

WSR 21-16-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-125—Filed July 21, 2021, 12:11 p.m., effective July 21, 2021, 12:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open commercial beach seine fisheries in Puget Sound Salmon Management and Catch Reporting Area 12C, Hoodspport Hatchery Zone.

Citation of Rules Affected by this Order: Amending WAC 220-354-210.

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

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

Reasons for this Finding: This emergency rule is necessary to modify commercial beach seine seasons in Puget Sound Salmon Management and Catch Reporting Area 12C, Hoodspport Hatchery Zone to conform with seasons and rules agreed to with comanagers during the 2021 North of Falcon season setting process and are interim until permanent rules take effect. Permanent rules resulting from the 2021 North of Falcon season setting process have been filed and will be effective August 1, 2021. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: July 21, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-21000F Puget Sound salmon—Beach seine—Open periods. Effective immediately through July 31, 2021, the following provisions of WAC 220-354-210 regarding commercial beach seine open periods in Puget Sound Salmon Management and Catch Reporting Area 12C, Hoodspport Hatchery Zone shall be as follows. All other provisions of WAC 220-351-210 not contained herein remain in effect unless otherwise altered by emergency rule:

(a) Puget Sound Salmon Management and Catch Reporting Area 12C, Hoodspport Hatchery Zone open periods:

AREA	TIME	DATES
12C, Hoodspport Hatchery Zone	7 AM - 7 PM	7/22, 7/29

(b) It is unlawful to retain chum salmon.

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WSR 21-16-004

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed July 22, 2021, 10:34 a.m., effective July 22, 2021, 10:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is amending this section to align with the Consolidated Appropriations Act, 2021 (Sec. 208) which restored eligibility for medicaid benefits for individuals from the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. HCA is refiling this emergency, previously filed under WSR 21-12-078 on May 28, 2021 (effective June 1, 2021), to fix the cross reference in subsection (3)(b)(i) to include the restored eligibility group in new subsection (1)(b)(xiii).

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

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Consolidated Appropriations Act, 2021 (Sec. 208).

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 Consolidated Appropriations Act, 2021, was enacted on December 27, 2020, and restored medicaid funding for eligible individuals living in the United States in accordance with the Compacts of Free Association. The immediate revision of this rule is necessary to align with the act while the agency proceeds with the permanent rules process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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: July 22, 2021.

Wendy Barcus
Rules Coordinator

OTS-3108.2

AMENDATORY SECTION (Amending WSR 15-10-002, filed 4/22/15, effective 5/23/15)

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 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 years of age. In that case, the child retains qualified alien status even after he or she turns twenty-one 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 special immigrant status under INA Section 101 (a) (27).

(xii) 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 years of age.

(xiii) 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 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 ~~((s))~~ (1)(b)(vi) through ~~((xii))~~ (xiii) 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 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.]

WSR 21-16-014

EMERGENCY RULES

STATE BOARD OF HEALTH

[Filed July 23, 2021, 7:05 a.m., effective July 23, 2021]

Effective Date of Rule: July 23, 2021.

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

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

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

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

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

The CARES Act requires "every laboratory that performs or analyzes a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19" to report the results from each such test to the Secretary of the United States Department of Health and Human Services (HHS). In addition, the act authorizes the secretary to prescribe the form, manner, timing, and frequency of such reporting. The HHS Secretary released laboratory data reporting guidance for COVID-19 on June 4, 2020, and later updated the guidance on January 8, 2021. The guidance requires all data components be reported through existing state and local public health data reporting methods until the end of the public health emergency. Of these requirements, demographic information such as the patient's age, race, ethnicity, and sex must be collected and reported in accordance with state law or policies.

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

tion required under the CARES Act will be subject to monetary penalties. The interim final rules became effective September 2, 2020.

Adoption of a fourth emergency rule ensures continued compliance with the CARES Act and CMS requirements to improve the public health response to COVID-19. The board previously adopted emergency rules on July 31, 2020, as WSR 20-16-121, on November 25, 2020, as WSR 20-24-081 and on March 26, 2021, as WSR 21-08-009.

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

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

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

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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: July 20, 2021.

Michelle A. Davis
Executive Director

OTS-2485.4

NEW SECTION

WAC 246-101-017 Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. (1) Designating coronavirus disease 2019 (COVID-19), and the novel coronavirus (SARS-CoV-2) that causes it, as a notifiable condition, and requiring the reporting of race and ethnicity and other essential data by health care providers, health care facilities, laboratories, and local health departments related to cases of COVID-19 are necessary to ensure that public health agencies receive complete notice of COVID-19 cases and to address racial and ethnic inequities in morbidity and mortality among individuals with the disease. This rule is also necessary to align with the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and the U.S. Department of Health and Human Services laboratory data reporting requirements for COVID-19 testing, which require reporting of COVID-19 data to the appropriate state or local health department and the U.S. Department of Health and Human Services, and further, that any person or entity ordering a diagnostic or serologic test, collecting a specimen, or performing a test should make every reasonable effort to collect complete demographic information and include such data when ordering a laboratory test to enable the entities performing the test to report these data to state and local public health departments. In the midst of this global pandemic, immediate adoption of a rule requiring notice of novel coronavirus (SARS-CoV-2) as a notifiable condition and reporting of race, ethnicity, and other essential data is necessary for the preservation of public health, safety, and general welfare.

(2) For the purpose of this section:

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

(b) "Health care facility" means:

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

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

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

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

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

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

- (i) Hispanic or Latino;
- (ii) Non-Hispanic or Latino;
- (iii) Unknown; or
- (iv) Asked, but unknown.

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

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

(h) Ask on order entry questions are:

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

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

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

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

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

(vi) Is the patient a resident in a congregate care or living setting (including, but not limited to, nursing homes, residential

care for people with intellectual and developmental disabilities, psychiatric treatment facilities, group homes, board and care homes, homeless shelter, foster care, correctional facilities, and temporary worker housing)? (yes, no, unknown); and

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

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

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

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

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

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

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

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

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

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

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

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

(10) A principal health care provider is not required to submit individual case reports of novel coronavirus (SARS-CoV-2) to the local health department when the provider practices in a health care facility where laboratory point of care testing occurs under a certificate of waiver as described in WAC 246-338-020 and the laboratory director

has fulfilled the laboratory notification requirements under subsections (14), (15), and (16) of this section.

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

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

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

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

(a) Within twenty-four hours; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(28) A local health department shall immediately reassign cases to the department upon determining the patient who is the subject of the case:

(a) Is a resident of another local health department; or

(b) Resides outside Washington state.

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

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

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

Table 1
Required Reporting for Health Care Providers, Health Care Facilities,
Laboratories, and Local Health Departments

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:	Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Patient's name	X	X	X	X	X	X
Patient's notifiable condition	X				X	X
Patient's date of birth, or if not available, patient's age	X	X	X	X	X	X
Patient's sex	X	X	X	X	X	X
Patient's ethnicity, using the categories described in subsection (2)(f) of this section	X	X	X	X	X	X
Patient's race, using the categories described in subsection (2)(g) of this section	X	X	X	X	X	X
Patient's full physical address including zip code	X	X	X	X	X	X
Patient's telephone number	X	X	X	X	X	X
Initial notification source					X	X
Patient's diagnosis of disease or condition	X					
Pertinent laboratory data	X					
Test ordered, using harmonized LOINC codes provided by the CDC		X	X	X	X*	X*
Date test ordered		X	X	X	X*	X*
Device identifier		X	X		X*	X*
Type of specimen tested	X	X	X	X	X*	X*

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

	Column A: Health care providers and health care facilities shall provide the following information to the local health department with each case report, and to the laboratory with each test ordered:	Column B: Laboratory directors shall provide the local health department with the following information with each laboratory report:	Column C: Laboratory directors shall provide the department with the following information with each specimen submitted:	Column D: Laboratory directors shall provide the following information when referring a specimen to another laboratory:	Column E: Local health department notifications to the department must include:	Column F: Local health department investigation reports to the department must include:
Name and telephone number of the person providing the report	X					
Performing laboratory's name		X	X		X*	X*
Performing laboratory's CLIA number, if known		X	X		X*	X*
Performing laboratory's zip code		X	X		X*	X*
Performing laboratory's phone number		X	X		X*	X*
Date local health department was notified					X	X
Hospitalization status of the patient						X
Whether the patient died during this illness						X
Source or suspected source						X

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

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WSR 21-16-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-126—Filed July 23, 2021, 8:56 a.m., effective July 23, 2021]

Effective Date of Rule: July 23, 2021.

Purpose: The purpose of this emergency rule is to create additional regulations that are needed to prevent wildfires on department lands in eastern Washington during the current period of very high and extreme fire danger. The new rule will help reduce the threat of wildfires on department lands in eastern Washington and provide protection of human health, safety, and wildlife habitat.

Citation of Rules Affected by this Order: Amending WAC 220-500-040.

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

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

Reasons for this Finding: An emergency rule is necessary to protect department lands from imminent risk of wildfire damage during a very high fire danger period which is occurring currently. These additional prohibitions are needed immediately to protect humans, wildlife, and property.

