trawl fishery—

Season. Notwithstanding the provisions of WAC 220-340-520, effective August 24, 2021, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W, 3 as well as Marine Fish/Shellfish Catch Reporting Areas 26B, and 26D are open to the commercial harvest of all shrimp species, effective Tuesday August 24, 2021 at 12:00 a.m., until further notice, except as provided for in this section:

(i) Sub-area 23A-S of Marine Fish/Shellfish Catch Reporting Area 23A are closed to the commercial harvest of non-spot shrimp until the harvestable share available for the state managed commercial spot shrimp fishery is taken.

(ii) Commercial harvest of spot shrimp in Shrimp Management Areas 1A or 1B is prohibited.

(iii) Commercial harvest of spot shrimp in Shrimp Management Area 2W is prohibited.

(iv) Commercial harvest of spot shrimp in Sub-area 23A-W of Marine Fish/Shellfish Catch Reporting Area 23A is prohibited.

(v) Commercial harvest of non-spot shrimp in Shrimp Management Area 2E is prohibited.

(vi) Commercial harvest of non-spot shrimp in Marine Fish/Shellfish Catch Reporting Area 26B is prohibited.

(vii) Commercial harvest of non-spot shrimp in Marine Fish/Shellfish Catch Reporting Area 26D is prohibited.

(b) There is no minimum size limit for spot shrimp or non-spot shrimp.

(c) Shrimp pot gear used for commercial harvest must meet the following requirements:

(i) A shrimp pot may not exceed a maximum 153 inch bottom perimeter and a maximum of 24 inch height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(iv) Spot shrimp may only be harvested using pots with a minimum mesh size of 1 inch. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(v) Non-spot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(d) Buoys must have the number of pots deployed per groundline recorded on each end-buoy of a groundline.

(e) It is lawful to concurrently deploy spot shrimp pots and non-spot pots with the following restrictions:

(i) Spot pots and non-spot pots may not be deployed concurrently within the same Marine Fish/Shellfish Catch Reporting Area, with the following exceptions:

Spot and non-spot pots may be concurrently deployed in Marine Fish/Shellfish Catch Reporting Area is 23A but not within the same sub-area (23A-E, 23A-W, 23A-C, or 23A-S).

Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Reporting Area 25A south of a line true west from Travis Spit to the Miller Peninsula, concurrently with spot shrimp pots in the remaining portion of 25A outside of Sequim Bay.

(ii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.

(f) Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and the amount of pounds that are being targeted prior to the deployment of any shrimp gear to either shrimp.report@dfw.wa.gov, by text message to 360-302-6372, or by other electronic means designated by the Department.

(g) It is unlawful to harvest non-spot and spot shrimp in the same day.

(h) It is unlawful to harvest shrimp in more than one Shrimp Management Area (1A, 1B, 1C, 2E, 2W, 3, 4, 5, or 6) per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly, from 12:00 a.m. on Wednesdays through 11:59 p.m. on Tuesdays.

(b) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 1000 pounds per non-spot shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, and 2W combined.

(c) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Region 2W. Region 2W is comprised of Catch Areas 25B, 25C, 25D, and 26AW.

(3) Shrimp Spot Pot Harvest Restrictions:

(a) Commercial harvest of spot shrimp in Shrimp Management Area 1C is limited to 255 pounds.

(b) Commercial harvest of spot shrimp in Shrimp Management Area 2E is limited to 1500 pounds.

(c) Commercial harvest of spot shrimp in Sub-area 23A-E of Marine Fish/Shellfish Catch Reporting Area 23A is limited to 254 pounds.

(d) Commercial harvest of spot shrimp in Sub-area 23A-C of Marine Fish/Shellfish Catch Reporting Area 23A and Marine Fish/Shellfish Catch Reporting Area 23B is limited to 887 pounds.

(e) Commercial harvest of spot shrimp in Sub-area 23A-S of Marine Fish/Shellfish Catch Reporting Area 23A and Marine Fish/Shellfish Catch Reporting Area 23D is limited to 2,878 pounds.

(f) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 23C is limited to 1,200 pounds.

(g) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 25A of Discovery Bay Shrimp District is limited to 1,081 pounds.

(h) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 29 is limited to 500 pounds.

(i) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 26B is limited to 321 pounds.

(j) Commercial harvest of spot shrimp in Marine Fish/Shellfish Catch Reporting Area 26D is limited to 500 pounds.

(4) Shrimp trawl Harvest Restrictions:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Marine Fish/Shellfish Catch Reporting Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Marine Fish/Shellfish Catch Reporting Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open effective immediately, until further notice.

(c) The waters of south Lopez Sound (the portion of Marine Fish/Shellfish Catch Reporting Area 22A south of a line projected east and west from the northern tip of Trump Island) will open at 12:00 a.m. on July 10, 2021.

(d) The remaining portion of Shrimp Management Area 1B and Marine Fish/Shellfish Catch Reporting Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until further notice.

(e) Marine Fish/Shellfish Catch Reporting Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) will open at 12:00 a.m. on July 1, 2021.

(f) Marine Fish/Shellfish Catch Reporting Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) will open at 12:00 a.m. on August 1, 2021

(g) Trawling is allowed only in waters deeper than 120 feet in Marine Fish/Shellfish Catch Reporting Area 20A.

(5) All shrimp taken under this section must be sold to licensed Washington State wholesale fish dealers.

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

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

NEW SECTION

WAC 220-340-03000Q Shellfish harvest logs. Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to shrimp.report@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

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REPEALER

The following sections of Washington Administrative Code are repealed, effective August 24, 2021:

- WAC 220-340-52000K Puget Sound shrimp pot and trawl fishery—Season. (21-152)
- WAC 220-340-03000P Shellfish harvest logs. (21-152)

WSR 21-18-030
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 23, 2021, 2:44 p.m., effective August 23, 2021, 2:44 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Under the emergency rule:

- Employers must not allow employees to perform work where a business activity is prohibited by an emergency proclamation.
- Employers must comply with all conditions for operation required by emergency proclamation.

L&I is monitoring the emergency proclamations, information including guidance from the Center[s] for Disease Control (CDC), and data on COVID-19 and will repeal the emergency rule if no longer needed.

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

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

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

Reasons for this Finding: This emergency rule making supersedes the emergency rule adopted on July 6, 2021, filed as WSR 21-14-084, as conditions have changed due to a new governor's proclamation being in effect (Proclamation 20-25.15).

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

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." The "Safe Start" orders further build on these by continuing the Safe Start plan for county-by-county phased reopening where the subsequent "Stay Safe, Stay Healthy" orders rolled back the county-by-county phased reopening in response to a COVID-19 outbreak surge and the following amendments under the "Health [Healthy] Washington - Roadmap to Recovery" took a regional approach to easing of the rolled back restrictions and aligning with CDC guidance on fully vaccinated individuals. Under the July 2021 "Washington Ready" order, Proclamation 20-25.14, some restrictions remained for large indoor gatherings and mask use is required for unvaccinated em-

ployees when indoors. The current "Washington Ready" Proclamation 20-25.15 addresses the increase in COVID-19 cases and hospitalizations in many parts of the state and the need to decrease the spread of the highly contagious delta variant.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions among individuals not fully vaccinated, reduce the occurrence of breakthrough infections, safely easing some restrictions while also maintaining crucial hospital capacity, ensuring care for Washingtonians who need it, and paving the way for economic recovery. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees. In setting the conditions for businesses under the "Washington Ready" 20-25.15 order considerations included statewide and county level data, the percentage of the state population who are fully vaccinated, the number of counties with high or substantial transmission rates, and critical knowledge gained regarding the spread of COVID-19, including a better understanding of the risks associated with certain activities and the measures that can be taken to reduce those risks.

