

WSR 21-24-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-258—Filed November 17, 2021, 2:58 p.m., effective November 17, 2021, 2:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close the Puget Sound commercial crab fishery in region 3-2, effective November 19, 2021, at 5:00 p.m. The provisions of this emergency rule:

WAC 220-340-42000U:

(1) Requires all crab harvested to be delivered to an original receiver or recorded on a shellfish transportation ticket within 36 hours of harvest. Requires separate transportation tickets to be completed for each day's harvest not delivered to an original receiver that is stored off the fishing vessel. Implements a 10-day restriction on the length of time that crab may be stored off-vessel before being delivered to an original receiver.

(2) Implements a labeling requirement for crab that are stored off-vessel.

(3) Implements a labeling requirement for crab that are stored off-vessel and not delivered to an original receiver within 36 hours.

WAC 220-340-45500D:

(1) Defines subareas east and west of Marine Fish Shellfish Catch Reporting Area 23C to align with agreed to boundaries within Region 3 2021-2022 crab management plan.

(2) Opens Puget Sound commercial crab harvest in Crab Management Regions 2 West, 3-1, 3-2, and 3-3 effective immediately. Closes commercial harvest in Crab Management Region 3-2 effective November 19, 2021 due to attainment of quota. Describes hard closure dates by crab management region. Maintains closure of Crab Management Region 2 East, which closed October 17, 2021, at 11:59 p.m. and Crab Management Region 1 which closed on November 3, 2021, at 7:30 p.m.

(3) Closes Port Angeles Harbor to commercial crab harvest due to public health decrees.

(4) Closes commercial crab harvest in Crab Management Region 3-4 until further notice.

(5) Closes areas to state commercial [crab harvest] that have been agreed to in regional management plans.

(6) Repeals areas where recreational and tribal harvest has been allowed that state commercial harvest has been historically limited.

(7) Repeals areas where recreational and tribal harvest has been allowed that state commercial harvest has been historically closed.

WAC 220-340-47000B:

(1) Allows deployment of up to 50 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 2 West.

(2) Allows deployment of up to 50 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 3-2, until November 19, 2021, at 5:00 p.m.

(3) Allows deployment of up to 40 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 3-1.

(4) Allows deployment of up to 60 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 3-3.

(5) Requires undeployed buoy tags to be retained for inspection.

WAC 220-352-34000M:

(1) Clarifies the Puget Sound commercial dealer quick reporting requirements.

(2) Implements a Puget Sound "stored crab" harvest report requirement for crab not delivered to an original receiver with[in] 36 hours of harvest.

(3) Implements a Puget Sound sales report requirement for stored crab that have been reported but not landed.

(4) Implements a registration requirement for commercial license holders to notify the department which crab management area a license will be fishing in.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000T, 220-340-45500C, 220-340-47000A and 220-352-34000L; and amending WAC 220-340-420, 220-340-455, 220-340-470, and 220-352-340.

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

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

Reasons for this Finding: There is sufficient allocation available in [Region] 3-2 to accommodate harvest through November 19, 2021. There is sufficient allocation available in [Regions] 2 West, 3-1, and 3-3 to accommodate continued commercial harvest. These provisions are in conformity with agreed regional management plans with applicable tribes or in accordance with procedures proscribed in the shellfish implementation plan when no annual regional management plan agreement has been reached. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. Further adjustment of season structure may be made pending updated harvest data. Changes to filing WSR 21-22-101 will make this emergency rule more enforceable. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 17, 2021.

Kelly Susewind
Director

NEW SECTION

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

(1) Crab Management Region 1 includes Marine Fish-Shellfish (MFSF) Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B. Crab Management Region 2E includes MFSF Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A East. Crab Management Region 2 West includes MFSF Catch Reporting Areas 25B, 25D, and 26A West. Crab Management Region 3-1 includes MFSF Catch Reporting Areas 23A and 23B. Crab Management Region 3-2 includes MFSF Catch Reporting Areas 25A, 25E, and 23D. Crab Management Region 3-3 includes MFSF Catch Reporting Areas 23C East, and Crab Management Region 3-4 consists of 23C West and 29.

(2) Effective immediately, until further notice, all crab removed from a vessel licensed in Puget Sound that are not delivered to an original receiver within 36 hours must be recorded on a commercial fish and shellfish transportation ticket. Separate commercial fish and shellfish transportation tickets must be filled out for each day's harvest stored this way. It is illegal to store crab prior to delivery and completion of a fish receiving ticket for more than 10 days.

(3) Effective immediately, until further notice, all crab that have been removed from a vessel must be stored in containers labeled with the following:

(a) date of harvest,

(b) an estimate of pounds of crab contained,

(c) either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from.

(4) Effective immediately, until further notice, all crab that have been removed from a vessel and are not delivered to an original receiver within 36 hours must be stored in containers labeled with the following:

(a) date of harvest,

(b) an estimate of pounds of crab contained,

(c) either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from, and

(d) Commercial fish and shellfish transportation ticket number.

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NEW SECTION

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

(1) For the purposes of crab harvest allocation, fishing season, and catch reporting, the following Marine Fish-Shellfish Catch Reporting Areas are modified as follows:

(a) Catch Area 23C East (23C-E) includes those waters of Puget Sound westerly of a line due north from the Ediz Hook light to the international boundary; and easterly of a line projected due north from Low Point.

(b) Catch Area 23C West (23C-W) includes those waters of Puget Sound westerly of a line due north from Low Point to the international boundary; and easterly of a line projected due north from the mouth of the Sekiu River.

(2) It is permissible to harvest Dungeness crab for commercial purposes from the following areas as listed:

(a) Region 2 West:

Crab Management Region 2-W; effective immediately through February 15, 2022.

(b) Region 3:

(i) Crab Management Region 3-1; effective immediately until further notice.

(ii) Crab Management Region 3-2; effective immediately until November 19, 2021 at 5:00 p.m..

(iii) Crab Management Region 3-3; effective immediately until further notice.

(3) Public Health Closures: effective immediately, until further notice, the following areas are closed to commercial crab fishing:

That portion of Marine Fish/Shellfish Catch Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(4) Effective immediately, until further notice, the following areas are closed to commercial crab fishing: Crab Management Regions 1, 2E, and 3-4.

(5) Management Plan Tribal Exclusive Closures: effective immediately, until further notice, the following areas are closed to commercial crab fishing:

Region 3-2:

Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A previously described as "west of a line from the new Dungeness Light to the abandoned dock at the Three Crabs Restaurant" now described as the Dungeness Bay Special Management Area which include all waters of Dungeness Bay west of the 123°6.50' Longitude line originating from the New Dungeness Light (48°10.90'N, 123°6.50'W).

(6) Limited Commercial Areas: It is permissible to harvest Dungeness crab for commercial purposes from the following areas as listed:

Region 2 West, effective immediately, until further notice:

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

(7) Commercial exclusion areas: It is permissible to harvest crab for commercial purposes from the following areas as listed:

Region 3-2, effective immediately, until further notice:

Those waters of Discovery Bay, Area 25E south of a line from Contractors Point to Tukey Point.

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

NEW SECTION

WAC 220-340-47000B Commercial crab fishery—Gear limits—Puget Sound and marine fish-shellfish management and catch reporting areas.

Notwithstanding the provisions of WAC 220-340-470:

(1) Effective immediately, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than

50 pots per license per buoy tag number in Crab Management Region 2 West with the following exceptions:

Region 2 West:

Commercial harvest is limited to 20 pots per license in those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin until 11:59 p.m. December 31, 2021.

(2) Effective immediately, until November 19, 2021 at 5:00 p.m., it is unlawful for any person to harvest crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 3-2 with the following exceptions:

Region 3-2:

(a) Commercial harvest is limited to 20 pots per license within the Sequim Bay Special Management Area which consists of all waters of Sequim Bay south of a line true west from Travis Spit to the Miller Peninsula.

(b) Commercial harvest is limited to 20 pots per license within the Discovery Bay Special Management Area defined as all waters of Discovery Bay south of a line from Diamond Point to Cape George.

(3) Effective immediately, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 40 pots per license per buoy tag number in Crab Management Region 3-1.

(4) Effective immediately, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 60 pots per license per buoy tag number in Crab Management Region 3-3.

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

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NEW SECTION

WAC 220-352-34000M Puget Sound crab—Additional reporting requirements. Notwithstanding the provisions of WAC 220-352-340,

(1) Effective immediately, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab landed by WDFW licensed Puget Sound commercial crab harvesters to fail to report to the department the previous day's purchases by 10:00 a.m. the day following the purchase. Reports must be made online at the Puget Sound commercial crab reporting website, by fax to (360) 302-3031, or by e-mail at crab.report@dfw.wa.gov. Reports must include all of the following:

(a) dealer name,

(b) dealer license number,

(c) dealer phone number,

(d) date of delivery of crab to the original receiver, and

(e) the total number of pounds of crab caught by non-treaty fishers by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area.

(2) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must deliver all crab removed from

their vessel to a licensed original receiver within 36 hours or submit a report of crab retained for delivery at a future date to the Department. Reports must be received within 36 hours following an offload. Reports must be made by online on the Puget Sound commercial crab reporting website or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

- (a) harvester name,
 - (b) WDFW issued vessel ID,
 - (c) Puget Sound commercial license number,
 - (d) date of harvest,
 - (e) an estimate of pounds of harvest retained by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area, and
 - (f) a commercial fish and shellfish transportation ticket number.
- (3) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must report the delivery of all crab to an original receiver that were previously retained off-vessel by 10:00 a.m. the day following delivery to an original receiver. Reports must be made online at the Puget Sound commercial crab reporting website, or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

- (a) harvester name,
 - (b) WDFW issued vessel ID,
 - (c) Puget Sound commercial license number,
 - (d) date of sale,
 - (e) dealer name,
 - (f) commercial shellfish transportation ticket number(s) delivered, and
 - (g) fish receiving ticket number(s) corresponding to landing date of delivery.
- (4) Effective immediately, until further notice, Puget Sound commercial crab license holders, or their designated alternate operators, must register which Crab Management Region that gear will be deployed in for each license they hold prior to the opening date. Registrations must be updated when gear moves between areas. Registrations can be made by registering on the WDFW Puget Sound commercial crabbing webpage or sending an email to crab.report@dfw.wa.gov, detailing the following information:
- (a) Vessel Operator Name
 - (b) Vessel Name and Vessel Registration Number
 - (c) Permit Number(s) to be Fished
 - (d) Crab Management Region to be fished
 - (e) Gear Deployment Date

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-340-42000T Commercial crab fishery—Unlawful acts.
(21-250)
- WAC 220-340-45500C Commercial crab fishery—Seasons and
areas—Puget Sound. (21-250)
- WAC 220-340-47000A Commercial crab fishery—Gear
requirements—Puget Sound. (21-250)
- WAC 220-352-34000L Puget Sound crab—Additional reporting
requirements. (21-250)

WSR 21-24-003

EMERGENCY RULES

MILITARY DEPARTMENT

[Filed November 17, 2021, 2:58 p.m., effective November 17, 2021, 2:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: EHB 1596 (2017) authorizes agencies to assess statutory costs for copies of public records if the agency has adopted a rule or regulation declaring the reasons that determining the actual cost of copies would be unduly burdensome. This emergency rule makes that determination and accordingly authorizes the military department to assess statutory costs for copies, as permitted by RCW 42.56.120.

Citation of Rules Affected by this Order: Amending WAC 323-10-070.

Statutory Authority for Adoption: RCW 42.56.070, 42.56.120.

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: Prior to the adoption of this emergency rule, the military department has not required public records requesters to pay for the costs of copies as permitted by RCW 42.56.120, as amended in 2017 by EHB 1596. However, public records requests made to the department have substantially increased in volume and frequency over the last year, and the costs imposed on the agency have been significant. These costs undermine the department's ability to protect public health, safety, and the general welfare. The immediate adoption of this emergency rule is therefore necessary to allow the department to charge statutory fees under RCW 42.56.120 and mitigate the current burden on the agency.