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: July 23, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-500-04000E Regulating public access. (1) Notwithstanding the provisions of WAC 220-500-040, effective July 23, 2021, until further notice, it is unlawful to be present in wildlife areas, and in water access areas within wildlife areas, owned or controlled by the department in Eastern Washington from 9:00 pm - 6:00 am without written approval from the director.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 and 77.15.230

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WSR 21-16-017
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 23, 2021, 11:18 a.m., effective July 25, 2021]

Effective Date of Rule: July 25, 2021.

Purpose: The department is extending adoption of WAC 388-439-0005 What is the pandemic EBT program?, 388-439-0010 Eligibility of pandemic EBT benefits for the 2020-2021 school year, and 388-439-0015 General information about pandemic EBT benefits. The department is also adopting WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six, and 388-439-0025, Eligibility for pandemic EBT benefits during the 2021 summer period.

Emergency adoption of these rules supports implementation, expansion, and extension of the Pandemic EBT (P-EBT) program for eligible children who do not have regular access to free or reduced-price school meals or childcare meals due to limited on-site learning or attendance as a result of the COVID-19 pandemic during the 2020-2021 school year, and extended into the 2021 summer, as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act, as amended by Section 1108 of H.R. 1319, American Rescue Plan Act.

Citation of Rules Affected by this Order: New WAC 388-439-0005, 388-439-0010, 388-439-0015, 388-439-0020, and 388-439-0025.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Other Authority: H.R. 6201, H.R. 8337, H.R. 133, H.R. 1319.

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: Emergency adoption of these rules is necessary to support implementation of the P-EBT program which protects the health, safety, and general welfare of Washington residents by supporting access to public assistance.

The department is showing forward progress with this filing due to federal changes to extend and expand the P-EBT program resulting in additional changes to the rule text and adopting two new WAC. The department is actively undertaking appropriate procedures to adopt the rule as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 5, 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 5, Amended 0, Repealed 0.

Date Adopted: July 23, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4858.7

**Chapter 388-439 WAC
PANDEMIC EBT (P-EBT) PROGRAM**

NEW SECTION

WAC 388-439-0005 What is the pandemic EBT program? (1) The pandemic electronic benefits transfer (P-EBT) program is a federally funded nutrition program administered by the department of social and health services (department) and provides food benefits to eligible children who do not have access to meals at a covered childcare center or free or reduced-price school meals due to school closures or lack of in-person instruction caused by the COVID-19 public health emergency.

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child based on the school's reported meal service to the majority of students enrolled in the school for the majority of the month;

(b) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(i) Receiving a benefit from a federal-means tested assistance program, including the supplemental nutrition assistance program (SNAP), temporary assistance for needy families (TANF), food distribution program on Indian reservations (FDPIR), some medicaid programs; or

(ii) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program (ECEAP);

(c) "Eligible student" means a child or student, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program (NSLP) and school breakfast program (SBP) during the school year, who is:

(i) Enrolled in a school or registered in a program in Washington state that normally participates in the NSLP;

(ii) Attending a school that has been closed or has reduced attendance or hours for five or more consecutive days during the school year due to the COVID-19 public health emergency designation; and

(iii) Determined by the school to be eligible for free or reduced-priced school meals or attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program. Students are identified as eligible for free or reduced-price

school meals using direct certification or free or reduced-price school meals application;

(d) "Free or reduced-price school meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act;

(e) "Full in-person learning" means meal service is available five days per week to the majority of students enrolled in the school for the majority of the month;

(f) "Majority" means more than fifty percent;

(g) "Meal service" means the typical meals (SBP and NSLP) served when school is in session and consumed onsite as part of the school day. Meal service includes both breakfast and lunch. Schools define the meal service provided to the majority of students enrolled in the school for the majority of the month as follows:

(i) "Full remote learning" means no meal service to students on school campus;

(ii) "Hybrid-learning" means partial in-person learning and meal service on school campus. Due to various hybrid-learning models across the state, the following levels have been defined as:

(A) "Level 1" is one-day meal service per week to students on school campus;

(B) "Level 2" is two-days meal service per week to students on school campus;

(C) "Level 3" is three-days meal service per week to students on school campus; or

(D) "Level 4" is four-days meal service per week to school on school campus;

(h) "Operating days" are days a school regularly operates, excluding weekends, breaks, and holidays;

(i) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible students or children under age six;

(j) "Public health emergency" means a federal declaration of a public health emergency due to the COVID-19 pandemic as issued by the secretary of health and human services;

(k) "School" means any public or nonprofit private schools, charter schools, and tribal compact schools within the state of Washington;

(l) "School closure" means that the school was closed for in-person or remote learning for the majority of the month, with no meal service available to students enrolled in the school;

(m) "Summer period" means the months between the end of the school year and the start of the next school year during which there was a public health emergency.

[]

NEW SECTION

WAC 388-439-0010 Eligibility of pandemic EBT benefits for the 2020-2021 school year. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefit for the 2020-2021 school year, a student must be:

(a) An eligible student as defined under WAC 388-439-0005 (2) (b) between September 1, 2020, to June 30, 2021; and

(b) Enrolled in a school that had a school closure, full remote learning, or hybrid-learning meal service during the public health emergency as reported by the school.

(2) An eligible student's P-EBT benefit level is calculated for the 2020-2021 school year by:

(a) Using the full daily meal reimbursement rate of six dollars and eighty-two cents for breakfast, lunch, and snack;

(b) Multiplied by the statewide average operating days of eighteen days per month;

(c) Multiplied using the percentage of benefit reimbursement based on the school's reported meal service under WAC 388-439-0005, reducing in twenty percent intervals as the student attends more days in-person with meal service; and

(d) Rounding the total benefit amount up to the nearest dollar.

Meal service reported	Dollar amount for the month
Full remote learning or school closure—Full benefit	\$123
Hybrid learning—Level 1—80% benefit	\$99
Hybrid learning—Level 2—60% benefit	\$74
Hybrid learning—Level 3—40% benefit	\$50
Hybrid learning—Level 4—20% benefit	\$25

(3) An eligible student is not eligible for P-EBT benefits if the school reports full in-person learning for the majority of students enrolled in the school for the majority of the month.

(4) P-EBT benefits are issued for a retroactive period of time to allow schools to report the applicable meal service during the applicable eligibility period.

(a) An initial one-time P-EBT allotment is issued for the months of September 2020 to January 2021;

(b) A subsequent one-time P-EBT allotment may be issued in April 2021, using the school's reported meal service for the preceding two months of February and March 2021;

(c) A subsequent one-time P-EBT allotment may be issued in June 2021, using the school's reported meal service for April, May, and June 2021; and

(d) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) An eligible student's benefits will be placed on a P-EBT card under WAC 388-439-0015.

(6) Issuance of P-EBT benefits beyond September 30, 2021, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval.

[]

NEW SECTION

WAC 388-439-0015 General information about pandemic EBT benefits. (1) Pandemic electronic benefit transfer (P-EBT) benefits will be deposited into an account accessible with a debit card called a P-EBT card. A P-EBT card will be issued to each eligible student or child under age six. Each P-EBT card will be:

- (a) Linked to an EBT account for each eligible student or child under age six for P-EBT benefits; and
- (b) Mailed to either:
 - (i) The address on file with the school for the eligible student; or
 - (ii) The address on file with the department for the basic food case for the child under age six.

(2) To use a P-EBT account:

- (a) The P-EBT card can be used by the eligible student or child under age six or responsible household member, such as a parent or caregiver, on behalf of the eligible student or child under age six, to access the benefits in their EBT account;
- (b) A personal identification number (PIN) has to be created that must be used with the P-EBT card to purchase food items;
- (c) P-EBT benefits must be accessed from the P-EBT card of an eligible student or child under age six. P-EBT benefits cannot be transferred to a bank account or issued as a check;
- (d) P-EBT benefits that are not used within two hundred seventy-four days from the last purchase or deposit activity on the eligible child's account will be removed; and
- (e) P-EBT benefits cannot be replaced once redeemed or removed. Families are responsible for keeping the P-EBT card and PIN of an eligible student or child under age six in a safe and secure place.

(3) The purpose of P-EBT benefits is to help low-income families or individuals have a more nutritious diet by providing food benefits to eligible children due to the COVID-19 public health emergency.

- (a) P-EBT benefits are used to buy food items for an eligible child (or youth) from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. department of agriculture food and nutrition service (FNS).
- (b) Use P-EBT benefits the same as other food benefits under WAC 388-412-0046 (2) (c).
- (c) It is not legal to use P-EBT benefits as described under WAC 388-412-0046 (2) (d).
- (d) If people intentionally misuse P-EBT benefits, they may be:
 - (i) Subject to fines; or
 - (ii) Subject to legal action, including criminal prosecution. Department of social and health services (DSHS) will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking in P-EBT benefits.

