

WSR 22-05-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-14—Filed February 3, 2022, 8:07 a.m., effective February 3, 2022, 8:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to prevent the spread of disease (*Mycoplasma ovipneumoniae*) to bighorn sheep from domestic goats and sheep on department lands. A preproposal has been filed, WSR 21-18-031, and proposed permanent rule making is anticipated to be in place by spring of 2022.

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

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

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

Reasons for this Finding: There is an existing and imminent threat on department land where pack goats are in close vicinity to wild bighorn sheep. The current threat of disease transmission could have dire impacts on state bighorn sheep populations during the upcoming recreational and hunting seasons. The department of fish and wildlife has started permanent rule making to address this issue for the long term and will accept additional public input during the rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 3, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-500-04000I Domestic goats and sheep on Washington department of fish and wildlife lands. Effective immediately, until further notice, the provisions of WAC 220-500-040 regarding domestic goats and sheep on Department lands shall be modified as follows. All

other provisions of WAC 220-500-040 not contained herein, unless changed by emergency rule remain in effect:

(1) It is unlawful for any person to cause or allow goats or sheep to be untethered or unattended on the following department wildlife area units, unless otherwise permitted by the director to do so:

(a) Colockum Wildlife Area: Colockum Unit;

(b) Wenas Wildlife Area: Wenas Unit;

(c) Chelan Wildlife Area: Chelan Butte, Swakane, and Entiat Units;

(d) LT Murray Wildlife Area: Quilomene and Whiskey Dick Units;

(e) Oak Creek Wildlife Area: Oak Creek and Rock Creek Units;

(f) Scotch Creek Wildlife Area: Scotch Creek, Charles and Mary Eder, Similkameen-Chopaka, and Tunk Valley Units;

(g) Sinlahekin Wildlife Area: Sinlahekin, Driscoll Island, McLoughlin Falls, and Carter Mountain Units;

(h) Asotin Creek Wildlife Area: Asotin Creek, Weatherly, and George Creek Units;

(i) Chief Joseph Wildlife Area: Chief Joseph, 4-0 Ranch, and Shumaker Units;

(2) Goats or sheep that have tested positive for *Mycoplasma ovipneumoniae* or that are displaying signs of pneumonia or other illness will not be permitted. Goats or sheep showing signs of pneumonia or other illness while on department lands must be removed within forty-eight hours.

(3) If a goat or sheep becomes lost, the owner must make every effort to locate and recover it. If the goat or sheep cannot be recovered, the owner shall contact the department by telephone as soon as possible.

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WSR 22-05-013

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed February 4, 2022, 7:13 a.m., effective February 4, 2022, 7:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-338-020 and 246-338-026, medical test site licensure and notification requirements. The department of health (department) is adopting an emergency rule to amend WAC 246-338-026 mandating reporting of test results intended to detect SARS-CoV-2 or diagnose a possible case of the coronavirus disease 2019 (COVID-19) in alignment with the federal changes published in 85 F.R. 54820. WAC 246-338-020 is amended to add language referencing the new subsection in WAC 246-338-026. These changes will allow the new reporting, inspection, and fining processes in compliance with the new federal requirements which will ensure the current clinical laboratory improvement amendments (CLIA) exempt status is not threatened and will respond to the current public health emergency created by the COVID-19 pandemic. This is the fifth emergency rule for these amendments. It continues, without change, the emergency rule that was filed on October 8, 2021, under WSR 21-21-013; and the prior filings on June 11, 2021, under WSR 21-13-045; February 12, 2021, under WSR 21-05-048; and October 15, 2020, under WSR 20-21-062.

Citation of Rules Affected by this Order: Amending WAC 246-338-020 and 246-338-026.

Statutory Authority for Adoption: RCW 70.42.060.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This emergency rule updates Washington rules to align with updated federal requirements published in 85 F.R. 54820, which include new reporting and inspection requirements and fines for nonreporting. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and federal compliance requirements which could threaten the current CLIA exempt status. The department continues to consider options for continuing this requirement under a permanent rule-making process, recognizing the temporary nature of the federal regulation.

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 1, Repealed 0.

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

Date Adopted: February 2, 2022.

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

OTS-2664.2

AMENDATORY SECTION (Amending WSR 02-12-105, filed 6/5/02, effective 7/6/02)

WAC 246-338-020 Licensure—Types of medical test site licenses.

After July 1, 1990, any person advertising, operating, managing, owning, conducting, opening, or maintaining a medical test site must first obtain a license from the department. License types are described in Table 020-1.

(1) Certificate of waiver.

Applicable if the medical test site performs only the tests classified as waived.

(2) Provider performed microscopic procedures (PPMP).

Applicable if the medical test site restricts its testing performance to one or more of the following moderate complexity tests performed by one of the licensed professionals listed, in conjunction with a patient's visit. In addition, the medical test site can perform tests classified as waived with this type of license.

(a) PPMP may be performed only by one of the following licensed professionals:

(i) Physician licensed under chapter 18.71 RCW, Physicians; chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery; or chapter 18.22 RCW, Podiatric medicine and surgery;

(ii) Advanced registered nurse practitioner, licensed under chapter 18.79 RCW, Nursing care;

(iii) Midwife licensed under chapter 18.50 RCW, Midwifery;

(iv) Physician assistant licensed under chapter 18.71A RCW, Physician assistants;

(v) Naturopath licensed under chapter 18.36A RCW, Naturopathy; or

(vi) Dentist licensed under chapter 18.32 RCW, Dentistry.

(b) Microscopic procedures authorized under a PPMP license are:

(i) All direct wet mount preparations for the presence or absence of bacteria, fungi, parasites, and human cellular elements;

(ii) All potassium hydroxide (KOH) preparations;

(iii) Pinworm examinations;

(iv) Fern tests;

(v) Postcoital direct, qualitative examinations of vaginal or cervical mucous;

(vi) Urine sediment examinations;

(vii) Nasal smears for granulocytes;

(viii) Fecal leukocyte examinations;

(ix) Qualitative semen analysis (limited to the presence or absence of sperm and detection of motility); and

(x) Any other tests subsequently categorized under CLIA as provider-performed microscopy procedures.

(3) Moderate/high complexity.

(a) **Low volume, Category A-J**, as described in Table 990-1.

Applicable if the medical test site performs any tests that are not classified as waived or qualified as PPMP under subsection (2) of

this section. Under this type of license, the medical test site may also perform tests classified as waived.

(b) **Accredited: Low volume, Category A-J**, as described in Table 990-1.

Applicable if the medical test site performs any tests that are not classified as waived, and is accredited **and** inspected by an accreditation organization approved by the department under WAC 246-338-040. Under this type of license, the medical test site may also perform tests classified as waived.

020-1 Table of Requirements for Each License Type

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
(1) Certificate of Waiver	<ul style="list-style-type: none"> • Restrict testing to tests classified as waived. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections. • Follow manufacturers' instructions for performing the test. 	<ul style="list-style-type: none"> • Complaint • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • When indicated
(2) PPMP	<ul style="list-style-type: none"> • Restrict testing to tests classified as PPMP or waived. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. • Follow manufacturers' instructions for performing the test. 	<ul style="list-style-type: none"> • Complaint • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • When indicated
(3) Moderate/High Complexity			
(a) Low Volume, Category A-J	<ul style="list-style-type: none"> • Perform tests classified as moderate or high complexity. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. 	<ul style="list-style-type: none"> • Initial • Routine • Complaint • On-site follow-up • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • First 6 months of license • Every 2 years • When indicated • When indicated • When indicated

LICENSE TYPE	REQUIREMENTS	INSPECTIONS	
		TYPE	FREQUENCY
(b) Accredited: Low Volume, Category A-J	<ul style="list-style-type: none"> • Follow manufacturers' instructions for performing test. • Perform tests classified as moderate or high complexity. • Meet the requirements of WAC 246-338-020 Licensure—Types of Medical Test Site Licenses; WAC 246-338-022 Initial Application for Medical Test Site License; WAC 246-338-024 License Renewal/ Reapplication Process; WAC 246-338-026 Notification Requirements; WAC 246-338-028 On-site Inspections; WAC 246-338-050 Proficiency Testing (if applicable); WAC 246-338-060 Personnel; WAC 246-338-070 Records; WAC 246-338-080 Quality Assurance; WAC 246-338-090 Quality Control. • Follow manufacturers' instructions for performing the test. • Submit to the department upon request, or authorize the accreditation organization to submit: • Proof of accreditation; • On-site inspection results; • Statement of deficiencies; • Plan of correction for the deficiencies cited; • Any disciplinary action and results of any disciplinary action taken by the accreditation organization against the medical test site. 	<ul style="list-style-type: none"> • Validation • Complaint • On-site follow-up • Technical assistance • <u>As required to assess compliance with WAC 246-338-026(7)</u> 	<ul style="list-style-type: none"> • 2.5% of accredited sites annually • When indicated • When indicated • When indicated