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

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

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

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

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

Date Adopted: November 17, 2021.

Cynthia Whaley
Rules Coordinator

OTS-3479.1

AMENDATORY SECTION (Amending WSR 14-22-096, filed 11/4/14, effective 12/5/14)

WAC 323-10-070 Costs of providing copies of public records. (1)

~~((Costs for paper copies.))~~ **Inspection.** There is no fee for inspecting public records. ~~((A requestor may obtain standard black and white photocopies for fifteen cents per page. Copies in color or larger sized documents cost will be based on the actual cost to reproduce them at the time of the request.~~

~~(2) Costs for electronic records. The cost of scanning existing office paper or other nonelectronic records is six cents per page. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee. The charge for electronic records provided on any medium other than email will be in the amount necessary to reimburse the actual cost to the agency.~~

~~(3) Deposits. Before beginning to make copies or scanning responsive records,))~~

(2) **Statutory default costs.** Pursuant to RCW 42.56.120(2), the department declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records:

(a) Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

(3) **Fee schedule.**

(a) The department will charge for copies of records pursuant to the default fees in RCW 42.56.120 and as published in the department's fee schedule available on the agency website at <https://mil.wa.gov/public-record-disclosure>.

(b) The department will charge the actual amount charged by an external vendor for records copied by an external vendor.

(c) The charges for copies under this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(4) **Customized electronic access services.** At the department's sole discretion, the department may provide customized electronic access to public records if the department estimates that the request would require the use of information technology expertise to prepare data compilations or provide customized electronic access services when such compilations and customized access services are not used by the department for other agency purposes. The department will charge the actual costs, including staff time, necessary to reimburse the department for providing customized electronic access services.

(5) **Deposits.** The public records officer or designee may require ((a)) an advance deposit of ((up to ten)) 10 percent of the estimated ((costs of copying all the records selected by the requestor)) fees when preparing records for an installment or an entire request. The public records officer or designee may also require the payment of the remainder of the copying or scanning costs before providing all the records, or the payment of the costs of copying or scanning an installment before providing that installment. The ((military)) department will not charge sales tax when it makes copies of or scans public records.

~~((4))~~ (6) Payment of fees. The department will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.

(7) Waiver of fees. The public records officer may waive the fee when the expenses of processing payment exceeds the costs of providing copies.

(8) Costs of mailing. The ~~((military))~~ department may ~~((also))~~ charge actual costs of mailing, including the cost of the shipping container.

~~((5))~~ (9) Payment. Payment may be made by cash, check, or money order to the ~~((military))~~ department.

[Statutory Authority: RCW 42.56.040. WSR 14-22-096, § 323-10-070, filed 11/4/14, effective 12/5/14. Statutory Authority: RCW 42.56.010 and 42.56.100. WSR 12-09-089, § 323-10-070, filed 4/18/12, effective 5/19/12; § 323-10-070, filed 2/13/74.]

WSR 21-24-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-260—Filed November 18, 2021, 2:54 p.m., effective November 20, 2021]

Effective Date of Rule: November 20, 2021.

Purpose: The purpose of this emergency rule is to close recreational salmon angling in Catch Record Card Area 11, beginning November 20, 2021.

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

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

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

Reasons for this Finding: The current estimate of Chinook encounters of the planned Marine Area 11 winter Chinook season is 94 percent (945 of 1,001) of the total encounters, 107 percent (683 of 637) of the sublegal encounters, and 110 percent (263 of 239) of the unmarked encounters agreed to in this year's list of agreed fisheries. Closure of recreational salmon angling in Catch Record Card Area 11, beginning Saturday, November 20, 2021, is needed because allowed sublegal and unmarked encounters have been reached, and to avoid exceeding total allowed Chinook encounters.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 18, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000Q Puget Sound salmon—Saltwater seasons and daily limits. Effective November 20 through December 31, 2021, the following provisions of WAC 220-313-060 regarding salmon seasons in Catch Record Card Area 11 shall be as described below. All other pro-

visions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 11: Salmon: Closed.

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REPEALER

The following section of Washington Administrative Code is repealed, effective November 20, 2021:

WAC 220-313-06000N Puget Sound salmon—Saltwater seasons and daily limits. (21-248)

WSR 21-24-012
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 19, 2021, 7:34 a.m., effective November 24, 2021]

Effective Date of Rule: November 24, 2021.

Purpose: The developmental disabilities administration (DDA) is enacting changes to WAC 388-823-0720 on an emergency basis to remove the "Woodcock-Johnson test of achievement." Recently under WSR 21-13-164, DDA mistakenly adopted language that says DDA will accept the "Woodcock-Johnson test of achievement" as evidence of a person's full scale intelligence quotient (FSIQ); however, the text should continue to read "Woodcock-Johnson test of cognitive abilities" as it stated before filing WSR 21-13-164.

Citation of Rules Affected by this Order: Amending WAC 388-823-0720.

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

Other Authority: RCW 34.05.350.

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 accidental removal of the test of cognitive abilities has the potential to create a health and safety issue for an applicant who urgently needs to become DDA-eligible and receive services. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest because DDA would not be permitted to continue to accept the Woodcock-Johnson test of cognitive abilities for several months; during that time, some applicants might be denied eligibility who would otherwise be deemed eligible based on results of their Woodcock-Johnson test of cognitive abilities.

DDA relies on the test of cognitive abilities to determine full-scale intelligence quotient scores, which are a necessary part of determining DDA eligibility. The Woodcock-Johnson test of achievement measures a person's academic level of achievement and does not produce an FSIQ score. In WAC 388-823-0720 What evidence do I need of my FSIQ?, the table lists tests that result in an FSIQ and DDA accepts the results of all of those tests as evidence of a qualifying FSIQ. It is not possible for DDA to determine an FSIQ based on the results of the Woodcock-Johnson test of achievement.

This is the second emergency filing on these changes. This filing is necessary to keep the emergency rule enacted until the permanent rule is adopted. DDA is progressing through the permanent rule-making process, the public rules hearing was held November 9, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, 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: November 19, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4880.1

AMENDATORY SECTION (Amending WSR 21-13-164, filed 6/23/21, effective 8/1/21)

WAC 388-823-0720 What evidence do I need of my FSIQ? Evidence of a qualifying FSIQ is derived from one of the tests listed in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Stanford-Binet 4th edition or earlier editions	67 or less	75 or less	83 or less
Stanford-Binet 5th edition	69 or less	77 or less	84 or less
Wechsler intelligence scales (Wechsler)	69 or less	77 or less	84 or less
Differential abilities scale (DAS)	69 or less	77 or less	84 or less
Kaufman assessment battery for children (K-ABC)	69 or less	77 or less	84 or less
Das-Naglieri cognitive assessment system (CAS)	69 or less	77 or less	84 or less

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Woodcock-Johnson-Test of ((achievement)) cognitive abilities III, III(r), or IV	69 or less	77 or less	84 or less
Reynolds intellectual assessment scales, 2nd edition (RIAS 2)	69 or less	77 or less	84 or less

(1) The test must be administered by a licensed psychologist or Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

(2) The FSIQ score cannot be attributable to mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen:

(a) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your intellectual impairment, measured by a FSIQ test, would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

(b) "Acceptable documentation" means written reports or statements that are directly related to the subject at issue, reasonable in light of all the evidence, and from a source of appropriate authority. The determination of whether a document is acceptable is made by DDA.

(c) If no documentation is provided or DDA determines that the documentation is not acceptable DDA will deny eligibility. The determination may be challenged through an administrative appeal.

(3) If you have a vision impairment that prevents completion of the performance portion of the IQ test, the administering professional may estimate an FSIQ using only the verbal IQ score of the appropriate Wechsler.

(4) If you have a significant hearing impairment, English is not your primary language, or you are nonverbal your FSIQ may be estimated using one of the tests shown in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at 1.5 or more standard deviations	Qualifying score more than 1 standard deviation
Wechsler intelligence scales (WISC, WAIS, WNV)	69 or less on the performance scale, or, on both the perceptual reasoning index and processing speed index	77 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index	84 or less on the performance scale, or, on both the perceptual reasoning Index and the processing speed index
Leiter international performance scale-revised (Leiter-R)	69 or less	77 or less	84 or less
Comprehensive test of nonverbal intelligence (C-TONI)	69 or less on full scale (NVIQ)	77 or less on full scale (NVIQ)	84 or less on full scale (NVIQ)
Kaufman assessment battery for children (K-ABC)	Nonverbal scale index of 69 or less	Nonverbal scale index of 77 or less	Nonverbal scale index of 84 or less

(5) If you are over the age of nineteen at the time of your determination you must have a valid FSIQ obtained at age thirteen or older.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 and 71A.16.020. WSR 21-13-164, § 388-823-0720, filed 6/23/21, effective 8/1/21. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0720, filed 5/29/14, effective 7/1/14.]

WSR 21-24-016
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed November 19, 2021, 9:24 a.m., effective November 21, 2021]

Effective Date of Rule: November 21, 2021.

Purpose: Implement section 28, chapter 304, Laws of 2021, which authorizes licensing of outdoor nature-based (ONB) programs. The rules explain the application process, licensing criteria and quality standards, and enforcement process.

Citation of Rules Affected by this Order: New WAC 110-300E-0001, 110-300E-0005, 110-300E-0015, 110-300E-0020, and 110-300E-0400.

Statutory Authority for Adoption: Section 28, chapter 304, Laws of 2021.

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: Effective July 25, 2021, section 28, chapter 304, Laws of 2021, authorized the department to license ONB programs, to adopt rules governing those programs, and apply the early achievers quality standards to ONB programs so that they may receive federal child care subsidy funding. The department began permanent rule making and adopted emergency rules that took effect July 25, 2021, that implemented its immediate licensing authority granted by section 28, chapter 304, Laws of 2021. The emergency rules must remain in effect until the permanent rules adopted by the department take effect December 23, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: November 19, 2021.

Brenda Villarreal
Rules Coordinator

OTS-3212.7

Chapter 110-300E WAC

OUTDOOR NATURE-BASED PROGRAMS

NEW SECTION

WAC 110-300E-0001 Authority. (1) Chapter 43.216 RCW establishes the responsibility and authority for the department of children, youth, and families to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) Pursuant to section 28, chapter 304, Laws of 2021:

(a) The department must establish a licensed outdoor nature-based child care program.

(b) The department must adopt rules to implement the outdoor nature-based child care program and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor classrooms in Washington state.

(c) The department must apply the early achievers program to the outdoor nature-based child care program to assess quality in outdoor learning environments and may waive or adapt early achievers requirements when necessary to allow for the operation of outdoor classrooms.

(d) A child care or early learning program operated by a federally recognized tribe may participate in the outdoor nature-based child care program through an interlocal agreement between the tribe and the department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of tribal sovereignty.

(3) Pursuant to RCW 43.216.250 (2)(b), the provisions of this chapter governing the physical facility, including buildings and other physical structures attached to buildings and premises, do not apply to licensed school-age programs that operate in facilities used by public or private schools. The department regulates only health, safety, and quality standards that do not relate to the physical facility for programs operating in facilities used by public or private schools.

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NEW SECTION

WAC 110-300E-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Agency" has the same meaning as described in RCW 43.216.010.

"Department" means the Washington state department of children, youth, and families (DCYF).

"Early learning" has the same meaning as described in RCW 43.216.010.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil monetary penalties (fines) pursuant to RCW 43.216.325(3).

"Outdoor nature-based program" has the same meaning as "outdoor nature-based child care" in RCW 43.216.010 (1)(e), which is an agency or an agency-offered program that:

- (a) Enrolls preschool or school-age children;
- (b) Provides early learning services to the enrolled children in an outdoor natural space approved by the department for not less than four hours per day or 50 percent of the daily program hours, whichever is less; and
- (c) Teaches a nature-based curriculum to enrolled children.