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NEW SECTION

WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six. (1) To be eligible for federally funded pandemic

electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between October 1, 2020, to June 30, 2021;

(b) Under the age of six; and

(c) Residing in a county with at least one school in that county that had a school closure, full remote learning, or hybrid-learning meal service during the public health emergency as reported by the school.

(2) Children who do not qualify for federally funded P-EBT benefits because they are on state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between October 1, 2020, to June 30, 2021.

(b) State-funded P-EBT benefits is contingent on the availability of state funds.

(3) We calculate a county standard benefit level for each month of P-EBT eligibility by:

(a) Using the full daily meal reimbursement rate of six dollars and eighty-two cents for breakfast, lunch, and snack;

(b) Multiplied by the statewide average operating days of eighteen days per month;

(c) Multiplied using a percentage of benefit reimbursement based on the school's reported meal service under WAC 388-439-0005 using the lowest available on-site meal service for at least one school in each county of the child's residence, as follows:

(i) One hundred percent if the lowest meal service is full remote learning or school closure;

(ii) Seventy percent if the lowest school meals service reported is hybrid learning - Level 1 or hybrid learning - Level 2; or

(iii) Thirty percent if the lowest school meal service reported is hybrid learning - Level 3 or hybrid learning - Level 4; and

(d) Rounding the total benefit amount up to the nearest dollar.

County lowest on-site school meal service	Dollar amount for the month
Full remote learning or school closure—Full benefit	\$123
Hybrid learning—Level 1—or Hybrid learning—Level 2—70% benefit	\$86
Hybrid learning—Level 3—or Hybrid learning—Level 4—70% benefit	\$37

(e) P-EBT benefits are issued for each month that:

(i) The household receives a SNAP or FAP benefit more than zero dollars; and

(ii) There is limited on-site meal service for at least one school in the county.

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as follows:

(a) An initial one-time P-EBT allotment is issued for the months of October 2020 to March 2021;

(b) A subsequent one-time P-EBT allotment is issued for the months of April to June 2021; and

(c) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(6) A child under age six who received P-EBT as an eligible student under WAC 388-439-0005 (2)(d) and WAC 388-439-0010, but who would receive more benefits as a child under age six under this section will be supplemented by federal or state funded P-EBT benefits. The child's total benefit amount is not to exceed the maximum P-EBT benefit of \$123 per month.

(7) Issuance of P-EBT benefits beyond September 30, 2021, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

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NEW SECTION

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2021 summer period. (1) During the summer period of July and August 2021, schools and covered childcare centers will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after 2020-2021 school year, prior to August 31, 2021, a child must be:

(a) An eligible student as defined under WAC 388-439-0005(c) in June 2021; or

(b) A child under age six, as defined under WAC 388-439-0020(1), between June 1, 2021, to August 31, 2021.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$375 for the 2021 summer period.

(4) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(5) Issuance of summer period benefits beyond September 30, 2021, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

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WSR 21-16-021
RECISSION OF EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed July 23, 2021, 2:05 p.m.]

The department of children, youth, and families requests to rescind WAC 110-300D-0001 filed under WSR 21-15-005 on July 7, 2021.

Please contact Brenda Villarreal at 360-522-3691 if you have any questions or need anything further.

Brenda Villarreal
Rules Coordinator

WSR 21-16-022
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 23, 2021, 2:14 p.m., effective July 25, 2021]

Effective Date of Rule: July 25, 2021.

Purpose: Implement Proclamation of the Governor 20-05 as amended by Proclamation of the Governor 21-11, which authorizes the department to license outdoor preschools July 1 - 31, 2011, and acknowledge the department's authority to license outdoor nature-based programs under chapter 4, Laws of 2021.

Citation of Rules Affected by this Order: Amending WAC 110-300D-0001.

Statutory Authority for Adoption: RCW 43.216.740.

Other Authority: Proclamation of the Governor 20-05, as amended by Proclamation 21-11 issued July 6, 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.

Reasons for this Finding: Proclamation of the Governor 20-05 declared a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. On July 6, 2011 [2021], Proclamation of the Governor 21-11 amended Proclamation 20-05 to continue, through July 31, 2021, outdoor preschool licenses authorized by RCW 43.216.740. These emergency rules prevent the closure of currently licensed outdoor preschools and the severe hardship that their closure would likely create for the enrolled children and families the programs serve, namely the children going without preschool or enrollment in an indoor-based preschool with a higher risk of COVID-19 transmission or their parents' inability to work due to the lack of adequate child care.

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: July 23, 2021.

Brenda Villarreal
Rules Coordinator

OTS-3098.2

AMENDATORY SECTION (Amending WSR 19-07-021, filed 3/12/19, effective 4/12/19)

WAC 110-300D-0001 Authority. (1) Chapter 43.216 RCW establishes the department of children, youth, and families' responsibility and authority 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) Under RCW 43.216.740(1), the department must establish a pilot project to license outdoor, nature-based early learning and child care programs (the "pilot project") (~~to commence August 31, 2017, and conclude June 30, 2021~~).

(3) Pursuant to RCW 43.216.740(2), the department shall adopt rules to implement the pilot project and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor pre-schools in Washington state.

(4) Pursuant to chapter 304, Laws of 2021, the department shall establish a licensed outdoor nature-based child care program, adopt rules to implement the program, and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor classrooms.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.740 and chapter 43.216 RCW. WSR 19-07-021, § 110-300D-0001, filed 3/12/19, effective 4/12/19.]

WSR 21-16-023
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 23, 2021, 2:21 p.m., effective July 25, 2021]

Effective Date of Rule: July 25, 2021.

Purpose: Implement section 28, chapter 304, Laws of 2021, which authorizes licensing of outdoor nature-based 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, authorizes the department to license outdoor nature-based (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. Since chapter 304 grants immediate licensing authority, the department must adopt rules to take effect on July 25, 2021, that establish health and safety standards to protect the children enrolled in ONB programs and enforce the quality standards necessary for the receipt of federal subsidy dollars and the time needed to adopt permanent rules does not allow for a July 25 effective date.

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: July 23, 2021.

Brenda Villarreal
Rules Coordinator

OTS-3212.1

Chapter 110-300E WAC
OUTDOOR NATURE-BASED PROGRAMS

NEW SECTION

WAC 110-300E-0001 Authority. (1) Chapter 43.216 RCW establishes the department of children, youth, and families' responsibility and authority 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 shall 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 shall 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.

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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" shall have the same meaning as described in RCW 43.216.010.

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

"Early learning" shall have 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 fifty 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 shall 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, DEL 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.

[]

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, DEL 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 shall not exceed two hundred fifty dollars 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 twenty-eight 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 twenty-eight 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.

[]

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 100-300D-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 ninety 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 twelve 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 twelve 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, DEL 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 ninety 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 ninety 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 ninety 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 ninety 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 21-16-035
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 26, 2021, 3:06 p.m., effective July 26, 2021, 3:06 p.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; and March XX [26], 2021, under WSR 21-08-014. 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 21-08-014 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: July 26, 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, 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, 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 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.

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.]

WSR 21-16-037
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 26, 2021, 3:49 p.m., effective July 26, 2021]

Effective Date of Rule: July 26, 2021.

Purpose: During the COVID-19 pandemic, relieve the department of children, youth, and families (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; and March 26, 2021, under WSR 21-08-015. 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: July 26, 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.]

WSR 21-16-038
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed July 26, 2021, 4:26 p.m., effective July 30, 2021]

Effective Date of Rule: July 30, 2021.

Purpose: The department is extending the amendment of the rule listed below to assure [ensure] certified community residential services and supports (CCRSS) providers are not significantly impeded from providing services and support to clients during the COVID-19 pandemic. Governor Inslee's Proclamation 20-18 and subsequent extensions identified that the pandemic has resulted in disruptions of long-term care systems, including the ability to safely conduct inspections. The governor's proclamations included the suspension of licensing inspections for all long-term care settings with the exception of CCRSS settings. Current rule states the department may conduct an on-site certification evaluation for each service provider at any time, but at least once every two years. The amendment lengthens the amount of time to complete certification evaluations that are currently suspended for consistency and safety across all programs regulated by the department. The amendment will allow the department additional time to complete certification evaluations when it is safe and practical to do so. In addition, under the rule development phase of rule making, the department is in discussions with stakeholders about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary. The department previously filed the CR-101 and is continuing in the process of permanent rule making. In the meantime, the department is extending the emergency rule under RCW 34.05.350.

Citation of Rules Affected by this Order: Amending WAC 388-101-3130.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.080.

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 CCRSS settings. Current CCRSS rules ensure the department may conduct on-site certification evaluations of each CCRSS service provider at any time, but at least every two years. Due to the suspension of certification evaluations, as proclaimed for all other long-term care settings related to the COVID-19 pandemic, the amendment will allow for additional time to complete the certification evaluations when the pandemic subsides.

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: July 26, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4821.1

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3130 Certification evaluation. (1) The department may conduct an on-site certification evaluation of each service provider at any time (~~(, but at least once every two years)~~).

