

WSR 21-24-071

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

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

Effective Date of Rule: Immediately upon filing.

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

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

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

Statutory Authority for Adoption: RCW 69.07.020, 69.07.220.

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

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

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

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

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

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 0, Repealed 0.

Date Adopted: November 30, 2021.

Derek I. Sandison
Director

Chapter 16-171 WAC
HEMP EXTRACT CERTIFICATION

NEW SECTION

WAC 16-171-100 Hemp extract certification—Purpose. The purpose of this chapter is to:

(1) Establish requirements for new hemp extract certification applications and renewals.

(2) Establish an inspection criteria and a rating system that will be used to determine whether a hemp extract certification applicant is in compliance with chapters 69.07 and 15.130 RCW, and regulations adopted thereunder, including Title 21 C.F.R.

(3) Identify steps leading to enforcement actions by the department.

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NEW SECTION

WAC 16-171-110 Hemp extract—Definitions. (1) Definitions for terms used in this chapter may be found in chapters 69.07, and 15.130 RCW, and Title 21 C.F.R. as adopted in WAC 16-167-050, unless otherwise provided in this chapter.

(2) For the purposes of this chapter, the following definitions apply:

(a) "Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practice.

(b) "Adulterate" has the same meaning as provided in RCW 15.130.200 except that the department does not consider hemp extract itself to be adulterated when produced in compliance with RCW 69.07.220 and these rules for use as a food ingredient in another state that allows its use as a food ingredient.

(c) "Certification criteria violation" means any violation of the inspection criteria that must be met prior to the issuance of a hemp extract certification.

(d) "Critical violation" means a violation of the inspection criteria that results in hemp extract adulteration or that has the potential to contribute to conditions resulting in such adulteration.

(e) "Department" means the Washington State Department of Agriculture (WSDA).

(f) "Director" means the director of the department.

(g) "Facility or hemp extract facility" means any premise, plant, building, room, area, or facility which processes, prepares, or handles hemp for production of hemp extract for use as a food ingredient in another state that allows its use as a food ingredient.

(h) "Hemp" has the same meaning as provided for in RCW 15.140.020, and means the plant *Cannabis sativa* L. and any part of the plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(i) "Hemp extract" means a substance or compound intended for human ingestion that is derived from, or made by, manufacturing hemp. The term does not include hemp seeds or hemp seed-derived ingredients that are generally recognized as safe by the United States Food and Drug Administration.

(j) "Hemp extract certification" means a certification issued by the department to a hemp extract facility manufacturing hemp extract for export to other states, which certifies the hemp extract facility's compliance with Washington state's inspection and sanitation requirements.

(k) "Hemp processor" has the same meaning as provided for in RCW 15.140.020, and means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

(l) "Sanitize" means to adequately treat hemp extract contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

(m) "Significant violation" means any violation of the inspection criteria not deemed to be a critical violation as described in WAC **16-171-140.**

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

NEW SECTION

WAC 16-171-120 Hemp extract facility certification—New application and renewals—Inspection criteria. To qualify for a new Hemp Extract Certification issued under chapter **69.07** RCW, the Washington Food Manufacturing Act, a hemp processor must first make an application to the department. After the department receives a complete application, the department will inspect the facility. The facility must be in compliance with the following requirements prior to issuance of a certification:

(1) The applicant must submit an application that includes:

(a) The full name of the applicant and the location of the hemp extraction facility where the applicant intends to operate, and if the applicant is an entity, the full name of each officer, managing member, or other responsible individuals;

(b) The principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant; and

(c) The type of hemp extracts to be processed, the method of manufacturing, and any other necessary information to make an evaluation.

(2) A hemp processor holding a hemp extract certification must apply for renewal of the certification annually.

(3) The appropriate fee must accompany the application submitted to the department, as follows:

(a) For new applications, the fee is \$1,400.

(b) For a new certification inspection, the fee is \$3,000.

(b) For renewal applications, the fee is \$1,500.

(4) The hemp extract facility must be in substantial compliance with inspection criteria as described in WAC 16-171-150(2). Refer to WAC **16-171-140** for the inspection and certification criteria and WAC 16-171-130 for definitions of certain inspection criteria. For the purposes of certification, a hemp extract facility may incur a one-point debit of a licensing criteria that has sliding scale.

(5) To renew a certification, a hemp extract manufacturer must submit a renewal application and fees before the manufacturer's current certification expires. If the department has received receipt of a submitted renewal application and fees before the certification expiration date, the time period of the prior certification extends until the department either issues the renewed certification or denies the renewal application. If a manufacturer does not timely submit a renewal application or fees, the prior certification expires upon the expiration date.

(6) Upon the approval of the application by the director the applicant shall be issued a new or renewal certification.

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NEW SECTION

WAC 16-171-130 Hemp extract certification—Inspection criteria definitions. This section provides definitions for certain criteria the department will use when conducting inspections to determine if a hemp extract facility complies with inspection criteria and Good Manufacturing Practices for hemp extract certification. The complete set of inspection criteria is set forth in WAC 16-171-140.

(1) "Clean and adequate protective clothing and hair restraints" means the clothing, or the outside layer of clothing, which can occasionally or incidentally contact hemp extract, either directly or indirectly, is:

- (a) Clean at the start of the work shift; and
- (b) Changed when the clothing becomes so soiled during the course of the work shift that contamination of hemp extract, hemp extract packaging or hemp extract contact surfaces becomes imminent; and
- (c) Suitable to the specific hemp extract manufacturing operation for protection against the contamination of hemp extract, hemp extract packaging, and hemp extract contact surfaces; and
- (d) Clean and effective hair restraints, such as hairnets, or beard nets if appropriate, are worn for the protection of hemp extract from contamination. Hats, caps, scarves or other head cover are acceptable if the hair is properly contained to protect hemp extract from contamination. Hair spray and/or tying back the hair in pony-tails, etc., are not considered effective hair restraints.

(2) "Adequate washing and sanitizing of hands as necessary" means washing and sanitizing hands thoroughly to protect against contamination of hemp extract from undesirable microorganisms in an adequate hand wash facility by:

- (a) Using proper handwashing methods which consist of:
 - (i) Applying soap to hands;
 - (ii) Using warm water;
 - (iii) Scrubbing hands thoroughly;
 - (iv) Rinsing and drying hands using methods that prevent hemp extract contamination;
- (v) Washing hands before beginning work, after each absence from the work station, and any time hands become soiled or contaminated; and
- (vi) Sanitizing hands when appropriate in addition to, but not in place of, the proper handwashing methods.

(3) "Garments and personal belongings stored appropriately; not a source of contamination" means personal belongings and garments, either personal or supplied by the hemp extract facility, are stored or kept separately from hemp extract manufacturing, handling and storage operations such as in an area, locker, cupboard, or other closeable unit that is dedicated to the storing or hanging of personal belongings and clothing so not to become a source of contamination to hemp extract, hemp extract packaging or hemp extract contact surfaces; and

No hemp extract, packaging materials, utensils or equipment used in the hemp extract manufacturing operation are kept, stored or commingled with personal belongings or garments.

(4) "Processes separated as required" means there is a separation of processes for the purpose of reducing potential contamination in hemp extract manufacturing operations where contamination is likely to occur. One or more of the following means may accomplish this:

- (a) Location;
- (b) Time;
- (c) Partition;
- (d) Air flow;
- (e) Enclosed systems; or
- (f) Other effective method

(5) "Adequate light" means lighting is provided in hand-washing, dressing and locker rooms, toilet rooms and in all areas where hemp extract is examined, manufactured or equipment is cleaned. Shatter resistant light bulbs or fixtures are to be used to protect against hemp contamination.

(6) "Detergents, sanitizers and toxic materials properly identified" means:

(a) Labeling any container containing detergent, sanitizer or toxic material with the:

- (i) Product name;
- (ii) Chemical description;
- (iii) Directions for use;
- (iv) Any required precautionary and warning statements;
- (v) First-aid instructions;
- (vi) Name and address of the manufacturer or distributor; and
- (vii) Any other additional information required by the federal

Environmental Protection Agency or other laws or rules; and

(b) Small transport or use containers for detergents, sanitizers or toxic materials are used only under the following conditions:

(i) The contents are properly identified on the container. Labeling the container with the common name is acceptable if the original storage container is on hand and properly identified;

(ii) No hemp extract container is used as a container for detergents, sanitizers or toxic materials;

(iii) No container used for detergents, sanitizers or toxic materials, is used as a hemp extract container.

(7) "Product contact surfaces clean and maintained in a sanitary condition, cleaned and sanitized prior to each use or as essential" means:

(a) Product contact surfaces of equipment, utensils, containers and other articles used in the manufacturing of hemp extract, when its continued use is apparent, are cleaned as frequently as necessary to protect against contamination of hemp extract.

(b) Hemp extract residues are removed from product contact surfaces frequently enough to prevent residues from becoming unwholesome or unfit for food, decomposed, filthy, putrid, or injurious to health; and

(c) The hemp extract product contact surfaces are sanitized prior to use and after cleaning as necessary.

(8) "Product contact surfaces clean and maintained in a sanitary condition, cleaned and sanitized prior to each use or as essential: Critical violation" means it is a critical violation if a hemp extract product contacts a surface that is not sanitized after cleaning or prior to use. Product contact surfaces that become contaminated, but are cleaned and sanitized prior to use, are not considered a critical violation.

(9) **"Nonproduct contact surfaces of equipment cleaned and maintained in a sanitary condition"** means nonproduct contact surfaces of equipment are kept reasonably free from dirt, old hemp extract residues, foreign material, dust, mold, mildew, slime and other accumulations that occur because of day-to-day hemp extract manufacturing operations.

(10) **"In-use hemp contact equipment and utensils appropriately stored: Protected from contamination between uses"** means the utensils used in the manufacturing of hemp, such as knives, scrapers, scoops, shovels, cutters, and other hand tools and equipment, are placed or stored in a manner to prevent hemp extract contact surfaces from being contaminated with filth. Filth includes, but is not limited to, nonpathogenic microorganisms, unsuitable toxic chemicals, and microscopic physical contaminants.

Storage and placement of utensils or equipment in the following manner is considered inappropriate storage:

(a) In contact with the floor, dirty equipment frames, other insanitary nonhemp extract contact surfaces;

(b) In contact with containers of nonpotable water (other than sterilizing solutions); and

(c) In contact with other contaminants.

(11) **"In-use hemp contact equipment and utensils appropriately stored: Protected from contamination between uses: Critical violation"** means that it is a critical violation when a utensil or piece of equipment is or has been stored in a manner that it becomes obviously contaminated with filth and its continued use is apparent.

Utensils and equipment that become contaminated are not considered a critical violation if the utensils and equipment are cleaned and sanitized prior to the next use.

(12) **Water supply — "Safe and of sanitary quality"** means the water supply used in the manufacturing of hemp is potable from an approved source and is monitored in accordance with applicable laws and rules with current satisfactory water tests as applicable. Water from an approved source and monitored in accordance with applicable laws and rules means:

(a) Hemp extract facilities with twenty-five or more employees and operating sixty days or more annually comply with the state department of health, division of drinking water requirements for a group A water system (chapter **246-290** WAC).

(b) Hemp extract facilities with less than twenty-five employees or operating less than sixty days annually, comply with the state department of health, division of drinking water requirements for a group B water system (chapter **246-291** WAC) unless connected to a Group A public water system.

(c) Private water supplies must meet the department of health, division of drinking water requirements for a group B water system (chapter **246-291** WAC) with respect to monitoring for bacteriological properties. When water is incorporated into the product, chemical and physical properties must also be monitored.

(13) **"Current satisfactory water test"** means for water obtained from other than a municipal system, analysis verifying the bacteriological, physical and chemical safety of the water has been conducted according to appropriate group A or B water system monitoring schedules and that reports of analysis are on file at the manufacturing facility and available for review by the department during routine facility inspection.

(14) **"No cross connections, no back siphonage"** means there is no backflow from or cross connection between piping systems that discharge waste water sewage and piping systems that carry water for hemp extract manufacturing. This includes any cross connection between a potable water system and a nonpotable system:

(15) **"Adequate floor drains and plumbing to convey wastes and sewage from the manufacturing facility, into approved sewage disposal system"** means:

(a) Plumbing is designed, sized, installed and maintained in accordance with applicable state and local plumbing codes so that sewage and liquid disposable waste is readily conveyed from the plant;

(b) Floor drainage is sufficient to prevent excessive pooling of water or other disposable waste;

(c) Plumbing and drains do not provide a source of contamination to hemp or hemp extract, potable water, hemp extract contact surfaces or hemp extract packaging material or create any insanitary condition; and

(d) Sewage is disposed into a municipal sewer system or other system approved by a federal, state or local agency having jurisdiction.

(16) **"Adequate, readily accessible toilet facilities"** means: A hemp extract facility provides its employees with toilet facilities that are located within a reasonable distance to the work area, and are maintained in accordance with local zoning ordinances.

a) Toilet facilities are located on the premises of a hemp extract facility.

b) If the hemp extract facility shares space in a multiple building complex, toilet facilities are located within the complex and within a reasonable distance from the work area.

c) Outhouses, chemical toilets or other nonflushing toilets may not be used.

(17) **"Toilets clean, in good repair, not opening directly into process areas, self-closing doors"** means toilet rooms are kept clean, free of trash and litter, in good repair and all toilet room doors are self-closing and do not open directly into a hemp extract manufacturing area.

(18) **"Handwash facilities adequate and convenient, with hot and cold or tempered water"** means employees and visitors in a hemp extract facility have access to one or more handwashing facilities with hot, cold, or tempered running water, and:

(a) There is at least one handwash facility located in each rest room and one in the hemp extract manufacturing area in a convenient location for use when hands become soiled.

(19) **"Hemp extract protected from contamination in storage"** means hemp and hemp extract is stored under conditions that protect against physical, chemical and microbial contamination, as well as against deterioration of the hemp extract and the container.

(20) **"Hemp extract protected from contamination in storage: Critical violation"** means it is a critical violation when a storage situation allows potential contamination of products.

(21) **"Packaging material properly handled and stored"** means: Packaging material is protected from potential sources of contamination during handling and storage. This includes, but is not limited to:

(a) Boxes, liners and other primary containers are stored off floors or other insanitary surfaces;

(b) Top containers in a nested stack of lined or primary containers are inverted or otherwise protected;

(c) All single service containers, caps, roll stock, liner jars, bottles, jugs and other preformed containers are stored in closed sanitary tubes, wrappings, boxes or cartons prior to use;

(d) The forming, make-up or other package assembly is conducted in a manner that prevents contamination;

(e) The handling of packaging material and containers prior to filling or wrapping is conducted as not to expose them to contamination by dust, foreign material or other contaminants.

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NEW SECTION

WAC 16-171-140 Hemp extract facility—Inspection criteria. The following table identifies:

- (1) Inspection criteria and whether each criterion also represents a certification requirement;
- (2) Whether a violation is critical; and
- (3) The debit value for each significant violation.

	Criteria Item-Critical*	Debit Value	Certification Requirement?
1	Hemp extract products free from adulteration.	C	Yes
2	Persons with apparent infections or communicable diseases properly restricted.	C	Yes
3	Adequate washing and sanitizing of hands as necessary, gloves used in food handling sanitary conditions.	C	Yes
4	Product contact surfaces clean and maintained in a sanitary condition; cleaned and sanitized prior to each use or as essential.	C	Yes
5	In use hemp contact equipment and utensils appropriately stored; protected from contamination between uses.	C	No
6	Water used is safe and of adequate sanitary quality; from approved source.	C	Yes
7	No cross connections; no back-siphonage.	C	Yes
8	Hot and cold water, under pressure, in areas where foods are processed or equipment washed.	C	Yes
9	Adequate, readily accessible toilet facilities provided.	C	Yes
10	No evidence of human defecation or urination about the premises.	C	Yes
11	Handwash facilities adequate and convenient, including hot and cold or tempered water.	C	Yes
12	Hemp protected from contamination in storage.	C	No
*A critical violation results in an establishment not being in substantial compliance.			
	Criteria Item-Significant	Debit Value	Certification Requirement?

