

WSR 22-02-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-279—Filed December 23, 2021, 1:04 p.m., effective December 23, 2021, 1:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to amend coastal commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000W and 220-340-45000E; and 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: This emergency rule is necessary because mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 23, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000Y 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) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until February 15, 2022 and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from November 30, 2021 through January 9, 2022, are only valid for the area south of 46°28.00 N. Lat.

(2) Until 8:00 a.m., January 11, 2022, it is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery south of Klipsan Beach (46°28.00) 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 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 220-340-45000F 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.

(a) 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.

(b) 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:

i. The waters between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 a.m. January 21, 2022; and

ii. The waters between Oysterville (46°33.00) and Destruction Island (47°40.50) until 8:00 a.m. February 15, 2022.

(2) Open area: The area from Klipsan Beach (46°28.00) to Destruction Island (47°40.50) and Grays Harbor.

(a) It is permissible to set crab gear beginning at 8:00 a.m., January 8, 2022.

(b) It is permissible to pull crab gear beginning at 9:00 a.m., January 11, 2022.

(3) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

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

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

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

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

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

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REPEALER

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

WAC 220-340-42000W Commercial crab fishery—Unlawful acts.
(21-265)

WAC 220-340-45000E Commercial crab fishery—Seasons and
areas—Coastal. (21-265)

WSR 22-02-009

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed December 23, 2021, 1:53 p.m., effective December 23, 2021, 1:53 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-300-001 Licensed health care facilities and coronavirus disease 2019 (COVID-19). Adopting an emergency rule to clarify that licensed facilities must comply with state and federal statutes, rules, lawful orders, and other legal requirements, including lawful orders issued to prevent the spread of COVID-19. This emergency rule establishes that all health care facilities licensed by the department of health must comply with state and federal statutes, administrative rules, lawful orders, and other legal requirements relating to the operation of the facility and the control or prevention of the spread of COVID-19, including orders issued by the governor, by the secretary of health, by a local board of health, and by a local health officer.

Citation of Rules Affected by this Order: New WAC 246-300-001.

Statutory Authority for Adoption: RCW 43.70.040, 18.46.060, 70.41.030, 70.42.220, 70.127.120, 70.230.020, 70.230.090, 71.12.670, 71.24.037.

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 worldwide COVID-19 pandemic and its persistence in Washington state continue to threaten the life and health of the people and economy of Washington, and remain a public disaster affecting life, health, property or the public peace. COVID-19 continues as an ongoing and present threat in Washington with continuing prevalence of COVID-19 cases and hospitalizations, primarily among unvaccinated populations but also in breakthrough infections in some fully vaccinated individuals. Clarifying the applicability of state and federal statutes, administrative rules, lawful orders, and other legal requirements to licensed health care facilities will assist facilities to comply with these requirements and will assist the department in its efforts to ensure the health and safety of the workers, recipients of services, and visitors in those facilities.

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 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: December 23, 2021.

Kristin Peterson, JD
Deputy Secretary

Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3389.3

**Chapter 246-300 WAC
GENERAL PROVISIONS—FACILITIES**

NEW SECTION

WAC 246-300-001 Licensed health care facilities and coronavirus disease 2019 (COVID-19). (1) This section applies to all health care facility types licensed by the department of health under chapters 18.46, 70.41, 70.42, 70.127, 70.230, 71.12, and 71.24 RCW.

(2) Every facility subject to this rule must comply with state and federal statutes, administrative rules, lawful orders, and other legal requirements relating to the operation of the facility and the control or prevention of the spread of coronavirus disease 2019 (COVID-19).

(3) Lawful orders include, but are not limited to, orders issued by the governor under chapter 43.06 RCW, by the secretary of health under chapter 43.70 RCW, or by a local board of health or local health officer under chapter 70.05, 70.08, or 70.24 RCW or chapter 246-100 WAC.

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WSR 22-02-018

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed December 27, 2021, 3:27 p.m., effective January 6, 2022]

The developmental disabilities administration (DDA) requests the rescission of emergency rules from WAC 388-823-0720 filed under WSR 21-24-012 on November 19, 2021. The rescission of WSR 21-24-012 is necessary so that the emergency rule text no longer takes precedence over the permanently adopted rule text. DDA requests that this rescission take effect January 6, 2022.