(2) During certification evaluations the service provider's administrator or designee must:

(a) Cooperate with department representatives during the on-site visit;

(b) Provide all contractor records, client records, and other relevant information requested by the department representatives;

(c) Ensure the service provider's administrator or designee is available during any visit to respond to questions or issues identified by department representatives; and

(d) Ensure the service provider's administrator or designee is present at the exit conference.

[Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3130, filed 12/21/07, effective 2/1/08.]

WSR 21-16-039
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed July 27, 2021, 8:29 a.m., effective August 1, 2021]

Effective Date of Rule: August 1, 2021.

Purpose: The developmental disabilities administration (DDA) is enacting changes to WAC 388-823-0720 on an emergency basis to remove the Woodcock-Johnson (WJ) 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 WJ 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 WJ 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 WJ test of achievement.

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: July 26, 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 21-16-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-131—Filed July 28, 2021, 7:53 a.m., effective August 2, 2021]

Effective Date of Rule: August 2, 2021.

Purpose: The purpose of this emergency rule is to open Puget Sound commercial sea cucumber seasons.

Citation of Rules Affected by this Order: Amending WAC 220-340-730.

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

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

Reasons for this Finding: This emergency rule opens harvest of sea cucumber in Sea Cucumber Management Districts 1, 2, and 5 (catch reporting areas 28A, 28B, 28C, 28D). Harvestable surpluses of sea cucumber exist in these specified districts, based on scientific surveys and stock assessment review among biologists outside of areas closed to harvest. This opener is pursuant to fulfill obligations of state and tribal comanager agreements. Immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 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: July 27, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000X Commercial sea cucumber fishery. Effective August 2, 2021 and until further notice, or until this rule expires on November 25, 2021 pursuant to RCW 34.05.350, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest and sales shall be described below. All other provisions of WAC

220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1, Monday through Sunday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following catch reporting areas of Sea Cucumber District 2, Monday through Sunday of each week: 29, 25A, 25B, 25C, 25D, 25E, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(3) Sea cucumber harvest using shellfish diver gear is allowed in the following catch reporting areas of Sea Cucumber District 5, Monday through Sunday of each week: 28B, 28C, 28D, and 28A except for all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

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

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WSR 21-16-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-132—Filed July 28, 2021, 7:57 a.m., effective September 11, 2021]

Effective Date of Rule: September 11, 2021.

Purpose: The purpose of this emergency rule is to open recreational sturgeon retention seasons in the Columbia River and Cowlitz River.

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

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

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

Reasons for this Finding: This rule is needed to allow a limited harvest of white sturgeon in the Columbia River estuary. The legal-size population is large enough to allow for a retention fishery within the lower Columbia River. This action is consistent with decisions made by the states of Washington and Oregon during the Columbia River compact hearing on March 23, 2021. This action was restated in the Oregon and Washington departments of fish and wildlife joint staff reports on May 18, May 25, June 10, and July 7, 2021. There is insufficient time to adopt permanent regulations.

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: July 27, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000U Freshwater exceptions to statewide rules—Columbia River. Effective September 11 through September 18, 2021 the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding white sturgeon retention seasons from Buoy 10 upstream to McNary Dam are as follows. All other provisions of WAC 220-312-060,

WAC 220-316-010, and WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

From Wauna powerlines upstream to Bonneville Dam, including the Cowlitz River:

(a) It is permissible to retain white sturgeon on Saturday, September 11 and Saturday, September 18, 2021.

(i) The daily limit of white sturgeon is one fish.

(ii) Minimum fork length 44 inches. Maximum fork length 50 inches.

(b) Catch and release angling for sturgeon is permissible on days and in areas not open to sturgeon retention.

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WSR 21-16-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-128—Filed July 28, 2021, 3:15 p.m., effective July 28, 2021, 3:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to create additional regulations that are needed to prevent wildfires on department lands in eastern Washington during the current period of very high and extreme fire danger. The new rule will help reduce the threat of wildfires on department lands in eastern Washington and provide protection of human health, safety, and wildlife habitat. Select water access areas listed in this rule within Columbia Basin and Chief Joseph Wildlife Area are authorized for overnight use.

Citation of Rules Affected by this Order: Repealing WAC 220-500-04000E; and amending WAC 220-500-040.

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

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

Reasons for this Finding: An emergency rule is necessary to protect department lands from imminent risk of wildfire damage during a very high fire danger period which is occurring currently. These additional prohibitions are needed immediately to protect humans, wildlife, and property.

Listed exceptions are based on the following rationales:

1. The Columbia Basin Wildlife Area is a fragmented landscape of unforested low-elevation shrubsteppe, irrigated agriculture, and dry-land wheat (harvest currently underway) with a relatively high degree of road access. Due to relatively flat topography and accessibility, wildfires in this area typically last hours, as opposed to days, and require less suppression resources. Water access sites proposed for exemption serve a high demand on large water bodies (Banks Lake, Pot-holes Reservoir) for recreational boating. Parking areas and access roads are generally well maintained, well delineated, and free of vegetation. Recreational value is high, and risk is relatively low. Further, compliance on Columbia Basin Wildlife Area during the COVID-19 shutdown was low, signs were ignored, and barriers were crossed. Allowing overnight use of some of these sites will reduce the number of violations across the wildlife area, make enforcement more manageable, and focus fire risk to more manageable areas as well.

2. Chief Joseph Wildlife Area has three sites with relatively low risk of wildfire and which support rafters who park overnight. Allowing these sites to remain open also helps with enforcement and reduces risk of violations across the wildlife area.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 28, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-500-04000F Regulating public access. Notwithstanding the provisions of WAC 220-500-040, effective immediately, until further notice, it is unlawful to be present in wildlife areas, and in water access areas within wildlife areas, owned or controlled by the Department in Eastern Washington from 9:00 pm - 6:00 am without written approval from the Director; with the following exceptions:

Water Access Site	Wildlife Area Unit	Water Body
Million Dollar Mile North	Banks Lake	Banks Lake
Million Dollar Mile South	Banks Lake	Banks Lake
Blythe	Desert	Potholes Reservoir
Crab Creek	Desert	Potholes Reservoir
Glen Williams	Desert	Potholes Reservoir
Lind Coulee Bridge East	Desert	Potholes Reservoir
Lind Coulee Bridge West	Desert	Potholes Reservoir
Lind Coulee Island	Desert	Potholes Reservoir
Lind Coulee Point	Desert	Potholes Reservoir
North Outlet	Desert	Potholes Reservoir
Sampson's Pit	Desert	Potholes Reservoir
South Outlet	Desert	Potholes Reservoir
Heller Bar	Chief Joseph WLA	Snake River
Shumaker Grade	Chief Joseph WLA	Grande Ronde River
Snyder Bar	Chief Joseph WLA	Grande Ronde River

A violation of this section is an infraction punishable under RCW 77.15.160 or a criminal citation punishable under RCW 77.15.230.

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REPEALER

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

WAC 220-500-04000E Regulating public access (21-126)

WSR 21-16-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-133—Filed July 28, 2021, 3:46 p.m., effective July 28, 2021, 3:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Closes commercial spot pot harvest and opens nonspot pot harvest in Shellfish Management and Catch Reporting Area 1A after attaining the spot shrimp quota.

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

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

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

Reasons for this Finding: This emergency rule:

- (1) Defines the shrimp management areas and regions open to spot and nonspot commercial harvest.
- (2) Defines spot pot gear requirements.
- (3) Defines nonspot gear requirements.
- (4) Implements labeling requirements for groundline pot gear.
- (5) Implements restrictions for the concurrent use of spot shrimp and onspot [nonspot] shrimp pot gear.
- (6) Implements a fishing declaration requirement for all shrimp pot fisheries in Puget Sound.
- (7) Sets harvest restrictions for and opens the nonspot commercial pot fishery.
- (8) Sets harvest restrictions for and opens the spot commercial pot fishery.
- (9) Sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery.
- (10) Requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

The emergency regulation closes spot shrimp pot harvest in Marine Fish/Shellfish Management and Catch Reporting Area 1A due to quota attainment and opens the area to harvest of nonspot shrimp to allow utilization of the available nonspot quota. Sections of this regulation define open areas to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and nonspot shares while also achieving the 50/50 harvest defined by the federal court order. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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: July 28, 2021.

Kelly Susewind
Director

NEW SECTION

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

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

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W and 3, as well as Marine Fish/Shellfish Management and Catch Area 26D are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

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

(ii) Marine Fish/Shellfish Management and Catch Area 26D is closed to the commercial harvest of non-spot shrimp.

(iii) Shrimp Management Area 1A is closed to the commercial harvest of spot shrimp.

(iv) Discovery Bay Shrimp District is closed to the commercial harvest of spot shrimp.

(v) Shrimp Management Areas 1B, 2E, and 2W and Sub-area 23A-E of Catch Reporting Area 23A are closed to the commercial harvest of spot shrimp.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly, Wednesdays through Tuesdays.