[Statutory Authority: RCW 70.42.090 and 2002 c 371. WSR 02-12-105, § 246-338-020, filed 6/5/02, effective 7/6/02. Statutory Authority: RCW 70.42.005, 70.42.060. WSR 01-02-069, § 246-338-020, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 70.42.005, 70.42.060 and chapter 70.42 RCW. WSR 00-06-079, § 246-338-020, filed 3/1/00, effective 4/1/00. Statutory Authority: RCW 70.42.005. WSR 97-14-113, § 246-338-020, filed 7/2/97, effective 8/2/97. Statutory Authority: Chapter 70.42 RCW. WSR 94-17-099, § 246-338-020, filed 8/17/94, effective 9/17/94; WSR 93-18-091 (Order 390), § 246-338-020, filed 9/1/93, effective 10/2/93; WSR 91-21-062 (Order 205), § 246-338-020, filed 10/16/91, effective 10/16/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-338-020, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.42 RCW. WSR 90-20-017 (Order 090), § 248-38-020, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 00-06-079, filed 3/1/00, effective 4/1/00)

- WAC 246-338-026 Notification requirements.** (1) The owner must notify the department in writing at least thirty days prior to the date of opening or closing the medical test site.
- (2) The owner must notify the department in writing within thirty days of any changes in:
- (a) Name of site;
 - (b) Director;
 - (c) Location of site;
 - (d) Tests, specialties, and subspecialties; and
 - (e) Test methodologies.
- (3) Proposed change of ownership. Transfer or reassignment of a license is prohibited without the department's approval, and must be initiated by the current owner sending a written notice to the department thirty days prior to transfer.
- (a) The current owner of a medical test site must notify the department, in writing at least thirty days prior to the change and provide the following information:
- (i) Name, address, and federal tax ID number of the medical test site;
 - (ii) Full name, address, and location of the current owner and prospective new owner; and
 - (iii) The date of the proposed change of ownership.
- (b) The prospective new owner must submit the following information at least thirty days prior to the change of ownership:
- (i) New name and federal tax ID number of the medical test site;
 - (ii) Changes in technical personnel and supervisors;
 - (iii) Any changes in tests, specialties, and subspecialties; and
 - (iv) Other information as requested by the department.
- (4) The medical test site must authorize an approved accreditation organization to notify the department of the test site's compliance with the standards of the accreditation organization.
- (5) The owner of an accredited license must notify the department in writing within thirty days of the medical test site having its accreditation denied or terminated by the accreditation organization or voluntarily dropping its accreditation status.
- (6) The owner must notify the department in writing within thirty days of any convictions of fraud and abuse, false billing, or kick-backs under state or federal law.
- (7) During the public health emergency, as defined in 42 C.F.R. 400.200, each medical test site that performs a test that is intended to detect SARS-CoV-2 or to diagnose a possible case of COVID-19 must report SARS-CoV-2 test results to HHS in such form and manner, and at such timing and frequency, as the department may prescribe. For the purposes of this subsection, "SARS-CoV-2 test" means any test that is intended to detect SARS-CoV-2 or diagnose a possible case of COVID-19.

[Statutory Authority: RCW 70.42.005, 70.42.060 and chapter 70.42 RCW. WSR 00-06-079, § 246-338-026, filed 3/1/00, effective 4/1/00.]

WSR 22-05-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-16—Filed February 4, 2022, 12:39 p.m., effective February 4, 2022, 12:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to set the opening of the Makah special management area (SMA) to state licensed fishermen.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000Z and 220-340-45000H; and amending WAC 220-340-420 and 220-340-450.

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

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

Reasons for this Finding: The stepped opening periods/areas accommodate delayed openings for state license holders as specified in state-tribal harvest management agreements and provide for fair start provisions. Provisions of the State/Makah Harvest Management Agreement allow for the opening of Makah SMA to state license holders and specifies a temporary pot limit.

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: February 4, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000C Commercial crab fishery—Unlawful acts.

Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

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

(a) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until February 15, 2022 and;

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

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

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

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

(3) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning 8:00 A.M. February 11, until 8:00 A.M. March 14, 2022. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Jamie Fuller at 360-249-1229;
- E-mail to Jamie Fuller at Jamie.Fuller@dfw.wa.gov; or
- Telephone call to Jamie Fuller at 360-580-0875.

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

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

NEW SECTION

WAC 220-340-45000I Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450 effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section:

(1) Open area: The area from the WA/OR border (46°15.00) to the US/Canada border including Grays Harbor and Willapa Bay, except Quinault PSMA, Quileute SMA, Makah SMA as listed below (section 4), and:

Licenses and vessels designated to those licenses that at any time participated in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, from December 1, 2021 until the area north of Klipsan Beach (46°28.00) opens, are prohibited from fishing in the waters between Oysterville (46°33.00) and US/Canada Border until 8:00 a.m. February 15, 2022.

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

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

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

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

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

(3) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(4) The Makah special management area (SMA) is closed to fishing until 8:00 AM, February 11, 2022. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner: (Tatoosh Island)

(b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.

(c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.

(d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

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

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-42000Z Commercial crab fishery—Unlawful acts. (21-281)

WAC 220-340-45000H Commercial crab fishery—Season and areas—Coastal. (22-04)

WSR 22-05-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-15—Filed February 4, 2022, 1:52 p.m., effective February 10, 2022]

Effective Date of Rule: February 10, 2022.

Purpose: Open commercial crab harvest in Region 1 on February 10, 2022, at 8:00 a.m. and Region 3-1 on February 12, 2022, at 8:00 a.m.

The provisions of this emergency rule: WAC 220-340-42000B:

(1) Allows barging in Region 1 between February 10 and 12, 2022, and implements a barging declaration.

(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 220-340-45500H:

(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 February 10, 2022, at 8:00 a.m. and Crab Management Region 3-1 effective February 12, 2022, at 8:00 a.m. Describes hard closure dates by crab management region. Maintains closure of crab Management Regions 2 East, 2 West, 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 220-340-47000F:

(1) Allows deployment of up to 35 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 1 effective immediately until February 10, 2022, at 8:00 a.m.

(2) Allows deployment of up to 25 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 3-1 effective immediately until February 12, 2022, at 8:00 a.m.

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

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

WAC 220-352-34000R:

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

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

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

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

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

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

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

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

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 4, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000B Commercial crab fishery—Unlawful acts.

Notwithstanding the provisions of WAC 220-340-420:

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

Region 3-2 includes MFSFCRA 25A, 25E, and 23D. Crab Management Region 3-3 includes MFSFCRA 23C East, and Crab Management Region 3-4 consists of 23C West and 29.

(a) Effective 8:00 a.m. February 10, 2022 until 7:59 a.m. February 12, 2022 it is permissible to deploy Dungeness crab pots for commercial purposes in Crab Management Region 1 from a vessel not designated on a 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 from one hour before sunrise to one hour after sunset.

(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 and fishing 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 licensed and fishing in Puget Sound 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 MFSFCRA or the Crab Management Region the catch originated from.

(4) Effective immediately, until further notice, all crab retained and removed from a vessel licensed and fishing in Puget Sound that 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 MFSFCRA or the Crab Management Region the catch originated from, and

(d) Commercial fish and shellfish transportation ticket number.

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

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

NEW SECTION**WAC 220-340-45500H 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 (MFSFCRA) are modified as follows:

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

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

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

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

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

(4) Effective February 10, 2022, at 8:00 a.m. until further notice the following areas are open to commercial crab fishing: Crab Management Region 1.

(5) Effective February 12, 2022, at 8:00 a.m. until further notice the following areas are open to commercial crab fishing: Crab Management Region 3-1.

(6) 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.

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

Region 1: Effective February 10, 2022, at 8:00 a.m. until further notice:

(a) Those waters of MFSFCRA 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 MFSFCRA 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 MFSFCRA 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

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

Region 1: Effective February 10, 2022, at 8:00 a.m. until further notice:

(a) Those waters of MFSFCRA 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 MFSFCRA 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

(c) Those waters of MFSFCRA 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 MFSFCRA 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 MFSFCRA 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.

(f) Those waters of MFSFCRA 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(g) Those waters of MFSFCRA 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.

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

NEW SECTION

WAC 220-340-47000F 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 in Crab Management Region 3-3.

(2) Effective February 10, 2022, 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 in Crab Management Region 1.

(3) Effective February 12, 2022, at 8:00 a.m. until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 25 pots per in Crab Management Region 3-1.

