

WSR 20-15-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-122—Filed July 1, 2020, 3:29 p.m., effective July 4, 2020]

Effective Date of Rule: July 4, 2020.

Purpose: The purpose of this rule is open summer Chinook seasons in the upper mainstem Columbia River from Priest Rapids Dam upstream, also in the Chelan and Entiat rivers. Additionally, this rule opens salmon seasons earlier than scheduled in the Brewster pool and allows two-pole fishing with a valid two-pole endorsement during salmon seasons in the mainstem upper Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000N and 220-312-05000D; and amending WAC 220-312-060 and 220-312-050.

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

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

Reasons for this Finding: This rule is needed to open summer Chinook seasons in the upper Columbia River. The *U.S. v. Oregon* Technical Advisory Committee (TAC) updated the summer Chinook run from a preseason value of thirty-eight thousand to sixty-five thousand. At this updated run size there are more surplus hatchery fish available for harvest. The TAC is comprised of representatives from Washington, Oregon, Idaho, the National Oceanic and Atmospheric Administration, and the treaty tribes and are responsible for developing preseason and inseason run forecasts that salmon seasons are based on. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: July 1, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000N Freshwater exceptions to statewide rules—Columbia Effective July 4 through October 15, 2020, provisions of WAC 220-312-060 and 220-220-160 regarding Columbia River salmon seasons and the use of the Two-pole Endorsement from Priest Rapid Dam upstream are modified as described below. All other provisions of WAC 220-312-060 and WAC 220-220-160 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) From Priest Rapids Dam to Rock Island Dam:

Salmon: Effective July 4 through August 31, 2020: Daily limit is 6; of which, up to 2 adult hatchery Chinook and up to 2 sockeye may be retained. Release coho and wild adult Chinook.

(2) From Rock Island Dam to Wells Dam:

(a) Salmon: Effective July 4 through October 15, 2020: Daily limit is 6; of which, up to 2 adult hatchery Chinook and up to 2 sockeye may be retained. Release coho and wild adult Chinook.

(b) Anglers who possess a valid two-pole endorsement may fish with two lines through October 15, 2020.

(3) From Wells Dam to the Highway 173 Bridge at Brewster:

(a) Salmon: Effective July 16 through October 15, 2020: Daily limit is 6; of which, up to 2 adult hatchery Chinook and up to 2 sockeye may be retained. Release coho and wild adult Chinook.

(b) Anglers who possess a valid two-pole endorsement may fish with two lines through October 15, 2020.

(4) From the Highway 173 Bridge at Brewster to the rock jetty at the upstream shoreline of Foster Creek (Douglas County side):

(a) Salmon: Effective July 4 through October 15, 2020: Daily limit is 6; of which, up to 2 adult hatchery Chinook and up to 2 sockeye may be retained. Release coho and wild adult Chinook.

(b) Anglers who possess a valid two-pole endorsement may fish with two lines through October 15, 2020.

NEW SECTION

WAC 220-312-05000D Freshwater exceptions to statewide rules—Eastside Effective July 16 through October 15, 2020, provisions of WAC 220-312-050 regarding salmon seasons in the Chelan and Entiat Rivers are modified as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) Chelan River: From the mouth (railroad bridge) to the Chelan P.U.D. safety barrier below the powerhouse:

Salmon: Effective July 16 through October 15, 2020: Daily limit 6; of which up to 2 may be adult hatchery Chinook. Release sockeye, coho, and wild adult Chinook.

(2) Entiat River: From the mouth (railroad bridge) to the boundary markers located approximately 1,500 feet upstream of Roaring Creek Road Bridge (immediately downstream of the Entiat National Fish Hatchery):

Salmon: Effective July 16 through September 30, 2020: Daily limit 6. Release all salmon other than Chinook. Night closure in effect.

REPEALER

The following sections of the Washington Administrative Code are repealed effective October 16, 2020:

WAC 220-312-06000N Freshwater exceptions to statewide rules—Columbia

WAC 220-312-05000D Freshwater exceptions to statewide rules—Eastside

WSR 20-15-003

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 20-123—Filed July 1, 2020, 3:31 p.m., effective July 4, 2020]

Effective Date of Rule: July 4, 2020.

Purpose: The purpose of this rule is [to] open seasons for summer Chinook in the lower Columbia River, from the Megler Astoria Bridge to the Hwy. 395 Bridge at Pasco.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000M and 220-312-06000P; and amending WAC 220-312-060.

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

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

Reasons for this Finding: This rule is needed to open summer Chinook seasons in the Columbia River. The *U.S. v. Oregon* Technical Advisory Committee (TAC) updated the summer Chinook run from a preseason value of thirty-eight thousand to sixty-five thousand. This rule also results in no additional impacts on Snake River ESA-listed sockeye. The TAC is comprised of representatives from Washington, Oregon, Idaho, the National Oceanic and Atmospheric Administration, and the treaty tribes and are responsible for developing preseason and inseason run forecasts that salmon seasons are based on. This fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. This action conforms Washington state rules with Oregon state rules and is consistent with the compact action of June 30, 2020. 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: July 1, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia Effective July 4 through July 31, 2020, provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Megler Astoria Bridge to the Hwy. 395 Bridge at Pasco are modified as described below. All other provisions of WAC 220-312-060 not addressed herein or otherwise amended by emergency rule remain in effect.

(1) From Megler Astoria Bridge to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to red navigation marker 2 at Tongue point on the Oregon bank:

Salmon and steelhead: Effective immediately through July 31, 2020: Closed to fishing for or retaining.

(2) From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to red navigation marker 2 at Tongue point on the Oregon bank upstream to the Hwy. 395 Bridge at Pasco:

(a) Salmon and steelhead: Effective July 4 through July 8 2020: Daily limit 6; up to 2 adults may be retained. Release all salmon and steelhead other than hatchery Chinook.

(b) Salmon and steelhead: Effective July 9 through July 31, 2020: Closed to fishing for or retaining.

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 the Washington Administrative Code is repealed effective July 4, 2020:

WAC 220-312-06000M Freshwater exceptions to statewide rules—Columbia (20-117)

The following section of the Washington Administrative Code is repealed effective August 1, 2020:

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia

WSR 20-15-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-127—Filed July 1, 2020, 3:33 p.m., effective July 4, 2020]

Effective Date of Rule: July 4, 2020.

Purpose: The purpose of this rule is open summer Chinook seasons in the Hanford Reach area of the Columbia River (from I-182 Bridge to Priest Rapids Dam).

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000Q; and amending WAC 220-312-060.

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

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

Reasons for this Finding: This rule is needed to open summer Chinook seasons in the Columbia River from the I-182 Bridge to Priest Rapids Dam. The *U.S. v. Oregon* Technical Advisory Committee (TAC) updated the summer Chinook run from a pre-season value of thirty-eight thousand to sixty-five thousand. At this updated run size there are more surplus hatchery fish available for harvest. The TAC is comprised of representatives from Washington, Oregon, Idaho, the National Oceanic and Atmospheric Administration, and the treaty tribes and are responsible for developing pre-season and in-season run forecasts that salmon seasons are based on. 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 1, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000Q Freshwater exceptions to statewide rules—Columbia Effective July 4 through July 31, 2020, provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Interstate 182 Bridge to Priest Rapids Dam are modified as described

below. All other provisions of WAC 220-312-060 not addressed herein or otherwise amended by emergency rule remain in effect.

From the Interstate 182 Bridge to Priest Rapids Dam:

Salmon: Effective July 4 through July 31, 2020: Daily limit is 2 salmon. Release coho and wild adult Chinook.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2020:

WAC 220-312-06000Q Freshwater exceptions to statewide rules—Columbia

WSR 20-15-009
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 2, 2020, 12:22 p.m., effective July 2, 2020, 12:22 p.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, including Safe Start phased reopening requirements for all business and any industry specific requirements.

Citation of Rules Affected by this Order: Amending 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 amends the emergency rule adopted on May 26, 2020, as conditions have changed due to new governor's proclamations being in effect (Proclamations 20-20.5 and 20-60).

L&I is taking action to help prevent the spread of COVID-19 and respond to the governor's proclamations allowing a phased-in reopening of businesses and establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how businesses may reopen without increasing the risk of COVID-19 spreading.

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." The recent orders further build on these by continuing the Safe Start plan for county-by-county phased reopening and addressing specific requirements for businesses in Yakima County.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID[-19] from person-to-person interactions, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. 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. In setting the phases and conditions for businesses, statewide and county level data was considered.

The conditions of businesses reopening and operating in the governor's orders are also consistent with the social/physical distancing and health and sanitation requirements of chapter 49.17 RCW and the Center[s] for Disease Control and Prevention. Chapter 49.17 RCW and L&I rule 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. And, for COVID-19, lack of social distancing or 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. Emergency rule making is necessary here because providing for a full notice and comment time period will allow businesses to reopen or reopen without following all conditions for reopening, endangering employees and the public during the public comment time period. The governor's proclamation has 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 order.

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 Non-governmental 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: July 2, 2020.

Joel Sacks
Director

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, including Safe Start phased reopening requirements for all business and any industry specific requirements.

(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 20-15-019
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-129—Filed July 7, 2020, 8:17 a.m., effective July 7, 2020, 8:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule is needed to close commercial spot shrimp harvest in Shrimp Management Area 1A.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000P; and amending WAC 220-340-520.

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 2020 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) defines the shrimp management areas and regions open to spot and non-spot commercial harvest; (2) sets harvest restrictions for and

opens the nonspot commercial pot fishery; (3) sets harvest restrictions for and opens the spot commercial pot fishery; (4) sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery; (5) requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers; and (6) closes Shrimp Management Area 1A to state commercial harvest of spot shrimp due to the attainment of quota (7,137 pounds). 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 7, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000Q Puget Sound shrimp pot and trawl fishery—Season. Effective immediately and until further notice, or until this rule expires on August 28, 2020 pursuant to RCW 34.05.350, the following provisions of WAC 220-340-520 regarding Puget Sound commercial shrimp pot harvest, non-spot shrimp harvest, spot shrimp harvest, trawl shrimp harvest and sales shall be described below. All other provisions of WAC 220-340-520 not addressed herein, and unless otherwise amended, remain in effect:

(1) Shrimp Pot Harvests:

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

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Areas) 23A-E, 23A-W, 23A-C, and 23A-S are closed to the harvest of non-spot shrimp until the spot quota is attained in all sub-areas of 23A. Catch Areas 23A-E, 23A-W, 23A-C, and 23A-S AE are within Shrimp Management Area 3 and comprise Catch Area 23A.

(ii) Effective immediately it is unlawful to harvest spot shrimp from sub-area 23A-E.

(iii) Effective immediately it is unlawful to harvest spot shrimp from Shrimp Management Area 1A.

(iv) Shrimp Management Area 1A is closed to harvest of non-spot shrimp until the spot shrimp quota is attained in all Catch Areas of 1A.

(v) Discovery Bay Shrimp District is closed to the harvest of all shrimp species.

(vi) Shrimp Management Areas 1B, 2E, and 2W are closed to the harvest of spot shrimp.