The business operating conditions in the governor's orders are also consistent with the purpose of chapter 49.17 RCW and guidance from CDC. Chapter 49.17 RCW and L&I rules require employers to provide a safe and healthy workplace free from recognized hazards, and an employer can be cited for a violation of the "safe place" rule where there are no specific rules to address the particular hazard. Lack of COVID-19 hazard controls such as failure to address symptomatic employees can be cited under the safe place standard. This emergency rule ensures clarity that restrictions and conditions on business under the emergency proclamations are also health and safety requirements under chapter 49.17 RCW and that employers can be subject to a citation and monetary penalties for violations.

This emergency rule is necessary for the preservation of public health, safety, and general welfare of all employees. The governor's proclamation has found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The governor's proclamation is currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

Date Adopted: August 23, 2021.

Joel Sacks

OTS-2313.6

NEW SECTION

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

(2) Employers must comply with all conditions for operation required by emergency proclamation issued under RCW 43.06.220.

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

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WSR 21-18-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-157—Filed August 23, 2021, 4:41 p.m., effective August 31, 2021]

Effective Date of Rule: August 31, 2021.

Purpose: The purpose of this emergency rule is to [close] a portion of the Skagit River to recreational fishing during dates listed.

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

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

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

Reasons for this Finding: This rule is necessary to avoid gear conflicts with treaty fisheries scheduled on dates listed. (August 31, September 1, 7, 8, 9, 14, 15, and 16, October 5, 6, 12, 13, 19, and 20, 2021.)

The Washington department of fish and wildlife asks anglers to respect tribal fishers and not to interfere with tribal fisheries. Conflicts that arise during on-going fisheries may necessitate additional time and area closures in the future to reduce conflicts.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 23, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000J Freshwater exceptions to statewide rules—Puget Sound. Effective August 31 through October 20, 2021 recreational fishing seasons for the section of the Skagit River from the Hwy. 9 Bridge in Sedro Woolley to the mouth of the Baker River, shall be closed during dates listed below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

Skagit River (Skagit Co.): From the Hwy. 9 Bridge in Sedro Woolley to the mouth of the Baker River: Recreational fishing is closed August 31, September 1, 7, 8, 9, 14, 15 and 16, October 5, 6, 12, 13, 19 and 20, 2021.

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WSR 21-18-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-162—Filed August 23, 2021, 4:55 p.m., effective August 25, 2021]

Effective Date of Rule: August 25, 2021.

Purpose: The purpose of this emergency rule is to close Chinook retention in Marine Area 11.

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

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

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

Reasons for this Finding: This emergency rule is necessary to close Chinook retention in Marine Area 11, except currently open year-round piers. The current estimate of Chinook harvest is 3,181 of the total harvest quota of 3,084 (103 percent) agreed to in this year's list of agreed fisheries. Because the harvest quota has been reached, Washington department of fish and wildlife is suspending Chinook retention. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: August 23, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000M Puget Sound salmon—Saltwater seasons and daily limits. Effective August 25 through September 30, 2021, the following provisions of WAC 220-313-060 regarding Chinook salmon retention in Marine Area 11, except for Des Moines Pier, Les Davis Pier, Point Defiance Boathouse Dock, and Redondo Pier, shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 11: Salmon: Release all Chinook.

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WSR 21-18-034
EMERGENCY RULES
STATE BOARD OF HEALTH

[Filed August 23, 2021, 8:56 p.m., effective August 23, 2021, 8:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-101-017 Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting, the Washington state board of health has adopted a fifth emergency rule to continue to designate novel coronavirus (SARS-CoV-2), also known as coronavirus disease 2019 (COVID-19), as a notifiable condition and extends reporting requirements for health care providers, health care facilities, laboratories, local health jurisdictions, and the department of agriculture (DOA) to report certain data with each COVID-19 test, including test results, relevant demographic details (e.g., patient's age, race, ethnicity, sex), and additional information. The rule allows for certain waivers by a local health officer. The rule establishes what testing and demographic data need to be reported as well as the timing and mechanism of reporting in accordance with P.L. 116-136, § 18115(a), the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

In addition to the above provisions, this emergency rule lengthens reporting time frames in which local health jurisdictions must notify the department of health (department) of COVID-19 cases, submit case investigations upon completion, and reassign cases to the department. These revisions are intended to better reflect the department's capacity to receive these data and for local health jurisdictions to transmit these data. This emergency rule will replace the current emergency rule filed as WSR 21-16-014.

Citation of Rules Affected by this Order: New WAC 246-101-017.

Statutory Authority for Adoption: RCW 43.20.050 (2)(f).

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: The immediate adoption of a rule to continue the designation of COVID-19 as a notifiable condition, and requiring the reporting of demographic, testing, and other relevant data by health care providers, health care facilities, laboratories, local health jurisdictions, and DOA for each COVID-19 test is necessary to comply with federal law and related guidance. Immediate adoption of this rule is necessary for the preservation of the public health, safety and general welfare of the state of Washington during this pandemic.

The CARES Act requires "every laboratory that performs or analyzes a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19" to report the results from each such test to the Secretary of the United States Department of Health and Human Services (HHS). In addition, the CARES Act authorizes the secretary to prescribe the form, manner, timing, and frequency of such reporting. The HHS secretary released laboratory data reporting guidance for COVID-19 on June 4, 2020, and later updated the guidance on January 8, 2021. The guidance requires all data components be reported through existing state and local public health data reporting methods until

the end of the public health emergency. Of these requirements, demographic information such as the patient's age, race, ethnicity, and sex must be collected and reported in accordance with state law or policies.

In September 2020, the Centers for Medicare and Medicaid Services (CMS) published an interim final rule in Federal Register 54826, Volume 85, Number 171, to update requirements for reporting SARS-CoV-2 test results by laboratories. The interim final rule states all laboratories conducting SARS-CoV-2 testing and reporting patient-specific results, including hospital laboratories, nursing homes, and other facilities conducting testing for COVID-19, who fail to report information required under the CARES Act will be subject to monetary penalties. The interim final rules became effective September 2, 2020.

The current emergency rule, filed as WSR 21-16-014, requires local health jurisdictions to report cases of COVID-19 to the department, submit case investigations upon completion to the department, and reassign COVID-19 cases to the department immediately. This emergency rule has been revised to change the reporting timeline for these data to within one business day instead of immediately. The revisions better reflect the department's capacity to receive these data and for local health jurisdictions to transmit these data to the department. All other provisions of this emergency rule remain the same and uphold the requirements of the CARES Act and CMS interim final rule.

Adoption of a fifth emergency rule ensures continued compliance with the CARES Act and CMS requirements, and better reflects department capacity to receive data and local health jurisdictions to submit data, in order to improve the public health response to COVID-19.

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

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

Date Adopted: August 23, 2021.

Michelle A. Davis
Executive Director

OTS-2485.5

NEW SECTION

WAC 246-101-017 Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. (1) Designating coronavirus disease 2019 (COVID-19), and the novel coronavirus (SARS-CoV-2) that causes it, as a notifiable condition, and requiring the reporting of race and

ethnicity and other essential data by health care providers, health care facilities, laboratories, and local health departments related to cases of COVID-19 are necessary to ensure that public health agencies receive complete notice of COVID-19 cases and to address racial and ethnic inequities in morbidity and mortality among individuals with the disease. This rule is also necessary to align with the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and the U.S. Department of Health and Human Services laboratory data reporting requirements for COVID-19 testing, which require reporting of COVID-19 data to the appropriate state or local health department and the U.S. Department of Health and Human Services, and further, that any person or entity ordering a diagnostic or serologic test, collecting a specimen, or performing a test should make every reasonable effort to collect complete demographic information and include such data when ordering a laboratory test to enable the entities performing the test to report these data to state and local public health departments. In the midst of this global pandemic, immediate adoption of a rule requiring notice of novel coronavirus (SARS-CoV-2) as a notifiable condition and reporting of race, ethnicity, and other essential data is necessary for the preservation of public health, safety, and general welfare.