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

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

NEW SECTION**WAC 220-340-34000R 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 MFSFCRA.

(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 MFSFCRA, 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 web page or

sending an email to crab.report@dfw.wa.gov, detailing the following information:

- (a) Vessel Operator Name
- (b) Vessel Name and Vessel Registration Number
- (c) 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 unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical 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.

REPEALER

The following sections of the Washington Administrative Code are repealed, effective February 10, 2022:

- WAC 220-340-42000A Commercial crab fishery—Unlawful acts. (22-02)
- WAC 220-340-45500G Commercial crab fishery—Seasons and areas—Puget Sound. (22-02)
- WAC 220-340-47000E Commercial crab fishery—Gear requirements—Puget Sound. (22-02)
- WAC 220-352-34000Q Puget Sound crab—Additional reporting requirements. (22-02)

WSR 22-05-026
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 7, 2022, 7:17 a.m., effective February 7, 2022, 7:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is extending the amendment of the rules listed below and making the suspension retroactive to August 13, 2021, to assure [ensure] assisted living facilities are not significantly impeded during the hiring process due to an administrator's inability to obtain a certificate of completion of a recognized administrator training as referenced in WAC 388-78A-2521. This will help to increase the number of long-term care administrators necessary to provide essential services to some of Washington's most vulnerable adults during the outbreak of COVID-19 and will address the gap in suspended requirements from the expiration of the last emergency rules filed under WSR 21-09-046. The current rules require administrator training prior to assuming administrator duties or within six months of beginning duties for administrators meeting additional educational requirements. Currently, applicants for assisted living facility administrator positions are unable to obtain the required training.

This rule making is necessary to establish a time frame when the portions of the rules were suspended during the COVID-19 pandemic, and assisted living facilities were not required to comply with the suspended portions of the rules.

Virtual trainings have been developed and implemented for the assisted living facility administrators. Although the available capacity for these trainings has increased, they are limited to semi-annual offerings. Additional time is needed to facilitate additional courses to serve the backlog of applicants requesting this training.

Citation of Rules Affected by this Order: Amending WAC 388-78A-2524(1), 388-78A-2525(1), and 388-78A-2526(1).

Statutory Authority for Adoption: RCW 18.20.090.

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 congregate settings, such as assisted living facilities. Administrator training is part of the hiring process and must be completed within a designated time frame. Currently, applicants for assisted living facility administrator positions are unable to obtain the required training. Although the training will become available, it will not be enough to meet the backlog of administrators needing this training. This circumstance is expected to exacerbate demand for long-term care administrators when the pandemic has already significantly reduced the availability of long-term care workers in the state in recent months. In addition, under the rule development phase of rule making, the department is in discussions about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary. A CR-101 was filed under WSR 20-17-085.

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 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, 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: February 7, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4801.1

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2524 Administrator qualifications—Certification of training, and three years experience. Prior to assuming duties as a boarding home administrator, the individual has ~~((met the following qualifications:~~

~~(1) Obtained certification of completing a recognized administrator training as referenced in WAC 388-78A-2521; and~~

~~(2) Has)) three years paid experience:~~

~~((a)) (1) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or~~

~~((b)) (2) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.~~

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2524, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2524, filed 1/15/10, effective 2/15/10.]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2525 Administrator qualifications—Associate degree, certification of training, and two years experience. The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1) ~~((1))~~ or (2) ~~((or (3)))~~ of this section:

(1) ~~((Obtains certification of completing a recognized administrator training course as referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or~~
~~(2)))~~ Has two years paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

~~((3)))~~ (2) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2525, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2525, filed 1/15/10, effective 2/15/10.]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2526 Administrator qualifications—Bachelor's degree, certification of training, and one year experience. The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1) ~~((1))~~ or (2) ~~((or (3)))~~ of this section.

(1) ~~((Obtains certification of completing a recognized administrator training course and referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or~~
~~(2)))~~ Has one year paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable

adults, such as a nursing home, assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

((~~3~~)) (2) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2526, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2526, filed 1/15/10, effective 2/15/10.]

WSR 22-05-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-17—Filed February 7, 2022, 8:05 a.m., effective February 14, 2022]

Effective Date of Rule: February 14, 2022.

Purpose: The purpose of this emergency rule is to open recreational razor clam seasons from February 14 through February 18, 2022.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000I; 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: February 4, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000I 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. February 14 through 11:59 p.m. February 18, 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	February 14 through February 18	From 12:01 p.m. to 11:59 p.m.
Area 2	Closed	Closed
Area 3	February 17 and 18	From 12:01 p.m. to 11:59 p.m.
Area 4	February 16 and 18	From 12:01 p.m. to 11:59 p.m.
Area 5	February 15	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 section of the Washington Administrative Code is repealed effective 12:01 a.m. February 19, 2022:

WAC 220-330-16000I Razor clams—Areas and seasons.

WSR 22-05-031
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 7, 2022, 1:51 p.m., effective February 9, 2022]

Effective Date of Rule: February 9, 2022.

Purpose: The department is enacting WAC 388-845-2019 on an emergency basis to make temporary modifications to developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers to control the spread of the COVID-19 virus and to meet immediate health and safety needs. This is a subsequent filing on WAC 388-845-2019; this rule language does not differ from that of the previous filing.

Citation of Rules Affected by this Order: New WAC 388-845-2019.

Statutory Authority for Adoption: RCW 34.05.350, 71A.12.030.

Other Authority: 42 U.S.C. 1396n(c).

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: Enacting this rule on an emergency basis is necessary to address effects of the COVID-19 pandemic and it is in the public interest to do so as following notice and comment requirements in the permanent rule-making process would delay temporary changes aimed to help clients avoid disruptions in service. This emergency filing is necessary to implement temporary changes to the HCBS waivers as approved by the Centers for Medicare and Medicaid Services (CMS) in an Appendix K. Many of the changes approved by CMS in the Appendix K are in the process of being added to the IFS, Basic Plus, Core, CIIBS, and community protection waivers. Currently, the waiver renewals and amendment are available for public comment January 19 through February 19, 2022. The CMS approvals should be final in September of 2022, at which point DDA will work on permanently adopting the changes. The department filed a CR-101 under WSR 20-15-010. This emergency will keep the necessary changes in place until adopted permanently.

This rule addresses the effects of COVID-19 on clients, providers, and DDA staff by temporarily: Suspending limits on respite services; permitting the state to exceed the budget for some DDA waivers; allowing assistive technology to be available on all waivers; permitting waiver services to be provided remotely when needed; expanding settings where some services can be provided to clients who are quarantined or hospitalized; and other changes.

An Appendix K is a standalone appendix that may be utilized by states during emergency situations to request amendment to approved 1915(c) waivers. It includes actions that states can take under the existing section 1915(c) home and community-based waiver authority in order to respond to an emergency.

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

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

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

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

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

Date Adopted: February 7, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4794.6

NEW SECTION

WAC 388-845-2019 What modifications to waiver services apply during the COVID-19 outbreak? (1) Notwithstanding any contrary requirement under this title, changes under this section to DDA's home and community-based waivers are effective immediately and necessary to respond to managing the COVID-19 outbreak. All changes, except the provision of remote waiver services, require prior approval by the DDA field services director or designee and will be assessed on a case-by-case basis. Once the emergency declaration regarding COVID-19 is expired, this rule will no longer be applicable, and allowances approved in this rule must end.

(2) The following changes to waiver services are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) All waiver services except goods may be offered remotely by providers when travel to the waiver participant is not possible due to COVID-19 infection or exposure.

(b) Limits to the number of respite hours a client may receive that are generated in the CARE assessment are temporarily suspended. The amount of respite hours a client may receive are determined by DDA.

(c) Assistive technology on the basic plus waiver is included as part of the list of aggregate services. The basic plus, CIIBS, and individual and family services waiver aggregate budgets may be exceeded for COVID-19-related health and safety needs.

(d) Respite provided out-of-state may be provided in excess of thirty days.

(e) Community guide and community engagement may be provided to more than one client at a time.

(f) Staff and family consultation may be provided to more than one client at a time.

(g) Assistive technology is available on all five waiver programs when a waiver participant requires a technology in order to receive waiver-funded remote supports, to increase, maintain, or improve independence with daily living, to increase safety, or to facilitate social communication. Assistive technology is only available to the par-

ticipant when access to technologies through other resources is not possible. Assistive technology includes:

- (i) The evaluation of the needs of the waiver participant, including a functional evaluation of the participant in the participant's customary environment;
- (ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (iii) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (v) Training or technical assistance for the participant and if appropriate, the participant's family;
- (vi) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of individuals with disabilities; and
- (vii) Distance-based observation and reporting provided by an assistive technology distance-based observation and reporting specialist.