"Provider" as used in this chapter means an early learning program that offers outdoor nature-based early learning services, and is licensed under and subject to the provisions of this chapter (also "licensee").

[]

NEW SECTION

WAC 110-300E-0015 Outdoor nature-based licensing agreement—Uniform rules. (1) Licensees under this chapter must agree, enter into, and comply with the terms and conditions of an outdoor, nature-based licensing agreement prepared by the department. The outdoor nature-based licensing agreement will require compliance with the following minimum terms and conditions:

- (a) The terms and conditions detailed in the outdoor nature-based licensing agreement;
- (b) The requirements of this chapter;
- (c) The background check requirements contained in chapter 110-06 WAC, early learning background checks; and
- (d) The requirements of the federal Child Care Development Fund (45 C.F.R. Part 98).

(2) To establish a uniform set of requirements for outdoor nature-based programs, the department may periodically update the outdoor nature-based licensing agreement, amend existing rules in this chapter, or draft new rules to be published under this chapter.

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NEW SECTION

WAC 110-300E-0020 Enforcement actions—Right of review—Process of seeking review. (1) The department is authorized by RCW 43.216.020, 43.216.065, 43.216.250, and 43.216.325 to take enforcement actions when a provider fails to comply with this chapter, chapter 110-06 WAC, early learning background checks, or chapter 43.216 RCW. Enforcement actions include civil monetary penalties and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) An applicant or provider has the right to appeal an enforcement action by requesting an adjudicative proceeding or "hearing" pursuant to the hearing rules codified in chapter 110-03 WAC, Administrative hearings.

(3) The department must issue a notice of violation to a provider when taking enforcement actions. A notice of violation must be sent certified mail or personal service and must include:

- (a) The reason why the department is taking the action;
- (b) The rules the provider failed to comply with;
- (c) The provider's right to appeal enforcement actions; and
- (d) How the provider may appeal and request a hearing.

(4) Fines must not exceed \$250 per day per violation.

(5) Fines may be:

(a) Assessed and collected with interest for each day a violation occurs;

(b) Imposed in addition to other enforcement actions; and

(c) Withdrawn or reduced if a provider comes into compliance during the notification period.

(6) A provider must pay fines within 28 calendar days after receiving a notice of violation unless:

(a) The office of financial recovery establishes a payment plan for the provider; or

(b) The provider requests a hearing, pursuant to chapter 110-03 WAC, Administrative hearings and RCW 43.216.335(3).

(7) The department may suspend or revoke a license if a provider fails to pay a fine within 28 calendar days or becomes delinquent in making payments, pursuant to RCW 43.216.327 and 43.216.335. If a provider's license is due for annual compliance, the department may elect not to continue the license for failure to pay a fine.

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NEW SECTION

WAC 110-300E-0400 Outdoor nature-based licenses—Application.

(1) After submitting to the department a signed outdoor nature-based licensing agreement pursuant to WAC 110-300E-0015, an applicant must submit a complete application to the department to receive an initial license, or be granted a continuation of a full license, to operate an outdoor nature-based program.

(2) Pursuant to RCW 43.216.305, the department must grant or deny a license or continuation of a full license within 90 days of receiving a complete application.

(3) After completing a department orientation an applicant must submit to the department a complete license application packet, pursuant to chapter 43.216 RCW. This requirement also applies to a change of ownership. A complete license application packet includes:

(a) Professional and background information about the applicant:

(i) A completed department application form;

(ii) A copy of the applicant's orientation certificate (orientation must be taken no more than 12 months prior to applying for a license);

(iii) A Washington state business license or a tribal, county, or city business or occupation license, if applicable;

(iv) Liability insurance, if applicable;

(v) A certificate of incorporation, partnership agreement, or similar business organization document, if applicable;

(vi) The license fee;

- (vii) A copy of current government issued photo identification;
 - (viii) A copy of Social Security card or sworn declaration stating that the applicant does not have one;
 - (ix) Employer identification number (EIN) if applicant plans to hire staff; and
 - (x) Employment and education verification. For example, diploma, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.
- (b) Information about the program to be licensed:
- (i) A site plan, including use of proposed licensed and unlicensed space, with identified emergency exits or emergency exit pathways;
 - (ii) Certificate of occupancy, if applicable;
 - (iii) Documentation, no more than three years old, from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in working order, if applicable;
 - (iv) *E. coli* bacteria and nitrate testing results for well water that is no more than 12 months old, if applicable;
 - (v) A lead or arsenic evaluation agreement for program sites located in the Tacoma smelter plume (counties of King, Pierce, and Thurston) or the Everett smelter plume (county of Snohomish); and
 - (vi) Lead and copper test results for drinking water, if applicable.
- (c) Program days and hours of operation, including closure dates and holiday observances; and
- (d) The following information about program staff:
- (i) A list of staff members, and if applicable and known, staff persons and volunteers required to complete the background check process as outlined in chapter 110-06 WAC, early learning background checks; and
 - (ii) A resume for the applicant and each staff person, if applicable.
- (e) The following policy documents, which will be reviewed by the department and returned to the applicant:
- (i) Parent and program policies;
 - (ii) Staff policies;
 - (iii) An emergency preparedness plan; and
 - (iv) Health policies.
- (4) An applicant must submit the completed application packet at least 90 calendar days prior to the planned opening of the outdoor, nature-based program. The department will inspect the program space and all submitted application materials prior to issuing a license.
- (a) The 90 calendar days begins when the department receives a complete application packet.
 - (b) Incomplete application packets will be returned to the applicant for completion.
 - (c) An applicant who is unable to successfully complete the application and licensing process within 90 days may withdraw the application and reapply when the applicant is able to meet the licensing requirements. If the applicant has completed the steps of the application process within 90 days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.
 - (d) An applicant who is unable to meet the application requirements and has not withdrawn his or her application will be denied a license, pursuant to RCW 43.216.325.

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WSR 21-24-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-261—Filed November 19, 2021, 12:34 p.m., effective November 19, 2021, 12:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to prevent or slow the spread of chronic wasting disease (CWD), a fatal disease of cervids, into Washington state from areas with CWD. The Washington department of fish and wildlife (WDFW) prohibits the importation of cervid carcasses and parts, with some exceptions, from states and Canadian provinces that detect CWD. Recently, CWD was detected in Manitoba and Idaho in an area near the Washington-Idaho border. The causative agent of CWD is present in cervid carcasses and parts, importation of which may introduce this disease into Washington cervids.

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

Statutory Authority for Adoption: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, and 77.65.520.

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

Reasons for this Finding: CWD has recently been identified in Manitoba and Idaho. This disease is fatal to cervids and has no cure or treatments. Once established, this disease is extremely difficult to eradicate and manage and can lead to population declines. The best management option for this disease is prevention.

WDFW, wildlife program, will be filing a preproposal on or before December 1, 2021, to initiate permanent rule making.

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

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

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

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

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

Date Adopted: November 19, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-413-03000D Importation and retention of dead nonresident wildlife. Effective immediately, until further notice, the following

provisions of WAC 220-413-030 shall be described below. All other provisions of WAC 220-413-030 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

It shall be unlawful to import or possess deer, elk, or moose, or parts thereof, harvested in Idaho or Manitoba 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.

WSR 21-24-026
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 22, 2021, 8:01 a.m., effective November 22, 2021, 8:01 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Due to the ongoing national and state emergency relating to COVID-19, the United States Postal Service (USPS) made temporary changes to its certified mail signature gathering procedures to limit direct contact with recipients. This emergency WAC clarifies that these temporary procedures employed by USPS are acceptable for purposes of certified mail service. Division of child support has filed a CR-101 and is currently working with internal and external stakeholders on permanent rule making on this subject. On July 16, 2021, USPS issued updated guidance to its employees that unvaccinated mail carriers should still wear masks and maintain social distancing. Additionally, on July 27, 2021, the Centers for Disease Control and Prevention (CDC) issued new guidance encouraging vaccinated people to wear masks and maintain social distancing even indoors in settings of high risk. As a result of these recent updates, special COVID-19 delivery practices for certified mail will likely continue. The department filed a CR-103P for permanent adoption under WSR 21-23-103. This emergency will be in place until the effective date of the permanent [rule], December 18, 2021.

Citation of Rules Affected by this Order: New 1.

Statutory Authority for Adoption: RCW 26.23.110, 34.05.220, 74.08.090, 74.20A.055.

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: USPS certified mail delivery procedures have already been changed. This has had an immediate effect on our ability to serve notices by certified mail. This emergency rule will ensure child support enforcement actions can continue, providing crucial financial resources to clients. Additional and more recent guidance from USPS and CDC in July 2021 means mail carriers will continue to exercise these special delivery practices.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, 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 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 1, 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: November 19, 2021.

Katherine I. Vasquez

SHS-4802.4NEW SECTION

WAC 388-14A-2210 What is the procedure for service by certified mail due to COVID-19? (1) The United States Postal Service has made temporary changes to its certified mail signature gathering procedures to limit direct contact with recipients. As long as these special signature gathering procedures remain in effect, the division of child support (DCS) will consider service by certified mail, return receipt requested when required under chapter 388-14A WAC to be successful 10 days after the following requirements are satisfied:

(a) The notice is sent by certified mail, return receipt requested, with restricted delivery to the noncustodial or custodial parent DCS is serving; and

(b) The postal service employee signs the receipt on behalf of the individual taking delivery as required by current postal service restricted delivery procedures.

(2) The individual taking delivery under section (1)(b) of this section is presumed to be the subject of service or the authorized agent of the subject.

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WSR 21-24-038
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed November 23, 2021, 11:22 a.m., effective December 8, 2021]

Effective Date of Rule: December 8, 2021.

Purpose: The department is extending the amendment of the rules listed below to assure 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 were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow physicians to delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist. Current state rules specify physicians must perform some tasks. The amendment will permit delegation of those tasks as long as the task is within the scope of practice of the delegate, and the delegate works under the supervision of the physician. The department filed a preproposal CR-101 under WSR 20-17-133. In addition, under the rule development phase of rule making, the department continues with discussions about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary.

Citation of Rules Affected by this Order: Amending WAC 388-97-1260.

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. Current nursing home rules require physicians perform certain tasks. The rules also restrict the frequency of delegation from a physician to a registered nurse practitioner or a physician assistant, depending on the payor source of the resident and whether the bed the resident occupies is certified for medicare, medicaid, or both. The amendment permits the physician to delegate tasks, even if it is required to be performed by the physician in regulation and regardless of the frequency of the delegation. The amendment does not change the required frequency of physician visits or the requirement for the physician to supervise the delegate. This amendment aligns state rules with federally waived rules to permit increased delegation of physician tasks to a registered nurse practitioner or a physician assistant during the declared emergency. This amendment provides flexibility for physicians to better prioritize their time and will help to ensure nursing home residents receive assessment and care by a qualified health care provider in a timely manner.