(2) For the purpose of this section:

(a) "Animal case" means an animal, alive or dead, with a diagnosis of novel coronavirus (SARS-CoV-2) made by a veterinarian licensed under chapter 18.92 RCW, veterinary medical facility licensed under chapter 18.92 RCW, or veterinary laboratory as defined under chapter 16.70 RCW based on clinical criteria, or laboratory criteria, or both.

(b) "Business day" means any day that the department is open for business.

(c) "Health care facility" means:

(i) Any assisted living facility licensed under chapter 18.20 RCW; birthing center licensed under chapter 18.46 RCW; nursing home licensed under chapter 18.51 RCW; hospital licensed under chapter 70.41 RCW; adult family home licensed under chapter 70.128 RCW; ambulatory surgical facility licensed under chapter 70.230 RCW; private establishment licensed under chapter 71.12 RCW; or enhanced service facility licensed under chapter 70.97 RCW; and

(ii) Clinics or other settings where one or more health care providers practice.

(d) "Immediately" means without delay, twenty-four hours a day, seven days a week.

(e) "Secure electronic data transmission" means electronic communication and accounts developed and maintained to prevent unauthorized access, loss, or compromise of sensitive information including, but not limited to, secure file transfer, secure facsimile, a health information exchange authorized under RCW 41.05.039, and the secure electronic disease surveillance system.

(f) "Secure electronic disease surveillance system" means the secure electronic data transmission system maintained by the department and used by local health departments to submit notifications, investigation reports, and outbreak reports under this chapter.

(g) Patient's ethnicity shall be identified by the patient and reported using one of the following categories:

(i) Hispanic or Latino;

(ii) Non-Hispanic or Latino;

(iii) Unknown; or

(iv) Asked, but unknown.

(h) Patient's race shall be identified by the patient and reported using one or more of the following categories:

- (i) American Indian or Alaska Native;
- (ii) Asian;
- (iii) Black or African American;
- (iv) Native Hawaiian or Other Pacific Islander;
- (v) White;
- (vi) Unknown; or
- (vii) Asked, but unknown.

(i) Ask on order entry questions are:

(i) Is this the patient's first test of any kind for novel coronavirus (SARS-CoV-2)? (yes, no, unknown);

(ii) Is the patient employed in health care with direct patient contact? (yes, no, unknown);

(iii) Is the patient symptomatic as defined by the Centers for Disease Control and Prevention (CDC)? (yes, no, unknown). If yes, then provide date of symptom onset (mm/dd/yyyy);

(iv) Is the patient hospitalized for novel coronavirus (SARS-CoV-2) at the time of testing? (yes, no, unknown);

(v) Is the patient in the intensive care unit (ICU) for novel coronavirus (SARS-CoV-2) at the time of testing? (yes, no, unknown);

(vi) Is the patient a resident in a congregate care or living setting (including, but not limited to, nursing homes, residential care for people with intellectual and developmental disabilities, psychiatric treatment facilities, group homes, board and care homes, homeless shelter, foster care, correctional facilities, and temporary worker housing)? (yes, no, unknown); and

(vii) Is the patient pregnant? (yes, no, unknown).

(3) Unless a health care facility has assumed the notification duties of the principal health care provider under subsection (8) of this section, or a laboratory director in a health care facility where laboratory point of care testing occurs under a certificate of waiver as described in WAC 246-338-020 has fulfilled the laboratory notification requirements as described in subsection (10) of this section, the principal health care provider shall submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within twenty-four hours of receiving a laboratory confirmed positive test result; and

(b) Following the requirements of this section, WAC 246-101-105, and WAC 246-101-120; excluding the requirements in WAC 246-101-105(10).

(4) The local health officer may waive or partially waive subsection (3) or (5) of this section, or both if the local health officer determines individual case reports of novel coronavirus (SARS-CoV-2) submitted by health care providers or health care facilities are not needed and are not promoting public health for any reason including, but not limited to, the local health department being unable to process the volume of case reports. The local health officer shall notify health care providers and health care facilities upon their determination.

(5) A health care facility shall submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within twenty-four hours of receiving a laboratory confirmed positive test result; and

(b) Following the requirements of this section, WAC 246-101-305, and WAC 246-101-320; excluding the requirement in WAC 246-101-305(4).

(6) Health care providers and health care facilities shall provide the local health department with the information identified in Column A of Table 1 in this section for individual case reports concerning novel coronavirus (SARS-CoV-2).

(7) Health care providers and health care facilities may provide the local health department with responses to ask on order entry questions under subsection (2)(h) of this section for individual case reports concerning novel coronavirus (SARS-CoV-2).

(8) A health care facility may assume the notification requirements established in this section for a health care provider practicing within the health care facility.

(9) A health care facility shall not assume the notification requirements established in this section for a laboratory that is a component of the health care facility.

(10) A principal health care provider is not required to submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department when the provider practices in a health care facility where laboratory point of care testing occurs under a certificate of waiver as described in WAC 246-338-020 and the laboratory director has fulfilled the laboratory notification requirements under subsections (14), (15), and (16) of this section.

(11) Health care providers and health care facilities shall provide the laboratory with the information identified in Column A of Table 1 in this section for each test ordered for novel coronavirus (SARS-CoV-2).

(12) Health care providers and health care facilities may provide the laboratory with responses to ask on order entry questions under subsection (2)(h) of this section for each test ordered for novel coronavirus (SARS-CoV-2).

(13) For specimens associated with novel coronavirus (SARS-CoV-2) sent to a laboratory outside of Washington state, health care providers, health care facilities, and laboratories shall provide the out-of-state laboratory with a copy of chapter 246-101 WAC if they arrange for the out-of-state laboratory to report the test results consistent with WAC 246-101-105 (5)(a), 246-101-205 (1)(f)(i), or 246-101-305 (1)(e)(i) to the local health department as required under this subsection.

(14) A laboratory director shall submit individual laboratory reports of positive, negative, and indeterminate test results for novel coronavirus (SARS-CoV-2) to the local health department via secure electronic data transmission using a file format or template specified by the department:

(a) Within twenty-four hours; and

(b) Following the requirements of this section, WAC 246-101-205, and WAC 246-101-230; excluding the requirements in WAC 246-101-205(3).

(15) A laboratory director shall provide the information identified in Column B of Table 1 in this section to the local health department with each novel coronavirus (SARS-CoV-2) laboratory report.

(16) A laboratory director may provide the local health department with responses to ask on order entry questions under subsection (2)(h) of this section with each novel coronavirus (SARS-CoV-2) laboratory report.

(17) A laboratory director, upon request by the local health department or the department, shall submit novel coronavirus (SARS-CoV-2) presumptive positive isolates or, if no isolate is available, the specimen associated with the presumptive positive result to the Washington state public health laboratories within two business days of request. Specimens shall be sent to:

Washington State Public Health Laboratories
Washington State Department of Health
1610 N.E. 150th Street
Shoreline, WA 98155

(18) If the local health department or the department requests a specimen under subsection (17) of this section, a laboratory director shall provide the Washington state public health laboratories with the information identified in Column C of Table 1 in this section with each specimen submitted.

(19) When referring a specimen to another laboratory for a test for novel coronavirus (SARS-CoV-2), a laboratory director shall provide the reference laboratory with the information identified in Column D of Table 1 in this section for each test referral.

(20) When referring a specimen to another laboratory for a test for novel coronavirus (SARS-CoV-2), a laboratory director may provide the reference laboratory with responses to ask on order entry questions under subsection (2)(h) of this section with each test referral.

(21) The department of agriculture shall submit individual case reports for each animal case of novel coronavirus (SARS-CoV-2) to the department via secure electronic data transmission using a file format or template specified by the department within twenty-four hours of being notified of the animal case.

(22) The department of agriculture shall call the department and confirm receipt immediately after submitting a case report for each animal case of novel coronavirus (SARS-CoV-2).