1	Jewelry, watches other personal items not a source of contamination.	1	No
2	Clean and adequate protective clothing and hair restraints.	1-2	No
3	Use of tobacco, eating and drinking of food and beverages and gum chewing restricted to appropriate areas.	1	No
4	Garments and personal belongings stored appropriately, not a source of potential contamination.	2	No
5	Employee work procedures preclude contamination.	1-2	No
6	Grounds: Free from pest attractions, breeding places, harborage, excessive dust and other contaminants.	1	No
7	Suitable size and location, construction including walls, floors, ceiling, counters, shelving, other fixtures, smooth, readily cleanable and in good repair.	1-5	Yes
8	Processes separated as required.	1-2	Yes
9	No operations in domestic living or sleeping quarters (including domestic kitchens).	0	Yes
10	Adequate light.	1-2	Yes
11	Lights; glass over food protected; breakproof.	1	No
12	Adequate ventilation to minimize vapors, steams, noxious fumes.	1-2	Yes
13	Drip or condensate from ceiling, fixtures, pipes, ducts not a potential source of contamination.	1-3	No
14	Screened or protected to exclude pests.	1-2	No
15	Building, fixtures, facilities clean; including transport vehicles.	1-5	Yes
16	Detergents, sanitizers, toxic materials safely used and stored.	1-3	No
17	Detergents, sanitizers and toxic materials properly identified.	1-2	No
18	Product contact surfaces clean and maintained in a sanitary condition; cleaned and sanitized prior to each use or as essential.	1-2	No
19	Nonproduct contact surfaces of equipment clean and maintained in a sanitary condition.	1-2	No
20	In use hemp extract contact equipment and utensils appropriately stored; protected from contamination between uses.	1-2	No
21	Effective measures taken to exclude pests from the facility. No harborage/breeding areas.	1-2	No
22	Pesticides safely used and stored.	1-3	No
23	No evidence of rodents, insects, birds or other animals.	1-5	Yes
24	Current satisfactory water supply test.	5	Yes
25	Water supply sufficient in quantity for intended operations.	2	Yes
26	Adequate floor drains and plumbing to convey wastes and sewage from plant.	1-2	Yes
27	Sewage and waste lines protected not a source of contamination.	1-2	Yes

28	Adequate offal, rubbish and waste disposal.	1-2	Yes
29	Toilet facilities clean and in good repair, no direct opening to process area, self-closing door.	1-2	Yes
30	Soap and single service towels or suitable drying devices provided at handwash facilities. Adequate refuse receptacles provided.	1-2	No
31	Readily understandable handwash signs provided at handwash facilities.	1	No
32	Hand dips provided as necessary.	1-2	No
33	Design, material and workmanship durable, readily cleanable and in good repair. Contact surfaces nontoxic and corrosion resistant.	1-3	Yes
34	Design and use preclude contamination with lubricants, fuel, contaminated water, paint, rust, compressed air/gas and other contaminants.	1-3	No
35	Freezers and cold storage units equipped with adequate thermometers.	1	No
36	Incoming raw materials or ingredients are from an approved source, in an obvious sanitary condition. Items inspected on receipt, suitable for intended use, segregated as necessary and properly stored (clean storage containers, facilities, products properly covered), ingredients properly identified; raw materials washed or cleaned as required.	1-5	No
37	No contaminating material used, stored or transported with supplies, ingredients or processed foods.	1-2	No
38	Packing material properly handled and stored.	1	No
39	Cleaning operations - conducted to minimize contamination.	1-3	No

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NEW SECTION

WAC 16-171-150 Hemp extract facility inspection rating system—
Inspection score. (1) A hemp extract facility is evaluated at the completion of an inspection conducted by the department as follows:

(a) A hemp extract facility will be debited the point value assigned to the inspection item listed in WAC **16-171-140** for each violation found during an inspection.

(b) The maximum point value possible is one hundred.

(c) The sum of the points debited for an inspection are subtracted from the maximum point value of one hundred. The remaining sum is the facility's score for that inspection.

(d) When the department identifies a critical violation during inspection of a hemp extract facility a failing score of "Critical" will be listed unless the violation is satisfactorily corrected during the inspection.

(2) A hemp extract facility is considered in substantial compliance with the inspection criteria if:

(a) No critical violations are found, or if critical violations are found, they are corrected prior to completion of the inspection; or

(b) The facility's inspection score is ninety points or above.

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NEW SECTION

WAC 16-171-160 Hemp extract facilities—Basis for enforcement action. (1) The department may issue a notice of correction for:

(a) Hemp extract facilities that score less than ninety points on an inspection; or

(b) Critical violations found during an inspection of a hemp extract facility.

(2) The department may review and consider initiating enforcement action, such as certification suspension, civil penalties, and/or other actions provided in chapter 69.07 or **15.130** RCW when:

(a) Hemp extract facilities score less than ninety points on two separate inspections within a consecutive three-year period; or

(b) Hemp extract facilities fail to correct critical violations during an inspection.

(3) Nothing herein shall prevent the department from:

(a) Choosing not to pursue a case administratively.

(b) Issuing a notice of correction in lieu of pursuing enforcement action.

(c) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate.

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WSR 22-01-005

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed December 2, 2021, 6:43 a.m., effective December 2, 2021, 6:43 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To allow veterinarians and field livestock inspectors certified by the department to conduct inspections at facilities not currently allowed to use veterinarians or field livestock inspectors when the department has notified a facility that department inspectors are not available to conduct inspections.

The rule-making order amends WAC 16-610-060 Veterinarian and field livestock inspector certification.

Citation of Rules Affected by this Order: Amending WAC 16-610-060.

Statutory Authority for Adoption: RCW 16.57.350, 16.58.030, 16.65.020.

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

Reasons for this Finding: An outbreak of COVID-19 at a licensed public livestock market hindered the department's ability to conduct livestock inspections. With the pandemic continuing and a new COVID-19 variant (Omicron) identified, the department will allow the licensed facilities listed in WAC 16-610-060 (1)(b) to hire veterinarians or private field inspectors that are certified by the department to conduct inspections in order to avoid adverse impacts to animal health and the related impacts on the public welfare of the loss of healthy animals from delayed livestock sales, and to protect the health of department employees. Licensed facilities are restricted to only hiring **certified** veterinarians and private field inspectors, when the department provides notification to **the facility** that department inspectors are not available to conduct inspections during the time period specified in the notice.

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.

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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 0, Amended 0, Repealed 0.

Date Adopted: December 2, 2021.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 19-20-022, filed 9/23/19, effective 10/24/19)

WAC 16-610-060 Veterinarian and field livestock inspector certification. (1) (a) The director may certify veterinarians, who are licensed and accredited in Washington state and field livestock inspectors who comply with the requirements of this section, to issue livestock inspection certificates.

(b) Veterinarians and field livestock inspectors may not conduct inspections at certified feedlots, slaughter plants, public livestock markets, or special sales unless the department has notified the facility in writing that department inspectors are not available to conduct inspections. If the department notifies a facility that its inspectors are not available to conduct inspections, the facility may use a veterinarian or field livestock inspector to conduct inspections during the period, as specified by the department, in which department inspectors are not available.

(c) (i) Veterinarians and field livestock inspectors may not perform livestock inspections for an individual or business if a conflict of interest exists.

(ii) For the purpose of this rule, a "conflict of interest" includes, but is not limited to, a financial or other interest, direct or indirect, in the livestock, the facility in which the livestock are presented for sale, or the event at which the livestock are being exhibited.

(2) Veterinarians licensed and accredited in Washington state and field livestock inspectors who wish to issue inspection certificates for livestock must apply for certification on the department's application form (WSDA form #7028). The application must include the following:

(a) The full name, address, telephone number, and email address of the individual applying for certification;

(b) The applicant's Washington state veterinary license number if the applicant is a veterinarian;

(c) The geographic area in which the applicant will issue inspection certificates for livestock;

(d) A statement describing the applicant's experience with large animals, especially cattle and horses;

(e) A brief statement indicating that the applicant is requesting certification to issue inspection certificates for cattle, horses or both;

(f) The signature of the applicant; and

(g) Any other additional information as requested by the director.

(3) All applications must be accompanied by a check or money order for the amount of the certification fee of sixty dollars per applicant.

(4) Certifications expire on the third December 31st following the date of issuance. For example, if a certification was issued on October 14, 2003, it would expire on December 31, 2005. All applications for renewal of certification must be submitted on AGR Form 930-7089 and accompanied by a check or money order for the amount of the certification fee of sixty dollars per applicant.

(5) All applicants applying for certification or renewal of certification must complete department-provided training and pass a written test with no less than a score of ninety percent. The department will provide to each person applying for certification or renewal of

certification a copy of the most current brand book and any supplements issued to date to each certified veterinarian or field livestock inspector. Training will include, but will not be limited to, the:

- (a) Reading of printed brands;
 - (b) Reading of brands or other marks on animals, including the location of brands on animals;
 - (c) Reading of a microchip or other electronic official individual identification;
 - (d) Completion of official documents; and
 - (e) Review of satisfactory ownership documents.
- (6) The director will maintain a list of veterinarians and field livestock inspectors certified to perform livestock inspections. Interested parties may request a copy of the list by contacting the department at:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, WA 98504-2577
Email: livestockid@agr.wa.gov
Phone: 360-902-1855
Web site: <https://agr.wa.gov/departments/animals-livestock-and-pets/livestock>

(7) Inspections by certified veterinarians and field livestock inspectors are conducted upon request and provided at the discretion of the veterinarian or field livestock inspector.

(8) Certified veterinarians and field livestock inspectors must submit all required inspection fees to the director and copies of each inspection certificate within thirty days of the date of issue.

(9) The director may deny certification or renewal of certification to issue inspection certificates if the veterinarian or field livestock inspector fails to meet the requirements of this section or knowingly makes false or inaccurate statements regarding his or her qualifications on the certification application.

[Statutory Authority: RCW 16.57.025, [16.57.]350, [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350. WSR 19-20-022, § 16-610-060, filed 9/23/19, effective 10/24/19. Statutory Authority: RCW 16.57.160 and chapter 34.05 RCW. WSR 16-21-008, § 16-610-060, filed 10/7/16, effective 11/7/16. Statutory Authority: Chapters 16.57, 16.58, 16.65, and 34.05 RCW. WSR 10-21-016, § 16-610-060, filed 10/7/10, effective 11/7/10; WSR 07-14-057, § 16-610-060, filed 6/28/07, effective 7/29/07; WSR 04-01-171, § 16-610-060, filed 12/23/03, effective 1/23/04.]

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

WSR 22-01-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-268—Filed December 2, 2021, 11:54 a.m., effective December 6, 2021]

Effective Date of Rule: December 6, 2021.

Purpose: The purpose of this emergency rule is to open commercial red sea urchin harvest seasons in Districts 1, 2, 3, and 4.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000F; and amending WAC 220-340-750.

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 red sea urchins in Sea Urchin Districts 1, 2, 3, and 4. 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: December 2, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000G Commercial sea urchin fishery. Effective December 6, 2021, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for red sea urchin harvest only, seven days-per-week: Sea Urchin District 1, District 2, District 3

east of a line projected true north from the shoreline at 123°48.3'W longitude to the international border, and District 4 west of a line projected true north from the shoreline at 123°52.7'W longitude to the international border.

(3) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1, District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23A, District 3 east of a line projected true north from the shoreline at 123°48.3'W longitude to the international border, District 4 west of a line projected true north from the shoreline at 123°52.7'W longitude to the international border, District 6, and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west and north of a line starting at Point Fosdick following longitude 122°35'W southward to latitude 47°14'N thence true west to Fox Island, and east and north of a line starting at Green Point following longitude 122°41'W southward to latitude 47°16.5'N thence true east to Fox Island.

(4) The maximum cumulative landings for red sea urchin and green sea urchin for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

[]

REPEALER

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

WAC 220-340-75000F Commercial sea urchin fishery. (21-237)

WSR 22-01-035
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 6, 2021, 2:17 p.m., effective December 10, 2021]

Effective Date of Rule: December 10, 2021.

Purpose: The department is extending emergency amendments to WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic, to define that households that receive a zero benefit are not eligible for emergency adjustments to food assistance benefit issuances and households that are eligible to receive an emergency adjustment will receive a minimum of \$95, as implemented under the Families First Coronavirus Response Act (H.R. 6201, Section 2302).

Citation of Rules Affected by this Order: Amending WAC 388-437-0005.

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, 74.08A.120.

Other Authority: H.R. 6201.

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: Extension of these emergency amendments is required to continue to implement provisions from an April 1, 2021, memo issued by United States Department of Agriculture's Food and Nutrition Service (FNS) and to align department policies with an April 21, 2021, Supplemental Nutrition Assistance Program clarification issued by FNS for the Families First Coronavirus Response Act (H.R. 6201, Section 2302). The department filed notice of its intent to adopt the rule as a permanent rule under WSR 21-17-026, and is actively undertaking appropriate procedures to adopt the rule as permanent.

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

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

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

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

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

Date Adopted: December 6, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4883.1

AMENDATORY SECTION (Amending WSR 21-07-098, filed 3/22/21, effective 4/22/21)

WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic. Starting March 2020, assistance units (AUs) eligible for either federal or state-funded food assistance, or both, will receive emergency allotments that bring the AU up to the maximum benefit for their household size.

(1) The amount is the maximum food assistance benefit allotment for your AU size under WAC 388-478-0060(1) less the amount received under WAC 388-450-0162 (4) (b).

(2) Beginning April 2021, assistance units (AU) that receive less than ninety-five dollars, but more than zero, in emergency allotments under WAC 388-437-0005(1) will receive a minimum emergency allotment of ninety-five dollars.

(3) AUs receiving zero benefits due to income do not qualify for an emergency allotment unless the zero benefit is due to a prorated issuance in the first month of eligibility, as described in WAC 388-412-0015(4), with ongoing months above zero benefits.

(4) Emergency allotments will continue each month until:

(a) The secretary for health and human services rescinds the public health emergency declaration that was issued on January 27, 2020, under section 319 of the Public Health Service Act;

(b) The state-issued emergency or disaster declaration expires;

or

(c) The food and nutrition service directs otherwise.

~~((3))~~ (5) Emergency allotments for state-funded food assistance will continue each month, contingent on the availability of state funds.

[Statutory Authority: RCW 74.04.500, 74.04.510, 74.08A.120 and H.R. 6201. WSR 21-07-098, § 388-437-0005, filed 3/22/21, effective 4/22/21.]

WSR 22-01-039
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed December 7, 2021, 9:39 a.m., effective December 7, 2021, 9:39 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend chapter 110-04 WAC to allow the department of children, youth, and families (DCYF) to issue background check clearance authorizations before completing fingerprint-based background checks.

Citation of Rules Affected by this Order: Amending WAC 110-04-0040 and 110-04-0080.

Statutory Authority for Adoption: RCW 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: 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. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-31 amends Proclamation 20-05 and waives and suspends fingerprint-based background checks before a person may be approved to have unsupervised access to children during the COVID-19 pandemic due to the potential risk of exposure to COVID-19 resulting from face-to-face contact in submitting fingerprints, limited access to fingerprinting as entities that receive and process fingerprints limit or suspend operations in order to limit exposure to COVID-19, and the unavailability of law enforcement agencies to process fingerprints during the pandemic. The ability to issue background check clearance authorizations before completing fingerprint-based background checks better enables DCYF to ensure the availability of child welfare service providers during the COVID-19 pandemic.

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: December 7, 2021.

Brenda Villarreal
Rules Coordinator

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

WAC 110-04-0040 Who must have background checks? (1) Under RCW 74.15.030, (~~(prior to authorizing unsupervised access to children,~~) the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Under RCW 74.15.030, (~~(prior to authorizing unsupervised access to children,~~) the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities that provide care. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care. The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, (~~(prior to returning a dependent child home,~~) the department requires a background check on all adults residing in the home, including the parents.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0040, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.030 and 43.43.832. WSR 18-12-101, § 388-06A-0110, filed 6/5/18, effective 7/6/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0110, filed 1/15/15, effective 2/15/15.]

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

WAC 110-04-0080 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.

(d) Department of health.

(e) Civil adjudication proceedings.

(f) Applicant's self-disclosure.

(g) Out-of-state law enforcement and court records.

(2) Background checks conducted for DCYF also includes:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) and (2) of this section, background checks conducted by DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home, all staff working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

(a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(4) Except as required in subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

(5) Applicants may be approved before the fingerprint-based background check is conducted.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0080, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0080, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0150, filed 1/15/15, effective 2/15/15.]

WSR 22-01-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-269—Filed December 7, 2021, 9:58 a.m., effective December 7, 2021, 9:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open gamefish seasons in that portion of Tokul Creek from Fish Hatchery Road Bridge to boundary marker downstream of Diversion Dam.

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

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

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

Reasons for this Finding: This emergency rule is necessary to open gamefish seasons in a portion [of] Tokul Creek. Tokul Creek hatchery has achieved adequate early winter steelhead broodstock on hand to meet egg-take goals. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 6, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000X Freshwater exceptions to statewide rules—Puget Sound. Effective immediately, through, 2021 through January 14, 2022, recreational gamefish seasons for Tokul Creek, from Fish Hatchery Road Bridge to boundary marker downstream of diversion dam shall be modified as follows. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Tokul Creek (King County): From Fish Hatchery Road Bridge to boundary marker downstream of diversion dam: Gamefish:

- (a) Open immediately, through January 14, 2022, except closed waters from 5:00 p.m. to 7:00 a.m.
- (b) Anti-snagging rules in effect.
- (c) Statewide minimum length/daily limit, except: Cutthroat trout and wild rainbow trout: Minimum length 14 inches.