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

(c) It is unlawful to harvest shrimp in more than one Shrimp Management Area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly from Wednesday through Tuesday, totaling 7 days in length.

(b) It is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from Shrimp Management Areas 1B, 1C, 2E, and 2W combined.

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

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

(3) Shrimp Spot Pot Harvest Restrictions:

(a) The initial spot shrimp catch accounting period is from May 5 through 11:59 p.m. on Tuesday, July 14, 2020.

(b) For the catch accounting period defined in 3(a) of this rule each fisher or alternate operator is required to report their intended catch area of harvest prior to the deployment of any spot shrimp gear to either shrimp.report@dfw.wa.gov or by text message to 360-302-6372.

(c) It is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 2000 pounds for the initial catch accounting period from Shrimp Management Areas 1A, 1C, and 3 combined.

(d) The second spot shrimp catch accounting period is biweekly from Wednesday through Tuesday, totaling 14 days in length, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 1200 pounds per catch accounting period from Shrimp Management Areas 1A, 1C, and 3 combined.

(4) Shrimp trawl gear:

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

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

(c) The remaining portion of Catch Area 22A within SMA 1B is open effective immediately, until further notice, or until this expire on August 28, 2020.

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

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 section of Washington Administrative Code is repealed:

WAC 220-340-52000P Puget Sound shrimp pot and trawl fishery—Season. (20-110)

**WSR 20-15-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-130—Filed July 7, 2020, 3:20 p.m., effective July 7, 2020, 3:20 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close recreational shrimp seasons in Marine Area 7 West as harvest targets have been achieved.

Citation of Rules Affected by this Order: Repealing WAC 220-330-07000Z and 220-330-07000A; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Only Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, and 12 remain open for spot shrimp harvest. This regulation closes all areas which are estimated to have reached their 2020 spot shrimp harvest targets. This regulation maintains areas currently open to the harvest of nonspot shrimps using 1/2 inch mesh pots with depth restrictions specific to each marine area. In addition, this emergency regulation allows nonspot shrimp opportunities to take place one hour before sunrise to one hour after sunset, which is the default daily times for those areas by permanent rule. Marine Area 13 will remain closed for spot shrimp for conservation reasons. 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: July 7, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000A Shrimp—Areas and Seasons. Notwithstanding the provisions of WAC 220-330-070, effective immediately until further notice, or until this rule expires on October 16, 2020, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District portion of Marine Area 6, except as provided for in this section. All other provisions of WAC 220-330-070 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Marine Area 4 (east of the Bonilla-Tatoosh line) and 5: Open daily until further notice for all shrimp species.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open until further notice to the harvest of all shrimp species except spot shrimp with a 200 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(3) Marine Area 6 (within the Discovery Bay Shrimp District): Closed to the harvest of all species of shrimp.

(4) Marine Area 7 South: Closed to the harvest of all species of shrimp.

(5) Marine Area 7 West: Closed to the harvest of all species of shrimp.

(6) Marine Area 7 East: Open until further notice to harvest of all shrimp species except spot shrimp with a 200 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(7) Marine Areas 8-1 and 8-2: Open until further notice to harvest of all shrimp species except spot shrimp with a 150 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(8) Marine Area 9: Open until further notice to harvest of all shrimp species except spot shrimp with a 150 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(9) Marine Area 10: Closed to the harvest of all species of shrimp.

(10) Marine Area 11: Open until further notice to harvest of all shrimp species except spot shrimp with a 150 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(11) Marine Area 12: Open July 15, 28 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(12) Marine Area 13: Open until further notice to harvest of all species except spot shrimp with a 200 foot maximum fishing depth restriction. All spot shrimp caught must be returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

REPEALER

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

WAC 220-330-07000Z Shrimp—Areas and seasons. (20-126)

The following section of the Washington Administrative Code is repealed effective October 16, 2020:

WAC 220-330-07000A Shrimp—Areas and seasons. (20-130)

WSR 20-15-046
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 8, 2020, 4:09 p.m., effective July 8, 2020, 4:09 p.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, including Safe Start phased reopening requirements for all business and any industry specific requirements.

Citation of Rules Affected by this Order: Amending 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 amends the emergency rule adopted on July 2, 2020, as conditions have changed due to a new governor's proclamation being in effect (Proclamation 20-20.6).

L&I is taking action to help prevent the spread of COVID-19 and respond to the governor's proclamations allowing a phased-in reopening of businesses and establishing conditions for business operations consistent with the recommendations of medical and safety professionals as to how businesses may reopen without increasing the risk of COVID-19 spreading.

The initial March 23, 2020, Stay Home, Stay Healthy Proclamation 20-25 required residents to stay home unless they need to pursue an essential activity, closed all businesses except essential businesses, and banned all gatherings for social, spiritual and recreational purposes. The order built upon earlier orders closing schools and restricting larger gatherings. This was followed by proclamation amendments adjusting the Stay Home, Stay Healthy order and transitioning to a phased-in approach to reopening Washington state, referred to as "Safe Start Washington." The recent orders further build on these by continuing the Safe Start plan for county-by-county phased reopening.

The governor's proclamations and amendments create a systematic framework to reduce the spread of COVID-19 from person-to-person interactions, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. 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. In setting the phases and conditions for businesses, statewide and county level data was considered.

The conditions of businesses reopening and operating in the governor's orders are also consistent with the social/physical distancing and health and sanitation requirements of chapter 49.17 RCW and the Center[s] for Disease Control and Prevention. Chapter 49.17 RCW and L&I rule 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. And, for COVID-19, lack of social distancing or 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. Emergency rule making is necessary here because providing for a full notice and comment time period will allow businesses to reopen or reopen without following all conditions for reopening, endangering employees and the public during

the public comment time period. The governor's proclamation has found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The governor's proclamation is 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 order.

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 Non-governmental 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: July 8, 2020.

Joel Sacks
Director

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, including Safe Start phased reopening requirements for all business and any industry specific requirements.

(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 20-15-047

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-133—Filed July 8, 2020, 4:39 p.m., effective July 9, 2020]

Effective Date of Rule: July 9, 2020.

Purpose: The purpose of this rule to open additional recreational summer Chinook seasons in the lower Columbia River from the Rocky Point/Tongue Point line to the Highway 395 Bridge at Pasco. This rule also closes the recreational shad fishery from Bonneville Dam to The Dalles Dam in order to prevent additional impacts to Endangered Species Act-(ESA)listed Snake River sockeye.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000P and 220-312-06000R; and amending WAC 220-312-060.

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

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

Reasons for this Finding: This rule is needed to open summer Chinook seasons in the Columbia River. The *U.S. v. Oregon* technical advisory committee (TAC) updated the summer Chinook run from a preseason value of thirty-eight thousand to sixty-five thousand on June 29. By closing the shad fishery from Bonneville Dam to The Dalles Dam, this rule also minimizes potential impacts on Snake River ESA-listed sockeye. The TAC is comprised of representatives from Washington, Oregon, Idaho, the National Oceanic and Atmospheric Administration, and the treaty tribes and are responsible for developing preseason and in-season run forecasts that salmon seasons are based on. This fishery is consistent with the 2018-2027 *U.S. v. Oregon* Management Agreement and the associated biological opinion. This action conforms Washington state rules with Oregon state rules and is consistent with the compact action of July 8, 2020. 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: July 8, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia Effective July 9 through July 31, 2020, provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Megler Astoria Bridge to the Hwy. 395 Bridge at Pasco and shad seasons from Bonneville Dam to The Dalles Dam are modified as described below. All other provisions of WAC 220-312-060 not addressed herein or otherwise amended by emergency rule remain in effect.

(1) From Megler Astoria Bridge to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to red navigation marker 2 at Tongue point on the Oregon bank:

Salmon and steelhead: Effective immediately through July 31, 2020: Closed to fishing for or retaining.

(2) From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to red navigation marker 2 at Tongue point on the Oregon bank upstream to Bonneville Dam:

(a) Salmon and steelhead: Effective July 9 through July 15, 2020: Daily limit 6; up to 2 adults may be retained. Release all salmon and steelhead other than hatchery Chinook.

(b) Salmon and steelhead: Effective July 16 through July 31, 2020: Closed to fishing for or retaining.

(3) From Bonneville Dam upstream to The Dalles Dam:

(a) Salmon and steelhead: Effective July 9 through July 15, 2020: Daily limit 6; up to 2 adults may be retained. Release all salmon and steelhead other than hatchery Chinook.

(b) Shad: Effective July 9 through July 15, 2020: Closed to fishing for or retaining.

(c) Salmon and steelhead: Effective July 16 through July 31, 2020: Closed to fishing for or retaining.

(4) From The Dalles Dam upstream to Hwy. 395 Bridge at Pasco:

(a) Salmon and steelhead: Effective July 9 through July 15, 2020: Daily limit 6; up to 2 adults may be retained. Release all salmon and steelhead other than hatchery Chinook.

(b) Salmon and steelhead: Effective July 16 through July 31, 2020: Closed to fishing for or retaining.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 9, 2020:

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia (20-123)

The following section of the Washington Administrative Code is repealed effective August 1, 2020:

WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia (20-133)

**WSR 20-15-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-132—Filed July 8, 2020, 4:48 p.m., effective July 8, 2020, 4:48 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 and steelhead 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.

This rule modifies 2020 tribal summer commercial fisheries above and below Bonneville Dam and is consistent with actions of the Columbia River Compact of June 8, June 30, and July 8, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000Z; 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: Allowable harvest on Columbia River salmonids remains available to extend the period of tribal commercial fisheries. This rule is consistent with actions of the Columbia River Compacts on June 8, June 30, and July 8, 2020. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302

F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: July 8, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000A Columbia River salmon seasons Effective immediately and until further notice or until this rule expires on November 5, 2020 the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Season: immediately to 6:00 PM Thursday, July 9, 2020

(b) Gear: Set and Drift 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 may not be sold, but sturgeon from 38 to 54 inches fork length in Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2020.

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

(a) Season: 6:00 AM Monday July 13 to 6:00 PM Thursday, July 16, 2020

(b) Gear: Set and Drift 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 may not be sold, but sturgeon from 38 to 54 inches fork length in Bonneville

Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2020.

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

(a) Season: Immediately through 11:59 PM July 31, 2020.

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

(c) Allowable sale: Salmon (any species) and steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2020.

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

(a) Season: Immediately through 11:59 PM July 31, 2020, only during days and times opened under tribal rules.

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

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

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

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

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

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

6) 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).

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000Z Columbia River salmon seasons.
(20-124)

WSR 20-15-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-131—Filed July 9, 2020, 2:03 p.m., effective July 9, 2020, 2:03 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000M; and amending WAC 220-358-030.

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

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

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

Reasons for this Finding: This rule extends the summer 2020 seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 8, 2020. There is insufficient time to promulgate permanent rules.