(h) If transportation is necessary to prevent illness or meet a client's immediate health and safety needs, waiver transportation services may be used to travel to a place where the client will not be receiving waiver services (e.g., transportation to a family member's home).

(3) If a client is displaced from their home because of quarantine or hospitalization, or if a provider is unavailable due to illness or business closure, the following waiver services may be provided in a hotel, shelter, church, other facility-based setting, or the home of a direct-care worker when those supports are not available through the medicaid state plan or another legally liable funding source:

- (a) Residential habilitation;
- (b) Respite care;
- (c) Positive behavior support;
- (d) Staff and family consultation;
- (e) Behavioral health stabilization- positive behavior support;
- (f) Behavioral health stabilization- crisis diversion beds;
- (g) Nurse delegation; and
- (h) Skilled nursing.

(4) Positive behavior support and staff and family consultation may be provided in an acute care setting such as a hospital or short-term institutional setting if:

- (a) DDA determines that no other alternatives are available and a nonintegrated setting is the only setting available to meet the client's health and safety needs;
- (b) The waiver service provider is not otherwise funded by another resource; and
- (c) The waiver services do not duplicate services already available in that setting.

(5) The following changes to waiver service provider qualifications are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) Staff and family consultation may include emergency preparedness consultation support from a provider trained in emergency management or a similar field with a current DDA contract.

(b) Respite care may be provided by currently contracted positive behavior support providers.

(6) Specialized medical equipment and supply, specialized equipment and supply, and assistive technology provider types may include the use of a purchase card and community choice guides when supply or cost impacts occur due to COVID-19.

(7) The following changes to level-of-care evaluations and re-evaluations for waiver participants are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) A client's services may continue and the level-of-care reassessment may be postponed up to one year if due to illness or quarantine:

(i) The client, their representative, or a DDA employee are unable to participate in the reassessment; or

(ii) There is insufficient time for the case manager to complete the annual reassessment paperwork.

(b) On a case-by-case basis, the time limit for approving a client's expired person-centered service plan may be extended if:

(i) The plan currently meets the client's needs; and

(ii) Monthly remote or telephonic monitoring is provided to ensure the plan continues to meet the client's needs.

(c) Telephonic assessments may occur in place of face-to-face assessments on a case-by-case basis. An initial assessment may be conducted telephonically when needed to prevent potential exposure related to COVID-19.

(d) For initial CARE assessments, employees may complete the assessment and person-centered service plan via the telephone or other electronic means and then do a brief in-person visit before moving the assessment to current.

(e) If the previsit questionnaire response indicates it is not safe to do an in-person visit, services can be authorized prior to an in-person visit occurring.

(f) A person-centered service plan, or revisions to a person-centered service plan, may be approved with a retroactive approval date for service needs identified to mitigate harm or risk directly related to COVID-19 impacts. Telephonic (or other information technology medium) assessments may occur when the assessment cannot occur due to impacts of COVID-19.

(8) CIIBS waiver quarterly face-to-face meeting requirement may be provided telephonically when a face-to-face meeting cannot occur due to client or client representative health concerns or staffing availability.

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WSR 22-05-045
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed February 8, 2022, 4:05 p.m., effective February 8, 2022, 4:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend chapter 110-06 WAC to allow individuals to work supervised in the department of children, youth, and families (DCYF)-licensed early learning programs after submitting to the department their background check applications, allow license-exempt family, friend, and neighbor providers to be authorized for unsupervised access to children following name-based background checks while fingerprint-based background checks are pending, include an interstate background check for individuals who have lived outside of Washington state in the five years immediately preceding their application, and remove certain crimes that disqualify a subject individual from authorization.

Citation of Rules Affected by this Order: Amending WAC 110-06-0040, 110-06-0046, and 110-06-120.

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 stable and quality child care during the COVID-19 pandemic. The amendment to WAC 110-06-120 removes crimes that account for 33 percent of family, friends, and neighbors being disqualified from participation in working connections child care. The amendment is in accord [accordance] with the federal disqualifying crimes list, significantly increases the number of individuals who may provide care, and will not pose a safety risk for children in care.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, 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: February 8, 2022.

Brenda Villarreal
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [22-06](#) issue of the Register.

WSR 22-05-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-18—Filed February 9, 2022, 4:12 p.m., effective February 24, 2022]

Effective Date of Rule: February 24, 2022.

Purpose: The purpose of this emergency rule is to open recreational salmon seasons in Marine Area 10, beginning February 24, 2022.

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

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

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

Reasons for this Finding: Estimates of landed catch to date indicate that we have reached 24 percent of the total encounters (8,475), 25 percent of sublegal encounters (7,319), and 46 percent of unmarked encounters (1,105) agreed to in this year's list of agreed fisheries for Catch Record Card Area 10. Feedback from Puget Sound recreational anglers indicates a priority for preserving fishing opportunity for February and March. In order to provide this opportunity and under the advisement of the Puget Sound Sports Fishing Advisory Group, Marine Area 10 will reopen salmon fishing February 24, 2022, with a three day per week open schedule and a one salmon daily limit. The limited opening and daily limit will help extend the fishery as late into the scheduled season as possible. 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: February 9, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000T Puget Sound salmon—Saltwater seasons and daily limits. Effective February 24 through March 31, 2022 the following provisions of WAC 220-313-060 regarding salmon seasons in Catch

Record Card Area 10, except Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier, shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 10 except Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier: Salmon:

(a) Open Thursdays, Fridays, and Saturdays, each week. Closed Sundays, Mondays, Tuesdays, and Wednesdays 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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REPEALER

The following section of Washington Administrative Code is repealed, effective February 24, 2022:

WAC 220-313-06000S Puget Sound salmon—Saltwater seasons and daily limits. (22-05)

WSR 22-05-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-19—Filed February 10, 2022, 9:40 a.m., effective February 10, 2022, 9:40 a.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule extends the tribal winter gillnet fishery in The Dalles and John Day pools. This rule is consistent with actions of the Columbia River Compact on February 9 and January 25, 2022. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

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

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions

change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: February 10, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000Y Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G (The Dalles Pool)

(a) Season: 6 AM Thursday, February 10, 2022, until 6 PM Saturday, February 12, 2022.

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length caught in The Dalles Pool may be sold or kept for subsistence purposes.

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

(2) Open Areas: SMCRA 1H (John Day Pool)

(a) Season: Immediately through 6 PM Saturday, February 19, 2022.

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length caught in the John Day Pool may be sold or kept for subsistence purposes.

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

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

(a) Season: Immediately through 6 PM Saturday, March 19, 2022.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length caught in the Bonneville Pool and sturgeon from 43 to 54 inches fork length caught in The Dalles and John Day pools may be sold or kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery.

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

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

REPEALER

The following section of Washington Administrative Code is repealed:

WAC 220-359-02000X Columbia River salmon seasons above Bonneville Dam. (22-12)

WSR 22-05-079

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed February 15, 2022, 10:18 a.m., effective February 15, 2022, 10:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-980-030, 246-980-040, and 246-980-065 in chapter 246-980 WAC, Home care aides; and adopting new WAC 246-980-011. This emergency rule creates new WAC 246-980-011 to establish alternate training and certification time frames for individuals working toward certification as a home care aide. Due to impacts from the coronavirus disease 2019 (COVID-19) pandemic, many uncertified home care aides are unable to obtain training and certification within statutory time frames. Establishing alternate time frames under ESHB 1120 (chapter 203, Laws of 2021) will allow additional time for aides to complete certification requirements while training, testing, and certification capacity issues are being resolved.

Amendments to WAC 246-980-030, 246-980-040, and 246-980-065 create cross-references to new WAC 246-980-011.

Citation of Rules Affected by this Order: New WAC 246-980-011; and amending WAC 246-980-030, 246-980-040, and 246-980-065.

Statutory Authority for Adoption: RCW 18.88B.021, ESHB 1120 (chapter 203, 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: This emergency rule is necessary to avoid a critical shortage of home care aides as a result of the COVID-19 pandemic.

During the COVID-19 pandemic, both training and testing were unavailable for several months in 2020 before resuming at limited capacity, creating a large backlog of uncertified home care aides. Thousands of uncertified home care aides are currently working under emergency waivers. After the declared emergency and waivers end, however, uncertified aides will not be able to work and will still be unable to readily access the training and testing necessary for certification. Losing these workers would exacerbate the existing home care aide workforce shortage, forcing more medically vulnerable patients to rely on other care options, such as higher-level residential care settings.

Establishing alternate time frames for home care aide certification, developed in collaboration with the department of social and health services under ESHB 1120, will create a path to certification for uncertified home care aides and allow the backlog of workers waiting for testing, training, and certification to be processed.