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

WSR 22-01-047
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 7, 2021, 4:18 p.m., effective December 7, 2021, 4:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) continues to respond to the 2021 passage of SSB 5424 regarding voluntary use of personal protective equipment (PPE) during a state of emergency, and ESSB 5115, also known as the Health Emergency Labor Standards Act (HELSEA). This rule making maintains new sections of WAC regarding public health emergency reporting and notification requirements for infectious and contagious diseases.

The emergency rule maintains requirements for when there is a public health emergency for an infectious or contagious disease and as such, the requirements are applicable to COVID-19.

Under the emergency rule:

- Employers with more than 50 covered employees at a workplace or worksite are required to report infectious or contagious disease outbreaks to L&I;
- Employees are not required to disclose any medical condition or diagnosis to their employer;
- Employers, except for certain health care employers, are required to notify employees in writing of potential exposures within one business day;
- Employees and contractors must be permitted to voluntarily use personal protective equipment.

A CR-101 Preproposal statement of inquiry was filed on May 13, 2021, and initiates the permanent rule-making process. This emergency rule supersedes WSR 21-17-051 filed on August 10, 2021.

Citation of Rules Affected by this Order: New WAC 296-62-600, 296-62-60001, 296-62-60002, 296-62-60003, 296-62-60004, 296-62-60005, 296-62-601, 296-62-60101, 296-62-60102, and 296-62-60103.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.60.

Other Authority: Chapter 146, Laws of 2021; chapter 252, 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.

Reasons for this Finding: SSB 5254 became effective April 26, 2021, and ESSB 5115 became effective on May 11, 2021, requiring L&I to take action to implement both bills. On February 29, 2021, Governor Inslee proclaimed a statewide state of emergency to respond to the continuing spread of COVID-19 which resulted in a global pandemic, Proclamation 20-05. Subsequent proclamations have been issued related to the pandemic response, including those with restrictions on business activities under Proclamation 20-25, et seq., initially entitled "Stay Home, Stay Healthy" and the most recent amendment titled "Washington Ready" under Proclamation 20-25.14. Washington state is still in the midst of a public health state of emergency battling the COVID-19 pandemic. These emergency rules are necessary to further respond

to and diminish the spread of COVID-19, alert public officials to workers' exposure to COVID-19 to allow for adequate responses to outbreaks, and to reduce the number of outbreaks, keeping Washington workers safe.

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 10, 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 10, Amended 0, Repealed 0.

Date Adopted: December 7, 2021.

Joel Sacks
Director

OTS-3146.4

NEW SECTION

WAC 296-62-600 Public health emergency reporting and notification requirements for infectious and contagious diseases.

[]

NEW SECTION

WAC 296-62-60001 Purpose and scope. WAC 296-62-600 through 296-62-60005 provides requirements for the reporting of infectious or contagious outbreaks to L&I's division of occupational safety and health (DOSH) and notification to employees of potential exposures to infectious or contagious diseases during a public health emergency as defined in this rule and consistent with the Health Emergency Labor Standards Act; sections 2 and 3, chapter 252, Laws of 2021. These requirements apply to employers in Washington state during a public health emergency.

[]

NEW SECTION

WAC 296-62-60002 Definitions. Covered employee. Means any employee that the employer is responsible to record their injury and illness on the employer's OSHA 300 log according to WAC 296-27-02103,

including employees from a temporary help service, employee-leasing service, a personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

Public health emergency. Means a declaration or order concerning any infectious or contagious disease, including a pandemic and is issued as follows:

(a) The President of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(b) The governor of the state of Washington has declared a state of emergency under RCW 43.06.010(12) in every county in the state.

[]

NEW SECTION

WAC 296-62-60003 General guidelines. (1) WAC 296-62-600 through 296-62-60005 do not require any employee to disclose any medical condition or diagnosis to their employer(s).

(2) WAC 296-62-600 through 296-62-60005 do not alter or eliminate any other reporting obligations an employer has under state or federal laws.

[]

NEW SECTION

WAC 296-62-60004 Reporting requirements for outbreaks during a public health emergency. Employers must report outbreaks as follows:

(1) During a public health emergency, employers with more than fifty covered employees at a workplace or worksite, must:

(a) Report to L&I's division of occupational safety and health (DOSH) within twenty-four hours of being notified of:

(i) Ten or more test-confirmed covered employees at the workplace or worksite where the test was collected during any period of time the Washington state department of health or a local health jurisdiction communicates to the employer that there is a COVID-19 outbreak at their workplace or worksite; or

(ii) Ten or more test-confirmed employees where the test was collected during any period of time between the following start and end points:

Start: When any two or more test confirmed covered employee cases at the workplace or worksite occur within fourteen consecutive calendar days of each other.

End: Twenty-eight consecutive calendar days have passed since the last positive test result for any covered employee at the workplace or worksite.

(b) Report by calling DOSH 1-800-4BE-SAFE (1-800-423-7233), and using the option to report fatalities, hospitalizations, amputations, or loss of an eye.

Exemptions:

- Employers currently in an outbreak do not need to continue reporting to DOSH until the outbreak has ended.
- Employers in an outbreak who later learn intervening cases were false positives are not required to retroactively reevaluate their outbreak status and report to DOSH. They may continue to act as if they were under the same unbroken outbreak.

(2) For the purposes of this subsection:

(a) "Worksite" or "workplace" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control.

(b) "Test-confirmed" means testing positive for the infectious or contagious disease.

Important: When reporting to DOSH, do not include any employee names or personal identifying information.

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NEW SECTION

WAC 296-62-60005 Notification requirements related to potential exposures. (1) Except for employers who are health care facilities as defined in RCW 9A.50.010, if an employer receives notice of potential exposure, the employer must within one business day of potential exposures:

(a) Provide written notice to all covered employees who were on the premises at the same worksite on the same day(s) as the qualifying individual when the qualifying individual may have been infectious or contagious. The written notice must state that the covered employee may have been exposed to the infectious or contagious disease.

(i) For COVID-19, a qualifying individual is potentially infectious or contagious two days before the qualifying individual felt sick/had symptoms (or, for asymptomatic people, two days before the test specimen collection) until the time the qualifying individual left, and/or was isolated, from the worksite.

(ii) The written notice must be made in a manner the employer normally uses to communicate employment-related information including, but not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending.

(iii) The written notice must be in both English and the language understood by the majority of the employees.

(b) Provide written notice also to:

(i) The union representative, if any, of any covered employees notified under WAC 296-62-600 through 296-62-60005(1).

(ii) Any temporary help service, employee-leasing service, or personnel supply service employers of a covered employee notified under WAC 296-62-600 through 296-62-60005(1).

(c) The requirements for the manner of written notice and the time for notice in WAC 296-62-600 through 296-62-60005 (1)(a)(iii) apply to notice of union representatives and employers under this subsection.

(2) Any written notice under this section may not include any employee names or personal identifying information.

(3) For the purposes of this subsection:

(a) Notice of potential exposure. Means any of the following:

(i) Notification to the employer from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite;

(ii) Notification to the employer from an employee, or their emergency contact, that the employee is a qualifying individual; or

(iii) Notification through a testing protocol of the employer that the employee is a qualifying individual.

(b) Qualifying individual. Means any person who has:

(i) A positive laboratory test for the infectious or contagious disease that is the subject of a public health emergency;

(ii) A positive diagnosis of the infectious or contagious disease that is the subject of a public health emergency by a licensed health care provider;

(iii) An order to isolate by a public health official related to the infectious or contagious disease that is the subject of a public health emergency; or

(iv) Died due to the infectious or contagious disease that is the subject of a public health emergency, in the determination of a local health department.

(c) Worksite. Means the building, store, facility, agricultural field, or other location where the qualifying individual worked. "Worksite" does not include any buildings, floors, or other locations of the employer that the qualifying individual did not enter.

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NEW SECTION

WAC 296-62-601 Public health emergency voluntary personal protective equipment usage.

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NEW SECTION

WAC 296-62-60101 Purpose and scope. WAC 296-62-601 through 296-62-60103 provides requirements for employee voluntary use of personal protective equipment during a public health emergency, consistent with chapter 146, Laws of 2021 (SB 5254); Concerning the use of protective devices and equipment during a public health emergency, chapter 252, Laws of 2021. These requirements apply to employers in Washington state during a public health emergency.

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NEW SECTION

WAC 296-62-60102 Definitions. Employee. Means any employee that the employer is responsible to record their injury and illness on the employer's OSHA 300 log according to WAC 296-27-02103, including employees from a temporary help service, employee-leasing service, a personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

Public health emergency. Means a declaration or order relating to controlling and preventing the spread of any infectious or contagious

disease that covers the jurisdiction where the individual or business performs work, and is issued as follows:

- (a) The president of the United States has declared a national or regional emergency;
- (b) The governor has declared a state of emergency under RCW 43.06.010(12); or
- (c) An order has been issued by a local health officer under RCW 70.05.070.

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NEW SECTION

WAC 296-62-60103 Voluntary use of personal protective equipment requirements. (1) Every employer who does not require employees or contractors to wear a specific type of personal protective equipment must accommodate its employee's or contractor's voluntary use of that specific type of protective device or equipment, including gloves, goggles, face shields, and face masks, as the employee or contractor deems necessary.

(2) The provisions of subsection (1) of this section applies only when:

- (a) The voluntary use of these protective devices and equipment does not introduce hazards to the work environment and is consistent with the provisions of both this chapter, and related rules established by the department of labor and industries (L&I) division of occupational safety and health (DOSH);
- (b) The use of facial coverings does not interfere with an employer's security requirements; and
- (c) The voluntary use of these protective devices and equipment does not conflict with standards for that specific type of equipment established by the department of health or DOSH.

(3) An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.

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WSR 22-01-057
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Residential Care Services)

[Filed December 8, 2021, 11:51 a.m., effective December 15, 2021]

Effective Date of Rule: December 15, 2021.

Purpose: The department is extending the amendment of the rule listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 epidemic. These amendments align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow nursing facilities to provide clinical records to residents and resident representatives in 10 working days instead of two working days. Current state rules specify clinical records be accessible to residents and their representatives for review within 24 hours and copies must be provided within two working days. The amendment lengthens the time nursing homes have to provide the resident access to, or copies of the requested clinical record from two to 10 days. The amendment does not permit the nursing facility to deny the resident access to records. The department filed a CR-101 preproposal under WSR 20-19-009. In addition, under the rule development phase of rule making, the department continues discussions with interested parties about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary.

Citation of Rules Affected by this Order: Amending WAC 388-97-0300.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Under nursing home rules, residents have the right to access and review their clinical record. Access to the record must be provided within 24 hours and if the resident or resident representative requests a copy of the record, it must be provided within two working days. The emergency rule lengthens the time nursing homes have to provide the resident access to, or copies of the requested clinical record. The amendment does not permit the nursing facility to deny the resident access to records. This amendment provides flexibility for nursing homes to prioritize direct care over nondirect care tasks while maintaining the resident's right to access their records.

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

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

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

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

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

Date Adopted: December 8, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4809.1

AMENDATORY SECTION (Amending WSR 14-12-040, filed 5/29/14, effective 6/29/14)

WAC 388-97-0300 Notice of rights and services. (1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right(†

~~(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and~~

~~(b) After receipt of his or her records for inspection,)) to purchase at a cost not to exceed twenty-five cents a page, photocopies of the records or any portions of them upon request and ((†two)) ten working days advance notice to the nursing home. For the purposes of this chapter, "working days" means Monday through Friday, except for legal holidays.~~

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, services or activities specified in section (4)(a)(i) and (ii), or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his or her representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

[Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 14-12-040, § 388-97-0300, filed 5/29/14, effective 6/29/14. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0300, filed 9/24/08, effective 11/1/08.]

WSR 22-01-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-270—Filed December 9, 2021, 10:04 a.m., effective December 15, 2021]

Effective Date of Rule: December 15, 2021.

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

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

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

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

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

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

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

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

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

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

Date Adopted: December 9, 2021.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. December 15, through 11:59 p.m. December 23, 2021, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	December 15 through 23	From 12:01 p.m. to 11:59 p.m.
Area 2	Closed	Closed
Area 3	December 15 through 23	From 12:01 p.m. to 11:59 p.m.
Area 4	December 16, 18, 20, and 22	From 12:01 p.m. to 11:59 p.m.
Area 5	December 15, 17, 19, 21, and 23	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

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NEW SECTION

WAC 220-330-01000T Shellfish—Daily limits, size restrictions, and unlawful acts. Notwithstanding the provisions of WAC 220-330-010 regarding Razor clam daily limits, effective 12:01 p.m. December 15, through 11:59 p.m. December 23, 2021, the daily limit is 20 razor clams for personal use in any one day from Razor Clam Area 1, Razor Clam Area 3, Razor Clam Area 4 and Razor Clam Area 5. All other provisions of WAC 220-330-010 not addressed herein remain in effect unless otherwise amended by emergency rule.

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REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. December 24, 2021:

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

WSR 22-01-071

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed December 9, 2021, 3:44 p.m., effective December 15, 2021]

The developmental disabilities administration (DDA) requests the rescission of the following notice:

Emergency rules from chapter 388-845 WAC filed under WSR 21-19-114 on September 20, 2021. The rescission of WSR 21-19-114 is necessary so that the emergency rule text no longer takes precedence over the permanently adopted rule text. DDA requests that this rescission take effect December 15, 2021.

Katherine I. Vasquez
Rules Coordinator

WSR 22-01-072
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed December 9, 2021, 8:27 a.m., effective December 9, 2021, 8:27 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-97-0140 and 388-97-0120 to waive and suspend the requirement for nursing homes to suspend certain transfers and discharges pending the outcome of a resident appeal of the nursing home transfer or discharge decision. The COVID-19 pandemic continues to require more rapid transfers and discharges than the rule permits. This emergency rule waives the requirement for nursing homes to suspend certain transfers and discharges pending the outcome of a resident appeal hearing, and improves resident safety by allowing faster grouping of COVID-19 positive residents in one facility, or grouping asymptomatic residents together. This helps expedite infection control processes, and maximizes the availability of nursing home beds. This amendment will align with federal rules. This WSR cancels and supersedes the emergency filed as WSR 21-24-069.

Citation of Rules Affected by this Order: Amending WAC 388-97-0140 and 388-97-0120.

Statutory Authority for Adoption: RCW 74.42.620.

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

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as nursing homes. Currently, WAC 388-97-0140 requires nursing homes to suspend a transfer or discharge pending the outcome of a resident appeal request to the office of administrative hearings (the office) when the appeal is received by the office on or before the date the resident actually transfers or discharges.

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

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

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

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

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

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

Date Adopted: December 9, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4908.3

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

WAC 388-97-0120 Individual transfer and discharge rights and procedures. (1) The skilled nursing facility and nursing facility must comply with all of the requirements of 42 C.F.R. § 483.10 and § 483.12, and RCW 74.42.450, or successor laws, and the nursing home must comply with all of the requirements of RCW 74.42.450 (1) through (4) and (7), or successor laws, including the following provisions and must not transfer or discharge any resident unless:

- (a) At the resident's request;
- (b) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (c) The transfer or discharge is appropriate because the resident's health has improved enough so the resident no longer needs the services provided by the facility;
- (d) The safety of individuals in the facility is endangered;
- (e) The health of individuals in the facility would otherwise be endangered; or
- (f) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

(2) The following notice requirements apply if a nursing home/facility initiates the transfer or discharge of a resident. The notice must:

- (a) Include all information required by 42 C.F.R. § 483.12 when given in a nursing facility;
- (b) Be in writing, in language the resident understands;
- (c) Be given to the resident, the resident's surrogate decision maker, if any, the resident's family and to the department;
- (d) Be provided thirty days in advance of a transfer or discharge initiated by the nursing facility, except that the notice may be given as soon as practicable when the facility cannot meet the resident's urgent medical needs, or under the conditions described in (1)(c), (d), and (e) of this section; or for cohorting purposes related to the COVID-19 pandemic as allowed under any applicable Centers for Medicare and Medicaid Services (CMS) emergency waivers; and

(e) Be provided fifteen days in advance of a transfer or discharge initiated by the nursing home, unless the transfer is an emergency.

(3) The nursing home must:

- (a) Provide sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the nursing home;

(b) Attempt to avoid the transfer or discharge of a resident from the nursing home through the use of reasonable accommodations unless agreed to by the resident and the requirements of WAC 388-97-0080 are met; and

(c) Develop and implement a bed-hold policy. This policy must be consistent with any bed-hold policy that the department develops.