Katherine I. Vasquez
Rules Coordinator

WSR 22-02-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-280—Filed December 27, 2021, 3:43 p.m., effective December 27, 2021, 3:43 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close commercial sea cucumber harvest for the 2021-2022 commercial harvest season.

Citation of Rules Affected by this Order: Repealing WAC 220-340-73000C.

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: Sea cucumber quotas for the 2021-2022 commercial harvest season have been reached in all districts and/or remaining quotas are insufficient to support additional harvest. This emergency rule closes harvest of sea cucumber in catch reporting Areas 23B, 25A, 25B, 25C, 25D, and 25E of sea cucumber management Districts 1 and 2. This closure is needed to fulfill obligations of state and tribal comanager agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 27, 2021.

Kelly Susewind
Director

REPEALER

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

WAC 220-340-73000C Commercial sea cucumber fishery.

WSR 22-02-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-281—Filed December 28, 2021, 9:58 a.m., effective December 28, 2021, 9:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to correct the date in subsection (2) of WAC 220-340-42000Z to 8:00 a.m., January 8, 2022, the previous filing of WSR 22-02-008 (Order 21-279) incorrectly listed January 11, 2022, in this section.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000Y and 220-340-45000F; and 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: This rule is necessary to correct the date in subsection (2) of WAC 220-340-42000Z to 8:00 a.m., January 8, 2022, the previous filing of WSR 22-02-008 (Order 21-279) incorrectly listed January 11, 2022, in this section.

In addition, mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Pot limits will reduce the crowding effect in this restricted area 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 2.

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

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

Date Adopted: December 28, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000Z 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) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until February 15, 2022 and;

(b) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel-hold inspection certificates dated from November 30, 2021 through January 9, 2022, are only valid for the area south of 46°28.00 N. Lat.

(2) Until 8:00 a.m., January 8, 2022, it is unlawful for persons participating in the Columbia River, Coastal, or Willapa Bay commercial Dungeness crab fishery south of Klipsan Beach (46°28.00) 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 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 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 220-340-45000G 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.

(a) 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.

(b) 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:

i. The waters between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 a.m. January 21, 2022; and

ii. The waters between Oysterville (46°33.00) and Destruction Island (47°40.50) until 8:00 a.m. February 15, 2022.

(2) Open area: The area from Klipsan Beach (46°28.00) to Destruction Island (47°40.50) and Grays Harbor.

(a) It is permissible to set crab gear beginning at 8:00 a.m., January 8, 2022.

(b) It is permissible to pull crab gear beginning at 9:00 a.m., January 11, 2022.

(3) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

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

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

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

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

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

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-42000Y Commercial crab fishery—Unlawful acts.
(21-279)

WAC 220-340-45000F Commercial crab fishery—Season and areas—Coastal. (21-279)

WSR 22-02-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-278—Filed December 29, 2021, 10:20 a.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this emergency rule is to:

(1) Postpone implementing the mandatory use of electronic fish receiving forms for deliveries of Dungeness crab, ocean pink shrimp, pink shrimp, coonstripe shrimp, sidestripe shrimp, or spot shrimp, and any other lawfully landed species, from coastal and Puget Sound licensed commercial fisheries.

(2) Not alter, and thus maintain the requirement that receivers that choose to use electronic fish receiving tickets for deliveries of Dungeness crab, ocean pink shrimp, pink shrimp, coonstripe shrimp, sidestripe shrimp, or spot shrimp, or any other lawfully landed species, from coastal and Puget Sound licensed commercial fisheries to obtain a voluntary agreement from the department.

Citation of Rules Affected by this Order: Amending WAC 220-352-035.

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: Delayed deployment and training time frames for department-developed tools required to implement mandatory electronic fish ticket receiving forms necessitate additional time before new electronic reporting rules are to take effect. The delay in implementing permanent rules through this emergency rule will provide time to successfully finish deployment of the application and train constituents in the use of new technologies. 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: December 29, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-352-03500A Requirement to prepare fish receiving ticket forms completely and accurately—Determining the appropriate form.
Effective January 1, 2022, until further notice, the provisions of WAC 220-352-035 (2)(d) are suspended. All other provisions of WAC 220-352-035 not contained herein remain in effect unless otherwise altered by emergency rule.