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

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

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

(3) Shrimp Spot Pot Harvest Restrictions:

(a) The spot shrimp catch accounting period starts May 1, 2021 at 12:00 a.m. through August 10, 2021 at 11:59 p.m.

(b) It is unlawful for the total harvest within the spot shrimp accounting period to exceed 4,500 pounds of spot shrimp per license from Shrimp Management Areas 1A, 1C, and 3 combined.

(4) Shrimp trawl Harvest Restrictions:

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

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

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

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

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

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

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

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

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

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

NEW SECTION

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

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REPEALER

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

- WAC 220-340-52000F Puget Sound shrimp pot and trawl fishery—Season. (21-118)
- WAC 220-340-03000J Shellfish harvest logs. (21-118)

WSR 21-16-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-127—Filed July 28, 2021, 3:54 p.m., effective August 9, 2021]

Effective Date of Rule: August 9, 2021.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in specific Columbia River select areas while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-358-030.

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

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

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

Reasons for this Finding: This rule sets commercial fisheries for fall 2021 in the mainstem and select areas. Impacts to nonlocal stocks are expected to be minimal in off channel select areas. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 27, 2021. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide

the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, 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: July 28, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000C Columbia River seasons below Bonneville.

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Mainstem:

Open Dates	Open Days	Open Time	Open Duration
August 9 - August 10	Monday (night)	9:00 pm - 6:00 am	9 hrs
August 11 - August 12	Wednesday (night)	9:00 pm - 6:00 am	9 hrs
August 16 - August 17	Monday (night)	9:00 pm - 6:00 am	9 hrs
August 18 - August 19	Wednesday (night)	9:00 pm - 6:00 am	9 hrs
August 23 - August 24	Monday (night)	9:00 pm - 6:00 am	9 hrs
August 25 - August 26	Wednesday (night)	9:00 pm - 6:00 am	9 hrs
August 30 - August 31	Monday (night)	9:00 pm - 6:00 am	9 hrs
September 1 - September 2	Wednesday (night)	9:00 pm - 6:00 am	9 hrs

(a) **Area:** Zones 4-5. The deadline at the lower end of Zone 4 is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation Buoy #1 and continuing to the Washington shore. Sanctuaries: Washougal and Sandy Rivers

(b) **Gear:** Drift gillnets only. 9-inch minimum mesh size restriction. Multiple net rule **NOT** in effect, which means nets not authorized for this fishery may not be onboard. Lighted buoys required.

(c) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. A maximum of **four** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to mainstem fisheries only.

(2) Tongue Point/South Channel Select Area:

Open Dates	Open Days	Open Time	Open Duration
August 23 - August 27	Monday, Thursday (night)	7:00 pm - 7:00 am	12 hrs
August 30 - September 3	Monday, Tuesday, Wednesday, Thursday (night)	7:00 pm - 7:00 am	12 hrs
September 4 - October 29	Monday, Tuesday, Wednesday, Thursday (night)	4:00 pm - 10:00 am	18 hrs

(a) **Area:**

(i) The Tongue Point Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the eastern shore of Tongue Point (midway between the red USCG light "2" at the tip of Tongue Point and the northern-most pier (#8) at the Tongue Point Job Corps facility) to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(A) If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) If the marker on the Oregon shore is not in place, the upstream boundary is defined by a line projecting from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

(ii) The South Channel Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) **Gear:** Gillnets with a 6-inch maximum mesh size restriction. Maximum net length of 250 fathoms. In the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom; however, unstored gillnets legal for use in South Channel may be onboard.

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted. Nets not specifically authorized for use may

be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted_buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. A maximum of **three** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to all Select Area fisheries.

(3) Blind Slough/Knappa Slough Select Area:

Open Dates	Open Days	Open Time	Open Duration
August 23 - September 3	Monday, Thursday (night)	7:00 pm-7:00 am	12 hrs
September 6 - October 29	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm-10:00 am	16 hrs

(a) **Area:** The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge. The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore. The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 9 3/4-inch through September 3, and a 6-inch maximum thereafter. Maximum net length is 100 fathoms. There is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

Nets not specifically authorized for use may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Permanent transportation rules in effect.** In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. A maximum of **three** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during

each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to all Select Area fisheries.

(4) Deep River Select Area:

Open Dates	Open Days	Open Time	Open Duration
September 13 - October 15	Monday, Tuesday, Wednesday, Thursday (night)	6:00 pm - 9:00 am	15 hrs
October 18 - October 28	Monday, Wednesday (night)	6:00 pm - 9:00 am	15 hrs
November 1 - November 25	Monday, Wednesday (night)	5:00 pm - 8:00 am	15 hrs

(a) **Area:** The Deep River fishing area includes all waters from West Deep River Road Bridge at the town of Deep River downstream to the mouth defined by a line from USCG navigation marker #16 southwest to a marker on the Washington shore.

(b) **Gear:** Gillnets with a maximum mesh size restriction of 6-inches. Maximum net length is 100 fathoms. No weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. No nets can be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. Nets not specifically authorized for use may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

(c) **Permanent transportation rules in effect.** In accordance with WAC chapter 220-352, commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(d) **Allowable Sales:** Salmon (except Chum), shad, and white sturgeon. A maximum of **three** white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). This white sturgeon possession and sales limit applies to all Select Area fisheries.

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

(6) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions

of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

(7) Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

WSR 21-16-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-129—Filed July 28, 2021, 3:59 p.m., effective July 28, 2021, 3:59 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule opens the 2021 tribal fall commercial fisheries above Bonneville, and in accordance with state/tribal MOUs/MOAs for below Bonneville Dam. This rule is consistent with actions of the Columbia River Compact on June 8, June 23, July 8, and July 27, 2021. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings

and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: July 28, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000Q Columbia River salmon seasons. Effective July 27, 2021, until further notice the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Season: Immediately through 11:59 PM July 31, 2021.

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

(c) Allowable sale: Salmon (any species) and steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2021.

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

(a) Season: 12:01 AM August 1, 2021, until further notice.

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

(c) Allowable sale: Salmon (any species) and steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be

sold after the period concludes. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

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

3) Open Areas: SMCRA 1E1 (Downstream of Bonneville Dam)

(a) Season: Immediately through 11:59 PM October 31, 2021, only during days and times opened under tribal rules.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in the fisheries downstream of Bonneville Dam.

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

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

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

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

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

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

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REPEALER

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

WAC 220-359-02000P Columbia River salmon seasons. (21-114)

WSR 21-16-057

EMERGENCY RULES

DEPARTMENT OF ECOLOGY

[Order 21-11—Filed July 28, 2021, 4:11 p.m., effective July 28, 2021, 4:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of ecology is adopting a new emergency rule chapter 173-167 WAC, Emergency drought funding. This emergency rule provides eligibility criteria for grant funds to alleviate hardship resulting from the drought declared on July 14, 2021.

The emergency rule will be effective through November 25, 2021. If needed, ecology may adopt subsequent emergency rules.

Please visit our website for information and to participate in the rule-making process <https://www.ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-167-2021>.

Citation of Rules Affected by this Order: New chapter 173-167 WAC.

Statutory Authority for Adoption: Chapter 43.83B RCW, Drought conditions.

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

Reasons for this Finding: An emergency rule is necessary to protect public health and safety and promote timelines that are in the best interest of the public. Once the rule is in place, ecology may distribute funds to alleviate hardship. Drought can cause immediate impacts to public bodies. To address these impacts, drought funding needs to be administered 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 0, Repealed 0; or Recently Enacted State Statutes: New 13, 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 13, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, 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: July 28, 2021.

Laura J. Watson
Director

OTS-1434.4

Chapter 173-167 WAC
EMERGENCY DROUGHT FUNDING

NEW SECTION

WAC 173-167-180 Purpose and applicability. (1) Ecology is authorized to provide funding to public entities to implement projects and measures that alleviate undue hardship caused by drought conditions negatively affecting:

(a) The delivery of safe and reliable drinking water supplies;
(b) The survival of fish and wildlife; and
(c) The viability of agricultural activities and livestock operations.

(2) This chapter establishes criteria for grant eligibility, selection, issuance, and performance, and applies to projects under which ecology may disburse funds for addressing undue hardship caused by drought conditions.

(3) Provisions in this chapter supplement provisions of chapter 173-166 WAC. In the event of any conflict between this rule and chapter 173-166 WAC, the provisions of this chapter control.

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NEW SECTION

WAC 173-167-190 Definitions. Definitions only apply to this chapter:

(1) "Agreement effective date" means the date on which the grant agreement becomes effective, as specified in the agreement.

(2) "Agreement signature date" means the date the grant agreement is signed by ecology.

(3) "Applicant" means an entity that applies for a grant.

(4) "Budget" means, for the purpose of grant agreements, a breakdown of eligible costs by task.

(5) "Ecology" means the Washington state department of ecology.

(6) "Grant agreement" or "agreement" means the formal, written, contractual document that details the terms and conditions, scope of work, budget, and schedule of the grant, signed by authorized signatories of the recipient and ecology.