(4) The nursing home must provide the bed-hold policy, in written format, to the resident, and a family member, before the resident is transferred or goes on therapeutic leave. At a minimum the policy must state:

(a) The number of days, if any, the nursing home will hold a resident's bed pending return from hospitalization or social/therapeutic leave;

(b) That a medicaid eligible resident, whose hospitalization or social/therapeutic leave exceeds the maximum number of bed-hold days will be readmitted to the first available semi-private bed, provided the resident needs nursing facility services. Social/therapeutic leave is defined under WAC 388-97-0001. The number of days of social/therapeutic leave allowed for medicaid residents and the authorization process is found under WAC 388-97-0160; and

(c) That a medicaid eligible resident may be charged if he or she requests that a specific bed be held, but may not be charged a bed-hold fee for the right to return to the first available bed in a semi-private room.

(5) The nursing facility must send a copy of the federally required transfer or discharge notice to:

(a) The department's home and community services when the nursing home has determined under WAC 388-97-0100, that the medicaid resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility; and

(b) The department's designated local office when the transfer or discharge is for any of the following reasons:

(i) The resident's needs cannot be met in the facility;

(ii) The health or safety of individuals in the facility is endangered; or

(iii) The resident has failed to pay for, or to have paid under medicare or medicaid, a stay at the facility.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0120, filed 9/24/08, effective 11/1/08.]

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

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

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

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

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

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

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility (the facility must document the danger that failure to transfer or discharge would pose); and

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

(2) A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the hearing when the resident's appeal is received by the office of administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

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

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

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

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

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

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

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

WSR 22-01-079
EMERGENCY RULES
PARAEDUCATOR BOARD

[Filed December 10, 2021, 11:58 a.m., effective December 10, 2021, 11:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amendment will allow school districts to meet the one day in-person fundamental course of study training requirement through online synchronous instruction with an instructor. The emergency rule would be valid through September 1, 2022.

Citation of Rules Affected by this Order: Amending WAC 179-09-040.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

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

Reasons for this Finding: Since March 2020, the pandemic requires consistent social distancing for the safety of the public. As we approach the start of the next school year, it is apparent that the COVID-19 variant "Delta" is a rising concern for the health of Washington students, educators, and families. As school districts are looking to hold both in-person and hybrid learning, maintaining the in-person requirement to meet seven hours of the fundamental course of study is not attainable for school districts. This amendment will allow school districts to meet the in-person training requirement in a virtual setting, so long as the training is synchronous and led by an instructor.

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

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

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

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

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

Date Adopted: December 10, 2021.

Jack Busbee
Rules Coordinator

OTS-3268.1

AMENDATORY SECTION (Amending WSR 20-20-002, filed 9/23/20, effective 10/24/20)

WAC 179-09-040 Fundamental course of study. (1) School districts must implement this section only in school years for which

state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) (a) School districts must provide a fundamental course of study on the state standards of practice, as defined by the board in WAC 179-09-050 of this chapter, to paraeducators who have not completed the course, either in the district or in another district within the state. At least one day of the fundamental course of study must be provided in person. School districts must use best efforts to provide the fundamental course of study before the paraeducator begins to work with students and their families, and at a minimum by the deadlines provided in subsection (3) of this section.

(b) Beginning March 1, 2020, through September 1, ((2021)) 2022, virtual learning environments that use synchronous learning with an instructor will meet the one day in-person training requirement of the fundamental course of study.

(3) Except as provided in (b) of this subsection, school districts must provide the fundamental course of study required in subsection (2) of this section by the deadlines provided in (a) of this subsection:

(a) (i) For paraeducators hired on or before September 1st, the first two days of the fundamental course of study must be provided by September 30th of that year and the second two days of the fundamental course of study must be provided within six months of the date of hire, regardless of the size of the district; and

(ii) For paraeducators hired after September 1st:

(A) For districts with ten thousand or more students, the first two days of the fundamental course of study must be provided within four months of the date of hire and the second two days of the fundamental course of study must be provided within six months of the date of hire or by September 1st of the following year, whichever is sooner; and

(B) For districts with fewer than ten thousand students, no later than September 1st of the following year.

(b) (i) For paraeducators hired for the 2018-19 school year, by September 1, 2020; and

(ii) For paraeducators not hired for the 2018-19 school year, but hired for the 2019-20 school year, by September 1, 2021.

(4) School districts may collaborate with other school districts or educational service districts to meet the requirements of this section.

(5) (a) Providers of the fundamental course of study must provide to the paraeducator written documentation of each unit completed by a paraeducator. The documentation is as published by the professional educator standards board.

(b) Upon request, if such request is made within seven calendar years of unit completion, the provider shall provide the paraeducator with documentation of unit completion.

(6) The fundamental course of study must include the training competencies that align with the standards of practice in chapter 179-07 WAC.

(7) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the fundamental course of study.

[Statutory Authority: Chapter 28A.413 RCW. WSR 20-20-002, § 179-09-040, filed 9/23/20, effective 10/24/20; WSR 19-21-070, § 179-09-040, filed 10/11/19, effective 11/11/19; WSR 18-16-106, § 179-09-040, filed 7/31/18, effective 8/31/18.]

WSR 22-01-080
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-271—Filed December 10, 2021, 2:51 p.m., effective December 13, 2021]

Effective Date of Rule: December 13, 2021.

Purpose: The purpose of this emergency rule is to open commercial sea cucumber harvest in management District 2-2.

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 commercial harvest of sea cucumbers in sea cucumber management District 2-2. The quota in this area has been increased by 10,800 pounds per comanager agreement. Opening commercial seasons in District 2-2 with a 700-pound weekly limit, with the expectation of 15 licenses participating, is consistent with and designed to fall within comanager agreed management plans. Harvestable surpluses of sea cucumbers exist in the areas specified.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 10, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-73000B Commercial sea cucumber fishery. Effective December 13, 2021 and until further notice, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest and sales shall be described below. All other provisions of WAC 220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following catch reporting areas of Sea Cucumber District 2-2, Monday through Sunday of each week: 23B, 25A, 25B, 25C, 25D, 25E.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 700 pounds per valid designated sea cucumber harvest license.

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WSR 22-01-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-272—Filed December 10, 2021, 2:52 p.m., effective December 10, 2021, 2:52 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The provisions of this emergency rule: WAC 220-320-11000B:

(1) Defines new Crab Management Region 3-4 and changes the boundaries of Crab Management Region 3-3 to accommodate boundaries agreed to in the Region 3 2021-2022 crab management plan.

WAC 220-340-42000W:

(1) Allows for barging in Crab Management Region 1 between December 15, 2021, at 8:00 a.m. and December 17, 2021, at 8:00 a.m.

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

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

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

WAC 220-340-45500F:

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

(2) Opens Puget Sound commercial crab harvest in Crab Management Region 3-3 effective immediately. Opens Puget Sound commercial crab harvest in Crab Management Region 1 effective December 15, 2021, at 8:00 a.m. Describes hard closure dates by crab management region. Maintains closure of Crab Management Regions 2 East, 2 West, 3-1, 3-2, and 3-4.

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

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

WAC 220-340-47000D:

(1) Allows deployment of up to 35 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 1 starting December 15, 2021, at 8:00 a.m.

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

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

WAC 220-352-34000P:

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

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

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

(4) Implements a registration requirement for commercial license holders to notify the department of their fishing status and which crab management area a licensee will be fishing in if active.

Citation of Rules Affected by this Order: Repealing WAC 220-320-11000A, 220-340-42000V, 220-340-45500E, 220-340-47000D and 220-352-34000P; and amending WAC 220-320-110, 220-340-420, 220-340-455, 220-340-470, and 220-352-340.

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

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

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

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

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

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 0, Repealed 5.

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

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

Date Adopted: December 10, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-320-11000B Puget sound crab management regions. Notwithstanding the provisions of WAC 220-320-110:

(1) Crab Management Region 3, subarea 3-3 is defined as all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23C-East.

(2) Crab Management Region 3, subarea 3-4 is defined as all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23C-West and 29.

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NEW SECTION

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

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

(a) Effective 8:00 a.m. December 15, 2021 until 7:59 a.m. December 17, 2021 it is permissible to deploy Dungeness crab pots for commercial purposes in Crab Management Region 1 from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and prior notice has been given as provided below. Crab pots may only be deployed during daylight hours.

(b) Puget Sound commercial crab license holders that intend to barge must send an email to crab.report@dfw.wa.gov, detailing the following information:

(i) Name and license number of licensed owner.

(ii) Name of designated primary operator if different from licensed owner.

(iii) Name of alternate operator if used to deploy pots from a non-designated vessel.

(iv) Buoy brand number and number of pots to be deployed from a non-designated vessel.

(v) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(vi) Region or Set Location

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

(3) Effective immediately, until further notice, all crab retained and removed from a vessel must be stored in containers based on date retained and labeled with the following:

(a) date of harvest,

(b) an estimate of pounds of crab in each container, and

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

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

- (a) date of harvest,
- (b) an estimate of pounds of crab in each container,
- (c) either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from, and
- (d) Commercial fish and shellfish transportation ticket number.

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NEW SECTION

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

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

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

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

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

(3) Effective immediately, until December 15, 2021 at 8:00 a.m. the following areas are closed to commercial crab fishing: Crab Management Region 1.

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

Region 3: Crab Management Region 3-3; effective immediately until further notice.

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

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

(6) Limited Commercial Areas: It is permissible to harvest Dungeness crab for commercial purposes from the following areas as listed: Region 1, effective December 15, 2021 at 8:00 a.m.:

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

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the

red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

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

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

Region 1, effective December 15 at 8:00 a.m.:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

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

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island, thence to Chuckanut Rock, thence to the most southerly tip of Clark's Point.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.

(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore and following the shoreline to the point of origin.

(i) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B, which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.

(j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.

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

Notwithstanding the provisions of WAC 220-340-470:

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

(2) Effective December 15, 2021 at 8:00 a.m., until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 35 pots per license per buoy tag number in Crab Management Region 1.

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

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

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

(a) dealer name,

(b) dealer license number,

(c) dealer phone number,

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

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

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

(a) harvester name,

(b) WDFW issued vessel ID,

(c) Puget Sound commercial license number,

(d) date of harvest,

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

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

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

- (a) harvester name,
- (b) WDFW issued vessel ID,
- (c) Puget Sound commercial license number,
- (d) date of sale,
- (e) dealer name,
- (f) commercial shellfish transportation ticket number(s) delivered, and
- (g) fish receiving ticket number(s) corresponding to landing date of delivery.

(4) Effective immediately, until further notice, Puget Sound commercial crab license holders, or their designated alternate operators, must register which Crab Management Region that gear will be deployed in for each license they hold prior to the opening date or if licenses are not being fished. Registrations must be updated when gear moves between areas or fishing activity stops. Registrations can be made by registering on the WDFW Puget Sound commercial crabbing webpage or sending an email to crab.report@dfw.wa.gov, detailing the following information:

- (a) Vessel Operator Name
- (b) Vessel Name and Vessel Registration Number
- (c) License Number(s) to be Fished
- (d) Crab Management Region to be fished or an indication that licenses will remain unfished
- (e) Gear Deployment Date

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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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-320-11000A Puget Sound crab management regions. (21-223)
- WAC 220-340-42000V Commercial crab fishery—Unlawful acts. (21-264)
- WAC 220-340-45500E Commercial crab fishery—Seasons and areas—Puget Sound. (21-264)
- WAC 220-340-47000C Commercial crab fishery—Gear requirements—Puget Sound. (21-264)
- WAC 220-352-34000N Puget Sound crab—Additional reporting requirements. (21-264)

WSR 22-01-117

EMERGENCY RULES

STATE BOARD OF EDUCATION

[Filed December 13, 2021, 8:46 a.m., effective December 13, 2021, 8:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making on chapter 180-90 WAC is to clarify policy and establish administrative procedures regarding loss of private school approval.

The rule making clarifies that private schools must comply with state law, including all applicable health and safety requirements, and that noncompliance may result in suspension or rescission of approval.

The private school emergency rules provide for:

- Additional definitions.
- Clarification of the reasons for possible loss of private school approval.
- A brief adjudicative hearing process before a hearing officer on whether the private school should lose its approval.
- An initial decision with a written statement of the reasons for the decision issued by the hearing officer.
- An administrative review process for the initial decision.
- An emergency summary suspension of private school approval if there is a reasonable basis to believe there is immediate danger to the health, safety, or welfare of the private school students, staff or others.
- Right of a private school to request a hearing on the summary suspension to determine whether the suspension should continue or be less restrictive in scope.
- Modification of annual certification of compliance process to align with current practice and for consistency with loss of approval standards.

Citation of Rules Affected by this Order: New WAC 180-90-142, 180-90-143 and 180-90-144; and amending WAC 180-90-112, 180-90-130, 180-90-141, and 180-90-160.

Statutory Authority for Adoption: RCW 28A.195.040, 28A.195.010, 28A.150.220.

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

Reasons for this Finding: RCW 28A.195.040 provides that the state board of education shall adopt rules pertaining to private school approval. To ensure that private schools can safely deliver education during the statewide emergency and local public health response to the COVID-19 pandemic, the state board of education has engaged in emergency rule making clarifying the process for certification of compliance for annual approval and the conditions for and loss of private school approval include noncompliance with all applicable laws, including applicable health and safety requirements. Due to the immediate need to ensure public health and safety in private schools, emergency rule making is necessary to align the loss of private school approval to all private school requirements including public health and safety measures. Immediate adoption and amendment of 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 the public interest. This rule is intended to ensure safe and adequate private schools that meet state standards.

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 3, Amended 4, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 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 0, Repealed 0.

Date Adopted: December 2, 2021.

Randy Spaulding
Executive Director

OTS-3324.4

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-112 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "~~(Approved)~~ Private school" means a nonpublic school or nonpublic school district (~~(conducting a program consisting of kindergarten and at least grade one, or a program consisting of any or all of grades one through twelve which has been)~~) approved by the state board of education pursuant to RCW 28A.305.130, and chapter 28A.195 RCW and in accordance with the minimum standards for approval as prescribed in this chapter.

(2) (a) "Reasonable health requirements" means those standards contained in chapter 246-366 WAC as adopted by the state board of health, and other applicable health requirements for private schools.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter 43.44 RCW.

(3) (a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not impact the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but may impact

the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5) (a) "Non-Washington state certificated teacher" means a person who does not have a Washington state certification consistent with WAC 181-79A-030(2), but who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of a baccalaureate degree in the subject matter to be taught or in a field closely related to the subject matter to be taught; or

(iii) A minimum of one calendar year of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school employs at least one Washington state certified teacher, administrator, or superintendent who provides general supervision to any non-Washington state certificated teacher. The school will annually report to the state board of education the academic preparations and experience of each non-Washington state certificated teacher providing k-12 instruction in an addendum to the certificate of compliance as provided in WAC 180-90-160; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section, has been verified by the private school, as meeting the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), and has not had his or her teacher's certificate revoked by any state or foreign country consistent with WAC 181-79A-155 (5) (a).

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher, administrator, or superintendent shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

(6) "Business day" means a weekday, excluding weekends, state holidays, and state closures unless otherwise specified.

(7) "Filing" means the process by which a document is officially delivered to a state board of education staff member. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified state board of education staff member;

(b) By sending the document by email and first class mail to the specified state board of education email address and state board of education's office address on its website; or

(c) By submitting an initial or annual application and certification of compliance as required in WAC 180-90-130 or 180-90-160.

Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the state board of education.

(8) "Executive director" means the executive director of the state board of education.

(9) "SBE private school officer" means the person designated by the executive director to administer the state board of education's private school program.

(10) "Hearing officer" means the person designated by the executive director to conduct a brief administrative proceeding on the loss of private school approval.

(11) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by both email, and by either certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(12) "Loss of approval" means either a suspension or rescission of a private school's approval by the state board of education. Suspension is for a set period of time or until specified conditions are met and rescission is permanent until a new application for approval is granted.

(13) "School" means and includes each building, facility, and location, including online program components, where any portions of a kindergarten and grades one through 12 program of education and related activities are conducted for two or more children by or in behalf of any private school or private institution subject to approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

(14) "Summary suspension" means the immediate, temporary suspension of a private school's approval in an administrative procedure.

(15) "Threat to health or safety" means the physical facilities, personnel, or practices of the school do not meet reasonable health

requirements or reasonable fire safety requirements; or failure to meet the requirements, standards, or legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW.

(16) "School or district administrator" means administrative or executive authority of private schools or private school districts. The terms "head of school," "principal," or "superintendent" may also be used in rule or application materials to refer to the administrative or executive authority of the private school or private school district.

[Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-112, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-112, filed 12/1/15, effective 1/1/16. Statutory Authority: Chapter 28A.305 RCW, RCW 28A.150.220, 28A.230.090, 28A.310.020, 28A.210.160, and 28A.195.040. WSR 10-23-104, § 180-90-112, filed 11/16/10, effective 12/17/10. Statutory Authority: RCW 28A.195.040. WSR 03-04-053, § 180-90-112, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-112, filed 12/2/85.]

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-130 Approval—Annual certification—Adverse findings.