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WSR 22-02-033
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed December 29, 2021, 12:02 p.m., effective January 2, 2022]

Effective Date of Rule: January 2, 2022.

Purpose: Clarify that the department does not regulate community-based quarantine and isolation facilities operated by, or under contract with, a local government.

Citation of Rules Affected by this Order: Amending WAC 110-145-1305.

Statutory Authority for Adoption: RCW 74.13.031 and 74.15.030.

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. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. WAC 110-145-1305 was adopted under WSR 20-19-052, 20-11-014, 21-03-016, 21-11-008, and 21-19-012 on May 12, 2020, September 10, 2020, January 8, 2021, May 9, 2021, and September 3, 2021, respectively, to allow for the expedient delivery of life-saving services to a highly vulnerable population in Washington state—homeless youth who have recently been diagnosed with, infected by, or who came into contact with COVID-19. Circumstances have changed under Proclamations 20-25 through 20-25.17, but conditions prompting the State of Emergency declaration still exist and justify the need for WAC 110-145-1305 to remain in effect.

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

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

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

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

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

Date Adopted: December 29, 2021.

Brenda Villarreal
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

"Chapter" means chapter 110-145 WAC.

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

(a) Under eighteen years old;

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

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

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

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

"Community-based COVID-19 isolation and quarantine facility" means any person, firm, partnership, association, corporation, or facility operated by or pursuant to a contract with a county in Washington state, and that provides temporary isolation and quarantine services to homeless youth who have been diagnosed with, infected with, or exposed to COVID-19. A community-based COVID-19 isolation and quarantine facility does not qualify as an "agency" under RCW 74.15.020(1). Such facilities are exempt from department licensing under RCW 74.15.020 (2) (1).

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

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

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

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

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

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

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

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

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

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

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

"DOH" means the department of health.

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

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

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

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

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

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

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been is-

sued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-145-1305, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-145-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1305, filed 12/11/14, effective 1/11/15.]

WSR 22-02-035

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed December 29, 2021, 2:48 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The health care authority (HCA) is amending WAC 182-531-1400 to implement changes directed by the legislature in 2SHB 1325, section (2)(11), chapter 126, Laws of 2021. For mental health diagnostic assessment of children birth through age five, HCA is directed to reimburse providers for up to five sessions per assessment and for travel costs when a session is conducted in a home or community setting.

Citation of Rules Affected by this Order: Amending WAC 182-531-1400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; and 2SHB 1325, section (2)(11), chapter 126, Laws of 2021.

Other Authority: Not applicable.

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: Approximately 9.5-14.2 percent of children birth to age five experience emotional, relational, or behavioral disturbance. Considering the impending statewide increase in behavioral health impacts and expected increase in child abuse occurrences resulting from the COVID-19 pandemic, it is urgent that the mental health system have developmentally appropriate assessment, diagnosis, and treatment protocols with flexibility to support families where they are in communities to ensure equitable, adequate care, and to prevent long-term social-emotional health impacts to Washington's youngest children. The implementation of policy changes directed by 2SHB 1325, section (2)(11), chapter 126, Laws of 2021, is critical to supporting a developmentally appropriate mental health system. This emergency rule is necessary while HCA conducts the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, 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: December 29, 2021.

Wendy Barcus
Rules Coordinator

OTS-3531.2

AMENDATORY SECTION (Amending WSR 19-15-107, filed 7/22/19, effective 8/22/19)

WAC 182-531-1400 Psychiatric physician-related services and other professional mental health services. (1) The mental health services covered in this section are different from the mental health services covered under community mental health and involuntary treatment programs in chapter 182-538D WAC.

(2) Inpatient and outpatient mental health services not covered under chapter 182-538D WAC may be covered by the agency under this section.

Inpatient mental health services

(3) For hospital inpatient psychiatric admissions, providers must comply with chapter 182-538D WAC.