(7) "Recipient" means an entity that has a grant agreement.

(8) "Scope of work" means the tasks, deliverables, and timelines of the grant agreement.

[]

NEW SECTION

WAC 173-167-200 Funding limitations. (1) Ecology will administer grants in accordance with the *Administrative Requirements for Recipients of Ecology Grants and Loans*. (Publication No. 17-01-004.) Revised September 2017.

(2) Except for state agency applicants and as provided for in subsection (3) of this section, applicants must provide cost-share totaling fifty percent of the total eligible cost of the project.

(3) If an applicant is seeking funding for a public water system to address the immediate undue hardship arising from drought condi-

tions and it serves a population of less than twenty-five thousand individuals with a mean household income of eighty percent or less of the state average, these applicants qualify for an exemption from the cost-share requirement.

(4) The department will provide no more than one hundred thousand dollars to any single entity or any single project with funding authorized under this chapter, except applicants meeting criteria under subsection (3) of this section may qualify for up to seven hundred thousand dollars of funding.

[]

NEW SECTION

WAC 173-167-210 Application. (1) All applicants must use the electronic system identified by ecology to apply for grants. Applicants without access to the electronic system must use a process approved by ecology.

(2) The applicant must complete the application process and provide all required information, including:

- (a) Applicant information;
- (b) Project location and description;
- (c) Requested funding amount and budget for the project;
- (d) Description of project benefit(s), including:
 - (i) Problem(s) or need(s) the project would address;
 - (ii) Timing and the extent to which the project is expected to address the identified needs;
 - (iii) Quantity of water, acreage, and number of residences affected by the proposed project, as applicable;
 - (iv) Method(s) used to determine project benefits; and
 - (v) Metrics for project success, including quantitative metrics if available.
- (e) Scope of work for the project;
- (f) Any other information required by ecology to evaluate the project.

(3) Ecology may request additional information to assist in the application evaluation process and may remove an application from further consideration if the application is incomplete.

[]

NEW SECTION

WAC 173-167-220 Eligible public entities for grant funding under this chapter. (1) The first one million dollars in funding will be available to address drought hardships through requests made to:

- (a) The department of health for drinking water emergencies;
- (b) The department of fish and wildlife for fish health emergencies; or
- (c) The conservation commission for agricultural emergencies.

(2) The first one million dollars in drought response funding that is available under this chapter shall be reserved for state agencies to fund emergency response activities by local and state agen-

cies. Funding limitations and restrictions in WAC 173-167-200 do not apply to grants issued to state agencies under this subsection.

(3) If more than one million dollars of funding is made available for drought emergency response activities, ecology will solicit proposals directly for grants from the following entities:

- (a) State, county, or city governmental agencies.
- (b) Federally recognized tribes.
- (c) Public utility districts, formed under chapter 54.04 RCW.
- (d) Water and sewer districts, formed under chapter 57.02 RCW.
- (e) Conservation districts, formed under chapter 89.08 RCW.
- (f) Irrigation districts, formed under chapter 87.03 RCW.
- (g) Port districts formed under chapter 53.04 RCW.
- (h) Watershed management partnerships formed under RCW 39.34.200.

[]

NEW SECTION

WAC 173-167-230 Eligibility for funding. (1) An activity or project for response to emergency drought conditions must be partially or completely within the area of a drought declaration order by ecology, which can be found at <https://ecology.wa.gov/DOE/files/40/408b30b3-0d96-4d57-aad8-36e675448b08.pdf> (a map of the drought declaration area can be viewed at <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-availability/Statewide-conditions/Drought-2021>).

(2) Funding provided under the first one million dollars available under this chapter shall be authorized for drought impacts resulting in a public health emergency due to a lack of potable water, a fish health emergency due to water quality or quantity problems, or an agricultural emergency resulting in the potential for loss of life of agricultural animals or agricultural crops.

(3) If more than one million dollars of funding is made available for drought emergency response activities, one or more of the following must be partially or completely within the area of a drought declaration order by ecology:

- (a) The public water system's service area;
- (b) The geographic area where irrigated agriculture or livestock are located;
- (c) The source of water, or the water body, that supplies water to the entity applying for funding.

(4) The reduction in water supply caused by drought must cause, or is expected to cause, undue hardship, as described under WAC 173-167-260.

(5) Funding may be granted if the following conditions are met:

(a) The proposed project or measure must be for an established beneficial use of water and not used for irrigation of new acreage or another new or expanded use.

(b) The applicant must provide documentation to ecology or the granting state agency that demonstrates ability to complete the project or measure on or before the expiration of the declared drought emergency.

(c) Water derived from the project or measure must be put to beneficial use and address the current water shortage during the drought declaration.

(d) The proposed project or measure cannot impair existing water rights, including instream and out-of-stream rights.

(e) The applicant must obtain all required permits and approvals for the proposed project prior to initiating work.

(f) If an applicant is seeking funding for a public water system, the applicant must obtain Washington department of health approval of the proposed project.

(g) If an applicant is on behalf of a public water system, the system must describe water conservation actions or demonstrate that the applicant has already made reasonable efforts to address their water supply shortage through conservation measures.

[]

NEW SECTION

WAC 173-167-240 Waiver. To expedite drought relief projects and measures, ecology can approve funding or compensation under this chapter without complying with:

- (1) Notice of publication;
- (2) The State Environmental Policy Act; and
- (3) Competitive bidding requirements.

[]

NEW SECTION

WAC 173-167-250 Eligible projects or measures. (1) Eligible projects or measures include, but are not limited to:

(a) Leasing or acquiring water rights providing an uninterrupted water supply for instream or out-of-stream use;

(b) Establishing emergency interties or other alternate source(s) of supply;

(c) Obtaining an emergency supply of potable water from trucks or bottles;

(d) Addressing fish hatchery or migration barriers caused by drought conditions;

(e) The cost of providing personnel necessary to implement the activities identified in this section.

(2) Ecology retains the discretion to fund an eligible project for less than the amount requested or deny a grant request for an eligible project. Situations where ecology may reduce or deny a grant request for an eligible project include, but are not limited to, incomplete application submittal, unavailability of sufficient funding for a project, or evidence that information submitted in an application is false or inaccurate.

[]

NEW SECTION

WAC 173-167-260 Undue hardship. (1) Undue hardship will be evaluated by considering:

(a) The short-term and long-term economic, public health, or environmental effects the water shortage would have in the absence of drought relief on agricultural crops, livestock operations, public water system safety and reliability, or instream fish and wildlife resources.

(b) The degree to which current drought conditions are directly responsible for the effects described as undue hardship.

(c) The amount of water shortage experienced or forecast for each applicant.

(2) In the Yakima Basin (water resource inventory areas 37, 38, and 39), undue hardship exists for irrigators at a water supply threshold consistent with the objectives of the Yakima Basin integrated plan. Undue hardship for irrigation projects does not exist if irrigation districts with junior prorated allocations receive seventy percent or greater of normal water supply.

[]

NEW SECTION

WAC 173-167-270 Grant agreement. (1) Ecology will work with the recipient to prepare the grant agreement.

(2) A grant agreement issued and managed in ecology's electronic system must include, at a minimum:

- (a) Project description;
- (b) Expected outcomes;
- (c) Project budget and funding distribution;
- (d) Agreement effective date and expiration date;
- (e) Description of tasks, deliverables, and timelines;
- (f) Contact information for ecology and the recipient;
- (g) Signatures of authorized signatories;
- (h) General terms and conditions that specify requirements related, but not limited to:
 - (i) Amendments and modifications;
 - (ii) Assignment limits on transfer of rights or claims;
 - (iii) Inadvertent discovery plan for human remains and/or cultural resources;
 - (iv) Compliance with all laws;
 - (v) Conflict of interest;
 - (vi) Disputes;
 - (vii) Environmental data standards;
 - (viii) Governing law;
 - (ix) Indemnification;
 - (x) Independent status of the parties to the agreement;
 - (xi) Order of precedence for laws, rules, and the agreement;
 - (xii) Property rights, copyrights, and patents;
 - (xiii) Records, audits, and inspections;
 - (xiv) Recovery of funds;
 - (xv) Severability;
 - (xvi) Suspension;
 - (xvii) Sustainable practices;

- (xviii) Termination;
- (xix) Third-party beneficiary;
- (xx) Waiver of agreement provisions.
 - (i) Special terms and conditions, if any;
 - (j) Agreement-specific terms and conditions, if any;
 - (k) Other items, if any, necessary to meet the goals of the grant program.

(3) All grant agreements under this chapter will include the latest version, as of the original agreement date, of ecology's grant general terms and conditions.

(4) Ecology may choose to extend a grant agreement at its sole discretion.

[]

NEW SECTION

WAC 173-167-280 Performance standards—General provisions. (1)

Nothing in this chapter influences, affects, or modifies existing ecology programs, rules, or enforcement of applicable laws and rules relating to activities funded by a grant.

(2) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant agreements, records, and activities.