(1) All private organizations carrying out a program for any or all of the grades kindergarten through 12, with the exception of kindergarten only, are subject to annual approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

(2) At least ~~((ninety))~~ 90 days prior to the commencement of the annual school term or period, the ~~((chief administrator of each private))~~ school or district administrator shall file with the state board of education a certificate of compliance ~~((in the form and substance))~~ as set forth in WAC 180-90-160.

~~((2))~~ (3) The state board of education shall review each certificate. The review shall be completed within ~~((thirty))~~ 30 days after receipt of a completed application. The state board of education may request additional information as it deems necessary.

~~((3))~~ (4) If the state board of education finds deviation, the private school shall be notified through written or electronic communication of any minor, major, or unacceptable deviations which must be corrected.

~~((4))~~ (5) If the state board of education finds major or unacceptable deviations, the private school shall submit a narrative report indicating agreement or not with the findings of the state board of education and any proposed remedial action to address the reported deviations. Minor deviations will be resolved with the state board of education prior to approval. In the case of major deviations, the private school may request that the state board of education grant provisional status for up to one year so the private school may take action to meet the requirements.

(6) In reviewing a private school's application for annual approval, the state board of education may consider pending or completed proceedings for loss of approval of a private school, including any

conditions or sanctions agreed to or placed upon a private school and any information obtained by the state board of education regarding potential loss of approval of a private school.

[Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-130, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-130, filed 12/1/15, effective 1/1/16; WSR 03-04-053, § 180-90-130, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-130, filed 12/2/85. Statutory Authority: RCW 28A.04.120(4). WSR 82-04-004 (Order 3-82), § 180-90-130, filed 1/21/82; Order 2-77, § 180-90-130, filed 3/24/77; Order 1-75, § 180-90-130, filed 2/4/75.]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-90-141 Loss of private school approval. The state board of education may suspend or rescind approval of a private school for one or more of the following reasons:

(1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the state board of education for the said period of time.

(a) For the 2020-21 school year, schools that implement an online education program consistent with the provisions of RCW 28A.195.090 will not be subject to rescission based on a failure to have students enrolled in the school's physical facilities; and

(b) The school maintains a physical address in Washington and plans to resume classroom instruction when the governing body of the school determines it is safe to do so and resumption is allowable under state and local emergency status.

(2) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112(5).

(3) Failure to provide verification that the physical facilities, personnel, and practices of the school meet (~~the~~) all reasonable health requirements and all reasonable fire safety (~~standards~~) requirements.

(4) Failure to meet any of the requirements, standards, or legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-90-141, filed 12/10/20, effective 1/10/21. Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-141, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-141, filed 12/1/15, effective 1/1/16; WSR 03-04-053, § 180-90-141, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.204 [28A.02.240]. WSR 87-09-039 (Order 7-87), § 180-90-141, filed 4/14/87.]

NEW SECTION**WAC 180-90-142 Brief adjudicative proceedings—Initial hearing.**

(1) A brief adjudicative proceeding is the process for rescission or suspension, other than summary suspension, of a private school's approval. Brief adjudicative proceedings shall be conducted by a hearing officer. The hearing officer may not participate in any case in which the hearing officer is involved as a complainant or witness, or in which the hearing officer has a direct or personal interest, prejudice, or bias.

(2) The parties to a brief adjudicative proceeding are the private school representative and the SBE private school officer. Before taking action, the hearing officer will conduct an informal hearing and provide each party an opportunity to explain its view of the matter.

(3) The hearing officer will serve an initial decision upon both the private school representative and the SBE private school officer within 10 business days of the completion of the informal hearing. The initial decision must include:

(a) A brief written statement of the reasons for the decision, including a description of the acts or failures to act giving rise to any sanctions and reference to the provisions of the Washington Administrative Code or the law violated;

(b) Any sanctions against the private school, including suspension or rescission of approval, and any time period or conditions which must be met for a suspension; and

(c) Information about how to seek administrative review of the initial decision.

If no request for review is filed within 21 days of service of the initial decision, the initial decision is deemed the final decision. The hearing officer must include in the decision that the private school must provide a copy of the final decision to the families of all its students and all of its staff members.

[]

NEW SECTION

WAC 180-90-143 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the executive director or designee, provided a party makes an oral or a written request for review with the executive director within 21 days of service of the initial decision.

(2) The executive director or designee may not participate in any case in which the executive director or designee is involved as a party or witness, or in which the executive director or designee has a direct or personal interest, prejudice, or bias.

(3) During the review, the executive director or designee must give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions or conditions should be continued, modified, or removed.

(4) The decision on review must be in writing, and include a brief statement of the reason for the decision and the changes or mod-

ifications, if any, to the initial decision, and a notice that judicial review may be available pursuant to WAC 180-90-150. The decision on review must include in the decision that the private school must provide a copy of the final decision to the families of all its students and all of its staff members.

(5) The decision on review must be served on the parties within 20 days of the initial decision or the request for review whichever is later. The decision on review is the final decision.

[]

NEW SECTION

WAC 180-90-144 Emergency adjudicative proceeding—Summary suspension. (1) An emergency adjudicative proceeding is the process to enter an emergency order for summary suspension of a private school's approval and other such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare while an investigation and/or administrative procedure is pending.

(2) The SBE private school officer may issue an emergency order summarily suspending a private school's approval if there is reasonable basis to believe that a private school:

(a) Has violated any provision of WAC 180-90-141; and

(b) Presents an immediate danger to the health, safety, or welfare of the private school's students, staff, volunteers, visitors, or other members of the school community that justifies use of emergency adjudication.

(3) The emergency order must include a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the SBE private school officer's decision to take the specific action. The summary suspension can be a full or partial suspension of approval.

(4) Notice. The SBE private school officer must provide notice to a private school that its approval as a private school has been summarily suspended under an emergency order. The private school must be served with oral or written notice of the summary suspension. If oral notice is given, a written notification must be served on the private school within two business days of the oral notice.

The written notification will include:

(a) The reasons for imposing the summary suspension, including a description of the acts or failures to act giving rise to the summary suspension and reference to the provisions of the Washington Administrative Code, state or federal law, or other applicable requirements, standards, or authority allegedly violated;

(b) The conditions, if any, under which the private school may continue to operate during the summary suspension; and

(c) Information on how to request a hearing on the summary suspension.

(5) The private school has the right to request a hearing on the summary suspension. The hearing request must be in writing and filed with the SBE private school officer.

(6) The SBE private school officer will conduct a hearing on the summary suspension as soon as practicable after receipt of the private school's request for a hearing on the summary suspension.

(a) During the summary suspension hearing, the issue before the SBE private school officer is whether there is probable cause to believe that summary suspension should be continued pending further administrative proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The SBE private school officer must provide the private school with an opportunity to explain why summary suspension should not be continued while administrative proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the private school fails to appear at the designated hearing time, the SBE private school officer may order that the summary suspension remain in place pending the conclusion of the administrative proceedings.

(d) As soon as practicable following the hearing, the SBE private school officer will issue a written decision which must include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) The SBE private school officer shall provide a copy of the decision to the private school. The SBE private school officer must include in the decision that the private school must provide a copy of the decision to the families of all its students and all of its staff members.

[]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-90-160 Minimum standards and certificate form. (1) The annual certificate of compliance required by WAC 180-90-130 shall be ~~((in substantial compliance with the form and substance of the following))~~ submitted to the state board of education and signed by the school or district administrator certifying compliance by the school or district. The certificate of compliance form and the submittal process will be determined by the state board of education. Information about annual private school approval and the submittal process will be posted on the state board of education website. The certificate of compliance affirms the school meets the requirements, standards, or legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW and the following standards with the exception only of such deviations or proposed deviations, if any, as are set forth in an attachment to the certificate of compliance:

~~((CERTIFICATE OF COMPLIANCE
WITH STATE STANDARDS~~

~~ESD/County/Public
School District
Private School/
District Address~~

~~I,, do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades through with a projected enrollment of; and that said school is scheduled to meet throughout the school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance~~

~~or~~

~~I,, do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:))~~

(a) Except as provided in chapter 180-111 WAC (~~for the 2019-20 school year~~), the minimum school year for instructional purposes consists of no less than (~~one hundred eighty~~) 180 school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW 28A.195.010.

(b) On each school day, pupils enrolled and in attendance at the school are engaged in educational activity planned by and under the direction of the school; and that pupils are provided an annual total instructional hour offering, as prescribed in RCW 28A.195.010, of at least:

(i) (~~450~~) Four hundred fifty hours for students in kindergarten.

(ii) (~~1000~~) One thousand hours for students in grades one through (~~twelve~~) 12.

(c) All classroom teachers hold appropriate Washington State certification except for:

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient units for meeting state board of education graduation requirements, except as provided in chapter 180-111 WAC; and/or

(ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated teacher, administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise, and the exceptional circumstances are listed on the addendum to this certificate.

(d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody, the extension program meets the following requirements:

(i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

(ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (e) through (g) of this subsection;

(iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

(iv) Each student's progress is evaluated by the certified person; and

(v) The certified person does not supervise more than ~~((thirty))~~ 30 students enrolled in the approved private school's extension program.

(e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

(f) The physical facilities, personnel, and practices of the school are adequate to meet the program offered, and all school facilities, personnel, and practices are in ~~((substantial))~~ compliance with all reasonable health requirements and all reasonable fire safety ((standards)) requirements, as defined in WAC 180-90-112, and substantiated as required by current inspection reports of appropriate health and fire safety officials which are on file in the ~~((chief))~~ school or district administrator's office;

(g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mission or focus of the school to satisfy the career and technical education requirement of chapter 180-51 WAC and may waive requirements as provided in chapter 180-111 WAC;

(h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

(i) The school does not engage in a policy of racial segregation or discrimination;

(j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations or proposed deviations from the rules and regulations of the state board of education and the standards contained in chapter 180-90 WAC. ~~((I have reported all such deviations herewith.~~

Dated this day of, 20...

.....
(signed)

.....
(title)

.....
(phone-number))

(2) Approval by the state board of education is contingent upon on-going compliance with the requirements, standards, and legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW and the standards ((certified)) herein. The school shall notify the state board of education of any deviation from these requirements, standards ((which)), or legal obligations that occurs after the approval action

taken by the state board of education. Such notification shall be filed within ~~((thirty))~~ 30 days of occurrence of the deviation.

(3) Failure to comply with the requirements of this chapter may result in the ~~((revocation))~~ rescission or suspension of the approval of the private school and shall be considered in subsequent application for approval as a private school.

(4) ~~((Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.))~~ The board may provide a shortened approval form or expedited approval process for private schools accredited by a state board of education-approved accrediting body.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-90-160, filed 12/10/20, effective 1/10/21. Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-160, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-160, filed 12/1/15, effective 1/1/16. Statutory Authority: 2014 c 217 and RCW 28A.230.090. WSR 14-19-032, § 180-90-160, filed 9/8/14, effective 10/9/14. Statutory Authority: RCW 28A.195.040. WSR 03-04-053, § 180-90-160, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.305.130(6), 28A.195.040 and 1996 c 83. WSR 96-15-099, § 180-90-160, filed 7/22/96, effective 8/22/96. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-90-160, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.02.240. WSR 89-01-038 (Order 23-88), § 180-90-160, filed 12/14/88; WSR 87-09-039 (Order 7-87), § 180-90-160, filed 4/14/87. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-160, filed 12/2/85. Statutory Authority: RCW 28A.04.120(4). WSR 82-04-004 (Order 3-82), § 180-90-160, filed 1/21/82. Statutory Authority: RCW 28A.02.201 et seq. and 28A.04.120(4). WSR 78-06-064 (Order 9-78), § 180-90-160, filed 5/25/78; Order 2-77, § 180-90-160, filed 3/24/77; Order 1-76, § 180-90-160, filed 2/3/76; Order 1-75, § 180-90-160, filed 2/4/75.]

WSR 22-01-146
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-274—Filed December 15, 2021, 11:00 a.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this emergency rule is to reduce Catch Record Card Area 10 salmon season openings three days per week and reduce the salmon daily limit to one fish.

Citation of Rules Affected by this Order: Amending WAC 220-313-06000R.

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: Marine Area 10 was originally scheduled to open to recreational salmon fishing seven days per week in January. The citizen comprised Puget Sound recreational angling advisory committee have advised Washington department of fish and wildlife to take actions to provide the maximum number of fishing days and avoid early closure of the season which is scheduled to run through March 31. In the 2021-22 fishing year, most Puget Sound salmon seasons that have had encounter-based limits have been closed prior to the planned end date due to reaching their encounter limits. Taking this information into account and the increased angling effort seen in nearly all Puget Sound salmon fisheries over the last year, the Marine Area 10 winter salmon seasons beginning January 1, 2022, will be limited to opening three days per week with a one fish daily limit. This rule will minimize the likelihood of meeting or exceeding fishery encounter limits prior to the planned closing date of March 31. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 15, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000R Puget Sound salmon—Saltwater seasons and daily limits. Effective January 1 through March 31, 2022, the following provisions of WAC 220-313-060 regarding salmon seasons in Catch Record Card Area 10 shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 10: Salmon:

- (a) Open Saturdays, Sundays, and Mondays each week. Closed Tuesdays, Wednesdays, Thursdays, and Fridays each week.
- (b) Daily limit 1.
- (c) Chinook, minimum size 22 inches. Other salmon species, no minimum size.
- (d) Release wild Chinook.

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WSR 22-01-147

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed December 15, 2021, 11:10 a.m., effective December 15, 2021, 11:10 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-341-0342 Agency licensure and certification—Off-site locations. The department of health (department) is adopting an emergency rule to amend WAC 246-341-0342 to define a mobile unit for behavioral health agencies in Washington and allow opioid treatment programs (OTPs) to add a mobile unit as an extension of their existing license. This will align existing rule with the federal changes published in Title 21 of the Code of Federal Regulations, Parts 1300, 1301, and 1304 (21 C.F.R.). On July 28, 2021, these federal rules were revised to allow OTPs to operate mobile units under their existing federal Drug Enforcement Administration (DEA) license. Although current behavioral health agency (BHA) licensing and certification rules reference 21 C.F.R., these rules went into effect on July 1, 2021, prior to the federal change, and need to be updated to ensure that OTPs in Washington are complying with the current version of the federal rule. The amendments to WAC 246-341-0342 define what a mobile unit is, require OTPs to notify the department in writing prior to operating a mobile unit, and outline requirements for OTPs that operate a mobile narcotic treatment program. These requirements include submitting a copy of the DEA approval for the unit and complying with 21 C.F.R. Parts 1300, 1301, and 1304.

Citation of Rules Affected by this Order: Amending WAC 246-341-0342.

Statutory Authority for Adoption: RCW 71.24.037, 71.24.585, 71.24.595.

Other Authority: Title 21 C.F.R. Parts 1300, 1301, and 1304.

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: This emergency rule updates department rules to align with the recently updated federal rules in 21 C.F.R., which allow OTPs to add and operate a mobile unit under their existing DEA license. Without this change, the rules would direct OTPs to comply with an outdated version of federal regulations that did not include the ability to operate a mobile OTP component. Furthermore, this has become an emergent issue as a result of the ongoing opioid crisis in Washington state, which has been exacerbated by the coronavirus disease 2019 (COVID-19) pandemic. This amendment will allow the department to approve mobile units without delay, increasing access to treatment for individuals who suffer from opioid use disorder, while maintaining regulatory oversight to ensure client and public safety. The department is considering adopting these changes as part of a permanent rule-making process, under WSR 21-14-010.

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

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

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

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

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

Date Adopted: December 15, 2021.

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

OTS-3478.3

AMENDATORY SECTION (Amending WSR 21-12-042, filed 5/25/21, effective 7/1/21)

WAC 246-341-0342 Agency licensure and certification—Off-site locations and mobile units. (1) A behavioral health agency may provide certified services at an off-site location or from a mobile unit under the existing behavioral health agency license.

(2) For the purposes of this section:

(a) "Off-site" means the provision of services by a licensed behavioral health agency at a location where the assessment or treatment is not the primary purpose of the site, such as in schools, hospitals, long-term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

(b) "Established off-site location" means a location that is regularly used and set up to provide services rather than a location used on an individual, case-by-case basis.

(c) "Mobile unit" means a vehicle, lawfully used on public streets, roads, or highways with more than three wheels in contact with the ground, from which behavioral health services are provided at a nonpermanent location(s).

(3) A behavioral health agency that provides ((outpatient)) off-site services at an established off-site location(s) shall:

(a) Maintain a list of each established off-site location where services are provided on a regularly scheduled ongoing basis and include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location;

(b) Maintain an individual's confidentiality at the off-site location; and

(c) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable.

~~((2))~~ (4) In addition to meeting the requirements in subsection ~~((1))~~ (3) of this section, an agency providing services to an individual in their place of residence or services in a public setting that is not an established off-site location where services are provided on a regularly scheduled ongoing basis must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual, staff member, and community safety; and

(b) For the purpose of emergency communication and as required by RCW 71.05.710, provide access to a wireless telephone or comparable device to any employee, contractor, student, or volunteer when making home visits to individuals.