(23) When the department of agriculture submits information under subsection (21) of this section, the department shall:

(a) Consult with the department of agriculture on all animal cases; and

(b) Notify the local health department of animal cases submitted to the department.

(24) A local health department shall, using a secure electronic disease surveillance system:

(a) Notify the department within one business day upon receiving a case report of positive, negative, or indeterminate test results for novel coronavirus (SARS-CoV-2); and

(b) Submit individual investigation reports of novel coronavirus (SARS-CoV-2) to the department within one business day upon completing the case investigation.

(25) Notifications required under subsection (24)(a) of this section must include the information identified in Column E of Table 1 in this section.

(26) Investigation reports required under subsection (24)(b) of this section must include the information identified in Column F of Table 1 in this section.

(27) A local health department may submit responses to ask on order entry questions under subsection (2)(h) of this section with each notification required under subsection (24)(a) of this section and each investigation report required under subsection (24)(b) of this section.

(28) A local health department shall, within one business day, reassign cases to the department upon determining the patient who is the subject of the case:

- (a) Is a resident of another local health department; or
- (b) Resides outside Washington state.

(29) A local health department, upon consultation with the department, may forward novel coronavirus (SARS-CoV-2) individual laboratory or case reports submitted by laboratories, health care providers, and health care facilities to the department for data entry and processing.

(30) The local health officer or the state health officer may request additional information of epidemiological or public health value when conducting a case investigation or otherwise for prevention and control of a specific notifiable condition.

(31) Health care providers, health care facilities, laboratories, and the department of agriculture may provide, via secure electronic data transmission using a file format or template specified by the department, additional health information, demographic information, or infectious or noninfectious condition information than is required under this section to the department, local health department, or both when it determines that the additional information will aid the public health authority in protecting the public's health and preventing the spread of novel coronavirus (SARS-CoV-2).

Table 1

Required Reporting for Health Care Providers, Health Care Facilities, Laboratories, and Local Health Departments

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:	Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Patient's name	X	X	X	X	X	X
Patient's notifiable condition	X				X	X
Patient's date of birth, or if not available, patient's age	X	X	X	X	X	X
Patient's sex	X	X	X	X	X	X
Patient's ethnicity, using the categories described in subsection (2)(f) of this section	X	X	X	X	X	X

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:	Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Patient's race, using the categories described in subsection (2)(g) of this section	X	X	X	X	X	X
Patient's full physical address including zip code	X	X	X	X	X	X
Patient's telephone number	X	X	X	X	X	X
Initial notification source					X	X
Patient's diagnosis of disease or condition	X					
Pertinent laboratory data	X					
Test ordered, using harmonized LOINC codes provided by the CDC		X	X	X	X*	X*
Date test ordered		X	X	X	X*	X*
Device identifier		X	X		X*	X*
Type of specimen tested	X	X	X	X	X*	X*
Specimen source, using appropriate SNOMED-CT, or equivalently detailed laboratory local codes, or a specimen-specific LOINC code for test performed		X	X	X	X*	X*
Date of specimen collection	X	X	X	X	X	X
Date specimen received by reporting laboratory		X	X		X*	X*
Accession number or specimen ID		X	X		X*	X*

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:	Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Test performed and result, using appropriate LOINC and SNOMED codes, as defined by the Laboratory in Vitro Diagnostics (LIVD) Test Code Mapping for SARS-CoV-2 tests provided by the CDC		X	X		X*	X*
Test result date		X	X		X*	X*
Condition symptom onset date (preferred), or alternatively, diagnosis date						X
Ordering health care provider's name	X	X	X	X	X	X
Ordering health care provider's National Provider Identifier (as applicable)	X	X	X	X	X	X
Ordering health care provider's telephone number	X	X	X	X	X	X
Ordering health care provider's address including zip code	X	X	X	X	X	X
Name and telephone number of the person providing the report	X					
Performing laboratory's name		X	X		X*	X*
Performing laboratory's CLIA number, if known		X	X		X*	X*
Performing laboratory's zip code		X	X		X*	X*
Performing laboratory's phone number		X	X		X*	X*
Date local health department was notified					X	X

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:	Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Hospitalization status of the patient						X
Whether the patient died during this illness						X
Source or suspected source						X

* Local health departments are not required to submit this information if the notification came from a health care provider or health care facility. All other information indicated in Columns E and F is still required in these instances.

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WSR 21-18-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-164—Filed August 25, 2021, 3:04 p.m., effective August 27, 2021]

Effective Date of Rule: August 27, 2021.

Purpose: The purpose of this emergency rule is to close Chinook retention in the Buoy 10 fishery.

Citation of Rules Affected by this Order: Amending WAC 220-312-060.

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

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

Reasons for this Finding: The Buoy 10 Lower River Hatchery (LRH) Chinook harvest has exceeded preseason expectations. Due to higher than expected impacts from the Buoy 10 fishery, joint state action was necessary to limit additional LRH mortalities and allow the hatchery coho retention fishery to remain open. Staff will continue to monitor progress of ongoing fisheries, with an expectation to manage within the allowed 38 percent Endangered Species Act (ESA) impact rate. This rule conforms Washington state rules with Oregon state rules. This regulation is consistent with compact action of August 25, 2021.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

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

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 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: August 25, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000V Freshwater exceptions to statewide rules—Columbia River. Effective August 27 through September 6, 2021, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from a true north-south line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), and including Youngs Bay, shall be as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

From a true north-south line through Buoy 10 upstream to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), and including Youngs Bay: Effective August 27 through September 6, 2021: Salmon and steelhead:

Daily limit 2. Minimum size 16 inches. Release all salmon and steelhead other than hatchery coho.

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WSR 21-18-052
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 25, 2021, 4:00 p.m., effective August 25, 2021, 4:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making is to establish the terms and conditions governing local education agencies' entitlement to receive state basic education apportionment allocations during the 2021-22 school year when local education agencies willfully fail to meet the requirements of Proclamation 20-09, et seq., or Proclamation 21-14, et seq.

Citation of Rules Affected by this Order: New WAC 392-117-070, 392-117-075, 392-117-080, and 392-117-085.

Statutory Authority for Adoption: RCW 28A.150.290.

Other Authority: RCW 28A.300.040.

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

Reasons for this Finding: Board actions that violate the law will jeopardize the opening of school, risk cases and outbreaks in school that will warrant quarantines, school building closures, and disruptions in high-quality in-person learning. Given the unprecedented situation caused by the COVID-19 virus and its effect on students and schools in Washington state, emergency rule making is necessary to address local education agencies that willfully do not comply with health and safety requirements contained within Proclamation 20-09, et seq., or vaccination requirements contained within Proclamation 21-14, et seq.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 0, Repealed 0.

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

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

Date Adopted: August 25, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3289.4

NEW SECTION

WAC 392-117-070 Definition—Local education agency. As used in WAC 392-117-075 through 392-117-085, local education agency means a common school district, educational service district, or charter school established under chapter 28A.710 RCW.

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NEW SECTION

WAC 392-117-075 Definition—Willful. As used in this chapter, willful means nonaccidental action or inaction by a local education agency that the local education agency knew or reasonably should have known would violate Proclamation 20-09, et seq., or Proclamation 21-14, et seq.

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NEW SECTION

WAC 392-117-080 Failure to comply with health and safety requirements. School districts, charter schools, and other local education agencies receiving state funds must comply with Proclamation 20-09, et seq. Local education agencies that fail to meet the requirements under Proclamation 20-09, et seq., are subject to the following course of action.

(1) **First notice:** Upon the superintendent of public instruction's determination that a local education agency has willfully failed to meet Proclamation 20-09, et seq., requirements, the state superintendent will provide notice of the determination to the local education agency. The local education agency will have 15 days from the receipt of the notice to provide verification of compliance. Unless the state superintendent provides instructions to the contrary, verification of compliance means a resolution passed by the local education agency which rescinds any actions previously taken prohibiting compliance or enforcement of Proclamation 20-09, et seq. If the local education agency's willful failure to comply with Proclamation 20-09, et seq., requirements is not corrected within 15 days of the state superintendent's first notice, the state superintendent will provide a second notice to the local education agency.