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

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

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

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

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

Date Adopted: November 23, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4803.1

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

WAC 388-97-1260 Physician services. (1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided twenty-four hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in (~~subsections~~) subsection (6) (~~(7), and (9)~~) of this section, a physician may delegate tasks, including tasks that, under state law, must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law; (~~and~~)

(c) Under the supervision of, and working in collaboration with the physician; and

(d) Not an employee of the facility, if caring for a resident whose payor source is medicaid.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) (~~If the resident's primary payor source is medicare, the physician may:~~

~~(a) Alternate federally required physician visits between personal visits by:~~

~~(i) The physician; and~~

~~(ii) An advanced registered nurse practitioner or physician's assistant; and~~

~~(b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first thirty days of admission to the facility.~~

~~(8) If the resident's payor source is medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.~~

~~(9) If the resident's payor source is not medicare or medicaid:~~

~~(a) In the medicare only certified facility or in the medicare certified area of a medicare/medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.~~

~~(b) In the medicaid only certified facility or in the medicaid certified area of a medicare/medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.~~

~~(10) The following table describes the physician visit requirements related to medicare or medicaid certified area and payor type.~~

	Beds in medicare only certified area	Beds in medicare/medicaid certified area	Beds in medicaid only certified area
Payor source:	Initial by physician	Initial by physician	N/A
medicare	Physician may delegate alternate visits	Physician may delegate alternate visits	
Payor source:	N/A	Delegate all tasks	Delegate all tasks
medicaid		Nonemployee	Nonemployee
Payor source:	Initial by physician	Initial by physician	Delegate all tasks
Others: such as insurance, private pay, Veteran Affairs	Physician may delegate alternate visits	Physician may delegate alternate visits	Nonemployee

~~(11)) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:~~

~~(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;~~

~~(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and~~

~~(c) Order resident self-medication when appropriate.~~

~~((12)) (8) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:~~

~~(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;~~

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1260, filed 9/24/08, effective 11/1/08.]

WSR 21-24-043
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed November 24, 2021, 7:52 a.m., effective November 24, 2021, 7:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is revising this rule to remove the restriction that the WISE program only applies to medicaid clients and add language to clarify the program is for those clients eligible for coverage under WAC 182-505-0210.

Citation of Rules Affected by this Order: Amending WAC 182-501-0215.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The immediate revision of these rules is necessary to comply with the implementation of a settlement - *Thurston County Superior Court in A.G.C. v. Washington State Health Care Authority*, no. 21-2-00479-34. The settlement prohibits the agency from applying prior versions of these rules to requests for WISE services from individuals who are not medicaid clients.

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: November 24, 2021.

Wendy Barcus
Rules Coordinator

OTS-3495.1

AMENDATORY SECTION (Amending WSR 20-15-026, filed 7/7/20, effective 8/7/20)

WAC 182-501-0215 Wraparound with intensive services (WISE). (1) Wraparound with intensive services (WISE) is a service delivery model that provides comprehensive behavioral health covered services and support to:

(a) (~~Medicaid-eligible~~) Clients age (~~twenty~~) 20 or younger with complex behavioral health needs who are eligible for coverage under WAC 182-505-0210; and

(b) Their families.

(2) The authority, the managed care organizations, and the WISE provider agencies must use, continue to use, and substantially comply with the WISE quality plan (WISE QP) for the delivery of WISE. The purpose of the WISE QP is to:

(a) Provide a framework for quality management goals, objectives, processes, tools, and resources to measure the implementation and success of the WISE service delivery model; and

(b) Guide production, dissemination, and use of measures used to inform and improve WISE service delivery.

(3) The WISE QP, as may be amended from time to time, is incorporated by reference and is available online at <https://www.hca.wa.gov/billers-providers-partners/behavioral-health-recovery/wraparound-intensive-services-wise>.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-15-026, § 182-501-0215, filed 7/7/20, effective 8/7/20.]

WSR 21-24-047
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed November 24, 2021, 9:41 a.m., effective November 24, 2021, 9:41 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: During the COVID-19 pandemic, relieve DCYF from (1) in-person contact for the purpose of receiving or fulfilling public records requests, copying public records, or allowing inspection of public records; and (2) the requirement to respond to a request for public records within five days of receiving the request.

Citation of Rules Affected by this Order: Amending WAC 110-01-0100 and 110-01-0200.

Statutory Authority for Adoption: RCW 43.216.065; and chapter 42.56 RCW.

Other Authority: Proclamations of the Governor 20-05 and 20-28.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-28 amends Proclamation 20-05 and directs state agencies to limit personal contact through social distancing and limit person-to-person contact. Proclamation 20-28 waives and suspends any in-person contact related to public records requests and the requirement that a state agency respond to requests within five days of receipt. WAC 110-01-0100 and 110-01-0200 were amended on an emergency basis on March 31, 2020, under WSR 20-08-123; July 29, 2020, under WSR 20-16-074; November 25, 2020, under WSR 20-24-089; March 26, 2021, under WSR 21-08-015; and July 26, 2021, under WSR 21-16-037. Proclamation 20-28.15 issued January 19, 2021, relieves state agencies from complying with provisions of the Public Records Act that involve in-person contact until the state of emergency terminates or until rescinded. This change in circumstances makes it necessary for the emergency rules filed under WSR 21-08-015 to remain in force.

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 0, Repealed 0.

Date Adopted: November 24, 2021.

Brenda Villarreal
Rules Coordinator

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

WAC 110-01-0100 Availability of public records. Pursuant to proclamation 20-28 and any subsequent proclamation, or other gubernatorial or legislative action suspending the requirements of RCW 42.56.080, .090, or .100, public inspection is not permitted. (~~Public records are available for inspection and copying during the department's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required, but significantly help the department provide prompt and efficient service. Some department records may be stored in other locations, in computer storage systems, or the state records warehouse, and may take time to identify and gather. Other records may be exempt from disclosure. Original records cannot be removed from the inspection location. If required by law, department staff must redact information in a record before making it available for inspection. Department staff will make copies of records on request.~~)

[WSR 18-14-078, recodified as § 110-01-0100, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 42.56 RCW. WSR 18-13-009, § 170-01-0100, filed 6/6/18, effective 7/7/18. Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0100, filed 4/11/12, effective 5/12/12.]

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

WAC 110-01-0200 How the department responds to public records requests. The department will respond to public record requests in a reasonable amount of time given the unique circumstances of the COVID-19 pandemic. (~~Within five business days of receiving the request,~~) When the department receives a request for records, the department will either:

- (1) Provide the record;
- (2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;
- (3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or
- (4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that the department relied upon in its denial.

At his or her discretion, the public records officer may send the requested records by email, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

[WSR 18-14-078, recodified as § 110-01-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 42.56 RCW. WSR 18-13-009, § 170-01-0200, filed 6/6/18, effective 7/7/18. Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0200, filed 4/11/12, effective 5/12/12.]

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.

WSR 21-24-048
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed November 24, 2021, 9:45 a.m., effective November 24, 2021, 9:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Modify the early achievers quality rating and improvement system requirements during the COVID-19 pandemic. More specifically, remove the deadline by which a provider must enroll in the program and the requirement to reach quality rating levels. Child care and early learning providers who participate in working connections and seasonal child care must still enroll in the early achievers program, follow its operating guidelines, submit attendance records electronically, and renew their facility ratings every three years.

Citation of Rules Affected by this Order: Amending WAC 110-15-0125 and 110-15-3750.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. The emergency amendments to WAC 110-15-0125 and 110-15-3750 address these challenges by waving and suspending some of the regulatory system requirements that delay child care providers from making child care available to the children of essential staff who are from low income families who require child care services during the COVID-19 pandemic. WAC 110-15-0125 and 110-15-3750 were amended on an emergency basis on March 30, 2020, under WSR 20-08-098; July 29, 2020, under WSR 20-16-072; November 25, 2020, under WSR 20-24-090; March 26, 2021, under WSR 21-08-014; and July 26, 2021, under WSR 21-16-035. Proclamation 20-31.11 issued January 19, 2021, relieves providers from meeting certain early achievers program deadlines until the State of Emergency terminates or the proclamation is rescinded. This change in circumstances makes it necessary for the emergency rules filed under WSR 21-16-035 to remain in force

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 0, Repealed 0.

Date Adopted: November 24, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-15-0125 Approved child care providers. (1) In-home/relative providers. To be approved to receive benefits under the WCCC program, an in-home/relative provider must comply with the applicable requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(2) Licensed providers.

(a) To be approved to receive payment under the WCCC program, a licensed provider must comply with the requirements of this chapter, chapter 43.216 RCW, ~~((and))~~ chapter~~((s))~~ 110-06, and chapter 110-300 ~~((, 110-300A, 110-300B, and))~~ or 110-305 WAC.

(b) A provider who cares for a child who is a Washington resident in a state that borders Washington must:

(i) Be licensed to provide care in the bordering state;

(ii) Comply with the bordering state's licensing regulations;

(iii) Comply with the electronic attendance requirements contained in WAC 110-15-0126.

(c) The lesser of the following will be paid to a qualified, licensed child care provider in a state that borders Washington:

(i) The provider's private pay rate for that child; or

(ii) The DCYF maximum WCCC subsidy daily rate for the DCYF region where the child resides.

(d) A licensed provider in a state that borders Washington that receives WCCC subsidy payment to care for a child who is a Washington resident is not required or eligible to participate in the early achievers program or to receive quality improvement awards, tiered reimbursements, or other awards and incentives associated with the early achievers program.

(3) Certified providers. To be approved to receive payment under the WCCC program, a certified provider must comply with the certification requirements contained in this chapter, chapter 43.216 RCW, ~~((and))~~ chapter~~((s))~~ 110-06, and chapter 110-300 ~~((, 110-300A, 110-300B, and))~~ or 110-305 WAC. Certified providers include:

(a) Tribal child care facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation;

(c) Child care facilities operated on public school property by a school district; and

(d) Seasonal day camps that contract with DCYF to provide subsidized child care.

(4) ~~((Early achievers program requirements for licensed and certified child care providers that))~~ To be eligible to receive WCCC pay-

ments, licensed or certified Early Achiever program participants who receive their first WCCC payment on or after July 1, 2016 must:

~~(a) ((A licensed or certified child care provider that first receives a WCCC subsidy payment on or after July 1, 2016, for providing nonschool age child care must complete the following activities to be eligible to receive additional WCCC payments:~~

~~(i)) Enroll in the early achievers program; and ((within thirty days of receiving the first WCCC subsidy payment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program within twelve months of enrollment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive DCYF subsidy payments for providing nonschool age child care;~~

~~(iii) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. A licensed or certified provider that fails to meet this requirement within thirty months of enrollment in the early achievers program, must complete remedial activities with DCYF and rate at a level 3 or higher within six months of beginning remedial activities. A licensed or certified provider that fails to rate at a level 3 or higher within six months of beginning remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care; and~~

~~(iv)) (b) Renew their facility rating every three years ((and maintain a rating level 3 or higher)). If a licensed or certified provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), the licensed or certified provider will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.~~

~~((b)) (c) Licensed and certified providers must comply with the provisions for participation as outlined in the early achievers operating guidelines. Failure to comply with these guidelines may result in a licensed or certified provider's loss of DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.~~

~~(5) ((Early achievers program requirements for licensed and certified child care providers that received a WCCC payment on or between July 1, 2015, and June 30, 2016:~~

~~(a)) A licensed or certified child care provider that received a WCCC subsidy payment on or between July 1, 2015, and June 30, 2016((, for providing nonschool age child care, must complete the following activities to be eligible to receive additional WCCC subsidy payments:~~

~~(i) Enroll in the early achievers program by August 1, 2016. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who failed to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for nonschool age child care; and~~

~~(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019. A licensed or certified provider that fails to meet this requirement by December 31, 2019, must complete remedial activities with DCYF and rate at a level 3 or higher by June 30, 2020. A licensed or certified provider that fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30,~~

2020, after completing remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

~~(b) Licensed and certified providers~~) must renew their facility rating every three years. ~~((and maintain a rating level 3 or higher))~~. If a licensed or certified provider fails to renew their facility rating or maintain a rating level 3 or higher, ~~licensed or certified providers~~) they will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(6) If a licensed or certified child care provider receiving WCCC subsidy payment for providing nonschool age has successfully completed all level 2 activities and is waiting to be rated, the licensed or certified provider may continue to receive WCCC subsidy payments ~~((pending the successful completion of the level 3 rating activity))~~.