~~((3) For the purposes of this section:~~

~~(a) "Off-site" means the provision of services by a licensed behavioral health agency at a location where the assessment or treatment is not the primary purpose of the site, such as in schools, hospitals, long-term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.~~

~~(b) "Established off-site location" means a location that is regularly used and set up to provide services rather than a location used on an individual, case-by-case basis.)~~ (5) Before operating a mobile unit, agencies providing behavioral health services from a mobile unit must notify the department in writing in a manner outlined by the department. The notification must include that a mobile unit is being added under the agency license and indicate what services will be provided from the mobile unit, including whether it is operating as a mobile narcotic treatment program as defined in 21 C.F.R. Part 1300.01.

(6) An opioid treatment program operating a mobile narcotic treatment program must:

(a) Submit a copy of the Drug Enforcement Administration (DEA) approval for the mobile narcotic treatment program; and

(b) Comply with 21 C.F.R. Parts 1300, 1301 and 1304.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0342, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0342, filed 4/16/19, effective 5/17/19.]

WSR 22-01-151
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-273—Filed December 15, 2021, 12:58 p.m., effective December 15, 2021, 12:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to correct the previous filing of WSR 22-01-080 that incorrectly specified opening commercial harvest in District 2-2, it should have specified Districts 1 and 2.

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

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

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

Reasons for this Finding: This emergency rule is necessary to correct the filing of WSR 22-01-080. The previous filing specified opening commercial harvest in District 2-2, this rule corrects the district to Districts 1 and 2.

This rule opens commercial harvest of sea cucumbers in Catch Reporting Areas 23B, 25A, 25B, 25C, 25D, and 25E of sea cucumber management Districts 1 and 2. The quota in this area has been increased by 10,800 pounds per comanager agreement. Opening commercial seasons in District 1 and 2 with a 700-pound weekly limit, with the expectation of 15 licenses [licensees] participating, is consistent with and designed to fall within comanager agreed management plans. Harvestable surpluses of sea cucumbers exist in the districts specified.

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: December 15, 2021.

Kelly Susewind
Director

NEW SECTION

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

(1) Sea cucumber harvest using shellfish diver gear is allowed in the following catch reporting areas of Sea Cucumber Districts 1 and 2, Monday through Sunday of each week: 23B, 25A, 25B, 25C, 25D, 25E.

(2) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 700 pounds per valid designated sea cucumber harvest license.

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REPEALER

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

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

WSR 22-01-165
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-276—Filed December 16, 2021, 12:48 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The purpose of this emergency rule is to reduce the number of days open for sturgeon retention in The Dalles Pool to three days per week from January 1 through 26, 2022.

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 alter the open days per week for sturgeon sport harvest in The Dalles Reservoir. This population of sturgeon is at risk of exceeding the guideline within January, as indicated by the last decade of data, and these actions are expected to help ensure the overall sport guideline of 190 fish is not exceeded. This action is consistent with decisions made by the states of Washington and Oregon during the Columbia River compact hearing on December 15, 2021. The general public welfare is protected with the immediate and limited duration opening of recreational sturgeon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 16, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000G Freshwater exceptions to statewide rules—Columbia River. Effective January 1 through January 26, 2022 the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regard-

ing white sturgeon retention seasons from the Dalles Dam to John Day 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 The Dalles Dam upstream to John Day Dam, including adjacent tributaries:

(a) It is permissible to retain white sturgeon on Saturday January 1, Monday January 3, Wednesday January 5, Saturday January 8, Monday January 10, Wednesday January 12, Saturday January 15, Monday January 17, Wednesday January 19, Saturday January 22, Monday January 24, and Wednesday January 26, 2022:

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

(ii) Minimum fork length 43 inches. Maximum fork length 54 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 22-01-166
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Residential Care Services)

[Filed December 16, 2021, 3:01 p.m., effective December 24, 2021]

Effective Date of Rule: December 24, 2021.

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

Citation of Rules Affected by this Order: Amending WAC 388-97-0920, 388-97-1915, and 388-97-1975.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

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

PASRR: Current nursing home rules require a PASRR screen, typically performed by hospital staff prior to admission to a nursing home, followed by further evaluation from state agency staff or contractors under certain circumstances. Hospital staff continue to experience an extremely high workload during the pandemic due to the increased number of admissions, coupled with a reduced number of available staff. Additionally, face-to-face evaluation of the transferring resident continues to be restricted in many counties. The PASRR rule will align state nursing home rules with federal rules that were extended to help facilitate care during the COVID-19 outbreak by shortening the transfer time from hospital to nursing home and increasing the flexibility for nursing home staff to be able to prioritize immediate or emergency care needs of incoming residents.

Resident groups: Current rules establish resident rights to participate in resident groups and require the facility to assist with the organization of a group. Extending the amendment of these rules will permit facilities to restrict resident groups and meets the state and federal recommendations for social distancing and limited gatherings. Extending this amendment also aligns state rules with federal rules that were suspended to accomplish social distancing recommendations.

These emergency rules continue to be needed to align state nursing home requirements with suspended or amended federal requirements. Ongoing conversations with stakeholders also support continuation of these emergency rules until a clear timeline for reimplementation, consistent with federal reimplementation, is established. The department filed a CR-101 under WSR 21-11-062.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 16, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4799.4

AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1915 PASRR requirements (~~(prior to admission of)~~) for new residents. (~~(Prior to every)~~) Within thirty days of admission (~~(of a new resident)~~), the nursing facility must:

(1) Complete a PASRR level I screening, or verify that a PASRR level I screening has been completed(~~(, and deny admission until that screening has been completed)~~).

(2) Require a PASRR level II evaluation, or verify that a PASRR level II evaluation has been (~~(completed)~~) requested when the individual's PASRR level I screening indicates that the individual may have serious mental illness and/or intellectual disability or related condition(~~(, and deny admission until that evaluation has been completed, unless all three of the following criteria apply and are documented in the PASRR level I screening:~~

(a) ~~The individual is admitted directly from a hospital after receiving acute inpatient care;~~

(b) ~~The individual requires nursing facility services for the condition for which he or she received care in the hospital; and~~

(c) ~~The individual's attending physician has certified that the individual is likely to require fewer than thirty days of nursing facility services)~~).

(3) (~~Decline to admit any individual whose PASRR level II evaluation determines that he or she does not require nursing facility services or that a nursing facility placement is otherwise inappropriate.~~

~~(4))~~ Coordinate with PASRR evaluators to the maximum extent practicable in order to avoid duplicative assessments and effort, and to ensure continuity of care for nursing facility residents with a serious mental illness and/or an intellectual disability or related condition.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. § 483.100-138. WSR 15-18-026, § 388-97-1915, filed 8/25/15, effective 9/25/15.]

AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1975 PASRR requirements after admission of a resident. (~~Following~~) After the thirtieth day of a resident's admission, the nursing facility must:

(1) Review all level I screening forms for accuracy. If at any time the facility finds that the previous level I screening was incomplete, erroneous or is no longer accurate, the facility must immediately complete a new screening using the department's standardized level I form, following the directions provided by the department's PASRR program. If the corrected level I screening identifies a possible serious mental illness or intellectual disability or related condition, the facility must notify DDA and/or the mental health PASRR evaluator so a level II evaluation can be conducted.

(2) Record the evidence of the level I screening and level II determinations (and any subsequent changes) in the resident assessment in accordance with the schedule required under WAC 388-97-1000.

(3) Maintain the level I form and the level II evaluation report in the resident's active clinical record.

(4) Immediately complete a level I screening using the department's standardized form if the facility discovers that a resident does not have a level I screening in his or her clinical record, following directions provided by the department's PASRR program. If the level I screening identifies a possible serious mental illness or intellectual disability or related condition, notify the DDA and/or mental health PASRR evaluator so a level II evaluation can be conducted.

~~(5) ((Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted on an exempted hospital discharge appears likely to need nursing facility services for more than thirty days, so a level II evaluation can be performed. This notification must occur as soon as the nursing facility anticipates that the resident may require more than 30 days of nursing facility services, and no later than the twenty-fifth day after admission unless good cause is documented for later notification.~~

~~(6))~~ Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted with an advance categorical determination appears likely to need nursing facility services for longer than the period specified by DDA and/or the mental health PASRR evaluator, so that a full assessment of the individual's need for specialized services can be performed. This notification must occur as soon as the nursing facility anticipates that the resident will require more than the number of days of nursing facility services authorized for the specific advance categorical determination and no later than five days

before expiration of the period (three days for protective services) unless good cause is documented for later notification.

~~((7))~~ (6) Immediately notify the DDA and/or mental health PASRR evaluator for a possible resident review when there has been a significant change in the physical or mental condition, as defined in WAC 388-97-1910, of any resident who has been determined to have a serious mental illness or intellectual disability or related condition. Complete a new level I screening for the significant change.

~~((8))~~ (7) Provide or arrange for the provision of any services recommended by a PASRR level II evaluator that are within the scope of nursing facility services. If the facility believes that the recommended service either cannot or should not be provided, the facility must document the reason(s) for not providing the service and communicate the reason(s) to the level II evaluator.

~~((9))~~ (8) Immediately complete a new level I screening using the department's standardized form if the facility finds that a resident, not previously determined to have a serious mental illness, develops symptoms of a serious mental illness, and refer the resident to the mental health PASRR evaluator for further evaluation.

~~((10))~~ (9) Provide services and interventions that complement, reinforce and are consistent with any specialized services recommended by the level II evaluator. The resident's plan of care must specify how the facility will integrate relevant activities to achieve this consistency and the enhancement of the PASRR goals.

~~((11))~~ (10) Discharge, in accordance with WAC 388-97-0120, any resident with a serious mental illness or intellectual disability or related condition who does not meet nursing facility level of care, unless the resident has continuously resided in the facility for at least thirty months and requires specialized services. The nursing facility must cooperate with DDA and/or mental health PASRR evaluator as it prepares the resident for a safe and orderly discharge.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. § 483.100-138. WSR 15-18-026, § 388-97-1975, filed 8/25/15, effective 9/25/15.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-97-0920 Participation in resident and family groups.

WSR 22-01-167
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-275—Filed December 16, 2021, 4:44 p.m., effective December 17, 2021]

Effective Date of Rule: December 17, 2021.

Purpose: The purpose of this emergency rule is to close recreational fishing seasons for Nooksack River, including North and Middle forks, beginning December 17. This rule will also close steelhead fishing through the end of December and all recreational fishing during the month of January in Nooksack River, South Fork.

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

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

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

Reasons for this Finding: This emergency rule is necessary to close recreational fishing seasons for Nooksack River, including North and Middle forks, beginning December 17. This rule will also close steelhead fishing through the end of December and all recreational fishing during the month of January in Nooksack River, South Fork.

In 2021, hatchery steelhead returned to the Nooksack [River] less abundant than forecasted and the broodstock goal was not reached. The 2021-2022 hatchery steelhead forecast is for 74 fish, while 160 fish are needed to make the broodstock goal. All Nooksack comanagers are in agreement that to ensure future sport and treaty opportunity on this stock, these measures are necessary. In response, the comanagers have all agreed to cease fishing in the Nooksack [River]. The South Fork will remain open for salmon and other gamefish through the end of the year, and then be closed to all fishing as part of the measures taken to bolster broodstock collection.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 16, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Y Freshwater exceptions to statewide rules—Puget Sound. Effective December 17, 2021 through February 15, 2022, recreational fishing seasons for Nooksack River; Nooksack River, North Fork; Nooksack River, Middle Fork; and Nooksack River, South Fork shall be modified during dates listed as follows. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Nooksack River (Whatcom County), from Lummi Indian Reservation boundary to confluence of North and South Forks:

Effective December 17, 2021 through January 31, 2022: All species: Closed.

(2) Nooksack River, North Fork (Whatcom County):

(a) From mouth to Maple Creek:

Effective December 17, 2021 through February 15, 2022: All species: Closed.

(b) From Maple Creek to Nooksack Falls:

Effective December 17, 2021 through January 31, 2022: All species: Closed.

(3) Nooksack River, Middle Fork (Whatcom County), from mouth to former site of Bellingham diversion dam:

Effective December 17, 2021 through January 31, 2022: All species: Closed.

(4) Nooksack River, South Fork (Whatcom County), from mouth to Skookum Creek:

(a) Effective December 17 through December 31, 2021: All steelhead: Closed to fishing for or retaining.

(b) Effective January 1 through January 31, 2022: All species: Closed.

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WSR 22-01-169

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed December 17, 2021, 11:19 a.m., effective December 17, 2021, 11:19 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-72-020 Certificate requirements, and 246-72-080 Renewals and updating license information. Current certificate requirements for medical marijuana certified consultants (MMCC) under WAC 246-72-020 require an initial applicant to obtain a cardiopulmonary resuscitation (CPR) card from a training course that includes both a written examination and skills demonstration test in order to receive a MMCC credential from the department of health (department). The department is amending this section of rule to temporarily suspend the skills demonstration portion of the CPR requirement to allow initial applicants to move forward in the department's application process during the coronavirus disease (COVID-19) declared emergency. WAC 246-72-080 does not specify CPR requirements include a skills demonstration test for renewal of a MMCC credential, however the department interprets this requirement to be the same as defined in WAC 246-72-020. Therefore, the department is also revising WAC 246-72-080 in this rule making to clarify that the in-person CPR requirement suspension applies to renewing applicants as well as initial applications. This is the fifth filing of these emergency rules and will replace the previous emergency rules filed on August 20, 2021, under WSR 21-18-013. It remains necessary as the COVID-19 pandemic continues to make in-person courses difficult to access.

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

Statutory Authority for Adoption: RCW 69.51A.290.

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

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

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

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

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

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

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

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

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

Date Adopted: December 17, 2021.

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

OTS-2302.1

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

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

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

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

OTS-2528.1

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

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

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

(2) Renewals:

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

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

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

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

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

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

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

WSR 22-01-190
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 20, 2021, 4:08 p.m., effective December 20, 2021, 4:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule is necessary to allow the factory assembled structure (FAS) program to effectively approve plans for commercial coach trailers, factory-built housing and commercial structures, recreational park trailers (RPT), recreational vehicles (RV), and conversion vendor units (food trucks and trailers) as required under RCW 43.22.360 and 43.22.480. The rule language includes changes to chapters 296-150C and 296-150F WAC that clarify plan submission requirements. The rule adds provisions to chapters 296-150P, 296-150R, and 296-150V WAC to allow plans for RPTs, RVs, and conversion vendor units to be reviewed and approved by a licensed professional engineer, architect, or firm as authorized by RCW 43.22.360(3).

Citation of Rules Affected by this Order: New WAC 296-150P-0315, 296-150P-0520, 296-150P-0530, 296-150P-0540, 296-150P-0550, 296-150P-0560, 296-150P-0570, 296-150P-0580, 296-150P-0590, 296-150R-0315, 296-150R-0520, 296-150R-0530, 296-150R-0540, 296-150R-0550, 296-150R-0560, 296-150R-0570, 296-150R-0580, 296-150R-0590, 296-150V-0420, 296-150V-0430, 296-150V-0440, 296-150V-0450, 296-150V-0460, 296-150V-0470, 296-150V-0480 and 296-150V-0490; and amending WAC 296-150C-0310, 296-150C-0420, 296-150C-0430, 296-150C-0460, 296-150C-0480, 296-150F-0310, 296-150F-0420, 296-150F-0430, 296-150F-0460, 296-150F-0480, 296-150P-0020, 296-150P-3000, 296-150R-3000, 296-150V-0310, and 296-150V-3000.

Statutory Authority for Adoption: RCW 43.22.360(3), 43.22.480(3).

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

Reasons for this Finding: In February 2020, a state of emergency was declared in Washington state to respond to the COVID-19 virus, which ultimately became a global pandemic. The department of labor and industries (L&I) has been involved in several efforts to respond to the pandemic effects on the economy, employment, and worker safety. As a result of L&I's response, resources and staffing shortages in the FAS program have developed a backlog of plans for review and approval. This emergency rule is needed to protect the general welfare of Washingtonians, by ensuring plans for commercial coaches, factory-built housing and commercial structures, RPTs, RVs, and conversion vendor units are approved in a timely manner and inspected to the safety standards of chapters 296-150C, 296-150F, 296-150P, 296-150R, and 296-150V WAC. If the emergency rule is not adopted, the backlog of plans needing review by the FAS program will significantly increase and likely cause serious harm to the entire FAS industry by impacting production as well as putting the public at risk of harm due to the lack of safety inspections for these structures prior to them being used by businesses and the public.

As of this filing, FAS has 2,000 plans waiting for review by the program's two remaining plan examiners; at full staffing, the program

has seven plan examiners. These plans are for all the types of structures identified above and include everything from simple RV trailers to large commercial buildings.