(2) **Second notice and withholding of apportionment:** The second notice will describe the state superintendent's determination and will identify a five day deadline for corrective action. If the local education agency does not provide verification of compliance prior to the deadline in the state superintendent's second notice, the state superintendent may withhold the local education agency's subsequent monthly apportionment payments until Proclamation 20-09, et seq., requirements are met. The first apportionment payment to be withheld will be for the month outlined in the second notice. The first apportionment payment and subsequent payments will be withheld until the local education authority meets Proclamation 20-09, et seq., requirements.

(3) **Reinstatement of apportionment:** A local education agency will be eligible to receive any withheld monthly apportionment, less any reduction under subsection (4) of this section, when the state superintendent has determined that the local education agency is complying with Proclamation 20-09, et seq. Such payments will be made at the next available monthly apportionment cycle.

(4) **Reduction of apportionment after persistent willful failure to meet requirements:** If the local education agency does not comply with the requirements under Proclamation 20-09, et seq., for two monthly apportionment cycles, any subsequent state basic education payments withheld for noncompliance will be reduced proportionately by a ratio equal to the number of school days held while the district was in violation of Proclamation 20-09, et seq., divided by 180 school days.

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NEW SECTION

WAC 392-117-085 Failure to comply with vaccination requirements.

School districts, charter schools, and other local education agencies receiving state funds must comply with Proclamation 21-14, et seq. Local education agencies that fail to meet the requirements under Proclamation 21-14, et seq., are subject to the following course of action.

(1) **First notice:** Upon the superintendent of public instruction's determination that a local education agency has willfully failed to meet Proclamation 21-14, et seq., requirements, the state superintendent will provide notice of the determination to the local education agency. The local education agency will have 15 days from the receipt of the notice to provide verification of compliance. Unless the state superintendent provides instructions to the contrary, verification of compliance means a resolution passed by the local education agency which rescinds any actions previously taken prohibiting compliance or enforcement of Proclamation 21-14, et seq. If the local education agency's willful failure to comply with Proclamation 21-14, et seq., requirements is not corrected within 15 days of the state superintendent's first notice, the state superintendent will provide a second notice to the local education agency.

(2) **Second notice and withholding of apportionment:** The second notice will describe the state superintendent's determination and will identify a five day deadline for corrective action. If the local education agency does not provide verification of compliance prior to the deadline in the state superintendent's second notice, the state superintendent may withhold the local education agency's subsequent monthly apportionment payments until Proclamation 21-14, et seq., requirements are met. The first apportionment payment to be withheld will be for the month outlined in the second notice. The first apportionment payment and subsequent payments will be withheld until the local education authority meets Proclamation 21-14, et seq., requirements.

(3) **Reinstatement of apportionment:** A local education agency will be eligible to receive any withheld monthly apportionment, less any reduction under subsection (4) of this section, when the state superintendent has determined that the local education agency is complying

with Proclamation 21-14, et seq. Such payments will be made at the next available monthly apportionment cycle.

(4) **Reduction of apportionment after persistent willful failure to meet requirements:** If the local education agency does not comply with the requirements under Proclamation 21-14, et seq., for two monthly apportionment cycles, any subsequent state basic education payments withheld for noncompliance will be reduced proportionately by a ratio equal to the number of school days held while the district was in violation of Proclamation 21-14, et seq., divided by 180 school days.

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WSR 21-18-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-165—Filed August 26, 2021, 8:24 a.m., effective September 1, 2021]

Effective Date of Rule: September 1, 2021.

Purpose: The purpose of this emergency rule is to close salmon fishing in Lake Wenatchee.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000W.

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

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

Reasons for this Finding: The majority of adult sockeye salmon currently in Lake Wenatchee will soon become largely unavailable to anglers due to their annual migration to the spawning grounds on the White and Little Wenatchee rivers. Sockeye condition and desirability will have declined drastically. With so few sockeye present in Lake Wenatchee, closing this fishery will reduce unnecessary impacts to bull trout.

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

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

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

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

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

Date Adopted: August 25, 2021.

Kelly Susewind
Director

REPEALER

The following section of Washington Administrative Code is repealed, effective September 1, 2021:

WAC 220-312-05000W Exceptions to statewide rules—Eastside.
(21-136)

WSR 21-18-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-166—Filed August 26, 2021, 8:27 a.m., effective August 27, 2021]

Effective Date of Rule: August 27, 2021.

Purpose: The purpose of this emergency rule is to open gillnet and purse seine fisheries in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A on August 27, 2021.

Citation of Rules Affected by this Order: Amending WAC 220-354-160 and 220-354-120.

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

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

Reasons for this Finding: This emergency rule is needed to provide for Pacific Salmon Commission's Fraser River Panel authorized commercial fisheries in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A. The Fraser River Panel authorized the fishery during their meeting on August 24, 2021. There is harvest share for pink salmon at current run-size levels. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 26, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000M Puget Sound salmon—Gill net—Open periods.

Effective August 27, 2021, the following provisions of WAC 220-354-160 regarding commercial Gill Net open periods in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A shall be as follows. All other provisions of WAC 220-351-210 not contained herein remain in effect unless otherwise altered by emergency rule:

AREA	TIME	DATES	Open/Closed	Minimum mesh size
Area 7 and 7A, excluding apex (see subsection (b))	8 AM – 11:59 PM	8/27/2021	Open	5"

(a) It is unlawful to retain sockeye.

(b) Closed northwest of a line projected 233 degrees true from ruins of the Iwersen Dock (48°58'30.6"N, 123°5'6.5"W) on Point Roberts to the Active Pass Light (List of Lights CA No. 275 FLW10s57ft17M, 48°52'23"N, 123°17'26"W) on Georgina Point, Mayne Island, British Columbia, Canada.

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NEW SECTION

WAC 220-354-12000B Puget Sound salmon—Purse seine—Open periods.

Effective August 27, 2021, the following provisions of WAC 220-354-160 regarding commercial purse seine open periods for Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A shall be as described below. All other provisions of WAC 220-354-120 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Area	Open/Closed	Time	Date
7 and 7A, excluding apex (see subsection (b))	Open	5 AM – 9 PM	8/27/2021

(a) It is unlawful to retain sockeye.

(b) Closed northwest of a line projected 233 degrees true from ruins of the Iwersen Dock (48°58'30.6"N, 123°5'6.5"W) on Point Roberts to the Active Pass Light (List of Lights CA No. 275 FLW10s57ft17M, 48°52'23"N, 123°17'26"W) on Georgina Point, Mayne Island, British Columbia, Canada.

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WSR 21-18-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-163—Filed August 26, 2021, 1:12 p.m., effective August 26, 2021, 1:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to reduce the likelihood of hunters transporting carcasses of deer from Ohio that are infected with chronic wasting disease (CWD), which could result in the disease becoming established in Washington state. The rule lists states from which the importation of ungulate carcasses is prohibited due to documented cases of CWD in wild deer, elk, or moose populations. This rule is to add Ohio to the list of states because Ohio recently detected CWD in wild white-tailed deer populations. A preproposal has been filed, WSR 21-10-079 and proposal, WSR 21-16-092. The proposed permanent rule is anticipated to be effective by the end of November. This emergency rule will be in effect until the permanent rule is adopted.