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 3, 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 3, Repealed 0.

Date Adopted: February 15, 2022.

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

OTS-3558.1

NEW SECTION

WAC 246-980-011 Long-term care workers working or hired during the COVID-19 public health emergency. (1) Unless exempt from certification as described in WAC 246-980-025, a long-term care worker affected by the coronavirus disease 2019 (COVID-19) public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Hired or rehired during the time frame of:	Shall be certified as a home care aide no later than:
August 17, 2019, to September 30, 2020	July 19, 2022
October 1, 2020, to April 30, 2021	September 18, 2022
May 1, 2021, to March 31, 2022	November 19, 2022
After March 31, 2022	Based on hire date

(2) "Hired" and "rehired" as used in this section mean the date of hire as defined in WAC 246-980-010. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in subsection (1) of this section.

(3) If a long-term care worker or home care aide is limited-English proficient, the worker may request an additional 60 days to obtain certification under WAC 246-980-065.

(4) Nothing in this section prevents a long-term care worker hired between November 17, 2019, and March 31, 2022, from completing training or obtaining certification in advance of the deadlines stipulated in subsection (1) of this section.

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AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

WAC 246-980-030 Working while obtaining certification as a home care aide. (1) A long-term care worker may provide care before receiving certification as a home care aide if all the following conditions are met:

(a) Before providing care, the long-term care worker must complete the training required by RCW 74.39A.074 (1)(d)(i)(A) and (B).

(b) The long-term care worker must submit an application for home care aide certification to the department within (~~fourteen~~) 14 calendar days of hire. An application is considered to be submitted on the date it is post-marked or, for applications submitted in person or online, the date it is accepted by the department.

(2) Except as provided in WAC 246-980-011, a long-term care worker is no longer eligible to provide care without a credential under the following circumstances:

(a) The long-term care worker does not successfully complete all of the training required by RCW 74.39A.074(1) within (~~one hundred twenty~~) 120 calendar days from their date of hire;

(b) The long-term care worker has not obtained their certification within (~~two hundred~~) 200 calendar days from their date of hire, or (~~two hundred sixty~~) 260 calendar days if granted a provisional certificate under RCW 18.88B.041.

(3) This section does not apply to long-term care workers exempt from certification under WAC 246-980-025.

[Statutory Authority: RCW 18.88B.021. WSR 18-20-072, § 246-980-030, filed 9/28/18, effective 10/29/18. Statutory Authority: Chapters 18.88B and 18.130 RCW, 2012 c 164, and 2013 c 259. WSR 13-19-087, § 246-980-030, filed 9/18/13, effective 10/19/13. Statutory Authority: Chapters 18.88B and 74.39A RCW. WSR 10-15-103, § 246-980-030, filed 7/20/10, effective 1/1/11.]

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

WAC 246-980-040 Certification requirements. (1) To qualify for certification as a home care aide, except as provided in WAC 246-980-011, the applicant must:

(a) Successfully complete all training required by RCW 74.39A.074(1) within (~~one hundred twenty~~) 120 calendar days of the date of hire as a long-term care worker;

(b) Successfully pass the home care aide certification examination, after completing training; and

(c) Become certified within (~~two hundred~~) 200 days of date of hire, or (~~two hundred sixty~~) 260 days if granted a provisional certificate under RCW 18.88B.041.

(2) An applicant for certification as a home care aide must submit to the department:

(a) A completed application for both certification and the examination on forms provided by the department;

(b) The exam fee set by the examination vendor and required fees under WAC 246-980-990; and

(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.074. The certificate of completion or other official verification may also be submitted directly from the approved instructor or training program.

(3) An applicant must submit to a state and federal background check as required by RCW 74.39A.056.

(4) An applicant exempt from certification under WAC 246-980-025(2) who voluntarily chooses to be certified must provide documentation of qualification for the exemption. The applicant is not required to take the training required in subsection (1)(a) of this section or provide proof of training completion to the department.

[Statutory Authority: RCW 18.19.050, 18.29.130, 18.29.210, 18.34.120, 18.46.060, 18.55.095, 18.84.040, 18.88B.060, 18.89.050, 18.130.050, 18.138.070, 18.155.040, 18.200.050, 18.205.060, 18.215.040, 18.230.040, 18.240.050, 18.250.020, 18.290.020, 18.360.030, 18.360.070, 70.41.030, 70.230.020, 71.12.670, and 18.108.085. WSR 21-02-002, § 246-980-040, filed 12/23/20, effective 1/23/21. Statutory Authority: RCW 18.88B.021. WSR 18-20-072, § 246-980-040, filed 9/28/18, effective 10/29/18. Statutory Authority: Chapters 18.88B and 18.130 RCW, 2012 c 164, and 2013 c 259. WSR 13-19-087, § 246-980-040, filed 9/18/13, effective 10/19/13. Statutory Authority: 2012 c 1 (Initiative 1163) and chapter 18.88B RCW. WSR 12-08-043, § 246-980-040, filed 3/30/12, effective 4/4/12. Statutory Authority: Chapters 18.88B and 74.39A RCW. WSR 10-15-103, § 246-980-040, filed 7/20/10, effective 1/1/11.]

AMENDATORY SECTION (Amending WSR 16-09-004, filed 4/7/16, effective 5/8/16)

WAC 246-980-065 Home care aide provisional certification. (1)

The department may issue a provisional certification to a long-term care worker who is limited-English proficient and submits:

(a) A request for a provisional certification; and

(b) Verification of his or her date of hire as a long-term care worker, as follows:

(i) For individual providers, verification of the applicant's date of hire submitted directly by the department of social and health services; or

(ii) For all other applicants, a form supplied by the department and completed by the employer who hired the applicant as a long-term care worker, verifying the applicant's date of hire.

(2) A provisional certification will be issued only once.

(3) Except as provided in WAC 246-980-011, a provisional certification will take effect ((two hundred)) 200 days from the applicant's date of hire as a long-term care worker, as defined in WAC 246-980-010(2).

(4) Except as provided in WAC 246-980-011, a provisional certification will expire ((two hundred sixty)) 260 days from the applicant's date of hire as a long-term care worker. The applicant must stop working on the ((two hundred sixtieth)) 260th day of employment if the certification has not been granted for any reason.

(5) A request for provisional certification may be denied pursuant to chapter 18.130 RCW, the Uniform Disciplinary Act, or based on RCW 18.88B.080.

(6) For the purposes of this section, "limited-English proficient" means that an individual is limited in his or her ability to read, write, or speak English.

[Statutory Authority: RCW 18.88B.060. WSR 16-09-004, § 246-980-065, filed 4/7/16, effective 5/8/16. Statutory Authority: 2013 c 259 and RCW 18.88B.035. WSR 14-09-002, § 246-980-065, filed 4/3/14, effective 5/4/14.]

WSR 22-05-090

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed February 15, 2022, 4:26 p.m., effective February 15, 2022, 4:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To reinsert erroneously removed code back into WAC 51-50-30020, specifically addressing elevator car/ambulance stretcher requirements for R-1, R-2 and I occupancies.

Citation of Rules Affected by this Order: New 1.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

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: Clearly defines elevator car and ambulance stretcher requirements and provides more stringent requirements for R-1, R-2 and I occupancies. This amendment was adopted in the 2015 International Building Code, but [was] erroneously removed during the 2018 code adoption cycle. The state building code council (SBCC) adopted the existing amendment as an emergency rule (WSR 21-22-006) and directed the SBCC staff to proceed with permanent rule making. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. SBCC has filed a CR-105 (WSR 22-05-062) on February 10, 2022, for a permanent adoption.

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 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: February 15, 2022.

Andrew S. Klein
Chair

OTS-3421.1

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-30020 ((Reserved.)) Section 30020—Hoistway enclosures. 3002.4 Elevator car to accommodate ambulance stretcher. In buildings provided with an elevator, at least one elevator shall provide fire department emergency access to all floors served in:

1. Buildings four or more stories above or below grade plane; and
2. Any R-1, R-2 or I occupancy building regardless of the number of stories.

The elevator car shall be of a size and arrangement to accommodate a 24-inch by 84-inch (610 mm by 2134 mm) ambulance stretcher with not less than 5-inch (127 mm) radius corners, in the horizontal, open position. The elevator shall be identified by the international symbol for emergency medical services (star of life). The symbol shall not be less than 3 inches (76 mm) in height and shall be placed inside on both sides of the hoistway door frame on both the designated level and the alternate level.

EXCEPTION: Private residence elevators are not required to comply with this section.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-30020, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-30020, filed 1/19/16, effective 7/1/16.]