The backlog has also created delays in public safety inspections of factory-built housing and commercial structures and of conversion vendor units (food trucks and trailers), because inspections cannot be performed without approved plans. In addition, lacking plans for some of their designs, the RV and RPT industries face delays in sending their products to Washington as they cannot apply Washington labels to models that have not been reviewed and approved.

These changes and additions made in the emergency rule will help address and reduce the backlog of plan reviews and promote timely public safety inspections, by providing for "licensed professional" plan reviews for the program. This will provide manufacturers with an alternate method to obtain approved plans in a timely manner, thus helping businesses remain in business or continue business operations. The emergency rule and its impact on the backlog of reviews and inspections will support restaurants and other types of businesses [to] comply with COVID-19 requirements by allowing those businesses to serve people outside, and keep workers safely distanced from the public according to state and local social distancing guidelines. In addition, updating the existing rules in chapters 296-150C and 296-150F WAC will make it easier for manufacturers using licensed professional reviews, by simplifying and clarifying our requirements for those types of plans.

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 26, Amended 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 26, Amended 15, 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 26, Amended 15, Repealed 0.

Date Adopted: December 20, 2021.

Joel Sacks
Director

OTS-3538.1

AMENDATORY SECTION (Amending WSR 98-14-078, filed 6/30/98, effective 7/31/98)

WAC 296-150C-0310 Who can approve design plans? (1) Design plans can be approved by us or by a licensed professional or firm authorized by us. (See WAC 296-150C-0420 and 296-150C-0430.)

(2) All electrical design plans for new or altered electrical installations for educational institutions, health care facilities, and

other buildings required by chapter 296-46 WAC, Safety standards—Installing electric wires and equipment—Administrative rules, must be reviewed and approved by us.

(3) ~~((A professional cannot approve plans submitted under a reciprocal agreement.))~~ All design plans submitted under a reciprocal agreement for multistate approval must be reviewed and approved by us.

[Statutory Authority: Chapter 43.22 RCW. WSR 98-14-078, § 296-150C-0310, filed 6/30/98, effective 7/31/98. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150C-0310, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-0420 Who can be authorized to approve design plans?

(1) A professional engineer, architect or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements.

(3) A professional who designs and certifies that the commercial coach design meets state requirements cannot also approve the design plan in the plan approval process.

(4) A professional cannot approve those electrical designs listed in WAC 296-150C-0310(2).

(5) A professional cannot approve plans submitted under a reciprocal agreement.

[Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150C-0420, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-0430 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer ~~((or))~~, architect, or firm; ~~((or))~~ and

~~((Name, a copy of your certificate of authority, and address of the firm; and~~

~~((3)))~~ A description of the services the professional engineer, architect, or firm will provide in the areas of structural, fire and life safety, energy, mechanical, plumbing, and electrical plan review; and

~~((4) A description))~~ (3) A summary of the professional's ~~((area(s) of))~~ or firm's expertise and qualifications ~~((which include: (a) A summary of the professional's or firm's experience; and~~

~~(b) Verification of experience in your area of expertise such as structural, mechanical, plumbing, energy, electrical, fire and life safety, and ventilation and indoor air quality) to review plans in the areas identified by the description of services.~~

[Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150C-0430, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 98-14-078, filed 6/30/98, effective 7/31/98)

WAC 296-150C-0460 What information must a manufacturer (~~provide~~) send to the department when a professional or firm does the design-plan approval? You must (~~provide~~) send us the following information (~~with~~) in your approved design plans:

- (1) A completed departmental design-plan approval request form;
- (2) (~~Two or more~~) A set(s) of design plans (~~plus elevation~~), drawings, specifications, engineering analysis, and test results and procedures necessary for a complete code evaluation of the design. These design plans must (~~have an original wet stamp, be signed, and dated~~) be sealed by the (~~approving~~) design professional(s) (~~(see WAC 296-150C-0340 and 296-150C-0350)~~) in accordance with chapters 196-23 and 308-12 WAC;
- (3) A cover sheet on the design plan noting which professional approved each portion of the design plan;
- (4) A copy of the authorization letter from us;
- (5) The design plan fee for design plans approved by professionals or firms; (see WAC 296-150C-3000.)
- (~~6~~) ~~A professional who designs and certifies that the commercial coach design meets state requirements cannot also approve the design plan in the plan approval process;~~
- (~~7~~) ~~A professional cannot approve those electrical designs listed in WAC 296-150C-0310(2); and~~
- (~~8~~) ~~A professional cannot approve plans submitted under a reciprocal agreement.)~~

[Statutory Authority: Chapter 43.22 RCW. WSR 98-14-078, § 296-150C-0460, filed 6/30/98, effective 7/31/98. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150C-0460, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150C-0480 Do you have a list of professionals or firms that are authorized to approve design plans? Yes. We will maintain a list of the licensed professionals and firms that are authorized to approve design plans for commercial coaches.

[Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150C-0480, filed 10/23/96, effective 11/25/96.]

OTS-3539.1

AMENDATORY SECTION (Amending WSR 12-15-061, filed 7/17/12, effective 9/1/12)

WAC 296-150F-0310 Who can approve design plans? (1) Design plans can be approved by us or by a licensed professional or firm authorized by us (see WAC 296-150F-0420 and 296-150F-0430).

(2) All electrical design plans for new or altered electrical installations for educational, institutional, health care facilities, and other buildings (see WAC 296-46B-900) must be reviewed and approved by us.

(3) All design plans submitted under a reciprocal agreement for multistate approval must be reviewed and approved by us.

[Statutory Authority: Chapter 43.22 RCW. WSR 12-15-061, § 296-150F-0310, filed 7/17/12, effective 9/1/12. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150F-0310, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0420 Who can be authorized to approve design plans?

(1) A professional engineer, architect, or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements.

(3) A professional who designs and certifies that the factory-built home or commercial structure design meets state requirements cannot also approve the design plan in the plan approval process;

(4) A professional cannot approve those electrical designs listed in WAC 296-150F-0310(2); and

(5) A professional cannot approve plans submitted under a reciprocal agreement.

[Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150F-0420, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0430 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer ~~((or))~~, architect, or firm; ~~((or))~~ and (2) ~~((Name, a copy of your certificate of authority, and address of the firm; and~~ (3)) A description of the services the professional engineer, architect, or firm will provide in the areas of structural, fire and life safety, energy, mechanical, plumbing, and electrical plan review; and ~~((4) A description))~~ (3) A summary of the professional's ~~((area(s) of))~~ or firm's expertise and qualifications ~~((which include:~~ (a) ~~A summary of the professional's or firm's experience; and~~ (b) ~~Verification of experience in your area of expertise such as structural, mechanical, plumbing, energy, electrical, fire and life safety, and ventilation and indoor air quality))~~ to review plans in the areas identified by the description of services.

[Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150F-0430, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 98-14-078, filed 6/30/98, effective 7/31/98)

WAC 296-150F-0460 What information must a manufacturer ((provide)) send to the department when a professional or firm does the design plan approval? You must ~~((provide))~~ send us the following information ~~((with))~~ in your approved design plan:

- (1) A completed departmental design plan approval request form;
- (2) ~~((Two or more))~~ A set((s)) of the design plan ~~((s plus elevation))~~ drawings, specifications, engineering analysis, and test results and procedures necessary for a complete code evaluation of the design. These design plans must ~~((have an original wet stamp, be signed, and dated))~~ be sealed by the ~~((approving))~~ design professional(s) ~~((see WAC 296-150F-0340 and 296-150F-0350))~~ in accordance with chapters 196-23 and 308-12 WAC;
- (3) A cover sheet on the design plan noting which professional approved each portion of the design plan;
- (4) A copy of the authorization letter from us; and
- (5) The design plan fee for design plans approved by professionals or firms (see WAC 296-150F-3000) ~~((~~
- ~~((6) A professional who designs and certifies that the factory-built home or commercial structure design meets state requirements cannot also approve the design plan in the plan approval process;~~
- ~~((7) A professional cannot approve those electrical designs listed in WAC 296-150F-0310(2); and~~
- ~~((8) A professional cannot approve plans submitted under a reciprocal agreement))~~ .

[Statutory Authority: Chapter 43.22 RCW. WSR 98-14-078, § 296-150F-0460, filed 6/30/98, effective 7/31/98. Statutory Authority:

RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150F-0460, filed 10/23/96, effective 11/25/96.]

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0480 Do you have a list of professionals or firms that are authorized to submit design plans? Yes. We will maintain a list of the licensed professionals and firms that are authorized to approve design plans for factory-built housing and commercial structures.

[Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150F-0480, filed 10/23/96, effective 11/25/96.]

OTS-3540.1

AMENDATORY SECTION (Amending WSR 12-15-061, filed 7/17/12, effective 9/1/12)

WAC 296-150P-0020 What definitions apply to this chapter? "**Alteration**" is the replacement, addition, modification, or removal of any equipment or material that affects the fire and life safety provisions, structural system, plumbing systems, fuel systems and equipment or electrical systems of a recreational park trailer.

The following changes are not considered alterations for purposes of this chapter:

- Repairs with approved parts;
- Modification of a fuel-burning appliance according to the terms of its listing; and
- Adjustment and maintenance of equipment.

"**Alteration insignia**" is an insignia which indicates a recreational park trailer alteration was approved by the department.

"**ANSI**" is the American National Standards Institute, Inc., and the institute's rules applicable to recreational park trailers. For the purposes of this chapter, references to ANSI mean ANSI A119.5 Recreational Park Trailers, current edition.

"**Approved**" is approved by the department of labor and industries.

"**Audit**" by the department is the department inspection of a manufacturer's quality control procedures, comprehensive plans, and recreational park trailers.

"**Comprehensive design plan**" consists of the design plans and copies of drawings such as:

- Floor plans relating to fire and life safety, structural, electrical, plumbing, liquefied petroleum (LP) and/or natural gas systems and appliances and air conditioning systems, if applicable to the plan of each recreational park trailer.

- Plumbing line drawings which describe the size, length and location of gas piping lines, liquid and body waste lines, liquid and body waste tanks, and potable water tanks.

- Electrical drawings. (See WAC 296-150P-0330.)

"Consumer" is a person or organization who buys or leases recreational park trailers.

"Dealer" is a person or organization whose business is offering recreational park trailers for sale or lease.

"Department" is the department of labor and industries. The department may be referred to as "we" or "us" in this chapter. Note: You may contact us at: Department of Labor and Industries, Specialty Compliance, P.O. Box 44430, Olympia, WA 98504-4430.

"Equipment" is all material, appliances, fixtures, and accessories used in the manufacture or alteration of recreational park trailers.

"Manual" is a reference containing instructions, procedures, responsibilities and other information used to implement and maintain the quality control program of a recreational park trailer manufacturer.

"National Electrical Code" see Appendix 'C' of ANSI A119.5 for reference to the appropriate edition to use for compliance.

"Recreational park trailer" also known as a "Park Model RV" is a trailer-type unit that is primarily designed to provide temporary living quarters for recreational, camping or seasonal use, that meets the following criteria:

- Built on a single chassis, mounted on wheels;
- Having a gross trailer area not exceeding 400 square feet (37.15 square meters) in the set-up mode; and
- Certified by the manufacturer as complying with ANSI A119.5.

"Quality control" is the plan and method for ensuring that the manufacture, fabrication, assembly, installation, storing, handling, and use of materials complies with this chapter and ANSI.

"State-plan insignia" is an insignia which is obtained under the state design-plan approval process.

"System" is a part of a recreational park trailer that is designed to serve a particular function such as plumbing, electrical, heating, mechanical or structural system.

[Statutory Authority: Chapter 43.22 RCW. WSR 12-15-061, § 296-150P-0020, filed 7/17/12, effective 9/1/12. Statutory Authority: RCW 43.22.340, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.480, and 43.22.485, 2002 c 268, and chapter 43.22 RCW. WSR 03-12-044, § 296-150P-0020, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.340 and 43.22.480. WSR 99-13-010, § 296-150P-0020, filed 6/4/99, effective 7/5/99. Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150P-0020, filed 7/31/97, effective 12/1/97.]

NEW SECTION

WAC 296-150P-0315 Who can approve design plans? (1) Comprehensive design plans for recreational park trailers can be approved by us or by a licensed professional or firm authorized by us. (See WAC 296-150P-0520 and 296-150P-0530.)

(2) All design plans for quality control manuals must be reviewed and approved by the department.

[]

NEW SECTION

WAC 296-150P-0520 Who can be authorized to approve design plans?

(1) A professional engineer, architect, or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect, or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements.

(3) A professional cannot approve quality control plans.

[]

NEW SECTION

WAC 296-150P-0530 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer, architect, or firm; and

(2) A description of the services the professional engineer, architect, or firm will provide in the areas of structural, fire and life safety, mechanical, plumbing, and electrical plan review for recreational park trailers; and

(3) A summary of the professional's or firm's expertise and qualifications to review plans in the areas identified by the description of services.

[]

NEW SECTION

WAC 296-150P-0540 How will I know whether I am authorized to approve design plans? Within 60 days after you submit the information requested in WAC 296-150P-0530, we will send you a letter either approving or denying your authorization request.

(1) If we approve your request, your name is added to the list of licensed professionals and firms authorized to approve design plans.

(a) We will authorize a professional to approve portions of a design plan within his or her area of expertise; and

(b) We will authorize an engineering or architectural firm to approve plans if the firm employs or contracts with professionals within the area of expertise necessary for the design plan.

(2) If we do not approve your request, we will notify you in writing why we are denying your request for authorization. If you dis-

agree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150P-0100.)

[]

NEW SECTION

WAC 296-150P-0550 How long is a licensed professional or firms authorization effective? Your authorization to approve design plans is effective until your license expires, is revoked, or is suspended.

(1) You must notify us of your license renewal at least 15 days before your license expires, to prevent your name from being removed from our licensed professional and firm list.

(2) You must notify us immediately if your license is revoked or suspended. Your name is then removed from the list of licensed professionals and firms authorized to approve design plans.

[]

NEW SECTION

WAC 296-150P-0560 What information must a manufacturer send to the department when a professional or firm does the design-plan approval? You must send us the following information in your approved design plans:

(1) A completed departmental design-plan approval request form;

(2) A set of design plan drawings, specifications, engineering analysis, and test results and procedures necessary for a complete code evaluation of the design. When required by chapter 196-23 or 308-12 WAC, design documents prepared by licensed professionals must be sealed;

(3) A cover sheet on the design plan noting which professional approved each portion of the design plan;

(4) A copy of the authorization letter from us;

(5) The design plan fee for design plans approved by professionals or firms. (See WAC 296-150P-3000.)

[]

NEW SECTION

WAC 296-150P-0570 What happens after we receive the professional or firm approved design plan and information? (1) After we receive your approved design plans and information, we will review the information and assign a plan approval number. We will send a copy of the design plan with the plan approval number to the manufacturer.

(2) We may periodically audit design plans approved by a professional engineer, architect, or firm to ensure compliance with design plan requirements. The department's periodic audit should not be construed as certifying that the plans are safe.

(3) If the audit reveals that the design plans approved by the professionals and firms do not comply with this chapter, you will be notified and required to pay our fees for review and approval of the design plans. (See WAC 296-150P-3000.)

[]

NEW SECTION

WAC 296-150P-0580 Do you have a list of professionals or firms that are authorized to approve design plans? Yes. We will maintain a list of the licensed professionals and firms that are authorized to approve design plans for conversion vendor units.

[]

NEW SECTION

WAC 296-150P-0590 Who approves addendums to design plans approved by a professional or firm? (1) You must have the professional or firm approve an addendum to a design plan, if they initially approved your design plan.

(2) If the professional or firm who approved your design plan is no longer on the department list, you may have us approve your addendum.

[]

AMENDATORY SECTION (Amending WSR 21-07-126, filed 3/23/21, effective 4/23/21)

WAC 296-150P-3000 Recreational park trailer fees.

INITIAL FILING FEE	\$40.00
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	\$113.50
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	\$150.10
RESUBMITTAL FEE	\$81.20
ADDENDUM (Approval expires on same date as original plan.)	\$81.20
ELECTRONIC PLAN SUBMITTAL FEE \$5.90 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<u>PLANS APPROVED BY PROFESSIONALS</u>	<u>\$30.00</u>
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$81.20
TRAVEL (per hour)*	\$81.20
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	

DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$81.20
TRAVEL (per hour)*	\$81.20
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$121.20
INSIGNIA FEES:	
STATE CERTIFIED	\$28.90
ALTERATION	\$40.00
REISSUED-LOST/DAMAGED	\$14.80
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$81.20
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$15.00
REFUND FEE	\$28.90

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 21-07-126, § 296-150P-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150P-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150P-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150P-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150P-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150P-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150P-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150P-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150P-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150P-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.355, 43.22.360, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.450, 43.22.480, and 43.22.485. WSR 00-17-148, § 296-150P-3000, filed 8/22/00, effective 9/30/00. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150P-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150P-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150P-3000, filed 7/31/97, effective 12/1/97.]