Citation of Rules Affected by this Order: Amending WAC 220-413-030.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

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

Reasons for this Finding: Ohio's deer archery season starts September 25, 2021. The department became aware that Ohio had detected CWD in wild white-tailed deer populations in February 2021. CWD is a prion disease (pathogenic agents that are transmissible and able to induce abnormal folding of specific normal cellular proteins) that affects cervids (family of hoofed ruminant mammals) and is fatal. There is no treatment or vaccine, and the disease presents a substantial risk to Washington's cervid populations. CWD has not been detected in wild or captive cervid populations in Washington. CWD can be spread to new areas when infected animal parts are discarded on the landscape. The intent of this rule is to reduce the risk of hunters transporting deer, elk, or moose parts into Washington that are infected with CWD. The states and provinces identified in this rule have detected CWD in wild cervid populations. This rule is in the process of becoming permanent.

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

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

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

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

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

Date Adopted: August 26, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-413-03000C Importation and retention of dead nonresident wildlife. Effective immediately, until further notice the following provisions of WAC 220-413-030 regarding the importation and possession of deer, elk, or moose, or parts thereof, harvested in Ohio shall be as follows. All other provisions of WAC 220-413-030 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

It is unlawful to import or possess deer, elk, or moose, or parts thereof, harvested in Ohio with the following exceptions:

- (a) Meat that has been deboned in the state or province where it was harvested and is imported as boned-out meat;
- (b) Skulls and antlers, antlers attached to the skull plate, or upper canine teeth (buglers, whistlers, ivories) from which all soft tissue has been removed;
- (c) Hides or capes without heads attached;
- (d) Tissue imported for use by a diagnostic or research laboratory; and
- (e) Finished taxidermy mounts.

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WSR 21-18-064
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed August 26, 2021, 2:37 p.m., effective September 14, 2021]

Effective Date of Rule: September 14, 2021.

Purpose: The department is extending the rules listed below to assure [ensure] nursing homes are not obstructed from offering the COVID-19 vaccine to residents and staff because of clinical interference from required tuberculosis (TB) testing. Current state rules specify that nursing homes administer TB testing to residents and staff within three days of employment or admission, unless the person is excluded from testing under the rules. The amendment permits the nursing home to defer TB testing if the person is in the process of receiving the COVID-19 vaccine, or if receiving the vaccine is of greater benefit and less risk than performing TB testing before administering the vaccine. The amendment does not permit the nursing facility to defer TB testing for reasons other than the COVID-19 vaccine and requires the nursing home to complete the TB testing as soon as the COVID-19 vaccine recommendations permit. The rules also require screening for signs and symptoms of TB for those persons who are deferring TB testing. The department filed a CR-101 preproposal under WSR 21-11-061. In addition, under the rule development phase of permanent rule making, the department is in discussions about adding or amending rule language to adopt permanently the deferral of TB testing until COVID-19 vaccination is completed if deemed appropriate.

Citation of Rules Affected by this Order: Amending WAC 388-97-1380 and 388-97-1580.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. [The] vaccine for COVID-19 is now available and vaccinating nursing home residents and staff is a high priority due to the heightened risk of COVID-19 in the nursing home setting. The Centers for Disease Control and Prevention (CDC) issued recommendations about the coadministration of the COVID-19 vaccine and TB testing products. The CDC recommended that TB testing occur prior to COVID-19 vaccination, or if the vaccination process is underway or the vaccine is a higher priority than determining TB status, to defer TB testing until after the COVID-19 vaccination process is complete. Current nursing home rules require testing of nursing home residents and staff within three days of employment or admission. These rule amendments permit deferment of TB testing until the vaccination process is completed, in accordance with the CDC COVID-19 guidance.

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

Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 25, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4847.1

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1380 Tuberculosis—Testing required. (1) Unless the nursing home decides to defer tuberculosis testing in accordance with subsection (2) of this section, or the resident or staff person is excluded from testing from WAC 388-97-1440, the nursing home must ((develop and implement a system to)):

(a) Ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission((-)); and ((2) The nursing home must also) (b) Ensure that facility personnel are tested annually.

((3)) (2) The nursing home may defer tuberculosis testing of facility personnel and residents to complete the COVID-19 vaccination process if the nursing home has considered the risks and benefits of such delay and if the delay is consistent with the current centers for disease control and prevention COVID-19 vaccination guidance.

(3) If testing is deferred for a resident or facility staff person, in accordance with subsection (2) of this section, the nursing home must:

(a) Asses the person for symptoms of tuberculosis within three days of employment or admission, and if the person has tuberculosis symptoms, follow WAC 388-97-1560; and

(b) Complete tuberculosis testing in accordance with WAC 388-97-1400 through 388-97-1580 as soon as indicated by the centers for disease control and prevention COVID-19 vaccination guidelines.

(4) For the purposes of WAC 388-97-1360 through 388-97-1580, "person" means facility personnel and residents.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1380, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1580 Tuberculosis—Test records. The nursing home must:

(1) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

(2) Keep the records of the tuberculosis symptom assessment and the documented rationale for deferring the tuberculosis testing in the nursing home, if tuberculosis testing is deferred in accordance with WAC 388-97-1380(2);

(3) Make the records readily available to the appropriate health authority and licensing agency;

~~((3))~~ (4) Retain the records for eighteen months beyond the date of employment termination; and

~~((4))~~ (5) Provide the tested person with a copy of ~~((his/her))~~ the test results.

[Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 10-02-021, § 388-97-1580, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1580, filed 9/24/08, effective 11/1/08.]

WSR 21-18-065
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed August 26, 2021, 2:50 p.m., effective September 7, 2021]

Effective Date of Rule: September 7, 2021.

Purpose: The department is extending the amendment of the rules listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will continue to align state nursing home rules with federal rules that are suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to delay the requirement by 30 days for a preadmission screening and resident review (PASRR) screening prior to admission to a nursing home. Federal rules also amended requirements that ensure residents can meet in groups. These rules also establish the right of residents to participate in resident groups. Under the rule development phase of the rule-making process, the department is in discussions about adding language to the rules that explains the circumstances and time periods under which suspension of rules due to COVID[-19] was necessary.

Citation of Rules Affected by this Order: [Repealing WAC 388-97-0920]; and amending 388-97-1915 and 388-97-1975.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities.

PASRR: Current nursing home rules require a PASRR screen, typically performed by hospital staff prior to admission to a nursing home, followed by further evaluation from state agency staff or contractors under certain circumstances. Hospital staff continue to experience an extremely high workload during the pandemic due to the increased number of admissions, coupled with a reduced number of available staff. Additionally, face-to-face evaluation of the transferring resident continues to be restricted in many counties. The PASRR rule will align state nursing home rules with federal rules that were extended to help facilitate care during the COVID-19 outbreak by shortening the transfer time from hospital to nursing home and increasing the flexibility for nursing home staff to be able to prioritize immediate or emergency care needs of incoming residents.

Resident groups: Current rules establish resident rights to participate in resident groups and require the facility to assist with the organization of a group. Extending the amendment of these rules will permit facilities to restrict resident groups and meets the state and federal recommendations for social distancing and limited gatherings. Extending this amendment also aligns state rules with federal rules that were suspended to accomplish social distancing recommendations.

These emergency rules continue to be needed to align state nursing home requirements with suspended or amended federal requirements. Ongoing conversations with stakeholders also support continuation of these emergency rules until a clear timeline for reimplementation, consistent with federal reimplementation, is established. The department filed a CR-101 under WSR 21-11-062.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 26, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4799.4

AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1915 PASRR requirements (~~(prior to admission of)~~) for new residents. (~~(Prior to every)~~) Within thirty days of admission (~~(of a new resident)~~), the nursing facility must:

(1) Complete a PASRR level I screening, or verify that a PASRR level I screening has been completed(~~(, and deny admission until that screening has been completed)~~).

(2) Require a PASRR level II evaluation, or verify that a PASRR level II evaluation has been (~~(completed)~~) requested when the individual's PASRR level I screening indicates that the individual may have serious mental illness and/or intellectual disability or related condition(~~(, and deny admission until that evaluation has been completed, unless all three of the following criteria apply and are documented in the PASRR level I screening:~~

(a) ~~The individual is admitted directly from a hospital after receiving acute inpatient care;~~

(b) ~~The individual requires nursing facility services for the condition for which he or she received care in the hospital; and~~

(c) ~~The individual's attending physician has certified that the individual is likely to require fewer than thirty days of nursing facility services)~~).