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

ary 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 9, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000N Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point/South Channel Select Area:

Open Dates	Open Days	Open Time	Open Duration
July 9 - July 10	Thursday (night)	7:00pm-7:00am	12hrs
July 13 - July 14	Monday (night)	7:00pm-7:00am	12 hrs
July 16 - July 17	Thursday (night)	7:00pm-7:00am	12 hrs
July 20 - July 21	Monday (night)	7:00pm-7:00am	12 hrs

Open Dates	Open Days	Open Time	Open Duration
July 23 - July 24	Thursday (night)	7:00pm-7:00am	12 hrs

(a) **Area:** The lower boundary of the Tongue Point fishing area is defined as a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island (fall boundary).

(b) **Gear:** 9 3/4-inch maximum mesh size restriction.

In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms and weight not to exceed two pounds on any one fathom.

In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms and no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(2) Blind Slough/Knappa Slough Select Area:

Open Dates	Open Days	Open Time	Open Duration
July 9 - July 10	Thursday (night)	7:00 pm-7:00 am	12 hours
July 13 - July 14	Monday (night)	7:00 pm-7:00 am	12 hours
July 16 - July 17	Thursday (night)	7:00 pm-7:00 am	12 hours
July 20 - July 21	Monday (night)	7:00 pm-7:00 am	12 hours
July 23 - July 24	Thursday (night)	7:00 pm-7:00 am	12 hours

(a) **Area:** The lower boundary of the Knappa Slough fishing area is defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore (fall boundary).

(b) **Gear:** 9 3/4-inch maximum mesh size restriction.

Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

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

(6) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315)). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

(7) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

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

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 the Washington Administrative Code is repealed effective July 9, 2020:

WAC 220-358-03000M Columbia river seasons below Bonneville Dam. (20-55)

**WSR 20-15-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-134—Filed July 9, 2020, 2:30 p.m., effective July 9, 2020, 2:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule is needed to adjust the second spot shrimp accounting period to allow harvesters to take two thousand five hundred pounds of spot shrimp from July 15 to August 12, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000Q; and amending WAC 220-340-520.

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 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) defines the

shrimp management areas and Regions open to spot and non-spot commercial harvest; (2) sets harvest restrictions for and opens the nonspot commercial pot fishery; (3) sets harvest restrictions for and opens the spot commercial pot fishery; (4) sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery; (5) requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers; (6) closes Shrimp Management Area 1A to state commercial harvest of spot shrimp due to the attainment of quota (seven thousand one hundred thirty-seven pounds); and (7) amends the second spot shrimp accounting period to allow two thousand five hundred pounds of spot shrimp harvest between July 15 and August 12, 2020. This adjustment to the catch accounting period will provide greater flexibility to allow commercial harvesters to capitalize on shifting market conditions. Additionally, this adjustment streamlines Washington department of fish and wildlife staff workflow and optimizes the economic utility of the commercial share of the resource.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 9, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000R Puget Sound shrimp pot and trawl fishery—Season. Effective immediately and until further notice, or until this rule expires on August 28, 2020 pursuant to RCW 34.05.350, the following provisions of WAC 220-340-520 regarding Puget Sound commercial shrimp pot harvest, non-spot shrimp harvest, spot shrimp harvest, trawl shrimp harvest and sales shall be described below. All other provisions of WAC 220-340-520 not addressed herein, and unless otherwise amended, remain in effect:

(1) Shrimp Pot Harvests:

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

(i) All waters of Marine Fish/Shellfish Management and Catch Reporting Areas (Catch Areas) 23A-E, 23A-W, 23A-C, and 23A-S are closed to the harvest of non-spot shrimp until the spot quota is attained in all sub-areas of 23A. Catch

Areas 23A-E, 23A-W, 23A-C, and 23A-S AE are within Shrimp Management Area 3 and comprise Catch Area 23A.

(ii) Effective immediately it is unlawful to harvest spot shrimp from sub-area 23A-E.

(iii) Effective immediately it is unlawful to harvest spot shrimp from Shrimp Management Area 1A.

(iv) Shrimp Management Area 1A is closed to harvest of non-spot shrimp until the spot shrimp quota is attained in all Catch Areas of 1A.

(v) Discovery Bay Shrimp District is closed to the harvest of all shrimp species.

(vi) Shrimp Management Areas 1B, 2E, and 2W are closed to the harvest of spot shrimp.

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

(c) It is unlawful to harvest shrimp in more than one Shrimp Management Area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly from Wednesday through Tuesday, totaling 7 days in length.

(b) It is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per shrimp catch accounting week from Shrimp Management Areas 1B, 1C, 2E, and 2W combined.

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

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

(3) Shrimp Spot Pot Harvest Restrictions:

(a) The initial spot shrimp catch accounting period is from May 5 through 11:59 p.m. on Tuesday, July 14, 2020.

(b) It is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 2000 pounds for the initial catch accounting period from Shrimp Management Areas 1A, 1C, and 3 combined.

(c) The second spot shrimp catch accounting period is from July 15, 2020 through 11:59 p.m. on August 12, 2020.

(d) It is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 2500 pounds for the second catch accounting period from Shrimp Management Areas 1A, 1C, and 3 combined.

(e) For the catch accounting periods defined in 3(a, c) of this rule each fisher or alternate operator is required to report their intended catch area of harvest prior to the deployment of any spot shrimp gear to either shrimp.report@dfw.wa.gov or by text message to 360-302-6372.

(4) Shrimp trawl gear:

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

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

(c) The remaining portion of Catch Area 22A within SMA 1B is open effective immediately, until further notice, or until this expire on August 28, 2020.

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

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

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

REPEALER

The following section of Washington Administrative Code is repealed:

WAC 220-340-52000Q Puget Sound shrimp pot and trawl fishery—Season. (20-129)

WSR 20-15-055

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed July 9, 2020, 2:45 p.m., effective July 10, 2020]

Effective Date of Rule: July 10, 2020.

Purpose: The department of licensing is extending emergency rules that change the requirement that prohibits cosmetology schools from offering more than twenty-five percent of training online; this requirement was extended, and will continue to be extended, to one hundred percent until permanent rules are adopted.

Citation of Rules Affected by this Order: Amending WAC 308-20-010.

Statutory Authority for Adoption: RCW 18.16.030 and 43.24.023.

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 change is to limit the in-class training to assist with COVID-19 response efforts allowing cosmetology schools to provide online training.

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 Non-governmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: July 9, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-19-049, filed 9/12/17, effective 10/13/17)

WAC 308-20-010 Definitions. (1) "Chemical compounds formulated for professional use only" are those compounds containing hazardous chemicals in a form not generally sold to the public; including but not limited to, bulk concentrates of permanent wave solution, neutralizers, chemical relaxers, oxidizing agents, flammable substances, facial creams, or approved chemical compounds. These compounds must be designated for use on the hair, face, neck, skin, or scalp.

(2) "Monthly student report" are forms provided by the school, approved by the department, preprinted with the school name. The report must include the month, year and daily activities of the student in each subject, (i.e., number of shampoos, haircuts, perms, colors, etc.) within each course (i.e., barbering, manicuring, cosmetology, hair design, esthetics, master esthetics, or instructor-trainee).

(3) "Completed and graduated" is the completion of the school curriculum and the state approved minimum hourly course of training.

(4) "Apprentice salon/shop" is a location certified by the Washington state apprenticeship and training council, that provides training for individuals accepted into the apprenticeship program. Apprentice salon/shops shall not receive payment from the apprentice for training.

(5) "Apprentice trainer" is a person that is currently licensed and in good standing. This person provides training in a licensed shop approved for the apprenticeship program, who must have received journey level training and have held a license in the curriculum for which he or she is providing training for a minimum of three years.

(6) "Journey level training" is the completion of three years working as a licensed cosmetologist, hair designer, barber, manicurist, esthetician, or master esthetician.

(7) "Completion of the apprenticeship training" is the completion of the apprentice salon/shop curriculum that includes the state approved hourly course of training as described in WAC 308-20-080.

(8) "Monthly apprentice report" forms provided by the apprentice shop, approved by the department, printed with the shop name, for use in recording apprentice training hours and activities.

(9) "Online training" means an approved electronic learning environment through a licensed school in which a student is enrolled. This training is limited to theory only. Online training may be used for up to ~~((twenty-five))~~ one hundred percent of the approved course of study.

(10) "Accreditation" is a status granted to a postsecondary school by one or more of the accrediting organizations recognized and approved by the U.S. Secretary of Education. Accreditation is voluntary and does not imply automatic transfer of credits from one postsecondary school to another.

(11) "Admission requirements" means the specific minimum criteria a school must use when accepting a student into the school.

WSR 20-15-056

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed July 9, 2020, 3:13 p.m., effective July 10, 2020]

Effective Date of Rule: July 10, 2020.

Purpose: The department of licensing is refiling emergency rules to change the delivery method of the classroom hours of instruction; this requirement will be modified until further notice to assist with the COVID-19 response efforts, or until this rule expires. The department is exploring permanent rule making on this subject.

Citation of Rules Affected by this Order: Amending WAC 308-108-150.

Statutory Authority for Adoption: RCW 46.01.110 and 46.82.290.

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

Reasons for this Finding: This emergency change provides driver training schools the flexibility to adopt web-based methods of instruction to assist with COVID-19 response efforts.

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 Non-governmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: July 9, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-07-058, filed 3/18/19, effective 4/18/19)

WAC 308-108-150 Course requirements. Driver training schools that provide education for persons under the age of eighteen must ensure their course:

(1) Includes a minimum of thirty hours of classroom instruction;

(2) Meets the behind the wheel instruction and observation requirements of WAC 308-108-160;

(3) Has a minimum of one hour and no more than two hours of classroom instruction and no more than one hour of behind the wheel instruction during a single day, except when adding a make-up class, in which case classroom instruction must not exceed four hours in a single day;

(4) Has a classroom portion that is at least fifty-percent instructor-led with verbal instruction consisting of:

(a) In-person training or live interactive web based learning;

(b) Teacher and student interaction;

(c) Questions and answers ~~(-and~~

~~(d) No more than six make-up hours of alternative classroom instruction, delivering the same information that was missed~~);

(5) Has all students in a classroom session on the same lesson, with the exception of make-up lessons. Open enrollment or self-paced instruction is not permitted;

(6) Is not completed in fewer than thirty calendar days;

(7) Includes comprehensive final written and behind the wheel examinations;

(8) Has a flow chart that indicates how the classroom and behind the wheel instruction are completed throughout the course;

(9) Includes information on the state of Washington's intermediate license requirements, restrictions, violations, and sanctions for violation of these requirements;

(10) Includes the delivery of instructional material developed by the department and the federally designated organ procurement organization for Washington state relating to organ and tissue donation awareness education; and

(11) Has a designated time for a parent, guardian, or employer night that is no less than one hour, which may fulfill one of the thirty hours required for student training, and must include:

(a) Instruction on the parent, guardian, or employer responsibilities and the importance of parent, guardian, or employer involvement with the teen driver;

(b) Information on intermediate license laws, restrictions, and sanctions;

(c) An introduction to the parent guide to teen driving; and

(d) A questions and answers period.