OTS-3541.1

NEW SECTION

WAC 296-150R-0315 Who can approve design plans? (1) Comprehensive design plans for recreational vehicles can be approved by us or by a licensed professional or firm authorized by us. (See WAC 296-150R-0520 and 296-150R-0530.)

(2) All design plans for quality control manuals must be reviewed and approved by the department.

[]

NEW SECTION

WAC 296-150R-0520 Who can be authorized to approve design plans?

(1) A professional engineer, architect, or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect, or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements.

(3) A professional cannot approve quality control plans.

[]

NEW SECTION

WAC 296-150R-0530 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer, architect, or firm; and

(2) A description of the services the professional engineer, architect, or firm will provide in the areas of structural, fire and life safety, mechanical, plumbing, and electrical plan review for recreational vehicles; and

(3) A summary of the professional's or firm's expertise and qualifications to review plans in the areas identified by the description of services.

[]

NEW SECTION

WAC 296-150R-0540 How will I know whether I am authorized to approve design plans? Within 60 days after you submit the information requested in WAC 296-150R-0530, we will send you a letter either approving or denying your authorization request.

(1) If we approve your request, your name is added to the list of licensed professionals and firms authorized to approve design plans.

(a) We will authorize a professional to approve portions of a design plan within his or her area of expertise; and

(b) We will authorize an engineering or architectural firm to approve plans if the firm employs or contracts with professionals within the area of expertise necessary for the design plan.

(2) If we do not approve your request, we will notify you in writing why we are denying your request for authorization. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150R-0100.)

[]

NEW SECTION

WAC 296-150R-0550 How long is a licensed professional or firms authorization effective? Your authorization to approve design plans is effective until your license expires, is revoked, or is suspended.

(1) You must notify us of your license renewal at least 15 days before your license expires to prevent your name from being removed from our licensed professional and firm list.

(2) You must notify us immediately if your license is revoked or suspended. Your name is then removed from the list of licensed professionals and firms authorized to approve design plans.

[]

NEW SECTION

WAC 296-150R-0560 What information must a manufacturer send to the department when a professional or firm does the design-plan approval? You must send us the following information in your approved design plans:

(1) A completed departmental design-plan approval request form;

(2) A set of design plan drawings and specifications necessary for a complete code evaluation of the design;

(3) A cover sheet on the design plan noting which professional approved each portion of the design plan;

(4) A copy of the authorization letter from us; and

(5) The design plan fee for design plans approved by professionals or firms. (See WAC 296-150R-3000.)

[]

NEW SECTION

WAC 296-150R-0570 What happens after we receive the professional or firm approved design plan and information? (1) After we receive your approved design plans and information, we will review the infor-

mation and assign a plan approval number. We will send a copy of the design plan with the plan approval number to the manufacturer.

(2) We may periodically audit design plans approved by a professional engineer, architect, or firm to ensure compliance with design plan requirements. The department's periodic audit should not be construed as certifying that the plans are safe.

(3) If the audit reveals that the design plans approved by the professionals and firms do not comply with this chapter, you will be notified and required to pay our fees for review and approval of the design plans. (See WAC 296-150R-3000.)

[]

NEW SECTION

WAC 296-150R-0580 Do you have a list of professionals or firms that are authorized to approve design plans? Yes. We will maintain a list of the licensed professionals and firms that are authorized to approve design plans for conversion vendor units.

[]

NEW SECTION

WAC 296-150R-0590 Who approves addendums to design plans approved by a professional or firm? (1) You must have the professional or firm approve an addendum to a design plan, if they initially approved your design plan.

(2) If the professional or firm who approved your design plan is no longer on the department list, you may have us approve your addendum.

[]

AMENDATORY SECTION (Amending WSR 20-04-081, filed 2/4/20, effective 3/6/20)

WAC 296-150R-3000 Recreational vehicle fees.

STATE PLAN	
INITIAL FILING FEE	\$36.70
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE	\$102.50
RESUBMITTAL FEE	\$74.00
ADDENDUM (Approval expires on same date as original plan.)	\$74.00
ELECTRONIC PLAN SUBMITTAL FEE \$5.50 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<u>PLANS APPROVED BY PROFESSIONALS</u>	\$15.00
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$74.10

TRAVEL (per hour)*	\$74.10
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$74.10
TRAVEL (per hour)*	\$74.10
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$110.90
INSIGNIA FEES:	
STATE CERTIFIED	\$27.30
ALTERATION	\$36.70
REISSUED-LOST/DAMAGED	\$13.10
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$74.10
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$13.80

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

SELF CERTIFICATION	
INITIAL FILING FEE	\$36.70
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE (one time fee)	\$103.90
RESUBMITTAL FEE	\$74.10
ADDENDUM (Approval expires on same date as original plan.)	\$74.10
ELECTRONIC PLAN SUBMITTAL FEE \$5.50 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$74.10
TRAVEL (per hour)*	\$74.10
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$74.10
TRAVEL (per hour)*	\$74.10
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	

SELF CERTIFIED	\$27.30
ALTERATION	\$36.70
REISSUED-LOST/DAMAGED	\$13.10
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$74.10
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$13.80
REFUND FEE	\$27.30

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 20-04-081, § 296-150R-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150R-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150R-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150R-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150R-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150R-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150R-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150R-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: RCW 43.22.340, 43.22.350, 43.22.355, 43.22.360, 43.22.400, 43.22.432, 43.22.433, 43.22.434, 43.22.450, 43.22.480, and 43.22.485. WSR 00-17-148, § 296-150R-3000, filed 8/22/00, effective 9/30/00. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-150R-3000, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-150R-3000, filed 5/29/98, effective 6/30/98. Statutory Authority: RCW 43.22.340 and 43.22.420. WSR 97-16-043, § 296-150R-3000, filed 7/31/97, effective 12/1/97. Statutory Authority: RCW 43.22.340, [43.22.]355, [43.22.]360, [43.22.]432, [43.22.]440 and [43.22.]480. WSR 96-21-146, § 296-150R-3000, filed 10/23/96, effective 11/25/96.]

OTS-3542.1

AMENDATORY SECTION (Amending WSR 99-18-069, filed 8/31/99, effective 10/1/99)

WAC 296-150V-0310 Who can approve design plans? ((Your design plan must be approved by the department.)) (1) Design plans for con-

version vendor units can be approved by us or by a licensed professional or firm authorized by us. (See WAC 296-150V-0420 and 296-150V-0430.)

(2) All design plans for medical units must be reviewed and approved by the department.

[Statutory Authority: Chapter 43.22 RCW. WSR 99-18-069, § 296-150V-0310, filed 8/31/99, effective 10/1/99.]

NEW SECTION

WAC 296-150V-0420 Who can be authorized to approve design plans?

(1) A professional engineer, architect or firm licensed by the state of Washington according to the Engineers Registration Act, chapter 18.43 RCW and/or the Architects Registration Act, chapter 18.08 RCW; or

(2) A professional engineer, architect or firm licensed in another state that has licensing or certification requirements that meet or exceed Washington requirements.

(3) A professional cannot approve medical units.

[]

NEW SECTION

WAC 296-150V-0430 What information must a professional or firm provide to be authorized to approve design plans? (1) Name, a copy of your certificate of registration or authority, and address of the professional engineer, architect, or firm; and

(2) A description of the services the professional engineer, architect, or firm will provide in the areas of fire and life safety, mechanical, plumbing, and electrical plan review for conversion vendor units; and

(3) A summary of the professional's or firm's expertise and qualifications to review plans in the areas identified by the description of services.

[]

NEW SECTION

WAC 296-150V-0440 How will I know whether I am authorized to approve design plans? Within 60 days after you submit the information requested in WAC 296-150V-0430, we will send you a letter either approving or denying your authorization request.

(1) If we approve your request, your name is added to the list of licensed professionals and firms authorized to approve design plans.

(a) We will authorize a professional to approve portions of a design plan within his or her area of expertise; and

(b) We will authorize an engineering or architectural firm to approve plans if the firm employs or contracts with professionals within the area of expertise necessary for the design plan.

(2) If we do not approve your request, we will notify you in writing why we are denying your request for authorization. If you disagree with our decision, you can send us a written request for a hearing, stating why you disagree. (See WAC 296-150V-0100.)

[]

NEW SECTION

WAC 296-150V-0450 How long is a licensed professional or firms authorization effective? Your authorization to approve design plans is effective until your license expires, is revoked, or is suspended.

(1) You must notify us of your license renewal at least 15 days before your license expires, to prevent your name from being removed from our licensed professional and firm list.

(2) You must notify us immediately if your license is revoked or suspended. Your name is then removed from the list of licensed professionals and firms authorized to approve design plans.

[]

NEW SECTION

WAC 296-150V-0460 What information must a manufacturer send to the department when a professional or firm does the design-plan approval? You must send us the following information in your approved design plans:

(1) A completed departmental design-plan approval request form;

(2) A set of design plan drawings, specifications, engineering analysis, and test results and procedures necessary for a complete code evaluation of the design. When required by chapter 196-23 or 308-12 WAC, design documents prepared by licensed professionals must be sealed;

(3) A cover sheet on the design plan noting which professional approved each portion of the design plan;

(4) A copy of the authorization letter from us; and

(5) The design plan fee for design plans approved by professionals or firms. (See WAC 296-150V-3000.)

[]

NEW SECTION

WAC 296-150V-0470 What happens after we receive the professional or firm approved design plan and information? (1) After we receive your approved design plans and information, we will review the information and assign a plan approval number. We will send a copy of the design plan with the plan approval number to the manufacturer.

(2) We may periodically audit design plans approved by a professional engineer, architect, or firm to ensure compliance with design plan requirements. The department's periodic audit should not be construed as certifying that the plans are safe.

(3) If the audit reveals that the design plans approved by the professionals and firms do not comply with this chapter, you will be notified and required to pay our fees for review and approval of the design plans. (See WAC 296-150V-3000.)

[]

NEW SECTION

WAC 296-150V-0480 Do you have a list of professionals or firms that are authorized to approve design plans? Yes. We will maintain a list of the licensed professionals and firms that are authorized to approve design plans for conversion vendor units.

[]

NEW SECTION

WAC 296-150V-0490 Who approves addendums to design plans approved by a professional or firm? (1) You must have the professional or firm approve an addendum to a design plan, if they initially approved your design plan.

(2) If the professional or firm who approved your design plan is no longer on the department list, you may have us approve your addendum.

[]

AMENDATORY SECTION (Amending WSR 21-07-126, filed 3/23/21, effective 4/23/21)

WAC 296-150V-3000 Conversion vendor units and medical units— Fees.

INITIAL FILING FEE	\$43.40
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	\$301.40
INITIAL FEE - ONE YEAR DESIGN	\$123.10
RENEWAL FEE	\$52.20
RESUBMIT FEE	\$87.90
ADDENDUM (Approval expires on same date as original plan)	\$87.90
ELECTRONIC PLAN SUBMITTAL FEE \$6.00 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW - For medical units, find fees at http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	\$134.20

INITIAL FEE - ONE YEAR DESIGN	\$81.10
RENEWAL FEE	\$81.10
ADDENDUM	\$81.10
<u>PLANS APPROVED BY PROFESSIONALS</u>	<u>\$81.10</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$16.20
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$87.90
TRAVEL (Per hour)*	\$87.90
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$131.60
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	\$25.20
REISSUED-LOST/DAMAGED	\$16.20
EXEMPT	\$43.40
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$87.90
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$16.20
REFUND FEE	\$28.90

*Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.

**Per state guidelines.

***Actual charges incurred.

[Statutory Authority: Chapters 43.22 and 43.22A RCW. WSR 21-07-126, § 296-150V-3000, filed 3/23/21, effective 4/23/21; WSR 20-04-081, § 296-150V-3000, filed 2/4/20, effective 3/6/20. Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-150V-3000, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 43.22 RCW and 2011 1st sp.s. c 50. WSR 12-06-069, § 296-150V-3000, filed 3/6/12, effective 4/30/12. Statutory Authority: Chapters 18.106, 43.22 RCW, 2008 c 285 and c 329. WSR 08-12-042, § 296-150V-3000, filed 5/30/08, effective 6/30/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-150V-3000, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.106, 43.22, and 70.87 RCW. WSR 06-10-066, § 296-150V-3000, filed 5/2/06, effective 6/30/06. Statutory Authority: Chapter 43.22 RCW. WSR 05-23-002, § 296-150V-3000, filed 11/3/05, effective 12/4/05. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-150V-3000, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapter 43.22 RCW and 2003 c 291. WSR 05-01-102, § 296-150V-3000, filed 12/14/04, effective 2/1/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-150V-3000, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 70.87.030, 18.106.070, 18.106.125, 2001 c 7, and chapters 18.106, 43.22, and 70.87 RCW. WSR 03-12-045, § 296-150V-3000, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-150V-3000, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075,

70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-150V-3000, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapter 43.22 RCW. WSR 99-18-069, § 296-150V-3000, filed 8/31/99, effective 10/1/99.]

WSR 22-01-200

EMERGENCY RULES

STATE BOARD OF HEALTH

[Filed December 21, 2021, 10:28 a.m., effective December 21, 2021, 10:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-101-017 Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. The Washington state board of health has adopted a sixth 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 (DOA) to report certain data with each COVID-19 test, including test results, relevant demographic details (e.g., patient's age, race, ethnicity, sex), and additional information. The rule allows for certain waivers by a local health officer. The rule establishes what testing and demographic data need to be reported as well as the timing and mechanism of reporting in accordance with 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; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

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

The CARES Act requires "every laboratory that performs or analyzes a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19" to report the results from each such test to the Secretary of the United States Department of Health and Human Services (HHS). In addition, the 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 fa-

cilities conducting testing for COVID-19, who fail to report information required under the CARES Act will be subject to monetary penalties. The interim final rules became effective September 2, 2020.

Adoption of a sixth emergency rule ensures continued compliance with the CARES Act and CMS requirements, and better reflects department capacity to receive data and local health jurisdictions to submit data, in order to improve the public health response to COVID-19. The board intends to incorporate these provisions into permanent rule, and filed a CR-101 on July 23, 2021, as WSR 21-15-105.

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

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

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

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

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

Date Adopted: December 17, 2021.

Michelle A. Davis
Executive Director

OTS-2485.5

NEW SECTION

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

reporting of race, ethnicity, and other essential data is necessary for the preservation of public health, safety, and general welfare.

(2) For the purpose of this section:

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

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

(c) "Health care facility" means:

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

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

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

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

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

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

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

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

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

(i) Ask on order entry questions are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) A principal health care provider is not required to submit individual case reports of novel coronavirus (SARS-CoV-2) to the local

health department when the provider practices in a health care facility where laboratory point of care testing occurs under a certificate of waiver as described in WAC 246-338-020 and the laboratory director has fulfilled the laboratory notification requirements under subsections (14), (15), and (16) of this section.

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

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

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

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

(a) Within twenty-four hours; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Resides outside Washington state.

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

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

(31) Health care providers, health care facilities, laboratories, and the department of agriculture may provide, via secure electronic data transmission using a file format or template specified by the department, additional health information, demographic information, or infectious or noninfectious condition information than is required under this section to the department, local health department, or both

when it determines that the additional information will aid the public health authority in protecting the public's health and preventing the spread of novel coronavirus (SARS-CoV-2).

Table 1

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

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

	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:
Type of specimen tested	X	X	X	X	X*	X*
Specimen source, using appropriate SNOMED-CT, or equivalently detailed laboratory local codes, or a specimen-specific LOINC code for test performed		X	X	X	X*	X*
Date of specimen collection	X	X	X	X	X	X
Date specimen received by reporting laboratory		X	X		X*	X*
Accession number or specimen ID		X	X		X*	X*
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

	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:
Ordering health care provider's address including zip code	X	X	X	X	X	X
Name and telephone number of the person providing the report	X					
Performing laboratory's name		X	X		X*	X*
Performing laboratory's CLIA number, if known		X	X		X*	X*
Performing laboratory's zip code		X	X		X*	X*
Performing laboratory's phone number		X	X		X*	X*
Date local health department was notified					X	X
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 22-01-211
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-277—Filed December 21, 2021, 4:23 p.m., effective December 30, 2021]

Effective Date of Rule: December 30, 2021.

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

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000F; and amending WAC 220-330-160.

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 21, 2021.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 p.m. December 30, 2021 through 11:59 p.m. January 5, 2022, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	December 30 through January 5	From 12:01 p.m. to 11:59 p.m.
Area 2	Closed	Closed
Area 3	December 30 through January 4	From 12:01 p.m. to 11:59 p.m.
Area 4	December 31, January 2, and January 4	From 12:01 p.m. to 11:59 p.m.
Area 5	December 30, January 1, and January 3	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

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REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. January 6, 2021:

WAC 220-330-16000F Razor clams—Areas and seasons.

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