(3) (~~Decline to admit any individual whose PASRR level II evaluation determines that he or she does not require nursing facility services or that a nursing facility placement is otherwise inappropriate.~~

~~(4))~~ Coordinate with PASRR evaluators to the maximum extent practicable in order to avoid duplicative assessments and effort, and to ensure continuity of care for nursing facility residents with a serious mental illness and/or an intellectual disability or related condition.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. § 483.100-138. WSR 15-18-026, § 388-97-1915, filed 8/25/15, effective 9/25/15.]

AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1975 PASRR requirements after admission of a resident. (~~Following~~) After the thirtieth day of a resident's admission, the nursing facility must:

(1) Review all level I screening forms for accuracy. If at any time the facility finds that the previous level I screening was incomplete, erroneous or is no longer accurate, the facility must immediately complete a new screening using the department's standardized level I form, following the directions provided by the department's PASRR program. If the corrected level I screening identifies a possible serious mental illness or intellectual disability or related condition, the facility must notify DDA and/or the mental health PASRR evaluator so a level II evaluation can be conducted.

(2) Record the evidence of the level I screening and level II determinations (and any subsequent changes) in the resident assessment in accordance with the schedule required under WAC 388-97-1000.

(3) Maintain the level I form and the level II evaluation report in the resident's active clinical record.

(4) Immediately complete a level I screening using the department's standardized form if the facility discovers that a resident does not have a level I screening in his or her clinical record, following directions provided by the department's PASRR program. If the level I screening identifies a possible serious mental illness or intellectual disability or related condition, notify the DDA and/or mental health PASRR evaluator so a level II evaluation can be conducted.

~~(5) ((Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted on an exempted hospital discharge appears likely to need nursing facility services for more than thirty days, so a level II evaluation can be performed. This notification must occur as soon as the nursing facility anticipates that the resident may require more than 30 days of nursing facility services, and no later than the twenty-fifth day after admission unless good cause is documented for later notification.~~

~~(6))~~ Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted with an advance categorical determination appears likely to need nursing facility services for longer than the period specified by DDA and/or the mental health PASRR evaluator, so that a full assessment of the individual's need for specialized services can be performed. This notification must occur as soon as the nursing facility anticipates that the resident will require more than the number of days of nursing facility services authorized for the specific advance categorical determination and no later than five days

before expiration of the period (three days for protective services) unless good cause is documented for later notification.

~~((7))~~ (6) Immediately notify the DDA and/or mental health PASRR evaluator for a possible resident review when there has been a significant change in the physical or mental condition, as defined in WAC 388-97-1910, of any resident who has been determined to have a serious mental illness or intellectual disability or related condition. Complete a new level I screening for the significant change.

~~((8))~~ (7) Provide or arrange for the provision of any services recommended by a PASRR level II evaluator that are within the scope of nursing facility services. If the facility believes that the recommended service either cannot or should not be provided, the facility must document the reason(s) for not providing the service and communicate the reason(s) to the level II evaluator.

~~((9))~~ (8) Immediately complete a new level I screening using the department's standardized form if the facility finds that a resident, not previously determined to have a serious mental illness, develops symptoms of a serious mental illness, and refer the resident to the mental health PASRR evaluator for further evaluation.

~~((10))~~ (9) Provide services and interventions that complement, reinforce and are consistent with any specialized services recommended by the level II evaluator. The resident's plan of care must specify how the facility will integrate relevant activities to achieve this consistency and the enhancement of the PASRR goals.

~~((11))~~ (10) Discharge, in accordance with WAC 388-97-0120, any resident with a serious mental illness or intellectual disability or related condition who does not meet nursing facility level of care, unless the resident has continuously resided in the facility for at least thirty months and requires specialized services. The nursing facility must cooperate with DDA and/or mental health PASRR evaluator as it prepares the resident for a safe and orderly discharge.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. § 483.100-138. WSR 15-18-026, § 388-97-1975, filed 8/25/15, effective 9/25/15.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-97-0920 Participation in resident and family groups.

WSR 21-18-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-167—Filed August 26, 2021, 5:02 p.m., effective August 30, 2021, 12:01 a.m.]

Effective Date of Rule: August 30, 2021, 12:01 a.m.

Purpose: The purpose of this emergency rule is to close recreational salmon seasons in Catch Record Card Area 1.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500D; and amending WAC 220-313-075.

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

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

Reasons for this Finding: This rule is needed to close salmon fishing in Catch Record Card Area 1. The Washington department of fish and wildlife data indicates that coho quota will be reached by the end of the day Sunday, August 29, 2021, in Catch Record Card Area 1. This rule is also adopted at the recommendation of the Pacific Fisheries Management Council and has been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 26, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500E Pacific Ocean salmon—Seasons—Closed areas.

Effective 12:01 AM August 30 through September 15, 2021 the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

- (1) **Catch Record Card Area 1:** Closed.
- (2) **Catch Record Card Area 2:**

Open immediately through September 15, 2021:

- (a) Daily limit of 2 salmon.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.

(3) **Catch Record Card Area 3:**

Open immediately through September 15, 2021:

- (a) Daily limit of 2 salmon.
- (b) Release wild coho.
- (c) Chinook minimum length 24 inches.
- (d) Coho minimum length 16 inches.

(4) **Catch Record Card Area 4:**

Open immediately through September 15, 2021:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho and chum.
- (c) Chinook minimum length 24 inches.
- (d) Coho minimum length 16 inches.
- (e) No chinook retention in waters east of the Bonilla-Tatoosh

line.

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

REPEALER

The following section of Washington Administrative Code is repealed, effective 12:01 AM August 30, 2021:

WAC 220-313-07500D Pacific Ocean salmon—Seasons—Closed areas. (21-154)

WSR 21-18-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-168—Filed August 30, 2021, 4:20 p.m., effective August 31, 2021]

Effective Date of Rule: August 31, 2021.

Purpose: The purpose of this emergency rule is to open commercial gill net and purse seine seasons in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A as well as commercial reef net seasons in Area 7 on August 31 and September 1, 2021.

Citation of Rules Affected by this Order: Amending WAC 220-354-160, 220-354-120, and 220-354-180.

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

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

Reasons for this Finding: This emergency rule is needed to provide for Pacific Salmon Commission's Fraser River Panel authorized commercial fisheries in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A. The Fraser River Panel authorized these fisheries during their meetings on August 27 and 30, 2021. There is harvest share available for pink salmon at current run-size levels. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 0, Repealed 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: August 30, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000N Puget Sound salmon—Gill net—Open periods.

Effective 8 AM, August 31 through 11:59 PM, September 1, 2021, the following provisions of WAC 220-354-160 regarding commercial Gill Net open periods in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A shall be as follows. All other provisions of WAC 220-351-210 not contained herein remain in effect unless otherwise altered by emergency rule:

Areas	Time	Date	Open/Closed	Minimum mesh size
Area 7 and 7A, excluding apex (see subsection (b))	8 AM - 11:59 PM	8/31/2021	Open	5"
Area 7 and 7A, excluding apex (see subsection (b))	8 AM - 11:59 PM	9/1/2021	Open	5"

(a) It is unlawful to retain sockeye salmon taken with gill net gear.

(b) Closed northwest of a line projected 233 degrees true from ruins of the Iwersen Dock (48°58'30.6"N, 123°5'6.5"W) on Point Roberts to the Active Pass Light (List of Lights CA No. 275 FLW10s57ft17M, 48°52'23"N, 123°17'26"W) on Georgina Point, Mayne Island, British Columbia, Canada.

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NEW SECTION

WAC 220-354-12000C Puget Sound salmon—Purse seine—Open periods.