WSR 20-15-057

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed July 9, 2020, 4:03 p.m., effective July 9, 2020, 4:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-930-010, sex offender treatment provider, the adopted amendment to WAC 246-930-010 will remove the words "face-to-face" from the definition of "treatment," allowing the possibility of sex offender treatment providers to offer treatment to clients through telehealth, enabling increased social distancing during the coronavirus disease (COVID-19) declared emergency.

Citation of Rules Affected by this Order: Amending WAC 246-930-010.

Statutory Authority for Adoption: RCW 18.155.040.

Other Authority: None.

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: Social distancing is a key component of minimizing the spread of disease during the COVID-19 declared emergency and is encouraged by Governor Inslee's Proclamation 20-05, Stay Home, Stay Healthy, subsequent amendments, and the Safe Start plan. Following restrictions on close contact and large gatherings, sex offender treatment providers have cancelled group and individual treatment sessions. Because treatment is required by WAC 246-930-010 to be conducted "face-to-face," sex offender treatment providers are currently unable to provide telehealth services, as many other mental health professionals are. Inability to access sex offender treatment services is detrimental to both the clients, who require support, and the public, who are at risk if clients recidivate. Amending WAC 246-930-010 to permit treatment through telehealth will allow sex offenders to resume treatment and reduce the risk to the public.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 9, 2020.

Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 07-09-092, filed 4/18/07, effective 5/19/07)

WAC 246-930-010 General definitions. In these rules, the following terms shall have the definition described below, unless another definition is stated:

(1) "Affiliate sex offender treatment provider" or "affiliate" means an individual who has satisfactorily passed the examination, met the education requirements, and has been issued a certificate to evaluate and treat sex offenders under chapter 18.155 RCW, and under the supervision of a certified sex offender treatment provider in accordance with the supervision requirements set forth in WAC 246-930-075.

(2) "Certified sex offender treatment provider" or "provider" means an individual who has satisfactorily passed the examination, met the education and experience requirements, and has been issued a certificate by the department to evaluate and treat sex offenders under chapter 18.155 RCW.

(3) "Client" means a person who has been investigated by law enforcement or child protective services for committing or allegedly committing a sex offense, or who has been convicted of a sex offense.

(4) "Committee" means the sex offender treatment providers advisory committee.

(5) "Community protection contract" means the document specifying the treatment rules and requirements the client has agreed to follow in order to maximize community safety.

(6) "Co-therapy hours" means the actual number of hours the applicant spent facilitating a group session.

(7) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(8) "Department" means the department of health.

(9) "Evaluation" means a comprehensive assessment or examination of a client conducted by a provider or affiliate that examines the client's offending behavior. Evaluation results must be detailed in a written report. Examples of evaluations include forensic, SSOSA, and SSODA evaluations. Standards for assessment and evaluation reports, and evaluation experience credit are located in WAC 246-930-320 and 246-930-340.

(10) "Parties" means the defendant, the prosecuting attorney, and the supervising officer.

(11) "Secretary" means the secretary of the department of health, or designee.

(12) "SSODA" means special sex offender disposition alternative, authorized under RCW 13.40.160.

(13) "SSOSA" means special sex offender sentencing alternative, authorized under RCW 9.94A.670.

(14) "Supervising officer" is the designated representative of the agency having oversight responsibility for a client sentenced under SSOSA or SSODA, for example, a community corrections officer or a juvenile probation officer.

(15) "Treatment" means ((face to face)) individual, group, or family therapy, provided by an affiliate or provider, to a client. Treatment is focused on the client's offending behavior.

(16) "Treatment plan" means a written statement of intended care and services as documented in the evaluation

that details how the client's treatment needs will be met while protecting the community during the course of treatment.

WSR 20-15-058

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed July 10, 2020, 8:14 a.m., effective July 10, 2020, 8:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-010, prescription labeling, records, and advertising—Minimum requirements, the pharmacy quality assurance commission (commission) is adopting emergency rules to reduce burdens on practitioners prescribing Schedule II substances during the coronavirus disease (COVID-19) outbreak. The commission recently completed a two and one half year process to consolidate and update thirty-three separate chapters of WAC into single chapter 246-945 WAC. An emergency rule is already in effect for the corresponding WAC 246-887-020 (WSR 20-09-133). WAC 246-945-010 replaces WAC 246-887-010. This emergency rule will replace WSR 20-09-133. This emergency rule amends WAC 246-945-010 to increase the duration of time a practitioner has to deliver a signed prescription of a Schedule II substance to the pharmacy from seven days to fifteen days. It also defines what a "signed prescription" means and allows for a practitioner to accomplish this requirement through paper, electronic transmission, facsimile, photograph, or scanned copy. These alternative methodologies support patients, practitioners, and pharmacists' efforts to practice social distancing and to help mitigate communal spread.

Citation of Rules Affected by this Order: Amending WAC 246-945-010.

Statutory Authority for Adoption: RCW 18.64.005; chapter 69.50 RCW.

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

Reasons for this Finding: The immediate amendment of this existing rule is necessary for the preservation of public health, safety, and general welfare. Stakeholders and leaders from the pain community have highlighted this is an immediate need for Washingtonians. This emergency rule has been in effect on rules that have been replaced by WAC 246-945-010. This emergency rule allows more time and more avenues for complying with the requirements during the COVID-19 pandemic, reducing burdens on practitioners and pharmacists during this difficult time and sustaining patient access. The emergency rules will help address this problem and reduce barriers for providers and patient populations in need of Schedule II prescriptions throughout this public health emergency. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent

rule would be contrary to public interest and the governor's order.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 9, 2020.

Tim Lynch, PharmD, MS, Chair
Pharmacy Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-010 Prescription and chart order—Minimum requirements. (1) For the purposes of this section, prescription does not include chart orders as defined in RCW 18.64.011(3).

(2) For the purposes of WAC 246-945-010 through 246-945-013, prescription includes written and electronic prescriptions.

(3) A prescription for a noncontrolled legend drug must include, but is not limited to, the following:

- (a) Prescriber's name;
- (b) Name of patient, authorized entity, or animal name and species;
- (c) Date of issuance;
- (d) Drug name, strength, and quantity;
- (e) Directions for use;
- (f) Number of refills (if any);

(g) Instruction on whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted, unless substitution is permitted under a prior-consent authorization;

(h) Prescriber's manual or electronic signature, or prescriber's authorized agent signature if allowed by law; and

(i) If the prescription is written, it must be written on tamper-resistant prescription pad or paper approved by the commission pursuant to RCW 18.64.500;

(4) A prescription for a controlled substance must include all the information listed in subsection (1) of this section and the following:

- (a) Patient's address;
- (b) Dosage form;
- (c) Prescriber's address;
- (d) Prescriber's DEA registration number; and
- (e) Any other requirements listed in 21 C.F.R., Chapter

II.

(5) A chart order must meet the requirements of RCW 18.64.550 and any other applicable requirements listed in 21 C.F.R., Chapter II.

(6) A controlled substance listed in Schedule II can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011 unless there is an "emergency."

(a) For the purposes of this subsection, an "emergency" exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it is not possible for the practitioner to provide a written or electronic prescription for the drug at that time.

(b) If a Schedule II drug is dispensed in an emergency, the practitioner must deliver a signed prescription to the dispenser within (~~seven~~) fifteen days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the (~~seven~~) fifteen day period, and further the pharmacist must note on the prescription that it was filled on an emergency basis.

(c) For the purposes of this subsection, a "signed prescription" shall be either:

(i) A paper prescription;

(ii) An electronic prescription;

(iii) A copy of the paper prescription sent via facsimile to the pharmacy; or

(iv) A photograph or scanned copy of the paper prescription sent to the pharmacy.

(7) A controlled substance listed in Schedule III, IV, or V, can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a controlled substance listed in Schedule III, IV, or V must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

(8) A noncontrolled legend drug can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a noncontrolled legend drug must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

WSR 20-15-059

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed July 10, 2020, 8:28 a.m., effective July 10, 2020, 8:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-056 Schedule V, the pharmacy quality assurance commission (commission) is adopting emergency rules to remove Epidiolex from the list of Schedule V controlled substances in Washington state. The commission recently completed a two and one half year process to consolidate and update the thirty-three separate WAC chapters into one new chapter: chapter 246-945 WAC. This emergency rule is already in effect under the corresponding old chapter, WAC 246-887-180 (WSR 20-11-078). WAC 246-945-056 replaces WAC 246-887-180. This emergency

rule will replace WSR 20-11-078. Epidiolex is an FDA-approved cannabidiol with less than 0.3% tetrahydrocannabinol (THC) and descheduling the drug in chapter 246-945 WAC will maintain the emergency rule already in effect and reduce the burden on practitioners prescribing Epidiolex.

Citation of Rules Affected by this Order: Amending WAC 246-945-056.

Statutory Authority for Adoption: RCW 18.64.005, 69.50.201.

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

Reasons for this Finding: The immediate amendment of this existing rule is necessary for the preservation of public health, safety, and general welfare. Epidiolex is an FDA-approved cannabidiol with less than 0.3% THC, used to help treat some seizure disorders. The 2018 Agricultural Improvement Act amended the Controlled Substances Act and declassified hemp products with less than 0.3% THC from Schedule I; however, Epidiolex was placed on Schedule V until April 6, 2020, when the United States drug enforcement agency announced that it would be descheduled as a federally controlled substance. This emergency rule will maintain the emergency rule already in effect on the chapter of WAC replaced by WAC 246-945-056 and update Washington rule to align with the federal decision. Emergency rules are necessary to reduce burdens on practitioners prescribing Epidiolex and allow patients easier access to the care they need. This rule may also help reduce pressure on the health system during the COVID-19 pandemic. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. The commission will begin a permanent rule-making process following these emergency rules as soon as the COVID-19 response allows.

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 Non-governmental 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 1, Repealed 0.

Date Adopted: July 9, 2020.

Tim Lynch, PharmD, MS, Chair
Pharmacy Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

WAC 246-945-056 Schedule V. The commission finds that the following substances have low potential for abuse relative to substances in Schedule IV under RCW 69.50.210 and WAC 246-945-055 and have currently accepted medical use in treatment in the United States and that the substances have limited physical dependence or psychological dependence liability relative to the substance in Schedule IV. In addition to the substances listed in RCW 69.50.212, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule V.

Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide); also referred to as BRV; UCB-34714; Briviact;

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester].

~~((3) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols, also known as Epidiolex.))~~

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

WSR 20-15-069

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed July 13, 2020, 11:34 a.m., effective July 13, 2020, 11:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is revising this section to allow for payment of office visits for clients under the alien emergency medical (AEM) program when the visit is specifically for the assessment and treatment of the COVID-19 virus.