WSR 22-05-091
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-21—Filed February 15, 2022, 5:05 p.m., effective February 15, 2022, 5:05 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: This rule extends the tribal winter gillnet fishery in The Dalles and John Day pools. This rule is consistent with actions of the Columbia River Compact on February 15, February 9, and January 25, 2022. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

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

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions

change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: February 15, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000Z Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G (The Dalles Pool)

(a) Season: 6 AM Wednesday, February 16, 2022, until 6 PM Friday, February 18, 2022.

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length caught in The Dalles Pool may be sold or kept for subsistence purposes.

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

(2) Open Areas: SMCRA 1H (John Day Pool)

(a) Season: Immediately through 6 PM Saturday, February 26, 2022.

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length caught in the John Day Pool may be sold or kept for subsistence purposes.

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

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

(a) Season: Immediately through 6 PM Saturday, March 19, 2022.

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

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length caught in the Bonneville Pool and sturgeon from 43 to 54 inches fork length caught in The Dalles and John Day pools may be sold or kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery.

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

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

[]

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

REPEALER

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

WAC 220-359-02000Y Columbia River salmon seasons above Bonneville Dam. (22-19)

WSR 22-05-096
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed February 16, 2022, 9:13 a.m., effective February 16, 2022, 9:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Extend emergency rule to amended chapter 51-50 WAC of the International Building Code, regarding Chapter 35 Reference Standards and section 903, specifically addressing elevator pit sprinklers. (Permanent rule filing WSR 22-02-040).

Also, extend emergency rule to amended chapter 51-54A WAC of the International Fire Code, regarding Chapter 80 Reference Standards and section 903, specifically addressing elevator pit sprinklers. (Permanent rule filing WSR 22-02-041.)

Citation of Rules Affected by this Order: New 2.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

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 requirement for fire sprinklers in pits of hydraulic elevators is predicated by the amount of debris that is collected in the pit and the potential of an ignition source that could cause a fire. With the advent of hydraulic fluids that are combustible but at flashpoints near 450°F, the lack of ignition sources (cigarette use in buildings has significantly decreased), the reduction of combustible materials found in elevator pits, and the significant reduction nationally in the amount of elevator pit fires (see NFPA data attached), the need for a fire sprinkler in the pit and elevator equipment room [has] been significantly reduced. NFPA 13 has included language in the code commentary that the requirement of sprinklers in the pit needs to be evaluated for benefit compared to the additional cost to install sprinklers, additional detection, and a shunt trip to accommodate shutting off the power to the elevator before fire sprinklers are activated. Further, when the power [is] turned off to the elevators it could trap someone who is using the elevator. For that reason, some fire departments do not use elevators during a fire event as they would not have full control of it and responders could become trapped in the elevator.

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 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 2, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 16, 2022.

Andrew S. Klein

OTS-3418.2

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-0903 Section 903—Automatic sprinkler systems.

903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in Sections 903.2.1 through 903.2.12.

EXCEPTIONS:

1. Spaces or areas in telecommunications buildings used exclusively for telecommunications equipment, associated electrical power distribution equipment, batteries and standby engines, provided that those spaces or areas are equipped throughout with an automatic smoke detection system in accordance with Section 907.2 and are separated from the remainder of the building by not less than one-hour fire barriers constructed in accordance with Section 707 or not less than two-hour horizontal assemblies constructed in accordance with Section 711, or both.
2. Bottom of the elevator hoistway in an enclosed and noncombustible elevator shaft.

903.2.1.8 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for fire areas containing Group E occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table 1004.1.2.

EXCEPTIONS:

1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table 1004.1.2, provided that the aggregate area of any cluster of portable school classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or
2. Portable school classrooms with an occupant load from 51 through 98, calculated in accordance with Table 1004.1.2, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each classroom shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or
3. Fire areas containing day care and preschool facilities with a total occupant load of 100 or less located at the level of exit discharge where every room in which care is provided has not fewer than one exit discharge door.

903.2.6 Group I. An automatic sprinkler system shall be provided throughout buildings with a Group I fire area.

EXCEPTIONS:

1. An automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be permitted in Group I-1 Condition 1 facilities.
2. Where new construction house ((~~sixteen~~) 16 persons receiving care, an automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be permitted for Group I-1, Condition 2, assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC.
3. An automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be permitted in additions to existing buildings where both of the following situations are true:
 - 3.1. The addition is made to a building previously approved as Group LC or Group R-2 that houses either an assisted living facility licensed under chapter 388-78A WAC or residential treatment facility licensed under chapter 246-337 WAC.
 - 3.2. The addition contains spaces for ((~~sixteen~~) 16 or fewer persons receiving care.

903.2.6.1 Group I-4. An automatic sprinkler system shall be provided in fire areas containing Group I-4 occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table 1004.1.2.

EXCEPTIONS:

1. An automatic sprinkler system is not required for Group I-4 day care facilities with a total occupant load of 100 or less, and located at the level of exit discharge and where every room where care is provided has not fewer than one exterior exit door.
2. In buildings where Group I-4 day care is provided on levels other than the level of exit discharge, an automatic sprinkler system in accordance with Section 903.3.1.1 shall be installed on the entire floor where care is provided, all floors between the level of care and the level of exit discharge and all floors below the level of exit discharge other than areas classified as an open parking garage.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m²).
2. A Group M fire area is located more than three stories above grade plane.

3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).

4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m²).

903.2.8 Group R. An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION:

Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

903.2.9.3 Group S-1 upholstered furniture and mattresses. An automatic sprinkler system shall be provided throughout a Group 5-1 fire area where the area used for storage of upholstered furniture exceeds 2,500 square feet (232 m²).

EXCEPTION:

Self-service storage facilities no greater than one story above grade plane where all storage spaces can be accessed directly from the exterior.

903.2.11 Specific building areas and hazards. In all occupancies other than Group U, an automatic sprinkler system shall be installed for building design or hazards in the locations set forth in Sections 903.2.11.1 through 903.2.11.7.

903.2.11.7 Relocatable buildings within buildings. Relocatable buildings or structures located within a building with an approved fire sprinkler system shall be provided with fire sprinkler protection within the occupiable space of the building and the space underneath the relocatable building.

EXCEPTIONS:

1. Sprinkler protection is not required underneath the building when the space is separated from the adjacent space by construction resisting the passage of smoke and heat and combustible storage will not be located there.
2. If the building or structure does not have a roof or ceiling obstructing the overhead sprinklers.
3. Construction trailers and temporary offices used during new building construction prior to occupancy.
4. Movable shopping mall kiosks with a roof or canopy dimension of less than 4 feet on the smallest side.

903.3.5.3 Underground portions of fire protection system water supply piping. The installation or modification of an underground water main, public or private, supplying a water-based fire protection system shall be in accordance with NFPA 24 and chapter 18.160 RCW. Piping and appurtenances downstream of the first control valve on the lateral or service line from the distribution main to one-foot above finished floor shall be approved by the fire *code official*. Such underground piping shall be installed by a fire sprinkler system contractor licensed in accordance with chapter 18.160 RCW and holding either a Level U or a Level 3 license. For underground piping supplying systems installed in accordance with Section 903.3.1.2, a Level 2, 3, or U licensed contractor is acceptable.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-0903, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-0903, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0903, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-089, § 51-50-0903, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0903, filed 2/1/13, effective 7/1/13. Statutory Authority: Chapter 19.27 RCW. WSR

10-24-059, § 51-50-0903, filed 11/29/10, effective 7/1/11. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0903, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-110, § 51-50-0903, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0903, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074, and chapters 19.27 and 34.05 RCW. WSR 05-24-070, § 51-50-0903, filed 12/5/05, effective 7/1/06. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0903, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-3500 Chapter 35—Referenced standards. Add the reference standards as follows:

Standard reference number	Title	Referenced in code section number
ANSI/APA PRG-320-18	Standard for Performance-Rated Cross-Laminated Timber (revised 2018)	602.4, 2303.1.4
NFPA 130-17	Standard for Fixed Guideway Transit and Passenger Rail Systems	3101.1, 3114
<u>NFPA 13-16</u>	<u>Standard for the Installation of Sprinkler Systems (except 8.15.5.3(5))</u>	<u>403.3.3, 712.1.3.1, 903.3.1.1, 903.2, 903.3.8.2, 903.8.5, 904.13, 905.3.4, 907.6.4, 1019.3</u>

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-3500, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-3500, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-3500, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-3500, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-3500, filed 2/1/13, effective 7/1/13.]

OTS-3419.2

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0903 Automatic sprinkler systems.

903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in Sections 903.2.1 through 903.2.12.