(4) The agency covers professional inpatient mental health services as follows:

(a) When provided by a psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric mental health nurse practitioner-board certified (PMHNP-BC), or psychologist in conjunction with the prescribing provider;

(b) The agency pays only for the total time spent on direct psychiatric client care during each visit, including services provided when making rounds. The agency considers services provided during rounds to be direct client care services and may include, but are not limited to:

(i) Individual psychotherapy up to one hour;

(ii) Family/group therapy; or

(iii) Electroconvulsive therapy.

(c) One electroconvulsive therapy or narcosynthesis per client, per day, and only when performed by a psychiatrist.

Outpatient mental health services

(5) The agency covers outpatient mental health services when provided by the following licensed health care professionals who are eligible providers under chapter 182-502 WAC:

(a) Psychiatrists;

(b) Psychologists;

(c) Psychiatric advanced registered nurse practitioners (ARNP);

(d) Psychiatric mental health nurse practitioners-board certified (PMHNP-BC);

(e) Mental health counselors;

(f) Independent clinical social workers;

(g) Advanced social workers; or

(h) Marriage and family therapists.

(6) With the exception of licensed psychiatrists and psychologists, qualified health care professionals who treat clients age ((eighteen)) 18 and younger must:

(a) Have a minimum of ((one hundred)) 100 actual hours of specialized study of child development and treatment and a minimum of one year of supervised experience in the diagnosis and treatment of clients age ((eighteen)) 18 and younger; or

(b) Be working under supervision of a professional who meets these criteria.

(7) The agency does not limit the total number of outpatient mental health visits a licensed health care professional can provide.

(8) The agency evaluates a request for covered outpatient mental health services in excess of the limitations in this section under WAC 182-501-0169. The agency covers outpatient mental health services with the following limitations:

(a) One psychiatric diagnostic evaluation, per provider, per client, per calendar year, unless significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the agency. For the purposes of this section, psychiatric diagnostic evaluation means the same as assessment (see WAC 182-538D-0200). When the psychiatric diagnostic evaluation is administered to a client from birth through age five, the agency allows the following as funding is available:

(i) Up to five sessions to complete a psychiatric diagnostic evaluation, if necessary; and

(ii) Evaluations in the home or community setting, including reimbursement for provider travel.

(b) One or more individual or family/group psychotherapy visits, with or without the client, per day, per client, when medically necessary.

(c) One psychiatric medication management service, per client, per day, in an outpatient setting when performed by one of the following:

(i) Psychiatrist;

(ii) Psychiatric advanced registered nurse practitioner (ARNP);

or

(iii) Psychiatric mental health nurse practitioner-board certified (PMHNP-BC).

(9) To receive payment for providing mental health services, providers must bill the agency using the agency's published billing instructions.

[Statutory Authority: RCW 41.05.021, 41.05.16 [41.05.160], and 2017 c 226. WSR 19-15-107, § 182-531-1400, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225. WSR 16-06-053, § 182-531-1400, filed 2/24/16, effective 4/1/16. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-03-041, § 182-531-1400, filed 1/12/15, effective 2/12/15. WSR 11-14-075, recodified as § 182-531-1400, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.09.521. WSR 08-12-030, § 388-531-1400, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-1400, filed 12/6/00, effective 1/6/01.]

WSR 22-02-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-282—Filed December 29, 2021, 4:53 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: Closes clam and oyster harvest on two beaches and clam harvest on one beach that are currently slated to open January 1 in permanent rule. This action will accommodate anticipated shifts away from January 1 start date for the 2022 seasons on these beaches, and to comply with court-mandated sharing arrangements. Permanent rules are currently underway; proposed 2022 seasons will be announced in early 2022.

Citation of Rules Affected by this Order: Amending WAC 220-330-110 and 220-330-140.

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

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

Reasons for this Finding: This rule is needed to ensure an orderly fishery and manage within court-ordered sharing requirements. It will close recreational clam and oyster harvesting opportunities at Belfair State Park and Port Gamble Heritage Park Tidelands and clam harvesting opportunities at Point Whitney Tidelands and Lagoon beginning January 1, 2022. Permanent rule currently has seasons at these beaches beginning on January 1, 2022. Proposed upcoming seasons for these beaches will be announced and set in early 2022. This rule will accommodate the anticipated shift of 2022 seasons away from a January 1, 2022, start date. Permanent rule making for 2022 clam and oyster seasons for these beaches is currently underway.