Citation of Rules Affected by this Order: Amending WAC 182-507-0115.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This rule making is in response to the Governor's Proclamation 20-05 declaring a State of Emergency for all counties throughout the state of Washing-

ton as a result of the coronavirus disease 2019 (COVID-19) and the secretary of the federal department of health and human services declaration of a public health emergency related to COVID-19. This emergency rule making is necessary to preserve the public health, safety, and general welfare by allowing payment for the office visit for an AEM client for the assessment and treatment of the COVID-19 virus.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 13, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-24-038, filed 11/29/12, effective 12/30/12)

WAC 182-507-0115 Alien emergency medical program (AEM). (1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 182-507-0110 is eligible for the alien emergency medical program's scope of covered services described in this section if the person meets ~~((a) and (b) or (c))~~ the requirements of (a) of this subsection, as well as the requirements of either (b), (c), or (d) of this subsection:

(a) The medicaid agency determines that the primary condition requiring treatment ~~((meets the definition of))~~ is an emergency medical condition as defined in WAC 182-500-0030, and the condition is confirmed through review of clinical records; and

(b) The person's qualifying emergency medical condition is treated in one of the following hospital settings:

(i) Inpatient;

(ii) Outpatient surgery;

(iii) Emergency room services, which must include an evaluation and management (E&M) visit by a physician; or

(c) Involuntary Treatment Act (ITA) and voluntary inpatient admissions to a hospital psychiatric setting that are authorized by the agency's inpatient mental health designee (see subsection (5) of this section); or

(d) For the assessment and treatment of the COVID-19 virus, the agency covers one physician visit provided in any outpatient setting, including the office or clinic setting, or via telemedicine, online digital or telephonic services to assess/evaluate and test, if clinically indicated, as follows:

(i) If the test is positive, in addition to the services described in (b) of this subsection and subsection (2)(b) of

this section, any medically necessary services to treat, including:

(A) Follow-up office visits;

(B) Medications, prior authorization requirements may apply;

(C) Respiratory services and supplies; and

(D) Medical supplies, prior authorization requirements may apply.

(ii) If a test is negative, any treatment described in (d)(i)(A) through (B) of this subsection, as a precautionary measure for an anticipated positive test result.

(e) The coverage described in (d) of this subsection is in effect only during the time period, as determined by the agency in its sole discretion, that a public health emergency related to COVID-19 exists.

(2) If a person meets the criteria in subsection (1) of this section, the agency will cover and pay for all related medically necessary health care services and professional services provided:

(a) By physicians in their office or in a clinic setting immediately prior to the transfer to the hospital, resulting in a direct admission to the hospital; and

(b) During the specific emergency room visit, outpatient surgery or inpatient admission. These services include, but are not limited to:

(i) Medications;

(ii) Laboratory, X-ray, and other diagnostics and the professional interpretations;

(iii) Medical equipment and supplies;

(iv) Anesthesia, surgical, and recovery services;

(v) Physician consultation, treatment, surgery, or evaluation services;

(vi) Therapy services;

(vii) Emergency medical transportation; and

(viii) Nonemergency ambulance transportation to transfer the person from a hospital to a long term acute care (LTAC) or an inpatient physical medicine and rehabilitation (PM&R) unit, if that admission is prior authorized by the agency or its designee as described in subsection (3) of this section.

(3) The agency will cover admissions to an LTAC facility or an inpatient PM&R unit if:

(a) The original admission to the hospital meets the criteria as described in subsection (1) of this section;

(b) The person is transferred directly to this facility from the hospital; and

(c) The admission is prior authorized according to LTAC and PM&R program rules (see WAC 182-550-2590 for LTAC and WAC 182-550-2561 for PM&R).

(4) The agency does not cover any services, regardless of setting, once the person is discharged from the hospital after being treated for a qualifying emergency medical condition authorized by the agency or its designee under this program. Exceptions:

(a) For admissions to treat COVID-19 or complications thereof, the agency will cover up to two postdischarge physician follow-up visits, regardless of how the visits are conducted or where they are conducted.

(b) Pharmacy services, drugs, devices, and drug-related supplies listed in WAC 182-530-2000, prescribed on the

same day and associated with the qualifying visit or service (as described in subsection (1) of this section) will be covered for a one-time fill and retrospectively reimbursed according to pharmacy program rules.

(5) Medical necessity of inpatient psychiatric care in the hospital setting must be determined, and any admission must be authorized by the agency's inpatient mental health designee according to the requirements in WAC 182-550-2600.

(6) There is no precertification or prior authorization for eligibility under this program. Eligibility for the AEM program does not have to be established before an individual begins receiving emergency treatment.

(7) Under this program, certification is only valid for the period of time the person is receiving services under the criteria described in subsection (1) of this section. The exception for pharmacy services is also applicable as described in subsection (4) of this section.

(a) For inpatient care, the certification is only for the period of time the person is in the hospital, LTAC, or PM&R facility - The admission date through the discharge date. Upon discharge the person is no longer eligible for coverage.

(b) For an outpatient surgery or emergency room service the certification is only for the date of service. If the person is in the hospital overnight, the certification will be the admission date through the discharge date. Upon release from the hospital, the person is no longer eligible for coverage.

(8) Under this program, any visit or service not meeting the criteria described in subsection (1) of this section is considered not within the scope of service categories as described in WAC 182-501-0060. This includes, but is not limited to:

(a) Hospital services, care, surgeries, or inpatient admissions to treat any condition which is not considered by the agency to be a qualifying emergency medical condition, including but not limited to:

(i) Laboratory X-ray, or other diagnostic procedures;

(ii) Physical, occupational, speech therapy, or audiology services;

(iii) Hospital clinic services; or

(iv) Emergency room visits, surgery, or hospital admissions.

(b) Any services provided during a hospital admission or visit (meeting the criteria described in subsection (1) of this section), which are not related to the treatment of the qualifying emergency medical condition;

(c) Organ transplants, including preevaluations, post operative care, and anti-rejection medication;

(d) Services provided outside the hospital settings described in subsection (1) of this section including, but not limited to:

(i) Office or clinic-based services rendered by a physician, an ARNP, or any other licensed practitioner;

(ii) Prenatal care, except labor and delivery;

(iii) Laboratory, radiology, and any other diagnostic testing;

(iv) School-based services;

(v) Personal care services;

(vi) Physical, respiratory, occupational, and speech therapy services;

(vii) Waiver services;

(viii) Nursing facility services;
 (ix) Home health services;
 (x) Hospice services;
 (xi) Vision services;
 (xii) Hearing services;
 (xiii) Dental services;
 (xiv) Durable and nondurable medical supplies;
 (xv) Nonemergency medical transportation;
 (xvi) Interpreter services; and
 (xvii) Pharmacy services, except as described in subsection (4) of this section.

(9) The services listed in subsection (8) of this section are not within the scope of service categories for this program and therefore the exception to rule process is not available.

(10) Providers must not bill the agency for visits or services that do not meet the qualifying criteria described in this section. The agency will identify and recover payment for claims paid in error.

WSR 20-15-079
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed July 14, 2020, 4:30 p.m., effective July 15, 2020]

Effective Date of Rule: July 15, 2020.

Purpose: To extend the emergency amendment of WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation, under WSR 20-07-079, which temporarily exempts participants from mandatory participation.

Citation of Rules Affected by this Order: Amending WAC 388-310-0350.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010.

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 is necessary to extend existing emergency rules, which provide relief in response to health and economic impacts of COVID-19. The department filed notice of its intent to adopt the rule as a permanent rule under WSR 20-14-104 and is actively undertaking appropriate procedures to adopt the rule as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 10, 2020.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-056, filed 11/24/15, effective 1/1/16)

WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?

Except as provided in subsection (4) of this section, you are exempt from mandatory participation if you are:

(a) A caretaker relative as defined by WAC 388-454-0010, included in the assistance unit and:

(i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below:

(i) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than ten hours a week and is expected to last at least twelve months. Your disability and ability to participate must be verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), behavioral health organization (BHO), and/or regional service area (RSA), or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, school professional, one of the medical or mental health professionals listed in subsection (2) of this section, HCS, MHD, BHO, and/or an RSA to require specialized care or treatment that prevents you from participating in work activities for more than ten hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) You are unable to participate in work activities for more than ten hours per week because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, BHO and/or an RSA, or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(e) A resident of Washington state during a declared state of emergency related to COVID-19.

(2) What types of medical or mental health professionals can provide medical evidence when I have a disability?

We accept medical evidence from the following sources when considering disability:

(a) For a physical impairment:

(i) A physician, which includes:

(A) Medical doctor (M.D.); and

(B) Doctor of osteopathy (D.O.);

(ii) An advanced registered nurse practitioner (ARNP) for physical impairments;

(iii) A physician's assistant (P.A.);

(iv) A doctor of optometry (O.D.) for visual acuity impairments; or

(v) Doctor of podiatry (D.P.) for foot disorders;

(b) For a mental impairment:

(i) A psychiatrist;

(ii) A psychologist;

(iii) An ARNP certified in psychiatric nursing;

(iv) A mental health professional provided the person's training and qualifications at a minimum include a master's degree; or

(v) A physician who is currently treating you for a mental impairment.

(c) We do not accept medical evidence from the medical professionals listed in subsections (2)(a) and (b), unless they are licensed in Washington state or the state where the examination was performed.

(3) Who reviews and approves an exemption from participation?

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472

WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(4) If I am an adult who is exempt due to my severe and chronic disability, can I still be required to participate in the WorkFirst program?

When you are exempt due to your severe and chronic disability, you may be required to:

(a) Pursue SSI or another type of federal disability benefit; and/or

(b) Participate in available treatment that is recommended by your treating medical or mental health provider or by a chemical dependency professional.

(5) Can I participate in WorkFirst while I am exempt?

(a) You may choose to fully participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(6) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?

Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit as described in WAC 388-484-0005.

(7) How long will my exemption last?

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(8) What happens when I am no longer exempt?

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(9) For time-limited extensions, see WAC 388-484-0006.

WSR 20-15-082

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-135—Filed July 15, 2020, 8:52 a.m., effective July 18, 2020]

Effective Date of Rule: July 18, 2020.

Purpose: The purpose of this rule is to open sockeye retention seasons in Baker Lake.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000Q; and amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is needed to open seasons for sockeye salmon in Baker Lake. The 2020 Baker Lake sockeye preseason forecast was especially low this year, in response, the Washington department of fish and wildlife (WDFW) initially took a conservative approach. Some thought it was unlikely that numbers of returning fish would be sufficient for a recreational fishery while others thought a fishery was possible but wanted to wait until we had updated run size data before scheduling one. It was decided to put a placeholder in the list of agreed-to fisheries whereby a fishery could be evaluated if two thousand five hundred sockeye were hauled to the lake. As of July 12, over two thousand five hundred sockeye have been hauled to the lake, thus initiating a discussion with the comanagers who have agreed with WDFW that a recreational sockeye fishery within the lake may begin on July 18. WDFW plans to closely monitor the fishery to ensure the allowable harvest is not exceeded, which is when the estimated fish remaining in the lake is one thousand five hundred. The length of the fishery will depend on how many fish are caught and the number of new fish being hauled. The fishery could close earlier than the anticipated closing date of September 7th if escapement and conservation goals appear to be in jeopardy.

The department finds that opening the Baker Lake sockeye fishery through the adoption of this rule promotes the general public welfare and that observing the time requirements of notice and opportunity to comment upon the adoption of a permanent rule is contrary to the public's interest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 14, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000Q Freshwater exceptions to statewide rules—Puget Sound. Effective July 18 through September 7, 2020, the following provisions of WAC 220-312-040 regarding recreational salmon seasons fishing for Baker Lake, shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Baker Lake (Whatcom Co.): Salmon:

(a) Daily limit 2 sockeye only. Minimum size 18 inches.