(7) DCYF-contracted seasonal day camps must have a contract with ~~((DEL))~~ DCYF to provide subsidized child care.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-15-0125, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-15-0125, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0125, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0125, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 43.43.832(6), 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0125, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0125, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0125, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0125, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0125, filed 12/19/01, effective 1/19/02.]

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.

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

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

WAC 110-15-3750 Eligible child care providers. To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter ~~((43.215))~~ 43.216 RCW and ~~((170-295, 170-296A, or 170-297))~~ chapters 110-300 or 110-305 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

(a) The provider's private pay rate for that child; or

(b) The state maximum child care subsidy rate for the ~~((DSHS))~~ DCYF region where the child resides; or

(3) Exempt from licensing but certified by ~~((DEL))~~, DCYF such as:

- (a) Tribal child care facilities that meet the requirements of tribal law;
- (b) Child care facilities on a military installation; and
- (c) Child care facilities operated on public school property by a school district.

~~(4) ((New child care providers, as defined in WAC 170-290-0003, who are)) To be eligible to receive a state subsidy payment, an agency as defined in RCW 43.217.010 that is subject to licensure, or ((are certified)) a person or facility authorized to receive state subsidy ((as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC)) under chapter 43.216 RCW, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:~~

~~(a) Enroll in the early achievers program; ((within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.))~~

~~(b) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care; and~~

~~(c) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(d) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~

~~(e) (c) Maintain an up to date rating by renewing their facility rating every three years ((and maintaining a rating level 3 or higher)). If a provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), they will lose eligibility to receive state subsidy payments nonschool age child care.~~

~~(5) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter ((43.215)) 43.216 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC,) who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:~~

~~(a) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.~~

~~(b) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019;~~

~~(d) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~

~~(e) Maintain an up to date rating by renewing their facility rating every three years ((and maintaining a rating level 3 or higher)). If a provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), they will lose eligibility to receive state subsidy payments nonschool age child care.~~

~~(6) If a child care provider ((serving nonschool age children, as defined in WAC 170-290-0003, and)) receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy. ((pending the successful completion of the level 3 rating activity.))~~

[WSR 18-14-078, recodified as § 110-15-3750, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3750, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3750, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3750, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3750, filed 10/28/09, effective 12/1/09.]

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.

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

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.

WSR 21-24-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-264—Filed November 24, 2021, 10:33 a.m., effective November 24, 2021, 10:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close commercial Crab Management Regions 3-1 and 2 West on November 29, 2021, at 5:30 p.m.

The provisions of this emergency rule:

WAC 220-340-42000V:

(1) Requires all crab harvested to be delivered to an original receiver or recorded on a shellfish transportation ticket within 36 hours of harvest. Requires separate transportation tickets to be completed for each day's harvest not delivered to an original receiver that is stored off the fishing vessel. Implements a 10-day restriction on the length of time that crab may be stored off-vessel before being delivered to an original receiver.

(2) Implements a labeling requirement for crab that are stored off-vessel.

(3) Implements a labeling requirement for crab that are stored off-vessel and not delivered to an original receiver within 36 hours.

WAC 220-340-45500E:

(1) Defines subareas east and west of Marine Fish Shellfish Catch Reporting Area 23C to align with agreed to boundaries within the Region 3 2021-2022 crab management plan.

(2) Opens Puget Sound commercial crab harvest in Crab Management Regions 2 West, 3-1, and 3-3 effective immediately. Closes commercial harvest in Crab Management Regions 2 West and 3-1 effective November 29, 2021, at 5:30 p.m., due to projected attainment of quota. Describes hard closure dates by crab management region. Maintains closure of Crab Management Regions 1, 2 East, 3-2, and 3-4.

(3) Closes Port Angeles Harbor to commercial crab harvest due to public health decrees.

(4) Repeals areas where recreational and tribal harvest has been allowed that state commercial harvest has been historically limited.

WAC 220-340-47000C:

(1) Allows deployment of up to 50 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 2 West until November 29, 2021, at 5:30 p.m.

(2) Allows deployment of up to 40 pots per license for the commercial harvest of Dungeness crab in Crab Management Regions 3-1 until November 29, 2021, at 5:30 p.m.

(3) Allows deployment of up to 60 pots per license for the commercial harvest of Dungeness crab in Crab Management Regions 3-3.

(4) Requires undeployed buoy tags to be retained for inspection.

WAC 220-352-34000N:

(1) Clarifies the Puget Sound commercial dealer quick reporting requirements.

(2) Implements a Puget Sound "stored crab" harvest report requirement for crab not delivered to an original receiver with 36 hours of harvest.

(3) Implements a Puget Sound sales report requirement for stored crab that have been reported but not landed.

(4) Implements a registration requirement for commercial license holders to notify the department which crab management area a license [licensee] will be fishing in.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000V, 220-340-45500E, 220-340-47000C and 220-352-34000N; and amending WAC 220-340-420, 220-340-455, 220-340-470, and 220-352-340.

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

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

Reasons for this Finding: There is sufficient allocation available in [Regions] 2 West and 3-1 to accommodate harvest through November 29, 2021. There is sufficient allocation available in [Region] 3-3 to accommodate continued commercial harvest. These provisions are in conformity with agreed regional management plans with applicable tribes or in accordance with procedures proscribed in the shellfish implementation plan when no annual regional management plan agreement has been reached. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. Further adjustment of season structure may be made pending updated harvest data. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 24, 2021.

Kelly Susewind
Director

NEW SECTION

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

(1) Crab Management Region 1 includes Marine Fish-Shellfish (MFSF) Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B. Crab Management Region 2E includes MFSF Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A East. Crab Management Region 2 West includes MFSF Catch Reporting Areas 25B, 25D, and 26A West. Crab Management Region 3-1 in-

cludes MFSF Catch Reporting Areas 23A and 23B. Crab Management Region 3-2 includes MFSF Catch Reporting Areas 25A, 25E, and 23D. Crab Management Region 3-3 includes MFSF Catch Reporting Areas 23C East, and Crab Management Region 3-4 consists of 23C West and 29.

(2) Effective immediately, until further notice, all crab removed from a vessel licensed in Puget Sound that are not delivered to an original receiver within 36 hours must be recorded on a commercial fish and shellfish transportation ticket. Separate commercial fish and shellfish transportation tickets must be filled out for each day's harvest stored this way. It is illegal to store crab prior to delivery and completion of a fish receiving ticket for more than 10 days.

(3) Effective immediately, until further notice, all crab that have been removed from a vessel must be stored in containers labeled with the following:

(a) date of harvest,

(b) an estimate of pounds of crab contained,

(c) either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from.

(4) Effective immediately, until further notice, all crab that have been removed from a vessel and are not delivered to an original receiver within 36 hours must be stored in containers labeled with the following:

(a) date of harvest,

(b) an estimate of pounds of crab contained,

(c) either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from, and

(d) Commercial fish and shellfish transportation ticket number.

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NEW SECTION

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

(1) For the purposes of crab harvest allocation, fishing season, and catch reporting, the following Marine Fish-Shellfish Catch Reporting Areas are modified as follows:

(a) Catch Area 23C East (23C-E) includes those waters of Puget Sound westerly of a line due north from the Ediz Hook light to the international boundary; and easterly of a line projected due north from Low Point.

(b) Catch Area 23C West (23C-W) includes those waters of Puget Sound westerly of a line due north from Low Point to the international boundary; and easterly of a line projected due north from the mouth of the Sekiu River.

(2) It is permissible to harvest Dungeness crab for commercial purposes from the following areas as listed:

(a) Region 2 West:

Crab Management Region 2-W; effective immediately until November 29, 2021 at 5:30 p.m..

(b) Region 3:

(i) Crab Management Region 3-1; effective immediately until November 29, 2021 at 5:30 p.m..

(ii) Crab Management Region 3-3; effective immediately until further notice.

(3) Public Health Closures: effective immediately, until further notice, the following areas are closed to commercial crab fishing:

That portion of Marine Fish/Shellfish Catch Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(4) Effective immediately, until further notice, the following areas are closed to commercial crab fishing: Crab Management Regions 1, 2E, 3-2 and 3-4.

(5) Limited Commercial Areas: It is permissible to harvest Dungeness crab for commercial purposes from the following areas as listed:

Region 2 West, effective immediately, until November 29, 2021 at 5:30 p.m.:

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

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

NEW SECTION

WAC 220-340-47000C Commercial crab fishery—Gear limits—Puget Sound and marine fish-shellfish management and catch reporting areas. Notwithstanding the provisions of WAC 220-340-470:

(1) Effective immediately, until November 29, 2021 at 5:30 p.m., it is unlawful for any person to harvest crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 2 West with the following exceptions:

Region 2 West:

Commercial harvest is limited to 20 pots per license in those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin.

(2) Effective immediately, until November 29, 2021 at 5:30 p.m., it is unlawful for any person to harvest crabs for commercial purposes with more than 40 pots per license per buoy tag number in Crab Management Region 3-1.

(3) Effective immediately, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 60 pots per license per buoy tag number in Crab Management Region 3-3.

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

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NEW SECTION**WAC 220-352-34000N Puget Sound crab—Additional reporting requirements.** Notwithstanding the provisions of WAC 220-352-340,

(1) Effective immediately, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab landed by WDFW licensed Puget Sound commercial crab harvesters to fail to report to the department the previous day's purchases by 10:00 a.m. the day following the purchase. Reports must be made online at the Puget Sound commercial crab reporting website, by fax to (360) 302-3031, or by e-mail at crab.report@dfw.wa.gov. Reports must include all of the following:

- (a) dealer name,
- (b) dealer license number,
- (c) dealer phone number,
- (d) date of delivery of crab to the original receiver, and

(e) the total number of pounds of crab caught by non-treaty fishers by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area.

(2) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must deliver all crab removed from their vessel to a licensed original receiver within 36 hours or submit a report of crab retained for delivery at a future date to the Department. Reports must be received within 36 hours following an offload. Reports must be made by online on the Puget Sound commercial crab reporting website or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

- (a) harvester name,
- (b) WDFW issued vessel ID,
- (c) Puget Sound commercial license number,
- (d) date of harvest,

(e) an estimate of pounds of harvest retained by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area, and

- (f) a commercial fish and shellfish transportation ticket number.

(3) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must report the delivery of all crab to an original receiver that were previously retained off-vessel by 10:00 a.m. the day following delivery to an original receiver. Reports must be made online at the Puget Sound commercial crab reporting website, or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

- (a) harvester name,
- (b) WDFW issued vessel ID,
- (c) Puget Sound commercial license number,
- (d) date of sale,
- (e) dealer name,

(f) commercial shellfish transportation ticket number(s) delivered, and

(g) fish receiving ticket number(s) corresponding to landing date of delivery.

(4) Effective immediately, until further notice, Puget Sound commercial crab license holders, or their designated alternate operators, must register which Crab Management Region that gear will be deployed in for each license they hold prior to the opening date. Registrations must be updated when gear moves between areas. Registrations can be

made by registering on the WDFW Puget Sound commercial crabbing web-page or sending an email to crab.report@dfw.wa.gov, detailing the following information:

- (a) Vessel Operator Name
- (b) Vessel Name and Vessel Registration Number
- (c) Permit Number(s) to be Fished
- (d) Crab Management Region to be fished
- (e) Gear Deployment Date

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-340-42000U Commercial crab fishery—Unlawful acts. (21-258)
- WAC 220-340-45500D Commercial crab fishery—Seasons and areas—Puget Sound. (21-258)
- WAC 220-340-47000B Commercial crab fishery—Gear requirements—Puget Sound. (21-258)
- WAC 220-352-34000M Puget Sound crab—Additional reporting requirements. (21-258)

WSR 21-24-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-263—Filed November 24, 2021, 1:10 p.m., effective December 1, 2021]

Effective Date of Rule: December 1, 2021.

Purpose: The purpose of this emergency rule is to open recreational razor clam seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000D and 220-330-01000P; and amending WAC 220-330-160 and 220-330-010.