Effective 5 AM, August 31 through 9 PM, September 1, 2021, the following provisions of WAC 220-354-160 regarding commercial purse seine open periods for Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A shall be as described below. All other provisions of WAC 220-354-120 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Areas	Open/Closed	Time	Date
7 and 7A, excluding apex (see subsection (b))	Open	5 AM - 9 PM	8/31/2021
7 and 7A, excluding apex (see subsection (b))	Open	5 AM - 9 PM	9/1/2021

(a) It is unlawful to retain any salmon other than pink salmon taken with purse seine gear.

(b) Closed northwest of a line projected 233 degrees true from ruins of the Iwersen Dock (48°58'30.6"N, 123°5'6.5"W) on Point Roberts to the Active Pass Light (List of Lights CA No. 275 FLW10s57ft17M, 48°52'23"N, 123°17'26"W) on Georgina Point, Mayne Island, British Columbia, Canada.

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NEW SECTION

WAC 220-354-18000M Puget Sound salmon—Reef net open periods.

Effective 5 AM August 31, through 9 PM, September 1, 2021, the following provisions of WAC 220-354-180 regarding reef net open periods in Puget Sound Salmon Management and Catch Reporting Area 7 shall be as follows. All other provisions of WAC 220-354-180 not contained herein remain in effect unless others altered by emergency rule:

Reef nets - Open to reef nets according to the times, dates, and conditions as prescribed and listed below:

Area	Open/Closed	Time	Date
7	Open	5 AM - 9 PM	8/31/2021

Area	Open/Closed	Time	Date
7	Open	5 AM - 9 PM	9/1/2021

(a) It is unlawful to retain any salmon other than pink salmon taken with reef net gear on August 31, 2021.

(b) It is unlawful to retain any salmon other than pink and coho salmon taken with reef net gear on September 1, 2021.

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

WSR 21-18-108

EMERGENCY RULES

COLUMBIA BASIN COLLEGE

[Filed August 31, 2021, 2:44 p.m., effective August 31, 2021, 2:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Department of Education (DOE) issued an announcement along with the Washington assistant attorney general's office regarding an update on a court ruling regarding hearsay. The court vacated the part of 34 C.F.R. § 106.45 (b) (6) (i) that prohibits a decision-maker from relying on statements that are not subject to cross-examination during the hearing: "If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility ..." This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New [Amending] Supplemental Title IX Student Conduct Procedures, WAC 132S-110-010 and 132S-110-070.

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

Other Authority: Title IX of the Education Act Amendments of 1972, 20 U.S.C. Section 1681.

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: Columbia Basin College is required by the United States DOE to comply with the recently adopted Title IX regulations.

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

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

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

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

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

Date Adopted: August 31, 2021.

Camilla Glatt
Vice President for
HR and Legal Affairs
Title IX Coordinator

OTS-3296.1

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-010 Order of precedence. This procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to the college's Title IX grievance policy and regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these hearing procedures conflict with Columbia Basin College's standard disciplinary procedures, WAC 132S-100-010 through 132S-100-500 these procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the hearing panel and hearing panel chair.

[Statutory Authority: RCW 28B.50.140 and 20 U.S.C. § 1092(f) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 20-23-031, § 132S-110-010, filed 11/10/20, effective 12/11/20.]

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

WAC 132S-110-070 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: RCW 28B.50.140 and 20 U.S.C. § 1092(f) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 20-23-031, § 132S-110-070, filed 11/10/20, effective 12/11/20.]

WSR 21-18-113
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-170—Filed September 1, 2021, 7:19 a.m., effective September 1, 2021]

Effective Date of Rule: September 1, 2021.

Purpose: The purpose of this emergency rule is to change the daily open period for the lands listed in this WAC and to create additional regulations that are needed to prevent wildfires on department lands in eastern Washington during the current period of very high and extreme fire danger. The new rule will help reduce the threat of wildfires on department lands in eastern Washington and provide protection of human health, safety, and wildlife habitat. Select water access areas listed in this rule within Columbia Basin and Chief Joseph Wildlife Areas are authorized for overnight use.

Citation of Rules Affected by this Order: Repealing WAC 220-500-04000F; and amending WAC 220-500-040.

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

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

Reasons for this Finding: An emergency rule is necessary to protect department lands from imminent risk of wildfire damage during a very high fire danger period which is occurring currently. These additional prohibitions are needed immediately to protect humans, wildlife, and property.

Listed exceptions are based on the following rationales:

1. The Columbia Basin Wildlife Area is a fragmented landscape of unforested low-elevation shrubsteppe, irrigated agriculture, and dry-land wheat (harvest currently underway) with a relatively high degree of road access. Due to relatively flat topography and accessibility, wildfires in this area typically last hours, as opposed to days, and require less suppression resources. Water access sites proposed for exemption serve a high demand on large water bodies (Banks Lake, Pot-holes Reservoir) for recreational boating. Parking areas and access roads are generally well maintained, well delineated, and free of vegetation. Recreational value is high, and risk is relatively low. Further, compliance on Columbia Basin Wildlife Area during the COVID-19 shutdown was low, signs were ignored, and barriers were crossed. By allowing overnight use of some of these sites will reduce the number of violations across the wildlife area, make enforcement more manageable, and focus fire risk to more manageable areas as well.

2. Chief Joseph Wildlife Area has three sites with relatively low risk of wildfire and which support rafters who park overnight. Allowing these sites to remain open also helps with enforcement and reduces risk of violations across the wildlife area.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 1, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-500-04000G Regulating public access. Notwithstanding the provisions of WAC 220-500-040, effective immediately, until further notice, it is unlawful to be present in wildlife areas, and in water access areas within wildlife areas, owned or controlled by the Department in Eastern Washington from 10:00 pm - 4:00 am without written approval from the director; with the following exceptions:

Water Access Site	Wildlife Area Unit	Water Body
Million Dollar Mile North	Banks Lake	Banks Lake
Million Dollar Mile South	Banks Lake	Banks Lake
Blythe	Desert	Potholes Reservoir
Crab Creek	Desert	Potholes Reservoir
Glen Williams	Desert	Potholes Reservoir
Lind Coulee Bridge East	Desert	Potholes Reservoir
Lind Coulee Bridge West	Desert	Potholes Reservoir
Lind Coulee Island	Desert	Potholes Reservoir
Lind Coulee Point	Desert	Potholes Reservoir
North Outlet	Desert	Potholes Reservoir
Sampson's Pit	Desert	Potholes Reservoir
South Outlet	Desert	Potholes Reservoir
Heller Bar	Chief Joseph WLA	Snake River
Shumaker Grade	Chief Joseph WLA	Grande Ronde River
Snyder Bar	Chief Joseph WLA	Grande Ronde River

A violation of this section is an infraction punishable under RCW 77.15.160 or a criminal citation punishable under RCW 77.15.230.

[]

REPEALER

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

WAC 220-500-04000F Regulating public access (21-128)

WSR 21-18-127
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-169—Filed September 1, 2021, 11:37 a.m., effective September 16, 2021]

Effective Date of Rule: September 16, 2021.

Purpose: The purpose of this emergency rule is to close fishing in a portion of the Wind River.

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

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

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

Reasons for this Finding: A minimum escapement of 500 wild summer steelhead is needed to allow for the opening of a catch-and-release fishery above Shipherd Falls on September 16. Based upon the results of a recent snorkel survey in August, the wild summer steelhead return is projected to be far below the minimum objective. Summer steelhead returns have been low throughout the Columbia River basin this year.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 1, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000B Freshwater exceptions to statewide rules—Southwest. Effective September 16 through November 30, 2021, the provisions of WAC 220-312-030 regarding angling seasons for Wind River, shall be modified during the dates and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule.

Wind River (Skamania County): from 100 feet above Shipherd Falls upstream to Moore Bridge: All game fish: Effective immediately through November 30, 2021: Closed

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