(b) Each angler aboard a vessel may deploy salmon angling gear until the daily salmon limit for all anglers aboard has been achieved.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 8, 2020:

WAC 220-312-04000Q Freshwater exceptions to statewide rules—Puget Sound.

**WSR 20-15-103
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-137—Filed July 15, 2020, 4:39 p.m., effective July 16, 2020]

Effective Date of Rule: July 16, 2020.

Purpose: The purpose of this rule [is] to open additional recreational summer Chinook as well as limited hatchery steelhead seasons in the lower Columbia River from the Rocky Point/Tongue Point line to the Highway 395 Bridge at Pasco.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000R and 220-312-06000S; and amending WAC 220-312-060.

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

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

Reasons for this Finding: This rule is needed to open summer Chinook and steelhead seasons in the Columbia River. The *U.S. v. Oregon* Technical Advisory Committee (TAC) updated the summer Chinook run from a preseason value of thirty-eight thousand to sixty-five thousand on June 29. No additional impacts on Snake River Endangered Species Act-listed sockeye are expected to occur with this extension. The TAC is comprised of representatives from Washington, Oregon, Idaho, National Oceanic and Atmospheric Administration, and the treaty tribes and are responsible for developing preseason and in-season run forecasts that salmon seasons are based on. This fishery is consistent with the 2018-2027 *U.S. v. Oregon* Management Agreement and the

associated biological opinion. This action conforms Washington state rules with Oregon state rules and is consistent with the compact action of July 15, 2020. Immediate adoption of this rule to open additional recreational Chinook and steelhead seasons is necessary for the preservation of the public health, safety, or general welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: July 15, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000S Freshwater exceptions to statewide rules—Columbia Effective July 16 through July 31, 2020, provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Megler Astoria Bridge to the Hwy. 395 Bridge at Pasco are modified as described below. All other provisions of WAC 220-312-060 not addressed herein or otherwise amended by emergency rule remain in effect.

(1) From Megler Astoria Bridge to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to red navigation marker 2 at Tongue point on the Oregon bank:

Salmon and steelhead: Effective immediately through July 31, 2020: Closed to fishing for or retaining.

(2) From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to red navigation marker 2 at Tongue point on the Oregon bank upstream to Hwy. 395 Bridge at Pasco:

Salmon and steelhead: Effective July 16 through July 31, 2020: Daily limit 6; up to 2 adults may be retained of which up to 1 may be a hatchery steelhead. Release all salmon other than hatchery Chinook. Release wild steelhead.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 16, 2020:

WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia (20-133)

The following section of the Washington Administrative Code is repealed effective August 1, 2020:

WAC 220-312-06000S Freshwater exceptions to statewide rules—Columbia (20-137)

WSR 20-15-105

EMERGENCY RULES

DEPARTMENT OF LICENSING

[Filed July 16, 2020, 8:24 a.m., effective July 16, 2020, 8:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is filing this emergency rule to temporarily suspend the requirements in WAC 308-108-160 Behind the wheel instruction and observation, "(b) One or more hours of additional in-vehicle driver observation."

Citation of Rules Affected by this Order: Amending WAC 308-108-160.

Statutory Authority for Adoption: RCW 46.01.110.

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: During Phase 1 of Safe Start only one student can be in the vehicle on a drive with an instructor of driver training education, and during Phase 2 only 2 students are allowed in the vehicle. The current rule bars students in Phase 1 counties from completing their driver training education requirements and has backlogged students in other counties from completing this requirement. The department is temporarily suspending this requirement to ensure all students are able to complete their driver training education in Washington state.

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 Non-governmental 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: July 16, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-01-070, filed 12/18/06, effective 9/1/07)

WAC 308-108-160 Behind the wheel instruction and observation. (1) Instruction provided to students under the age of eighteen must include(~~(~~

~~(a))~~ behind the wheel instruction consisting of:

~~((i))~~ (a) Not less than six hours of on-street behind the wheel vehicle operation under the direct supervision and direction of a licensed instructor; or

~~((ii))~~ (b) Five or more hours of on-street behind the wheel vehicle operation and four or more hours of driving simulation instruction under the direct supervision and direction of a licensed instructor(~~(~~ and

~~(b) One or more hours of additional in-vehicle driver observation).~~

(2) Behind the wheel instruction must be documented on a form provided or approved by the department, including the time the instruction was conducted, the signature of the instructor, and initials of the student.

WSR 20-15-107

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed July 16, 2020, 11:10 a.m., effective July 16, 2020, 11:10 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority is revising this section to temporarily eliminate the requirement for date and signature from the medicaid client or the client's designee upon delivery of medical equipment and supplies.

Citation of Rules Affected by this Order: Amending WAC 182-543-2200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: In response to the current public health emergency surrounding the outbreak of the coronavirus disease 2019 (COVID-19) along with the governor of Washington's emergency proclamations related to COVID-19, this rule making is necessary to immediately allow delivery of medical equipment and supplies without the requirement of a date and signature from the client or the client's designee in order to avoid contact between the client and delivery person.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 16, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-24-021, filed 11/27/18, effective 1/1/19)

WAC 182-543-2200 Proof of delivery. (1) When a provider delivers an item directly to the client or the client's authorized representative, the provider must furnish the proof of delivery when the medicaid agency requests that information. All of the following apply:

(a) The agency requires a delivery slip as proof of delivery. The proof of delivery slip must:

(i) ~~(Be signed and dated by the client or the client's authorized representative (the date of signature must be the date the item was received by the client);~~

~~(ii))~~ Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name; and

~~((iii))~~ (ii) For medical equipment that may require future repairs, include the serial number.

(b) When the provider or supplier submits a claim for payment to the agency, the date of service on the claim must be one of the following:

(i) For a one-time delivery, the date the item was received by the client or the client's authorized representative; or

(ii) For nondurable medical supplies for which the agency has established a monthly maximum, on or after the date the item was received by the client or the client's authorized representative.

(2) When a provider uses a delivery/shipping service to deliver items which are not fitted to the client, the provider must furnish proof of delivery that the client received the equipment and/or supply, when the agency requests that information.

(a) If the provider uses a delivery/shipping service, the tracking slip is the proof of delivery. The tracking slip must include:

(i) The client's name or a reference to the client's package or packages;

(ii) The delivery service package identification number; and

(iii) The delivery address.

(b) If the provider/supplier does the delivering, the delivery slip is the proof of delivery. The delivery slip must include:

(i) The client's name;

(ii) The shipping service package identification number;

(iii) The quantity, detailed description(s), and brand name or names of the items being shipped; and

(iv) For medical equipment that may require future repairs, the serial number.

(c) When billing the agency, use:

(i) The shipping date as the date of service on the claim if the provider uses a delivery/shipping service; or

(ii) The actual date of delivery as the date of service on the claim if the provider/supplier does the delivery.

(3) A provider must not use a delivery/shipping service to deliver items which must be fitted to the client.

(4) Providers must obtain prior authorization when required before delivering the item to the client. The item must be delivered to the client before the provider bills the agency.

(5) The agency does not pay for medical equipment and related items furnished to the agency's clients when:

(a) The medical professional who provides medical justification to the agency for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The medical professional who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of medical equipment and related items.

WSR 20-15-108
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-138—Filed July 16, 2020, 11:36 a.m., effective July 16, 2020,
11:36 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 and steelhead 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.

This rule modifies 2020 tribal summer commercial fisheries above and below Bonneville Dam and is consistent with actions of the Columbia River Compact of June 8, June 30, July 8, and July 15, 2020.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000A; 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: Allowable harvest on Columbia River salmonids remains available to extend the period of tribal commercial fisheries. This rule is consistent with actions of the Columbia River Compacts on June 8, June 30, July 8, and July 15, 2020. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

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

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

Date Adopted: July 16, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000B Columbia River salmon seasons Effective immediately and until further notice or until this rule expires on November 12, 2020 the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Season: 6:00 AM Monday July 20 to 6:00 PM Thursday, July 23, 2020

(b) Gear: Set and Drift 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 may not be sold, but sturgeon from 38 to 54 inches fork length in Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2020.

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

(a) Season: Immediately through 11:59 PM July 31, 2020.

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

(c) Allowable sale: Salmon (any species) and steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2020.

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

(a) Season: Immediately through 11:59 PM July 31, 2020, only during days and times opened under tribal rules.

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

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

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000A Columbia River salmon seasons.
(20-132)

WSR 20-15-115**EMERGENCY RULES****DEPARTMENT OF LICENSING**

[Filed July 16, 2020, 2:57 p.m., effective July 25, 2020]

Effective Date of Rule: July 25, 2020.

Purpose: The department of licensing is extending emergency rules allowing for remote notarization in Washington state. These rules will be withdrawn or made permanent based on developing governor and legislative action. The department also filed notice for permanent rule making regarding SB 5641 under WSR 20-06-073. Interested stakeholders can participate in the rule-making process for the permanent rules by contacting rulescoordinator@dol.wa.gov.

Citation of Rules Affected by this Order: Amending chapter 308-30 WAC, Notaries public.

Statutory Authority for Adoption: RCW 42.45.250.

Other Authority: Proclamation by the Governor 20-27 Electronic Notary Effective Date.

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 is enacted to decrease in-person notarization to assist with COVID-19 response efforts, allowing remote notarization in Washington state ahead of SB 5641 implementation.

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 Non-governmental 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: July 16, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-020 Definitions. Words and terms used in these rules have the same meaning as in the Revised Uniform Law on Notarial Acts, RCW 42.45.010.

"Appear personally" means:

(a) Being in the same physical location as another individual and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(b) For remote notarial acts, being in a different physical location from another individual but able to see, hear, and communicate with that individual by means of communication technology.

"Commission" is equivalent to the term "license" as defined in RCW 18.235.010(6).

"Department" means the Washington state department of licensing.

"Director" means the director of the department of licensing or the director's designee.

"Electronic journal" means a chronological record of notarizations maintained by a notary public in an electronic format in compliance with these rules.

"Electronic notarial acts" means notarizations or notarial acts with respect to electronic records.

"Electronic notarial certificate" means the part of, or attachment to, an electronic record that is completed by the notary public, contains the information required under RCW 42.45.130 and the notary's official stamp, bears that notary's electronic signature, and states the facts attested to by the notary in a notarization performed on an electronic record.

"Enroll" and "enrollment" mean a process for registering a notary public with a technology provider to access and use a tamper-evident technology in order to perform electronic notarial acts.

"Principal" means:

(a) An individual whose electronic signature is notarized; or

(b) An individual, other than a witness required for an electronic notarial act, taking an oath or affirmation from the notary public.

"Remote notarial act" means a notarization that is performed electronically using approved audio-video technol-

ogy that allows for direct interaction between the notary and the individuals that are remotely located.

"Sole control" means at all times being in the direct physical custody of the notary public or safeguarded by the notary with a password or other secure means of authentication.