- EXCEPTIONS:
1. Spaces or areas in telecommunications buildings used exclusively for telecommunications equipment, associated electrical power distribution equipment, batteries and standby engines, provided that those spaces or areas are equipped throughout with an automatic smoke detection system in accordance with Section 907.2 and are separated from the remainder of the building by not less than one-hour fire barriers constructed in accordance with Section 707 of the International Building Code or not less than two-hour horizontal assemblies constructed in accordance with Section 711 of the International Building Code, or both.
 2. Bottom of the elevator hoistway in an enclosed and noncombustible elevator shaft.

903.2.1.6 Assembly occupancies on roofs. Where an occupied roof has an assembly occupancy with an occupant load exceeding 100 for Group A-2, and 300 for other Group A occupancies, the building shall be equipped with an *automatic sprinkler system* in accordance with Section 903.3.1.1 or 903.3.1.2.

EXCEPTION: Open parking garages of Type I or Type II construction.

903.2.1.8 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for fire areas containing Group E occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table 1004.1.2.

- EXCEPTIONS:
1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table 1004.1.2, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or
 2. Portable school classrooms with an occupant load from 51 through 98, calculated in accordance with Table 1004.1.2, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each classroom shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or
 3. Fire areas containing day care and preschool facilities with a total occupant load of 100 or less located at the level of exit discharge where every room in which care is provided has not fewer than one exit discharge door.

903.2.6 Group I. An automatic sprinkler system shall be provided throughout buildings with a Group I *fire area*.

- EXCEPTIONS:
1. An *automatic sprinkler system* installed in accordance with Section 903.3.1.2 shall be permitted in Group I-1 Condition 1 facilities.
 2. Where new construction or additions house less than ((~~sixteen~~) 16) persons receiving care, an automatic sprinkler system installed in accordance with Section 903.2.8.3 shall be permitted for Group I-1, Condition 2, assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC.

903.2.6.1 Group I-4. An automatic sprinkler system shall be provided in fire areas containing Group I-4 occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table 1004.1.2.

- EXCEPTIONS:
1. An automatic sprinkler system is not required where Group I-4 day care facilities with a total occupant load of 100 or less, and located at the level of exit discharge and where every room where care is provided has not fewer than one exterior exit door.
 2. In buildings where Group I-4 day care is provided on levels other than the level of exit discharge, an automatic sprinkler system in accordance with Section 903.3.1.1 shall be installed on the entire floor where care is provided, all floors between the level of care and the level of exit discharge and all floors below the level of exit discharge other than areas classified as an open parking garage.

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R *fire area*.

- EXCEPTION:
- Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
 2. The Group R fire area is on only one story.
 3. The Group R fire area does not include a basement.
 4. The Group R fire area is no closer than 30 feet from another structure.
 5. Cooking is not allowed within the Group R fire area.
 6. The Group R fire area has an occupant load of no more than 8.
 7. A hand-held (portable) fire extinguisher is in every Group R fire area.

903.2.9 Group S-1. An *automatic sprinkler system* shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 *fire area* exceeds 12,000 square feet (1115 m²).
2. A Group S-1 *fire area* is located more than three stories above grade plane.
3. The combined area of all Group S-1 *fire areas* on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).

4. A Group S-1 *fire area* used for the storage of commercial motor vehicles where the *fire area* exceeds 5,000 square feet (464 m²).

903.2.9.3 Group S-1 Upholstered furniture and mattresses. An automatic sprinkler system shall be provided throughout a Group S-1 fire where the area used for the storage of upholstered furniture exceeds 2,500 square feet (232 m²).

EXCEPTION: Self-service storage facilities no greater than one story above grade plane where all storage spaces can be accessed directly from the exterior.

903.2.11.1.3 Basements. Where any portion of a basement is located more than 75 feet (22,860 mm) from openings required by Section 903.2.11.1, or where new walls, partitions or other similar obstructions are installed that increase the exit access travel distance to more than 75 feet, the basement shall be equipped throughout with an approved automatic sprinkler system.

903.2.11.7 Relocatable buildings within buildings. Relocatable buildings or structures located within a building with an approved fire sprinkler system shall be provided with fire sprinkler protection within the occupiable space of the building and the space underneath the relocatable building.

EXCEPTIONS: 1. Sprinkler protection is not required underneath the building when the space is separated from the adjacent space by construction resisting the passage of smoke and heat and combustible storage will not be located there.
2. If the building or structure does not have a roof or ceiling obstructing the overhead sprinklers.
3. Construction trailers and temporary offices used during new building construction prior to occupancy.
4. Movable shopping mall kiosks with a roof or canopy dimension of less than 4 feet on the smallest side.

903.3.5.3 Underground portions of fire protection system water supply piping. The portion of the installation or modification of an underground water main, public or private, dedicated to supplying a water-based fire protection system shall be in accordance with NFPA 24 and chapter 18.160 RCW. Piping and appurtenances downstream of the first control valve on the lateral or service line from the distribution main to one-foot above finished floor shall be approved by the fire code official. Such underground piping shall be installed by a fire sprinkler system contractor licensed in accordance with chapter 18.160 RCW and holding either a Level U or a Level 3 license. For underground piping supplying systems installed in accordance with Section 903.3.1.2, a Level 2, 3, or U licensed contractor is acceptable.

EXCEPTION: Portions of underground piping supplying automatic sprinkler systems installed in accordance with NFPA 13D.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0903, filed 1/20/21, effective 2/20/21; WSR 19-24-058, § 51-54A-0903, filed 11/27/19, effective 7/1/20. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-0903, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0903, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-090, § 51-54A-0903, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0903, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 19-02-086, filed 1/2/19, effective 7/1/19)

WAC 51-54A-8000 Referenced standards.

NFPA 13-16: Standard for the Installation of Sprinkler Systems (except 8.15.5.3(5)) 903.3.1.1, 903.3.2, 903.3.8.2, 903.3.8.5, 904.13, 905.3.4, 907.6.4, 914.3.2, 1019.3, 1103.4.8, 3201.1, 3204.2, 3205.5, Table 3206.2, 3206.4.1, 3206.10, 3207.2, 3207.2.1, 3208.2.2, 3208.2.2.1, 3208.4, 3210.1, 3401.1, 5104.1, 5104.1.1, 5106.5.7, 5704.3.3.9, Table 5704.3.6.3(7), 5704.3.7.5.1, 5704.3.8.4

NFPA 96-07 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations 609.3

NFPA 720-15 Standard for the Installation of Carbon Monoxide (CO) Warning Equipment in Dwelling Units 1103.9

NFPA 130-17 Standard for Fixed Guideway Transit and Passenger Rail Systems 3901.1

[Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-8000, filed 1/2/19, effective 7/1/19. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-8000, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-8000, filed 2/1/13, effective 7/1/13.]

WSR 22-05-097
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 16, 2022, 9:18 a.m., effective February 16, 2022, 9:18 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Under the emergency rule:

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

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

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

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

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

Reasons for this Finding: This emergency rule making readopts the emergency rule adopted on October 18, 2021, filed as WSR 21-21-074. L&I is taking action to help prevent the spread of COVID-19 and respond to the governor's proclamations establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how businesses may continue operation without increasing the risk of COVID-19 spreading. L&I filed a Preproposal statement of inquiry (CR-101) in accordance with 2021's ESSB 5092, section 220(8) related to infectious diseases to ensure the state has general guidelines to follow in the case of an infectious disease outbreak. This would include when there is an outbreak subject to a public health emergency under a national or state declared state of emergency. In addition, conditions have changed due the governor's announcement that the requirement under "Washington Ready" 20-25.17 for face coverings or masks for large outdoor events with 500 or more individuals regardless of vaccination status is being removed on February 18, 2022.

There are indications based on COVID-19 case and hospitalization trends that the state is at [a] turning point in the pandemic. While the governor has indicated future action is possible, the requirement for face coverings or masks for customers and employees regardless of vaccination status in indoor spaces accessible to the public remains in effect under Proclamation 20-25.17 as are the prohibitions for any state agency, operator of an education setting, and operator of a health care setting to permit workers to engage in work if the worker is not fully vaccinated against COVID-19 and provided proof of vaccination status under Proclamation 21-14.3.

The governor's proclamations and amendments, including Proclamations 20-25.17 and 21-14.3, create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions among individuals not fully vaccinated, reduce the occurrence of breakthrough infections, safely easing some restrictions while also maintaining crucial hospital capacity, ensuring care for Washingtonians who need it, and paving the way for economic recovery. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees.

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

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

L&I is monitoring the emergency proclamations, information including guidance from the CDC, and data on COVID-19 and will repeal the emergency rule if no longer needed.

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

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

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

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

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

Date Adopted: February 16, 2022.