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. An exceptionally large population of harvestable razor clams in Razor Clam Areas 1, 3, 4, and 5 allow for a temporary increase in the daily bag limit. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: November 24, 2021.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:00 p.m. December 1, through 11:59 p.m. December 9, 2021, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	December 1 through 9	From 12:00 p.m. to 11:59 p.m.
Area 2	Closed	Closed
Area 3	December 1 through 9	From 12:00 p.m. to 11:59 p.m.
Area 4	December 1, 3, 5, 7, and 9	From 12:00 p.m. to 11:59 p.m.
Area 5	December 2, 4, 6, and 8	From 12:00 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

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NEW SECTION

WAC 220-330-01000S Shellfish—Daily limits, size restrictions, and unlawful acts. Notwithstanding the provisions of WAC 220-330-010 regarding Razor clam daily limits, effective 12:01 p.m. December 1, through 11:59 p.m. December 9, 2021, the daily limit is 20 razor clams for personal use in any one day from Razor Clam Area 1, Razor Clam Area 3, Razor Clam Area 4 and Razor Clam Area 5. All other provisions of WAC 220-330-010 not addressed herein remain in effect unless otherwise amended by emergency rule.

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REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. December 10, 2021:

- WAC 220-330-16000D Razor clams—Areas and seasons.
- WAC 220-330-01000P Shellfish—Daily limits, size restrictions, and unlawful acts.

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

[Order 21-265—Filed November 24, 2021, 4:34 p.m., Effective November 24, 2021, 4:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open coastal commercial crab seasons.

Citation of Rules Affected by this Order: Amending WAC 220-340-420 and 220-340-450.

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

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

Reasons for this Finding: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The area from Klipsan Beach to the United States/Canada border remains closed pending the outcome of state-tribal harvest management agreements. The stepped opening periods provide for a fair start for fishers that chose to wait to fish in areas that have been delayed. Pot limits will reduce the crowding effect in the area that is open and language improves enforcement of pot limits. 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: November 24, 2021.

Kelly Susewind
Director

NEW SECTION

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

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

(a) Each vessel receives a hold inspection certificate from an authorized agency official that includes a unique vessel inspection certificate number and

(b) The vessel inspection certificate number is recorded on all shellfish tickets completed for coastal Dungeness crab landings until further notice.

(2) It is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery to:

(a) Deploy or operate more than 400 shellfish pots if the permanent number of shellfish pots assigned to the Coastal commercial crab fishery license held by that person is 500.

(b) Deploy or operate more than 250 shellfish pots if the permanent number of shellfish pots assigned to the Coastal Dungeness crab fishery license held by that person is 300.

(c) Fail to maintain onboard any participating vessel the excess crab pot buoy tags assigned to the Coastal Dungeness crab fishery license being fished.

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

(a) Vessels that participated in the coastal Dungeness crab fishery from Klipsan Beach (46°28.00 North Latitude) to Point Arena, CA, including Willapa Bay and the Columbia River, may possess crab for delivery into Washington ports south of 47°00.00 N. Lat., provided the crab were taken south of Klipsan (46°28.00 N. Lat.).

(b) The vessel does not enter the area north of 47°00.00 N. Lat. unless the operator of the vessel has contacted the Washington Department of Fish and Wildlife and allows a vessel-hold inspection if requested by Fish and Wildlife officers prior to entering this area. Prior to entering the area north of 47°00.00 N. Lat., the vessel operator must call 360-580-6200, and report the vessel name, operator name, estimated amount of crab to be delivered in pounds, and the estimated date, time, and location of delivery 24 hours prior to entering the area.

(4) It is unlawful for a vessel not designated on a Dungeness crab coastal fishery license to deploy crab pot gear except under the following conditions:

(a) The vessel deploys pot gear only during the 73-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date;

(b) The undesignated vessel carries no more than 250 crab pots at any one time; and;

(c) The primary or alternate operator of the crab pot gear named on the license associated with the gear is on board the undesignated vessel while the gear is being deployed.

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

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

NEW SECTION

WAC 220-340-45000E Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450 effective

immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay.

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

(3) It is permissible to set crab gear beginning at 8:00 a.m., November 28, 2021.

(4) It is permissible to pull crab gear beginning at 9:00 a.m., December 1, 2021.

(5) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from fishing in the following areas for the durations specified:

(a) The waters between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 10 days have elapsed from the time that the area north of Klipsan Beach opens; and

(b) The waters between Oysterville (46°33.00) and the U.S. Canadian border until 35 days have elapsed from the time that the area north of Oysterville opens

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

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WSR 21-24-058
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 29, 2021, 10:12 a.m., effective November 29, 2021, 10:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Developmental disabilities administration (DDA) is amending WAC 388-101D-0030 to temporarily allow providers to hire a person without a high school diploma or GED.

Citation of Rules Affected by this Order: Amending WAC 388-101D-0030.

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

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: DDA is adopting this rule on an emergency basis to help providers of residential habilitation address critical staffing shortages. Immediate adoption will allow providers to hire staff quickly, enabling providers to meet client health and safety needs.

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: November 24, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4900.3

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0030 Staffing requirements. (1) The ((service)) provider must ensure each ((staff meets the following minimum requirements)) of its employees:

((1) Have) (a) Has a high school diploma or GED equivalent, unless the ((employees were)) employee was hired before September 1, 1991, or is exempt under subsection (2) of this section;

~~((2) Be at least eighteen years of age)~~ (b) Is age 18 or older when employed as a direct (care staff, or at least twenty-one years of age) support professional who provides support services to a client;

(c) Is age 21 or older when employed as an administrator;

~~((3) Have)~~ (d) Has a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and

~~((4) Passed)~~ (e) Passes the department background check ~~((as))~~ required ~~((by))~~ under WAC 388-101-3250.

(2) The provider may hire a person without a high school diploma or GED if while working directly with clients the employee has access to another employee or a volunteer who:

(a) Has a high school diploma or GED; or

(b) Was hired before September 1, 1991.

(3) If the provider hires a person under subsection (2) of this section, the provider must have a written plan that states when and how the person must contact another employee for assistance.

[WSR 16-14-058, recodified as § 388-101D-0030, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3200, filed 12/21/07, effective 2/1/08.]

WSR 21-24-069
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed November 30, 2021, 8:52 a.m., effective November 30, 2021, 8:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-97-0140 to waive and suspend the requirement for nursing homes to suspend transfers and discharges pending the outcome of a resident appeal of the nursing home transfer or discharge decision. The COVID-19 pandemic continues to require more rapid transfers and discharges than the rule permits. This emergency rule waives the requirement for nursing homes to suspend transfers and discharges pending the outcome of a resident appeal hearing, and improves resident safety by allowing faster grouping of COVID-19 positive residents in one facility, or grouping asymptomatic residents together. This helps expedite infection control processes, and maximizes the availability of nursing home beds.

Citation of Rules Affected by this Order: Amending WAC 388-97-0140.

Statutory Authority for Adoption: RCW 74.42.620.

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 nursing homes. Currently WAC 388-97-0140 requires nursing homes to suspend a transfer or discharge pending the outcome of a resident appeal request to the office of administrative hearings (the office) when the appeal is received by the office on or before the date the resident actually transfers or discharges.

Strict compliance with these requirements will prevent, hinder, or delay certain transfers or discharges of nursing home residents to other long-term care facilities when they are necessary to expedite the grouping or cohorting of residents to reduce the spread of COVID-19, especially the Delta variant, among our most vulnerable populations, and to relieve stress on our health care system to meet the increased demand of addressing COVID-19 related illnesses.

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

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

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

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

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

Date Adopted: November 29, 2021.

Katherine I. Vasquez

SHS-4908.1

AMENDATORY SECTION (Amending WSR 20-03-103, filed 1/15/20, effective 2/15/20)

WAC 388-97-0140 Transfer and discharge appeals for resident in medicare or medicaid certified facilities. (1) A skilled nursing facility and a nursing facility that initiates transfer or discharge of any resident, regardless of payor status, must:

(a) Provide the required written notice of transfer or discharge to the resident and, if known or appropriate, to a family member or the resident's representative;

(b) Attach a department-designated hearing request form to the transfer or discharge notice;

(c) Inform the resident in writing, in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge; and

(ii) ~~((Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges; and~~

~~(iii))~~) The nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

(2) ~~((A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the hearing when the resident's appeal is received by the office of administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged.~~

~~(3))~~) The resident is entitled to appeal the skilled nursing facility or nursing facility's transfer or discharge decision. The appeals process is set forth in chapter 182-526 WAC and this chapter. In such appeals, the following will apply:

(a) In the event of a conflict between a provision in this chapter and a provision in chapter 182-526 WAC, the provision in this chapter will prevail;

(b) The resident must be the appellant and the skilled nursing facility or the nursing facility will be the respondent;

(c) The department must be notified of the appeal and may choose whether to participate in the proceedings. If the department chooses to participate, its role is to represent the state's interest in assuring that skilled nursing facility and nursing facility transfer and discharge actions comply substantively and procedurally with the law and with federal requirements necessary for federal funds;

(d) If a medicare certified or medicaid certified facility's decision to transfer or discharge a resident is not upheld, and the resident has been relocated, the resident has the right to readmission immediately upon the first available bed in a semi-private room if the resident requires and is eligible for the services provided by a nursing facility or skilled nursing facility;

(e) Any review of the administrative law judge's initial decision shall be conducted under chapter 182-526 WAC.

[Statutory Authority: RCW 74.42.620. WSR 20-03-103, § 388-97-0140, filed 1/15/20, effective 2/15/20. Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 11-22-077, § 388-97-0140, filed 11/1/11, effective 12/2/11. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0140, filed 9/24/08, effective 11/1/08.]

WSR 21-24-071

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed November 30, 2021, 10:52 a.m., effective November 30, 2021, 10:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To create a temporary hemp extract certification process, which will enable Washington state hemp processors to comply with other states' and countries' regulatory requirements that hemp extracts intended for use in consumable products must be sourced from a state that inspects or regulates hemp under a food safety program, until a permanent rule can be adopted.

The rule-making order creates chapter 16-171 WAC, Hemp extract certification.

Citation of Rules Affected by this Order: New WAC 16-171-100, 16-171-110, 16-171-120, 16-171-130, 16-171-140, 16-171-150, and 16-171-160.

Statutory Authority for Adoption: RCW 69.07.020, 69.07.220.

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

Reasons for this Finding: In 2021, the legislature passed SB [ESB] 5372 (chapter 104, Laws of 2021) authorizing the department to conduct rule making to establish the voluntary hemp extract certification process to allow for hemp extract products to be used as a food ingredient in another state that allows its use. This voluntary certification will allow a manufacturer to apply for a hemp extract certification, which will evaluate a hemp manufacturer's compliance with Washington state's inspection and good manufacturing practices requirements. Other states are also making changes to their hemp programs and establishing new markets for hemp products at an unprecedented pace. Many of these new opportunities require that hemp extracts intended for use in consumable products be sourced from a state that regulates hemp extracts under a food safety program.

One crucial example of this is the recent passage of California's Assembly Bill 45 (AB 45), which will allow for the inclusion of hemp extract in consumable products within the state. California will require out-of-state hemp extracts to be inspected under a food safety program. This opening of the California market presents a substantial opportunity and it is expected that many major national consumer product companies will rapidly introduce a number of food, beverage, and other branded products in the state. Supply lines and relationships for hemp ingredients to be included in these products will form rapidly. The California bill went into effect immediately upon signature by the governor.

The passage of AB 45 and the opening of the California market will undoubtedly draw hemp processors from around the country who are seeking to export their hemp products to California. Those processors who are able to promptly establish supply relationships to provide hemp products early on will have the opportunity to secure a market position that could last for many years to come. This presents a very significant opportunity for Washington's hemp processors, but the timeline necessary to establish permanent rules regarding hemp extract certification will put hemp extract processors in this state at a se-

vere disadvantage to processors in those states that already have similar regulations in place.