"Tamper-evident technology" means a set of applications, programs, hardware, software, or other technologies designed to enable a notary public to perform electronic notarial acts and to display evidence of any changes made to an electronic record.

"Technology provider" means an individual or entity that offers the services of a tamper-evident technology for electronic notarial acts.

"Venue" means the state and county where the notary public is physically located while performing a notarial act.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-030 Application process for notary public commission. (1) To apply for a notary public commission, an applicant who meets the requirements of RCW 42.45.200(2) shall submit an application on forms provided by the department. The application shall include:

(a) Evidence of a ten thousand dollar surety bond, signed by the notary public, that conforms to RCW 42.45.200(4);

(b) Payment of the prescribed fee; and

(c) A signed and notarized oath of office.

(2) As part of a notary public commission application, an applicant shall provide both their legal name and their commission name. The applicant's commission name must contain their surname, and at least the initials of the applicant's first and middle name.

(3) To apply for an electronic records notary public endorsement, an applicant who meets the requirements of RCW 42.45.200(7) shall submit an electronic records notary public application on forms provided by the department and pay the prescribed fee.

(4) An applicant may only apply for an electronic records notary public endorsement if:

(a) They currently hold an active notary public commission; or

(b) They are applying for a notary public commission and an electronic records notary public endorsement simultaneously.

(5) An individual applying for an electronic records notary public endorsement must inform the department within thirty days of applying of the tamper-evident technology provider that they have enrolled with before they perform their first electronic notarial act.

(6) To apply for a remote notary endorsement, an electronic records notary public shall submit a remote notary endorsement application on forms provided by the department.

(7) An applicant may only apply for a remote notary endorsement if:

(a) They currently hold an active notary public commission and with an electronic records notary public endorsement;

(b) They currently hold an active notary public commission, and are applying for an electronic records notary public endorsement and a remote notary endorsement simultaneously; or

(c) They are applying for a notary public commission, an electronic records notary public endorsement, and a remote notarial acts endorsement simultaneously.

(8) A notary public shall reapply with the department for each commission term before performing notarial acts.

~~((7))~~ (9) A notary public may elect not to apply for an electronic records notary public endorsement or a remote notary endorsement.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-040 Approval or denial of application.

(1) Upon ~~(the)~~ an applicant's fulfillment of the requirements for a notary public commission ~~((or))~~ and/or an electronic records notary public endorsement, a remote notary endorsement, the department shall approve the application and issue the notary public commission ((or)) along with any endorsements.

(2) If the department receives an incomplete or invalid application, the department shall hold the application for thirty calendar days to allow the applicant to cure any defects. After the thirty day period, the application shall be canceled and any application fees forfeited.

(3) An applicant may not perform any notarial acts in person, electronically, or remotely before receiving a notary public commission from the department.

~~(4) ((A notary public may not perform any electronic notarial acts before receiving an electronic records notary public endorsement from the department.~~

~~(5))~~ The department may deny a commission or endorsement application if the applicant fails to comply with these rules or does not meet the requirements for licensure.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-050 Term of commission.

(1) The term of a notary public commission shall expire on the expiration date of the notary public's surety bond, no more than four years after their commission date.

(2) Unless terminated pursuant to WAC 308-30-270, an electronic records notary public endorsement ~~((is))~~ and the remote notary endorsement are valid from the date the endorsement is issued by the department, and continues as long as the notary public's current commission remains valid.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-150 Completion of electronic notarial certificate.

(1) For every electronic notarial act and remote notarial act, a notary public shall complete an electronic notarial certificate that complies with the requirements of these rules, RCW 42.45.130 and 42.45.140.

(2) An electronic notarial certificate shall be completed at the time of notarization and in the ~~((physical))~~ presence of the principal.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-220 Fees for notarial acts. (1) The maximum fees a notary may charge for notarial acts are:

Notarial Act	Fee
Witnessing or attesting a signature	\$10.00
Taking an acknowledgment or a verification upon oath or affirmation	\$10.00
Certifying or attesting a copy	\$10.00
Administering an oath or affirmation	\$10.00
Certifying that an event has occurred or an act has been performed	\$10.00

(2) A notary public need not charge for notarial acts.

(3) A notary public may not charge fees for receiving or noting a protest of a negotiable instrument.

(4) A notary public may additionally charge the actual costs of copying any instrument or record.

(5) A notary public may charge a travel fee when traveling to perform a notarial act if:

(a) The notary public and the individual requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary public explains to the individual requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.

(6) Notwithstanding the maximum fees set forth in subsection (1) of this section and the prohibition set forth in subsection (3) of this section, a notary public may charge a maximum fee of twenty-five dollars to perform a remote notarial act.

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

WAC 308-30-270 Termination or suspension of commission or endorsement.

(1) The department may take action against the commission and/or endorsement of a notary public who fails to comply with these rules as provided in RCW 42.45.210, 42.45.270, and chapter 18.235 RCW. Any restriction, suspension, or revocation of a notary public's commission will automatically have the same effect on any endorsement the notary public holds.

(2) A notary public may terminate their notary public commission and/or electronic records endorsement or remote notary endorsement by notifying the department of this intent in writing and disposing of all or any part of a tamper-evident technology in the notary's control whose purpose was to perform electronic notarizations.

(3) A notary public may terminate the electronic records notary public endorsement or the remote notary endorsement and maintain the underlying notary public commission.

(4) A notary public whose commission is terminated or expired, either by the notary or the department, shall disable their official stamp by destroying, defacing, damaging, or securing the device against use. The notary shall maintain their notarial journals for ten years as required by RCW 42.45.180 and WAC 308-30-210.

NEW SECTION

WAC 308-30-290 Authorized remote notarial acts.

(1) A notary public who has received both an electronic records notary public endorsement and a remote notarial acts endorsement from the department may perform the following remote notarial acts:

- (a) Taking an acknowledgment;
- (b) Taking a verification on oath or affirmation;
- (c) Witnessing or attesting a signature;
- (d) Certifying or attesting a copy;
- (e) Certifying that an event has occurred or an act has been performed; and
- (f) Noting a protest of a negotiable instrument, if the notary public is:
 - (i) Acting under the authority of an attorney who is licensed to practice law in this state or another state; or
 - (ii) Acting under the authority of a financial institution regulated by this state, another state, or the federal government.

(2) In performing remote notarial acts, a notary public shall comply with all requirements for electronic notarial acts under this chapter.

NEW SECTION

WAC 308-30-300 Standards for identity proofing.

(1) In performing remote notarial acts, if a notary public does not have satisfactory evidence of the identity of a remotely located individual under subsection (4) of this section, the notary public must reasonably verify the individual's identity through two different types of identity proofing consisting of a credential analysis procedure and a dynamic knowledge-based authentication assessment as provided in subsections (2) and (3) of this section.

(2) Credential analysis must use public or private data sources to confirm the validity of the identification credential presented by a remotely located individual and shall, at a minimum:

- (a) Use automated software processes to aid the notary public in verifying the identity of each remotely located individual;
- (b) Require the identification credential to pass an authenticity test, consistent with sound commercial practices, that uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identification credential is not fraudulent or inappropriately modified;
- (c) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credential details; and
- (d) Enable the notary public visually to compare for consistency the information and photograph on the identification

credential and the remotely located individual as viewed by the notary public in real time through communication technology.

(3) A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

- (a) The remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;
- (b) Each question must have a minimum of five possible answer choices;
- (c) At least eighty percent of the questions must be answered correctly;
- (d) All questions must be answered within two minutes;
- (e) If the remotely located individual fails the first attempt, the individual may retake the quiz one time within twenty-four hours;
- (f) During a retake of the quiz, a minimum of forty percent of the prior questions must be replaced;
- (g) If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same online notary public within twenty-four hours of the second failed attempt; and
- (h) The notary public must not be able to see or record the questions or answers.

(4) A notary public has satisfactory evidence of the identity of a remotely located individual if:

- (a) The notary public has personal knowledge of the identity of the individual; or
- (b) The individual is identified by oath or affirmation of a credible witness in accordance with the following requirements:
 - (i) To be a credible witness, the witness must have personal knowledge of the remotely located individual;
 - (ii) The notary public must have personal knowledge of the credible witness or verify the identity of the credible witness by two different types of identity proofing in accordance with subsections (1), (2), and (3) of this section; and
 - (iii) A credible witness may be outside the physical presence of the notary public or remotely located individual if the notary public, credible witness, and remotely located individual can communicate by using communication technology.

NEW SECTION

WAC 308-30-310 Standards for communication technology.

(1) Communication technology for remote notarial acts must provide for synchronous audio-visual feeds of sufficient audio clarity and video resolution to enable the notary public and remotely located individual to see and speak with each other. The process must provide a means for the notary public reasonably to confirm that an electronic record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(2) Communication technology must provide reasonable security measures to prevent unauthorized access to:

- (a) The live transmission of the audio-visual feeds;
- (b) The methods used to perform identify verification; and

(c) The electronic record that is the subject of the remote notarial act.

(3) If a remotely located individual must exit the workflow, the individual must restart the identify verification process required under WAC 308-30-300 from the beginning.

NEW SECTION

WAC 308-30-320 Certificate of notarial act for remote notarial acts. (1) A form of notarial certificate for a remote notarial act satisfies the requirement of RCW 42.45.280(4) and 42.45.130 (1)(g) if it is in the form provided by applicable law and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

(2) A short form of acknowledgment prescribed in RCW 42.45.140 satisfies the requirement of RCW 42.45.280(4) and 42.45.130 (1)(g) if it is in substantially one of the following forms for the purposes indicated:

(a) For an acknowledgment in an individual capacity:

State of Washington

County of

This record was acknowledged before me by means of communication technology on (date) by (name(s) of individuals).

.....
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires:)

(b) For an acknowledgment in a representative capacity:

State of Washington

County of

This record was acknowledged before me by means of communication technology on (date) by (name(s) of individuals) as (type of authority, such as officer or trustee) of (name of party on behalf of whom the instrument was executed).

.....
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires:)

(c) For verification on oath or affirmation:

State of Washington

County of

Signed and sworn to (or affirmed) before me by means of communication technology on (date) by (name(s) of individuals making statement).

.....
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires:)

(d) For witnessing or attesting a signature:

State of Washington

County of

Signed or attested before me by means of communication technology on (date) by (name(s) of individuals).

.....
(Signature of notary public)

Notary Public

(Electronic official stamp)

(My commission expires:)

NEW SECTION

WAC 308-30-330 Retention of audio-visual recordings and repositories. (1) A notary public must retain any audio-visual recording created under RCW 42.45.280 (3)(c) in a computer or other electronic storage device that protects the recording against unauthorized access by password or other secure means of authentication. The recording must be created in an industry-standard audio-visual file format and must not include images of any electronic record that was the subject of the remote notarial act.

(2) An audio-visual recording must be retained for at least ten years after the recording is made.

(3) A notary public must take reasonable steps to ensure that a backup of the audio-visual recording exists and is secure from unauthorized use.

(4) The fact that the notary public's employer, contractor, or repository keeps or stores any audio-visual recordings shall not relieve the notary of the duties required by these rules.