(3) New ecology grant agreements signed after the effective date of this chapter must be managed using ecology's designated electronic system. A recipient who cannot access the electronic system to meet a deadline or agreement requirements must use a process approved by ecology.

(4) Ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

(5) Recipients must:

- (a) Follow all applicable accounting and auditing laws and rules related to grants;
- (b) Use funds according to the agreement;
- (c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules;
- (d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement;
- (e) Obtain prior approval for equipment purchases over the amount specified in the agreement.

(6) As specified in the grant agreement, the recipient must submit the following to ecology:

- (a) Progress reports;
- (b) Payment requests;
- (c) Equipment and materials purchase reports, including receipts;
- (d) Documentation of project implementation;
- (e) A final closeout report;
- (f) Any other required information.

(7) Ecology will:

- (a) Follow all applicable accounting and auditing laws and rules related to grants;

(b) Monitor projects and review progress reports to assure compliance with applicable laws, rules, orders, permits, and terms and conditions of the agreement;

(c) Confirm receipt of required documentation and satisfactory completion of the project before approving final payment.

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NEW SECTION

WAC 173-167-290 Closing out the agreement. (1) The recipient must follow the closeout requirements in the agreement.

(2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the time frames in the agreement.

(3) Ecology will close out the grant agreement when it determines the recipient has met the requirements or when the agreement has been terminated (see WAC 173-167-300).

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NEW SECTION

WAC 173-167-300 Termination of agreement. (1) Failure by the recipient to comply with a grant agreement may result in termination of the agreement.

(2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior to terminating an agreement.

(3) Ecology's ability to make payments is contingent on availability of funding.

(4) Ecology will document the termination of an agreement.

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WSR 21-16-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-135—Filed July 28, 2021, 4:51 p.m., effective August 6, 2021]

Effective Date of Rule: August 6, 2021.

Purpose: The purpose of this emergency rule is to open recreational salmon seasons in the portion of Marine Area 10 that is the East Elliott Bay Fishery.

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

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

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

Reasons for this Finding: This emergency rule is necessary to modify salmon seasons in Marine Area 10, to conform with seasons and rules agreed to with comanagers during the 2021 North of Falcon season setting process. 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: July 28, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000H Puget Sound salmon—Saltwater seasons and daily limits. Effective August 6 through 11:59 AM, August 9, 2021, the following provisions of WAC 220-313-060 regarding salmon seasons for the section of Marine Area 10 known as the East Elliott Bay fishery, as defined herein shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 10; East Elliott Bay:

(a) East Elliott Bay is defined as: Water of Elliott Bay between a line from Duwamish Head to Pier 91 up to the mouth of the Duwamish River including Harbor Island (Duwamish Waterways).

- (b) Salmon:
- (i) Daily limit 2 salmon.
- (ii) Release chum.

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WSR 21-16-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed July 30, 2021, 10:35 a.m., effective July 30, 2021, 10:35 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On or about July 29, 2021, an emaciated Southern Resident killer whale, K21, was reported off the southern tip of Vancouver Island. The department verified the images of the emaciated whale on the morning of July 30, 2021, and determined that the designation of "sick or vulnerable" is appropriate. Per WAC 220-460-110, the department is adopting an emergency rule to designate K21 as vulnerable and thereby prevent commercial whale watching operators from approaching this individual or a group containing the individual within 0.5 nautical mile. This designation and the additional distance are necessary to ensure that K21's ability to survive is not hindered by the presence of vessels.

Citation of Rules Affected by this Order: New WAC 220-460-110A.

Statutory Authority for Adoption: RCW 77.65.620.

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 imminent risk to an endangered species requires additional protection immediately. This emergency action is necessary to protect the public's interest in the preservation of a vulnerable endangered animal.

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 X [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: July 30, 2021.

Kelly Susewind
SRKW K21 Protection

NEW SECTION

WAC 220-460-110A Southern Resident Killer Whale K21 Notwithstanding the provisions of WAC 220-460-110, effective immediately, the department declares the emaciated male Southern Resident Killer Whale K21 as a vulnerable individual. It is unlawful for commercial whale watching operators to approach within 0.5 nautical mile of the indi-

vidual Southern Resident Killer Whale K21, or within 0.5 nautical mile of a group of Southern Residents containing K21.

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WSR 21-16-068
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed July 30, 2021, 11:17 a.m., effective July 30, 2021, 11:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To implement changes related to the passage of SHB 1411 which adds time limitations to certain crimes which were previously permanently disqualifying: Assault 2, Assault 3, Delivery of marijuana, Extortion 2, Theft 1, and Robbery 2; to add a provision which removes the automatic disqualification, allowing for a character competence and suitability review, for a crime listed which is accompanied by a court issued certificate of restoration of opportunity; and to remove domestic violence (felonies only) from the list of automatically disqualifying crimes because by law this is an aggravator added to another crime, not a stand-alone crime.

Citation of Rules Affected by this Order: Amending WAC 388-113-0020.

Statutory Authority for Adoption: RCW 74.08.090, 43.43.842, 74.39A.056.

Other Authority: SHB 1411.

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: To preserve and expand the workforce of long-term care workers by balancing client choice and safety. These proposed changes remove criminal history related barriers to employment for individuals working for or intending to work for vulnerable persons.

This emergency rule filing is necessary to ensure current WAC aligns with the statutory amendments in SHB 1411 passed in the 2021 legislative session. The department needs to have its rule align with the statute so that providers affected by the statute changes are not automatically disqualified, but receive a character, competence or suitability determination as to whether they can become a paid provider to the vulnerable adult. SHB 1411 is effective July 25, 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 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: July 30, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4879.2

AMENDATORY SECTION (Amending WSR 18-08-066, filed 4/2/18, effective 5/3/18)

WAC 388-113-0020 Which criminal convictions and pending charges automatically disqualify an individual from having unsupervised access to adults or minors who are receiving services in a program under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC?

(1) Individuals who must satisfy background checks requirements under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC must not work in a position that may involve unsupervised access to minors or vulnerable adults if the individual has been convicted of or has a pending charge for any of the following crimes:

- (a) Abandonment of a child;
- (b) Abandonment of a dependent person;
- (c) Abuse or neglect of a child;
- (d) Arson 1;
- (e) Assault 1;
- (f) Assault 2 (less than five years);
- (g) Assault 3 (less than five years);
- (h) Assault 4/simple assault (less than three years);
- (i) Assault 4 domestic violence felony;
- (j) Assault of a child;
- (k) Burglary 1;
- (l) Child buying or selling;
- (m) Child molestation;
- (n) Coercion (less than five years);
- (o) Commercial sexual abuse of a minor/patronizing a juvenile prostitute;
- (p) Communication with a minor for immoral purposes;
- (q) Controlled substance homicide;
- (r) Criminal mistreatment;
- (s) Custodial assault;
- (t) Custodial interference;
- (u) Custodial sexual misconduct;
- (v) Dealing in depictions of minor engaged in ~~((sexual))~~ sexually explicit conduct;
- (w) ~~((Domestic violence (felonies only))~~;
~~(x))~~ Drive-by shooting;
- ~~((y))~~ (x) Drug crimes ~~((, if they involve))~~ involving one or more of the following:
 - (i) ~~((Manufacture of))~~ Manufacturing or possession with the intent to manufacture a drug;
 - (ii) Delivery ~~((of))~~ or possession with the intent to deliver a drug other than marijuana;
 - (iii) ~~((Possession of a drug with the intent to manufacture or deliver))~~ Delivery of marijuana (less than three years).
- ~~((z))~~ (y) Endangerment with a controlled substance;
- ~~((aa))~~ (z) Extortion 1;
- (aa) Extortion 2 (less than five years);
- ~~((bb))~~ (bb) Forgery (less than five years);
- ~~((cc))~~ (cc) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- ~~((dd))~~ (dd) Identity theft (less than five years);