California has the largest market in the country and the economic consequences of failing to have Washington's hemp extract certification process in place at the time of California's regulations are implemented would be expansive. Not only are Washington's hemp processors currently prevented from exporting their products into numerous existing markets until the permanent rules are in place, but if the processors miss out on the opportunity to establish key supply relationships at the onset of the California market, it will set Washington hemp industry back significantly and will exacerbate the existing competitive differences between the states. This setback will have a long lasting effect that will likely take many years to remedy, if in fact it can be remedied at all.

The department has determine[d] that establishing a temporary hemp certification process until the permanent rule can be adopted is necessary to protect the general welfare of Washington's hemp industry.

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 7, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 7, 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 7, Amended 0, Repealed 0.

Date Adopted: November 30, 2021.

Derek I. Sandison
Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [22-01](#) issue of the Register.

WSR 21-24-075

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed November 30, 2021, 2:04 p.m., effective November 30, 2021, 2:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending the definition of qualified alien in WAC 182-503-0535 to include certain persons from Iraq and Afghanistan. The agency is amending WAC 182-507-0135 to add certain persons from Iraq and Afghanistan to the individuals eligible for refugee medical assistance.

Citation of Rules Affected by this Order: Amending WAC 182-503-0535 and 182-507-0135.

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: The agency is amending these rules to comply with medicaid eligibility changes made by federal law, specifically, the National Defense Authorization Act of 2006, the Afghan Allies Protection Act of 2009, and the Extending Government Funding and Delivering Emergency Assistance Act of 2021. This emergency filing is necessary to comply with the federal law immediately while the agency proceeds through the permanent rule-making process. The agency filed the Preproposal statement of inquiry (CR-101) under WSR 21-24-064 on November 30, 2021.

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

Number of Sections Adopted at 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: November 30, 2021.

Wendy Barcus
Rules Coordinator

OTS-3506.1

AMENDATORY SECTION (Amending WSR 21-19-029, filed 9/9/21, effective 10/10/21)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than (~~twenty-one~~) 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than (~~twenty-one~~) 21 years of age. In that case, the child retains qualified alien status even after he or she turns (~~twenty-one~~) 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602(b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

~~((xii))~~ (xiii) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than (~~twenty-one~~) 21 years of age.

~~((xiii))~~ (xiv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least (~~fifty~~) 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(d) A nonqualified alien may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(e) An undocumented person may be eligible for:

(i) Alien medical programs;

(ii) State-only funded apple health for kids; or

(iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through (~~(xiii)~~) (xiv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 21-19-029, § 182-503-0535, filed 9/9/21, effective 10/10/21; WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

OTS-3507.1

AMENDATORY SECTION (Amending WSR 12-19-001, filed 9/5/12, effective 10/6/12)

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d) (5) of the INA;

(c) Granted conditional entry under section 203 (a) (7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; or

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a) (27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006.

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1)(a) through ~~((g))~~ (i) of this section.

[Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0135, filed 9/5/12, effective 10/6/12.]

WSR 21-24-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-267—Filed November 30, 2021, 3:48 p.m., effective December 1, 2021]

Effective Date of Rule: December 1, 2021.

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

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

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

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

Reasons for this Finding: These measures are being taken to protect wild steelhead stocks. The majority of coastal wild steelhead runs are expected to return well below escapement targets as they have the past five seasons, failing to meet management objectives. Outside of the Hoh and Quillayute systems, which just met escapement goals in the 2020/2021 season, the rest of coastal systems (Willapa, Chehalis, Humptulips, Upper Quinault, and Queets/Clearwater made only 65 percent (13,167) of their total escapement goal (20,206) for wild steelhead. 2021/2022 coastwide steelhead returns are again forecasted to fall short (26,200) of escapement goals for wild steelhead (27,066). The rules contained in this filing are expected to result in a reduction of wild steelhead encounters.

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

Implementing these rules follows an extensive public engagement process, which included a four-part virtual town hall series during summer and fall 2021 and several Washington fish and wildlife (WDFW) staff updates to the fish and wildlife commission. More than 1,000 people joined WDFW fishery managers during these virtual meetings, with nearly 600 people providing feedback on the department's coastal steelhead management web page.

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

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

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: November 30, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000R Freshwater exceptions to statewide rules—Coast. Effective December 1, 2021, until further notice, the following provisions of WAC 220-312-020, regarding gamefish seasons, fishing from a floating device, and gear and hook restrictions for coastal tributaries, including tributaries of Grays Harbor and Willapa Bay shall be modified as described below. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

1. Bear River (Pacific Co.):

(a) Effective December 1, 2021 through February 28, 2022:

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

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

(iii) Release wild rainbow trout.

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

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

(a) Effective December 1, 2021 through February 28, 2022:

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

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

(iii) Release wild rainbow trout.

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

3. Black River (Grays Harbor Co.), from the mouth to bridge on 128th Ave SW: Effective December 1 through December 31, 2021:

All species: Closed.

4. Bogachiel River (Clallam Co.), from the mouth to Olympic National Park boundary: Effective December 1, 2021, until further notice:

(a) All species: Fishing from a floating device is prohibited upstream of the Highway 101 Bridge.

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

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

5. Calawah River: (Clallam Co.), from the mouth to the forks: Effective December 1, 2021, until further notice:

(a) All species: Fishing from a floating device is prohibited above the Highway 101 Bridge.

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

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

6. Calawah, South Fork (Clallam Co.), from the mouth to Olympic National Park boundary: Effective December 1, 2021 through February 28, 2022:

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

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

7. Cedar Creek (Jefferson Co.), outside Olympic National Park boundary: Effective December 1, 2021 through February 28, 2022:

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

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

(c) Release wild rainbow trout.

8. Chehalis River (Grays Harbor Co.), from the mouth upstream, including all forks: Effective December 1, 2021, until further notice: All species: Closed.

9. Clearwater River (Jefferson Co.), from the mouth to Snahapish River: Effective December 1, 2021, until further notice:

All species: Closed.

10. Cloquallum Creek (Grays Harbor/Mason Co.), from the mouth to the outlet at Stump Lake: Effective December 1, 2021 through February 28, 2022:

All species: Closed.

11. Copalis River (Grays Harbor Co.): Effective December 1, 2021 through February 28, 2022:

All species: Closed.

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

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

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

13. Elk Creek (Lewis/Pacific Co.): Effective January 1, 2022, until further notice:

All species: Closed.

14. Elk River (Grays Harbor Co.): Effective December 1, 2021 through February 28, 2022:

All species: Closed.

15. Fork Creek (Pacific Co.): from Fork Creek Hatchery rack upstream 500 feet at fishing boundary sign, Effective December 1, 2021, until further notice:

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

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

(c) Release wild rainbow trout.

16. Goodman Creek (Jefferson Co.), outside of Olympic National Park boundary: Effective December 1, 2021 through February 28, 2022:

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

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

(c) Release wild rainbow trout.

17. Hoh River (Jefferson Co.), from Olympic National Park boundary upstream to Olympic National Park boundary below mouth of South Fork Hoh: Effective December 1, 2021, until further notice:

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

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

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

18. Hoh River, South Fork (Jefferson Co.), outside of Olympic National Park boundary: Effective December 1, 2022, until further notice:

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

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

19. Hoquiam River including West and East forks (Grays Harbor Co.): Effective December 1, 2021 through February 28, 2022:

All species: Closed.

20. Humptulips River (Grays Harbor Co.), from the mouth to confluence of East and West forks and West Fork from mouth to Donkey Creek: Effective December 1, 2021, until further notice:

All species: Closed.

21. Joe Creek (Grays Harbor Co.), from the mouth to Ocean Beach Rd. Bridge: Effective December 1 through December 31, 2021:

All species: Closed.

22. Johns River (Grays Harbor Co.), from the mouth (Hwy. 105 Bridge) to Ballon Creek: Effective December 1 through February 28, 2021:

All species: Closed.

23. Kalaloch Creek (Jefferson Co.), outside Olympic National Park boundary: Effective December 1, 2021 through February 28, 2022:

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

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

(c) Release wild rainbow trout.

24. Moclips River (Grays Harbor Co.), from the mouth to Quinault Indian Reservation boundary: Effective December 1, 2021 through February 28, 2022:

All species: Closed.

25. Mosquito Creek (Jefferson Co.), from Olympic National Park boundary upstream to Goodman 3000 Mainline Bridge: Effective December 1, 2021 through February 28, 2022:

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

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

(c) Release wild rainbow trout.

26. Naselle River (Pacific Co.), from the Hwy. 101 Bridge to the North Fork: Effective December 1, 2021, until further notice:

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

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

(c) Release wild rainbow trout.

27. Naselle River, South (Pacific Co.), from the mouth to Bean Creek: Effective December 1, 2021 through February 28, 2022:

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

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

(c) Release wild rainbow trout.

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

(a) Effective December 1, 2021 through February 28, 2022:

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

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

(iii) Release wild rainbow trout.

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

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

(a) Effective December 1, 2021 through February 28, 2022:

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

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

(iii) Release wild rainbow trout.

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

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

(a) Effective December 1, 2021 through February 28, 2022:

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

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

(iii) Release wild rainbow trout.

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

31. Newaukum River, including South Fork (Lewis Co.), from mouth to Hwy. 508 Bridge near Kearny Creek: Effective December 1, 2021, until further notice:

All species: Closed.

32. Newaukum River, Middle Fork (Lewis Co.), from mouth to Taucher Rd. Bridge: Effective December 1, 2021, until further notice:

All species: Closed.

33. Newaukum River, North (Lewis Co.), from mouth to 400' below Chehalis City water intake: Effective December 1, 2021, until further notice:

All species: Closed.

34. North River (Grays Harbor/Pacific Co.), from the Hwy. 105 bridge to Raimie Creek: Effective December 1, 2021 through February 28, 2022:

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

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

(c) Release wild rainbow trout.

35. Palix River (Pacific Co.):

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

(i) Effective December 1, 2021 through February 28, 2022:

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

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

(C) Release wild rainbow trout.

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

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

(i) Effective December 16, 2021 through February 28, 2022:

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

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

(C) Release wild rainbow trout.

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

36. Quillayute River (Clallam Co.), from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers: Effective December 1, 2021, until further notice:

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

(b) Steelhead: Daily limit 2 hatchery steelhead.

37. Quinault River (Grays Harbor/Jefferson Co.), from the mouth at upper end of Quinault Lake upstream to Olympic National Park boundary: Effective December 1, 2021, until further notice:

All species: Closed.

38. Salmon River (Jefferson Co.), from outside Quinault Indian Reservation and Olympic National Park: Effective December 1 2021 through February 28, 2022:

All species: Closed

39. Satsop River and East Fork (Grays Harbor Co.), from the mouth to bridge at Schafer State Park, and from 400' below Bingham Creek Hatchery dam to the dam and all Forks: Effective December 1, 2021, until further notice:

All species: Closed.

40. Satsop River, Middle Fork (Grays Harbor Co.), Effective December 1, 2021 through February 28, 2022.

All species: Closed

41. Satsop River, West Fork (Grays Harbor Co.), Effective December 1, 2021 through February 28, 2022.

All species: Closed

42. Skookumchuck River (Lewis/Thurston Co.), from mouth to 100' below outlet of TransAlta WDFW steelhead rearing pond located at the base of Skookumchuck Dam: Effective December 1, 2021, until further notice:

All species: Closed.

43. Smith Creek (near North River) (Pacific Co.): Effective December 1, 2021 through February 28, 2022:

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

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

(c) Release wild rainbow trout.