Joel Sacks
Director

OTS-2313.6

NEW SECTION

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

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

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

[]

WSR 22-05-098

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed February 16, 2022, 9:23 a.m., effective February 16, 2022, 9:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To extend stuck amended section WAC 51-54A-8200 International Wildland Urban Interface Code from the International Fire Code and reserve section. (Permanent rule filing under WSR 22-02-041.)

Citation of Rules Affected by this Order: New 1.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

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 state building code council (SBCC) was notified by local jurisdictions that the mapping, RCW, and WAC did not align to produce an enforceable code. SBCC agreed to delete the state amendment and to add the Wildland Urban Interface Code to the group 2 rule-making process. This would assist local jurisdictions to provide more public comment and allow SBCC to produce a more accurate and enforceable code. SBCC will be moving into rule making to make the Wildland Urban Interface Code a standalone code with state amendments.

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 1, 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 0, Amended 0, Repealed 0.

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

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

Date Adopted: February 16, 2022.

Andrew S. Klein
Chair

OTS-3416.1

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-8200 (~~(International Wildland Urban Interface Code.)~~)
Reserved.

~~((101.5 Additions or alterations. Additions or alterations may be made to any building or structure without requiring the existing~~

building or structure to comply with all of the requirements of this code, provided the addition or alteration conforms to that required for a new building or structure.

EXCEPTION: Provisions of this code that specifically apply to existing conditions are retroactive. See Sections 402.3, 601.1 and Appendix A.

Additions or alterations shall not cause the existing building or structure to become unsafe. An unsafe condition shall be deemed to have been created if an addition or alteration will cause the existing building or structure to become structurally unsafe or overloaded; will not provide adequate access in compliance with the provisions of this code or will obstruct existing exits or access; will create a fire hazard; will reduce required fire resistance or will otherwise create conditions dangerous to human life.

108.3 Site plan. In addition to the requirements for plans in the *International Building Code*, the code official may require site plans which include topography, width and percent of grade of access roads, landscape and vegetation details, locations of structures or building envelopes, existing or proposed overhead utilities, occupancy classification of buildings, types of ignition resistant construction of buildings, structures and their appendages, roof classification of buildings, and site water supply systems. The code official is authorized to waive or modify the requirement for a site plan.

108.4 Vegetation management plans. When required by the code official or when utilized by the permit applicant pursuant to Section 502, vegetation management plans shall be prepared and shall be submitted to the code official for review and approval as part of the plans required for a permit. See Appendix B.

108.7 Vicinity plan. When required by the code official, the requirements for site plans shall include details regarding the vicinity within 300 feet (91,440 mm) of property lines, including other structures, slope, vegetation, fuel breaks, water supply systems and access roads.

402.1.1 Access. New subdivisions, as determined by this jurisdiction, shall be provided with fire apparatus access roads in accordance with the *International Fire Code*.

402.1.2 Water supply. New subdivisions, as determined by this jurisdiction, shall be provided with water supply in accordance with the *International Fire Code*.

402.2 Individual structures. Individual structures shall comply with Sections 402.2.1 and 402.2.2.

402.2.1 Access. Individual structures hereafter constructed or relocated into or within wildland-urban interface areas shall be provided with fire apparatus access in accordance with the *International Fire Code*.

402.2.2 Water supply. Individual structures hereafter constructed or relocated into or within wildland-urban interface areas shall be provided with a conforming water supply in accordance with the *International Fire Code*.

EXCEPTIONS: 1. Structures constructed to meet the requirements for the class of ignition-resistant construction specified in Table N503.1 for a nonconforming water supply.
2. Buildings containing only private garages, carports, sheds and agricultural buildings with a floor area of not more than 600 square feet (56 m²).

402.3 Existing conditions. Existing address markers, roads and fire protection equipment shall be in accordance with the *International Fire Code*.

Table 503.1
Ignition-Resistant Construction^a

Defensible Space ^c	Fire Hazard Severity					
	Moderate Hazard		High Hazard		Extreme Hazard	
	Water Supply ^b		Water Supply ^b		Water Supply ^b	
	Conforming	Nonconforming	Conforming	Nonconforming	Conforming	Nonconforming
Nonconforming	IR 2	IR 1	IR 1	IR 1 N.C.	IR 1 N.C.	Not Permitted
Conforming	IR 3	IR 2	IR 2	IR 1	IR 1	IR 1 N.C.
1.5 x Conforming	Not Required	IR 3	IR 3	IR 2	IR 2	IR 1

^aAccess shall be in accordance with Section 402.

^bWater supply shall be in accordance with Section 402.1.

IR 1 = Ignition-resistant construction in accordance with Section 504.

IR 2 = Ignition-resistant construction in accordance with Section 505.

IR 3 = Ignition-resistant construction in accordance with Section 506.

N.C. = Exterior walls shall have a fire-resistance rating of not less than 1 hour and the exterior surfaces of such walls shall be noncombustible. Usage of log wall construction is allowed.

^cConformance based on Section 603.

~~403 Access. This section not adopted.~~

~~404 Water supply. This section not adopted.~~

~~APPENDIX B VEGETATION MANAGEMENT PLAN — THIS APPENDIX IS ADOPTED.~~

~~APPENDIX D FIRE DANGER RATING SYSTEM — THIS APPENDIX IS ADOPTED.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-8200, filed 12/18/19, effective 7/1/20. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-8200, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-8200, filed 1/16/16, effective 7/1/16.]

WSR 22-05-103

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed February 16, 2022, 11:51 a.m., effective February 16, 2022, 11:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To modify requirements in WAC 51-11R-40310 to temporarily rescind the prohibition for gas fireplaces with continuously burning pilot lights.

Citation of Rules Affected by this Order: Amending WAC 51-11R-40310.

Statutory Authority for Adoption: RCW 19.27A.045.

Other Authority: RCW 19.27A.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: The state building code council (SBCC) was notified by the industry that because of the current global microchip shortage, they are not able to meet this new requirement in the energy code. After the initial 120 emergency rule, the industry was still unable to supply the required controls and asked that the council enter into rule making to allow a year extension before the requirements become effective. On September 28, 2021, SBCC began the permanent rule-making process for the effective date extension. See WSR 21-20-057. The emergency rule is being extended until the adoption of this permanent rule.

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 1, Repealed 0.

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

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

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

Date Adopted: February 16, 2022.

Andrew S. Klein
Council Chair

OTS-3597.1

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40310 Section R403.1—Controls.

R403.1 Controls. At least one thermostat shall be provided for each separate heating and cooling system.

R403.1.1 Programmable or connected thermostat. Where the primary heating system is a forced-air furnace, at least one thermostat per dwelling unit shall be Energy Star certified and capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day. The thermostat shall allow for, at a minimum, a 5-2 programmable schedule (weekdays/weekends) and be capable of providing at least two programmable set-back/setup periods per day. This thermostat shall include the capability to set back, set up or temporarily operate the system to maintain zone temperatures down to 55°F (13°C) or up to 85°F (29°C). The thermostat shall initially be programmed by the manufacturer with a heating temperature set point no higher than 70°F (21°C) and a cooling temperature set point no lower than 78°F (26°C). The thermostat and/or control system shall have an adjustable deadband of not less than 10°F.

EXCEPTIONS:

1. Systems controlled by an occupant sensor that is capable of shutting the system off when no occupant is sensed for a period of up to 30 minutes.
2. Systems controlled solely by a manually operated timer capable of operating the system for no more than two hours.
3. Ductless mini-split heat pump systems that have an integral proprietary thermostat.

R403.1.2 Heat pump supplementary heat. Unitary air cooled heat pumps shall include controls that minimize supplemental heat usage during start-up, set-up, and defrost conditions. These controls shall anticipate need for heat and use compression heating as the first stage of heat. Controls shall indicate when supplemental heating is being used through visual means (e.g., LED indicators). Heat pumps equipped with supplementary heaters shall be installed with controls that prevent supplemental heater operation above 40°F. At final inspection the auxiliary heat lock out control shall be set to 35°F or less.

R403.1.3 Continuously burning pilot lights. The natural gas systems and equipment listed below are not permitted to be equipped with continuously burning pilot lights.

1. Fan-type central furnaces.
2. Household cooking appliances.

EXCEPTION: Household cooking appliances without electrical supply voltage connections and in which each pilot light consumes less than 150 Btu/hr.

3. Pool heaters.
4. Spa heaters.
5. Beginning September 1, 2022, fireplaces.

EXCEPTION: Any fireplace with on-demand, intermittent or interrupted ignition (as defined in ANSI Z21.20) is not considered continuous.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40310, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40310, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40310, filed 2/1/13, effective 7/1/13.]