((ee)) (ee) Incendiary devices (possess, manufacture, dispose);
 ((ff)) (ff) Incest;
 ((gg)) (gg) Indecent exposure/public indecency (felony);
 ((hh)) (hh) Indecent liberties;
 ((ii)) (ii) Kidnapping;
 ((jj)) (jj) Luring;
 ((kk)) (kk) Malicious explosion 1;
 ((ll)) (ll) Malicious explosion 2;
 ((mm)) (mm) Malicious harassment;
 ((nn)) (nn) Malicious placement of an explosive 1;
 ((oo)) (oo) Malicious placement of an explosive 2 (less than
 five years);
 ((pp)) (pp) Malicious placement of imitation device 1 (less
 than five years);
 ((qq)) (qq) Manslaughter;
 ((rr)) (rr) Murder/aggravated murder;
 ((ss)) (ss) Possess depictions minor engaged in sexual conduct;
 ((tt)) (tt) Promoting pornography;
 ((uu)) (uu) Promoting prostitution 1;
 ((vv)) (vv) Promoting suicide attempt (less than five years);
 ((ww)) (ww) Prostitution (less than three years);
 ((xx)) (xx) Rape;
 ((yy)) (yy) Rape of child;
 ((zz)) (zz) Residential burglary;
 ((aaa)) (aaa) Robbery 1;
 ((bbb)) (bbb) Robbery 2 (less than five years);
 ((ccc)) (ccc) Selling or distributing erotic material to a mi-
 nor;
 ((ddd)) (ddd) Sending or bringing into the state depictions of
 a minor engaged in sexually explicit conduct;
 ((eee)) (eee) Sexual exploitation of minors;
 ((fff)) (fff) Sexual misconduct with a minor;
 ((ggg)) (ggg) Sexually violating human remains;
 ((hhh)) (hhh) Stalking (less than five years);
 ((iii)) (iii) Theft 1 (less than ten years);
 ((jjj)) (jjj) Theft from a vulnerable adult 1;
 ((~~jjj~~)) (~~jjj~~) ~~Theft from a vulnerable adult 2 (less than ten years);~~
 ((kkk)) (kkk) Theft 2 (less than five years);
 ((lll)) (lll) Theft from a vulnerable adult 2 (less than ten years);
 ((~~lll~~)) (~~lll~~) ~~Theft 3 (less than three years);~~
 ((mmm)) (mmm) Unlawful imprisonment;
 ((nnn)) (nnn) Unlawful use of building for drug purposes (less
 than five years);
 ((~~ooo~~)) (~~ooo~~) ~~Use of machine gun in a felony;~~
 ((ppp)) (ppp) Vehicular assault;
 ((~~qqq~~)) (~~qqq~~) ~~Violation of temporary restraining order or pre-
 liminary injunction involving sexual or physical abuse to a child;~~
 ((~~rrr~~)) (~~rrr~~) ~~Violation of a temporary or permanent vulnerable
 adult protection order (VAPO) that was based upon abandonment, abuse,
 financial exploitation, or neglect; and~~
 ((sss)) (sss) Voyeurism.

(2) If "(less than ten years)," "(less than five years)," or
 "(less than three years)" appears after a crime listed in subsection
 (1) of this section, the individual is not automatically disqualified
 if the required number of years has passed since the date of the con-
 viction. This will result in a letter from the background check cen-
 tral unit indicating a character, competence, and suitability review

is required before allowing unsupervised access to children or vulnerable adults. This provision applies to convictions that the department has determined under subsection (3) of this section as equivalent to a crime listed in subsection (1) of this section once the period of time listed in subsection (1) of this section has passed.

(3) When the department determines that a conviction or pending charge in federal court or in any other court, including state court is equivalent to a Washington state crime that is disqualifying under this section, the equivalent conviction or pending charge is also disqualifying.

(4) In instances where a court has issued a certificate of restoration of opportunity of one of the crimes listed above, according to the procedure in RCW 9.97.020, the conviction is not automatically disqualifying but is subject to a character, competence, and suitability review.

[Statutory Authority: RCW 74.08.090, 43.43.842, 74.39A.056. WSR 18-08-066, § 388-113-0020, filed 4/2/18, effective 5/3/18. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0020, filed 6/24/14, effective 7/25/14.]

WSR 21-16-078
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 2, 2021, 9:08 a.m., effective August 5, [2021]]

Effective Date of Rule: August 5[, 2021].

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. The 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.

Citation of Rules Affected by this Order: New WAC 388-14A-2210.

Statutory Authority for Adoption: RCW 26.23.110, 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. The department is proceeding with permanent adoption, filed the CR-101 under WSR 20-09-148, has been working on proposed language, and plans to file a CR-102 proposal shortly.

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: July 30, 2021.

Katherine I. Vasquez

SHS-4802.2

NEW SECTION

WAC 388-14A-2210 What is the procedure for service by certified mail during the COVID-19 emergency? (1) Due to the ongoing national and state emergency relating to COVID-19, 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 ten 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 21-16-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-136—Filed August 2, 2021, 9:59 a.m., effective August 4, 2021]

Effective Date of Rule: August 4, 2021.

Purpose: The purpose of this emergency rule is to open recreational sockeye salmon seasons in Lake Wenatchee.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

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

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

Reasons for this Finding: Based on current sockeye passage analysis at both Tumwater Dam and mainstem Columbia River Dams, the Washington department of fish and wildlife projects twenty-nine thousand total sockeye are destined for Lake Wenatchee. This provides an estimated six thousand sockeye to be available for harvest above the natural spawning escapement goal of twenty-three thousand fish. This fishery will be monitored closely and may close on short notice depending upon angler participation and harvest rates.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 2, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000W Exceptions to statewide rules—Eastside. Effective August 4, 2021, until further notice, the following provisions of WAC 220-312-050 regarding Lake Wenatchee (Chelan County) recreational seasons for salmon shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, and unless otherwise amended by emergency rule, remain in effect:

Daily limit 2 salmon:

- (a) Release all salmon other than sockeye.
- (b) Selective gear rules in effect.
- (c) Night closure in effect.

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WSR 21-16-086
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-137—Filed August 2, 2021, 4:18 p.m., effective August 3, 2021]

Effective Date of Rule: August 3, 2021.

Purpose: The purpose of this emergency rule is to close recreational Chinook retention in Marine Area 6.

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

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

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

Reasons for this Finding: This emergency rule is necessary to modify salmon seasons in Marine Area 6. The current estimate of total legal sized Chinook encounters is 6,843 (one hundred percent) of the total 6,843 legal sized encounters agreed upon in this year's list of agreed fisheries. Because one hundred percent of the legal sized Chinook encounter quota has been met, the Washington department of fish and wildlife staff have made the decision to suspend Chinook retention in order to preserve Coho and Pink opportunities in Area 6. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 2, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000I Puget Sound salmon—Saltwater seasons and daily limits. Effective August 3 through August 15, 2021, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 6 shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 6: Salmon:

- (a) Daily limit 2 salmon.
- (b) Release Chinook, chum, and wild coho.

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WSR 21-16-096

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed August 3, 2021, 12:06 p.m., effective August 3, 2021, 12:06 p.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. This emergency rule amends WAC 246-335-545 and WAC 246-335-645 to remove the requirement that supervision of aide services must be "during an on-site visit" and to add language that the supervisory visit "may be conducted on-site or via telemedicine." This rule will allow home health and hospice agencies to perform supervision either on-site or via telemedicine.

This rule also amends the definition of "telemedicine" in WAC 246-335-510 and 246-335-610 to 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 COVID-19-related guidelines and department of health (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. Adopting emergency rules extending flexibility in how supervision is performed will align department rule with federal and state guidelines and extend some aspects of current waivers past the eventual end of the COVID-19 declared emergency as Washington begins recovery.

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 the circumstances are warranted.

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. 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 performing clinical care by focusing on admitting new patients as they transition 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: August 3, 2021.

Kristin Peterson, JD
Deputy Secretary for 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 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 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 direc-

tion 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.]

WSR 21-16-102
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-138—Filed August 3, 2021, 3:38 p.m., effective August 6, 2021]

Effective Date of Rule: August 6, 2021.

Purpose: The purpose of this emergency rule is to open recreational salmon seasons in Catch Record Card Area 2, seven days per week.

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

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

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

Reasons for this Finding: This rule is needed to expand recreational fishing opportunity by opening an additional two days of salmon fishing each week in Marine Area 2. Sufficient quota remains available to allow additional fishing opportunity while still meeting the Pacific Coast Salmon Fishery Management Plan goal of continuing recreational salmon fishing into September. These rules are also adopted at the recommendation of the Pacific Fisheries Management Council and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 3, 2021.

Kelly Susewind
Director

NEW SECTION

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

Effective August 6 through September 15, 2021 the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC

220-313-075 not addressed herein remain in effect unless otherwise amended:

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

Open immediately through September 15, 2021:

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

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

Open immediately through September 15, 2021:

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

Zone is open. See WAC 220-306-040

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

Open immediately through September 15, 2021:

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

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

Open immediately through September 15, 2021:

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

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

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REPEALER

The following section of Washington Administrative Code is repealed, effective August 6, 2021:

WAC 220-313-07500B Pacific Ocean salmon—Seasons—Closed areas. (21-124)

WSR 21-16-105
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-139—Filed August 3, 2021, 4:51 p.m., effective August 5, 2021]

Effective Date of Rule: August 5, 2021.

Purpose: The purpose of this emergency rule is to close recreational Chinook retention in Catch Record Card Area 9.

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

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

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

Reasons for this Finding: This emergency rule is necessary to modify salmon seasons in Marine Area 9. The current estimate of Chinook harvest is 4,418 (ninety-four percent) of the total 4,700 harvest quota agreed up [upon] in this year's list of agreed fisheries. Because ninety-four percent of the Chinook harvest quota has been met, Chinook retention is closing in order to preserve coho and pink opportunities in Area 9. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 3, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000J Puget Sound salmon—Saltwater seasons and daily limits. Effective August 5 through August 15, 2021, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 9 shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 9: Salmon:

(a) Daily limit 2 salmon.

(b) Release Chinook, chum, and wild coho.

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