44. Sol Duc River (Clallam Co.), from mouth to Hwy. 101 Bridge upstream of Klahowya campground: Effective December 1, 2021, until further notice:

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

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

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

45. Sooes River (Clallam Co.), outside of Makah Indian Reservation: Effective December 1, 2021 through February 28, 2022:

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

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

(c) Release wild rainbow trout.

46. Stevens Creek (Grays Harbor Co.), from mouth to Hwy 101 Bridge: Effective December 1, 2021 through February 28, 2022:

All Species: Closed.

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

(a) Effective December 1, 2021 through February 28, 2022:

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

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

(iii) Release wild rainbow trout

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

Closed

48. Van Winkle Creek (Grays Harbor Co.), from mouth to 400' below outlet of Lake Aberdeen Hatchery: Effective December 1, 2021 through January 31, 2022:

All species: Closed

49. Willapa River (Pacific Co.), from mouth (City of South Bend boat launch) to Hwy. 6 Bridge (near the town of Lebam): Effective December 1, 2021, until further notice:

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

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

(c) Release wild rainbow trout.

50. Willapa River, South Fork (Pacific Co.): Effective December 1, 2021 through February 28, 2022:

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

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

(c) Release wild rainbow trout.

51. Wishkah River (Grays Harbor Co.), from the mouth to 200' below the weir at the Wishkah Rearing Ponds and from 150' upstream to 150' downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary): Effective December 1, 2021 through February 28, 2022:

All species: Closed.

52. Wynoochee River (Grays Harbor Co.): Effective December 1, 2021, until further notice:

All species: Closed.

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

WSR 21-24-099

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed December 1, 2021, 9:25 a.m., effective December 1, 2021, 9:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-335-510, 246-335-545, 246-335-610, 246-335-645, in-home services agencies. The department of health (department) is filing a second emergency rule to continue the amendments filed August 3, 2021, under WSR 21-16-096, and allows for the use of telemedicine.

Amendments to WAC 246-335-545 and 246-335-645 remove the requirement that supervision of aide services must be "during an on-site visit" and add language that the supervisory visit "may be conducted on-site or via telemedicine." This will allow home health and hospice agencies to perform supervision either on-site or via telemedicine.

Also, amendments to the definition of "telemedicine" in WAC 246-335-510 and 246-335-610 clarify that telemedicine applies to both delivery of health care services and supervision of direct care providers and how it is to be used.

Federal and state coronavirus disease 2019 (COVID-19) pandemic-related guidelines and department waivers, filed under WSR 20-10-061, currently allow home health and hospice agencies to implement social distancing practices and to limit in-person contact to reduce the spread of the virus. These emergency rules align department rule with federal and state guidelines, allowing flexibility in how supervision is performed. Continuing the emergency rule amendments while permanent rule making is in progress will extend some aspects of current waivers past the eventual end of the COVID-19 declared emergency as Washington begins recovery.

The department is also considering permanent rule making on this topic under WSR 21-20-084.

Citation of Rules Affected by this Order: Amending WAC 246-335-510, 246-335-545, 246-335-610, and 246-335-645.

Statutory Authority for Adoption: RCW 70.127.120.

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 will allow home health and hospice agencies to perform supervision either on-site or via telemedicine.

As Washington continues to combat and recover from the COVID-19 pandemic, aided by waivers effective through the termination of the declared emergency, home health and hospice agencies need the option to continue conducting supervision via telemedicine when circumstances warrant it.

Supervision via telemedicine is a needed option in rural communities where health services are less available, vaccination rates are lower, and the necessity to limit in-person contact is greater. Home health and hospice agencies need the option to limit unnecessary in-person contact to keep patients and staff as safe as possible. Consistent with the federal "Patients over Paperwork" initiative, telemedicine supervisory visits allow hospice and home health nurse supervisors to dedicate more time [to] performing clinical care by focusing

on admitting new patients transitioning from institutional level care to a home and community-based setting.

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 4, 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 4, Repealed 0.

Date Adopted: December 1, 2021.

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

OTS-3165.3

AMENDATORY SECTION (Amending WSR 21-06-054, filed 2/25/21, effective 3/28/21)

WAC 246-335-510 Definitions—Home health. The definitions in the section apply throughout WAC 246-335-505 through 246-335-560 unless the context clearly indicates otherwise:

(1) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, a respiratory therapist licensed under chapter 18.89 RCW, an occupational therapist licensed under chapter 18.59 RCW, a speech therapist licensed under chapter 18.35 RCW, a dietitian or nutritionist as defined in subsection (5) of this section, or social worker licensed under chapter 18.320 RCW to assess health status and progress.

(2) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's needs.

(3) "Authorizing practitioner" means the individual practitioners licensed in Washington state, or another state according to the exemption criteria established in chapters 18.57, 18.71, and 18.79 RCW, and authorized to approve a home health plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW;

(b) A podiatric physician and surgeon licensed under chapter 18.22 RCW;

(c) A physician assistant licensed under chapter 18.71A or 18.57A RCW; or

(d) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW.

(4) "Cardiopulmonary resuscitation" or "CPR" means a procedure to support and maintain breathing and circulation for a person who has stopped breathing (respiratory arrest) or whose heart has stopped (cardiac arrest).

(5) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

(6) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health aide" means an individual who is a nursing assistant certified or nursing assistant registered under chapter 18.88A RCW.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(11) "Home medical supplies or equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(12) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

(13) "Licensed nurse" means a licensed practical nurse or registered nurse under chapter 18.79 RCW.

(14) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. Maintenance care consists of periodic monitoring by a licensed nurse, therapist, dietitian or nutritionist, or social worker to assess a patient's health status and progress.

(15) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide home health services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance

with the Nurse Practice Act as defined in chapters 18.79 RCW and 246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

(16) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

(17) "Patient" means an individual receiving home health services.

(18) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietitian or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

(19) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(20) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

(21) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

(22) "Telemedicine" means the delivery of health care services, including supervision of direct care providers, through the use of HI-PAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient at the originating site, direct care provider, and the supervising care provider, for the purpose of ((diagnosis)) supervision, consultation, education, or treatment. "Telemedicine" includes the provision of health care services and evaluating compliance with the plan of care using audio-visual technology instead of a face-to-face visit. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

(23) "Therapist" means an individual who is:

- (a) A physical therapist licensed under chapter 18.74 RCW;
- (b) A respiratory therapist licensed under chapter 18.89 RCW;
- (c) An occupational therapist licensed under chapter 18.59 RCW;
- (d) A speech therapist licensed under chapter 18.35 RCW; or
- (e) A massage therapist licensed under chapter 18.108 RCW.

(24) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

[Statutory Authority: RCW 70.127.120 and 42 U.S.C. 1395f. WSR 21-06-054, § 246-335-510, filed 2/25/21, effective 3/28/21. Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-510, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

- WAC 246-335-545 Supervision of home health services.** (1) A licensee must employ a director of clinical services;
- (2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence;
- (3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of ten hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of home health services. Examples of appropriate training include, but are not limited to:
- (a) Agency sponsored in-services;
 - (b) Community venues;
 - (c) Community classes;
 - (d) Conferences;
 - (e) Seminars;
 - (f) Continuing education related to the director's health care professional credential, if applicable; and
 - (g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.
- (4) The director of clinical services or designee must be available during all hours patient care is being provided;
- (5) The director of clinical services or designee must ensure:
- (a) Coordination, development, and revision of written patient care policies and procedures related to each service provided;
 - (b) Supervision of all patient care provided by personnel and volunteers. The director of clinical services may delegate staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;
 - (c) Evaluation of services provided by contractors;
 - (d) Coordination of services when one or more licensed agencies are providing care to the patient;
 - (e) Compliance with the plan of care;
 - (f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and
 - (g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.
- (6) The licensee must document supervision including, but not limited to:
- (a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW;
 - (b) For patients receiving acute care services, supervision of the home health aide services (~~during an on-site visit~~) with or without the home health aide present must occur once a month to evalu-

ate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site or via telemedicine and must be conducted by a licensed nurse or therapist in accordance with the appropriate practice acts;

(c) For patients receiving maintenance care or home health aide only services, supervision of the home health aide services (~~during an on-site visit~~) with or without the home health aide present must occur every six months to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site or via telemedicine and must be conducted by a licensed nurse or licensed therapist in accordance with the appropriate practice acts; and

(d) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts.

(7) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-545, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-610 Definitions—Hospice. The definitions in this section apply throughout WAC 246-335-605 through 246-335-660 unless the context clearly indicates otherwise:

(1) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's physical, psychosocial, emotional and spiritual status related to their terminal illness and other health conditions. This includes evaluating the caregiver's and family's willingness and capability to care for the patient.

(2) "Authorizing practitioner" means the individual practitioners licensed in Washington state and authorized to approve a hospice plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW; or

(b) An advanced registered nurse practitioner as authorized under chapter 18.79 RCW.

(3) "Bereavement services" means emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

(4) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

(5) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, or related services that support the plan of care provided by in-home health and hospice agencies.

(6) "Home health aide" means an individual who is a nursing assistant certified under chapter 18.88A RCW.

(7) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of permanent or temporary residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(8) "Hospice services" means symptom and pain management to a terminally ill individual, and emotional, spiritual and bereavement services for the individual and their family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

(9) "Interdisciplinary team" means the group of individuals involved in patient care providing hospice services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor and volunteer.

(10) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

(11) "Medication administration" means assistance in the application, instillation or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide hospice or hospice care center services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW, 246-840 WAC, and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

(12) "Medical director" means a physician licensed under chapter 18.57 or 18.71 RCW responsible for the medical component of patient care provided in an in-home services agency licensed to provide hospice services according to WAC 246-335-615 (4) (a).

(13) "Patient" means an individual receiving hospice services.

(14) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

(15) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(16) "Restraint" means:

(a) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move their arms, legs, body, or head freely. Restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm, or to physically guide a patient from one location to another; or

(b) A drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard hospice or palliative care treatment or dosage for the patient's condition.

(17) "Seclusion" means the involuntary confinement of a patient alone in a room or an area from which the patient is physically prevented from leaving.

(18) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

(19) "Spiritual counseling" means services provided or coordinated by an individual with knowledge of theology, pastoral counseling or an allied field.

(20) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

(21) "Telemedicine" means the delivery of health care services, including supervision of direct care providers, through the use of HI-PAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient at the originating site, direct care provider, and the supervising care provider, for the purpose of ((diagnosis)) supervision, consultation, education, or treatment. "Telemedicine" includes the provision of health care services and evaluating compliance with the plan of care using audio-visual technology instead of a face-to-face visit. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-610, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-645 Supervision of hospice services. (1) A licensee must employ a director of clinical services.

(2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence.

(3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of ten hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of hospice services. Examples of appropriate training include, but are not limited to:

- (a) Agency sponsored in-services;
- (b) Community venues;
- (c) Community classes;
- (d) Conferences;
- (e) Seminars;

(f) Continuing education related to the director's health care professional credential, if applicable; and

(g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.

(4) The director of clinical services or designee must be available twenty-four hours per day, seven days per week.

(5) The director of clinical services or designee must ensure:

(a) Coordination, development, and revision of written patient and family care policies and procedures related to each service provided;

(b) Supervision of all patient and family care provided by personnel and volunteers. The director of clinical services may assign staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;

(c) Evaluation of services provided by contractors;

(d) Coordination of services when one or more licensed agency is providing care to the patient and family;

(e) Compliance with the plan of care;

(f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and

(g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.

(6) The licensee must document supervision including, but not limited to:

(a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW;

(b) Licensed nurse supervision of home health aide services (~~(during an on-site visit)~~) with or without the home health aide present once a month to evaluate compliance with the plan of care and patient and family satisfaction with care. The supervisory visit may be conducted on-site or via telemedicine; and

(c) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts.

(7) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-645, filed 3/6/18, effective 4/6/18.]