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: December 29, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-11000M Clams other than razor clams, mussels—Areas and seasons. Notwithstanding the provisions of WAC 220-330-110, effective January 1, 2022, until further notice, the following provisions of WAC 220-330-110 shall be as described below. All other provisions not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

- (1) Belfair State Park: Closed.
- (2) Point Whitney Tidelands and Point Whitney Lagoon: Closed.
- (3) Port Gamble Heritage Park Tidelands: Closed.

[]

NEW SECTION

WAC 220-330-14000K Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-330-140, effective January 1, 2022, until further notice, the following provisions of WAC 220-330-140 shall be as described below. All other provisions not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

- (1) Belfair State Park: Closed.
- (2) Port Gamble Heritage Park Tidelands: Closed.

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WSR 22-02-044
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed December 30, 2021, 1:30 p.m., effective December 30, 2021, 1:30 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 28A.150.290.

Other Authority: RCW 28A.300.040.

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

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

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

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

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

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

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

Date Adopted: December 30, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3289.4

NEW SECTION

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

[]

NEW SECTION

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

[]

NEW SECTION

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

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

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

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

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

[]

NEW SECTION

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

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

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

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

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

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

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

[]

WSR 22-02-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-01—Filed January 3, 2022, 5:05 p.m., effective January 4, 2022]

Effective Date of Rule: January 4, 2022.

Purpose: The purpose of this emergency rule is to close steelhead fishing in portions of the Snake River from the mouth to Lower Granite Dam, as well as the Touchet, Tucannon, and Walla Walla rivers. This rule will also reduce the steelhead daily limit to one fish and require anglers stop fishing after their steelhead daily limit has been retained in the Snake River upstream of Lower Granite Dam and the Grand [Grande] Ronde River.

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

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

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

Reasons for this Finding: These measures are consistent with the discussions and actions taken from North of Falcon preseason setting process due to a low forecast. The 2021 Columbia River preseason forecasted return for upriver steelhead was 89,200. Steelhead passage at Bonneville Dam remains the lowest count on record. The Washington department of fish and wildlife has coordinated with comanagers, due to the low overall return, it is necessary to close the Snake River downstream of Lower Granite Dam, and the Touchet, Tucannon, and Walla [Walla] rivers to all steelhead fishing. Current estimates of natural and hatchery origin fish returning to the Upper Snake River and Grande Ronde [River] are sufficient to allow for limited recreational fisheries to continue with reduced daily 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 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: January 3, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000G Freshwater exceptions to statewide rules—Eastside. Effective immediately, until further notice, the following provisions of WAC 220-312-050 regarding steelhead seasons for the Snake River and its tributaries, the Grande Ronde, Touchet, Tucannon, and Walla Walla rivers shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or otherwise amended by emergency rule, remain in effect:

(1) Grande Ronde River (Asotin County): Effective January 4 through April 15, 2022:

From the mouth to the Washington/Oregon border: Steelhead:

(a) Daily limit is 1 hatchery steelhead.

(b) Anglers may not continue to fish after the steelhead daily limit has been retained.

(2) Snake River (Franklin/Walla Walla Counties): Effective January 4 through March 31, 2022:

(a) From the Burbank to Pasco railroad bridge at Snake River mile 1.25 to the Lower Granite Dam: Steelhead: Closed to fishing for or retaining.

(b) From the Lower Granite Dam to the Idaho/Oregon Border: Steelhead:

(i) Daily limit is 1 hatchery steelhead.

(ii) Anglers may not continue to fish after the steelhead daily limit has been retained.

(3) Touchet River (Walla Walla County): Effective January 4 through April 15, 2022:

From the mouth to the confluence of the North and South Forks: Steelhead: Closed to fishing for or retaining.

(4) Tucannon River (Columbia/Garfield Counties): Effective January 4 through April 15, 2022:

From the mouth to the Tucannon Hatchery Road Bridge: Steelhead: Closed to fishing for or retaining.

(5) Walla Walla River (Walla Walla County): Effective January 4 through April 15, 2022:

From the mouth to the Washington/Oregon border: Steelhead: Closed to fishing for or retaining.

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