(5) The personal representative or guardian of a notary public shall follow RCW 42.45.280(6) related to the disposition of the notary public's audio-visual recordings upon the death or adjudication of incompetency of the notary public.

(6) The notary public, or the notary's personal representative or guardian, shall provide access instructions to the department for any audio-visual recordings maintained or stored by the notary, upon commission resignation, revocation, or expiration without renewal, or upon the death of adjudication of incompetency of the notary.

(7) A notary public, or the notary's personal representative or guardian, may by written contract engage a third party to act as a repository to provide the storage required by this

section. A third party under contract under this section shall be deemed a repository under RCW 42.45.280(6).

(8) Any contract under subsection (7) of this section must:

(a) Enable the notary public, or the notary's personal representative or guardian, to comply with the retention requirements of this section even if the contract is terminated; or

(b) Provide that the information will be transferred to the notary public, or to the notary's personal representative or guardian, if the contract is terminated.

WSR 20-15-117

EMERGENCY RULES

STATE BOARD OF HEALTH

[Filed July 17, 2020, 7:42 a.m., effective July 17, 2020]

Effective Date of Rule: July 17, 2020.

Purpose: WAC 246-80-021 Prohibition—Vitamin E Acetate, the Washington state board of health has adopted an emergency rule to continue the ban on the sale of vapor products containing vitamin E acetate. This applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means including by telephone or other method of voice transmission, the mail or any other delivery service, or the internet or other online service. This emergency rule supersedes the emergency rule filed as WSR 20-08-007 on March 19, 2020.

Citation of Rules Affected by this Order: New WAC 246-80-021.

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

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

Reasons for this Finding: The standards in this emergency rule have not changed from the previous emergency rule. Since the previous emergency rule, the board has filed a Preproposal statement of inquiry, CR-101, filed as WSR 20-10-113 on May 6, 2020, for permanent rule making to prohibit the use of vitamin E acetate in vapor products.

In July 2019 the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration, state and local health jurisdictions and other clinical and public health partners began investigation [of] outbreaks of lung injury associated with e-cigarette product use, or vaping. In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multi-state outbreak. As of February 18, 2020, CDC reported a total of two thousand eight hundred seven cases of hospitalized e-cigarette, or vaping, product use associated lung injury (EVALI) cases, and sixty-eight deaths in twenty-nine states and the District of Columbia. Twenty-seven cases of lung injury, including two deaths have been reported in Washington state.

As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, a recent study cited by the CDC conducted laboratory tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease from sixteen states. Forty-nine samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of the injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven samples. None of a range of other potential chemicals of concern was detected in the samples, but evidence is not yet sufficient to rule out the contribution of other chemicals, substances or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and recommends that vitamin E acetate not be added to any vapor products.

This legislative session, the governor submitted request legislation (SB 6254) aimed at increasing regulation of vapor products in Washington. The bill included a ban of vitamin E acetate, however the legislature failed to pass SB 6254. Due to the clear association of vitamin E acetate with EVALI and absent legislative action to ban vitamin E acetate the board has determined that continuing a ban is necessary to protect the public health, safety and welfare while permanent rule making commences.

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 Non-governmental 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 1, Amended 0, Repealed 0.

Date Adopted: June 10, 2020.

Michelle A. Davis
Executive Director

NEW SECTION

WAC 246-80-021 Prohibition—Vitamin E acetate.

(1) Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. As part of the investigation into the multistate outbreak of lung disease associated with the use of vapor products, the Centers for Disease Control (CDC) conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. All of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. The CDC did not determine that vitamin E acetate was present in only THC vapor products or only non-THC vapor

products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. Subsequently, tests of fifty-one samples of fluid collected from the lungs of patients with vaping-associated lung disease in sixteen states identified vitamin E acetate in forty-eight of the samples. THC was identified in forty-seven of fifty samples and nicotine was identified in thirty of forty-seven samples. Evidence is not yet sufficient to rule out the contribution of other chemicals, substances, or product sources to the disease. The CDC has identified vitamin E acetate as a chemical of concern and stated that it is important that vitamin E acetate not be added to any vapor products. Adoption of a rule prohibiting the sale of vapor products containing vitamin E acetate is necessary for the preservation of the public health, safety, and general welfare.

(2) No person including, but not limited to, a person licensed under chapter 69.50 or 70.345 RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

WSR 20-15-118

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed July 17, 2020, 8:51 a.m., effective July 17, 2020, 8:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In March of 2020, Congress passed the Families First Coronavirus Response Act that, among other things, authorized and funded extended unemployment benefits in response to the COVID-19 pandemic. The department is adopting an emergency rule in order to align state rules with federal rules and guidance regarding suitable work for extended benefits.

Citation of Rules Affected by this Order: Amending WAC 192-240-025.

Statutory Authority for Adoption: RCW 50.12.040, 50.22.020.

Other Authority: 20 C.F.R. § 615.8 (e)(5)(ii), (f)(2)(ii); Unemployment Insurance Program Letter No. 14-81 (Feb. 2, 1981).

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

Reasons for this Finding: As a federal-state program, Washington is required to conform with United States Department of Labor (USDOL) guidance or risk federal funding. The Families First Coronavirus Response Act pro-

vides federal funding for extended unemployment benefits in response to the COVID-19 pandemic. If the department does not align state rules with USDOL guidance, those funds may be in jeopardy.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 17, 2020.

Dan Zeitlin
Policy Director

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-240-025 Failure to apply for or accept suitable work—RCW 50.22.020 (4)(b)—Extended benefits. (1) You will be denied extended benefits if you fail:

(a) To accept any offer of suitable work as defined in WAC 192-240-020 if the job was:

(i) Offered to you in writing; or

(ii) Listed with the department.

(b) To accept a referral, or to apply for suitable work, when referred by your local employment center, if the job was:

(i) Offered to you in writing~~(s)~~; or

(ii) Listed with the department.

(2) The denial is for the week in which the refusal occurs and until you work in four weeks and earn four times your weekly benefit amount.

WSR 20-15-135

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-139—Filed July 21, 2020, 12:36 p.m., effective August 6, 2020]

Effective Date of Rule: August 6, 2020.

Purpose: The purpose of this rule is to open recreational halibut seasons in Marine Areas 1 through 10 and to align sport fishing rules with federal rules adopted by the National Marine Fisheries Service.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000Z; and amending WAC 220-314-030.

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

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

Reasons for this Finding: Under the Halibut Convention Act, the National Marine Fisheries Service has the authority to promulgate regulations for domestic halibut regulations and the states are required to conform. Therefore, this rule conforms to the National Marine Fisheries Service's final rule, which is consistent with the actions taken by the Pacific Fishery Management Council and the International Pacific Halibut Commission.

The recreational halibut quota is sufficient to provide for these seasons. Halibut catch will be closely monitored by the Washington department of fish and wildlife staff, the season could close earlier if quotas are achieved. Conversely, if catch is slower than anticipated, it is possible that additional days could be added to the season. In Marine Areas 1 and 2, proposed additional days include, Friday, August 28; Friday, September 4; and Friday, September 11. No recreational halibut fishing days will be open beyond September 30.

The immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 21, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000Z Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-040, and 220-314-010, effective August 6 through September 30, 2020, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-040, and 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

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

(a) Open August 6, 13, 16, 20, 23, 27, and 30; September 3, 6, 10, 13, 17, 20, 24, and 27, 2020. (Thursday, August 6, then Thursdays and Sundays, beginning August 13 through September 27, 2020.)

(b) Lingcod can be retained when halibut are on board, during the halibut season north of the Washington-Oregon border.

(2) **Catch Record Card Area 1 (Nearshore fishery);** Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon):

(a) Open August 10, 11, 12, 17, 18, 19, 24, 25, 26, and 31; September 1, 2, 7, 8, 9, 14, 15, 16, 21, 22, 23, 28, 29, and 30 2020. (Mondays through Wednesdays, beginning August 10 through September 30, 2020.)

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

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

Open August 6, 13, 16, 20, 23, 27, and 30; September 3, 6, 10, 13, 17, 20, 24, and 27, 2020. (Thursday, August 6, then Thursdays and Sundays, beginning August 13 through September 27, 2020.)

(4) **Card Areas 3 and 4:**

Open August 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, and 29; September 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, and 26, 2020. (Thursdays through Saturdays beginning August 6 through September 26, 2020.)

(5) **Catch Record Card Area 5 through 10:**

(a) Open August 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, and 29; September 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, and 26, 2020. (Thursdays through Saturdays beginning August 6 through September 26, 2020.)

(b) It is permissible for halibut anglers to retain Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Area 5.

(6) **Catch Record Card Areas 11, 12 and 13:** Closed.

REPEALER

The following section of the Washington Administrative Code is repealed October 1, 2020:

WAC 220-314-03000Z Halibut—Seasons—Daily and possession limits. (19-139)

WSR 20-15-136

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-140—Filed July 21, 2020, 12:38 p.m., effective July 21, 2020, 12:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close recreational shrimp seasons in Marine Area 12 as harvest targets have been achieved.

Citation of Rules Affected by this Order: WAC 220-330-07000A and 220-330-07000B; and amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. In Puget Sound, only Marine Area 4 (east of the Bonilla-Tatoosh line) and Marine Area 5 remain open for spot shrimp harvest. This rule closes Marine Area 12 to all shrimp harvest due to having reached 2020 harvest quota and maintains closure of all areas which are estimated to have reached their 2020 spot shrimp harvest targets. This rule also maintains areas currently open to the harvest of nonspot shrimps using 1/2 inch mesh pots with depth restrictions specific to each marine area. In addition, this emergency rule allows nonspot shrimp opportunities to take place one hour before sunrise to one hour after sunset, which is the default daily times for those areas by permanent rule. Marine Area 13 will remain closed for spot shrimp for conservation reasons.

The immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: July 21, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000B Shrimp—Areas and seasons.

Notwithstanding the provisions of WAC 220-330-070, effective immediately until further notice, or until this rule expires on October 16, 2020, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4

(east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District portion of Marine Area 6, except as provided for in this section. All other provisions of WAC 220-330-070 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Marine Area 4 (east of the Bonilla-Tatoosh line) and 5: Open daily until further notice for all shrimp species.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open until further notice to the harvest of all shrimp species except spot shrimp with a 200 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(3) Marine Area 6 (within the Discovery Bay Shrimp District): Closed to the harvest of all species of shrimp.

(4) Marine Area 7 East: Open until further notice to harvest of all shrimp species except spot shrimp with a 200 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(5) Marine Area 7 South: Closed to the harvest of all species of shrimp.

(6) Marine Area 7 West: Closed to the harvest of all species of shrimp.

(7) Marine Areas 8-1 and 8-2: Open until further notice to harvest of all shrimp species except spot shrimp with a 150 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(8) Marine Area 9: Open until further notice to harvest of all shrimp species except spot shrimp with a 150 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(9) Marine Area 10: Closed to the harvest of all species of shrimp.

(10) Marine Area 11: Open until further notice to harvest of all shrimp species except spot shrimp with a 150 foot maximum fishing depth restriction. All spot shrimp caught must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(11) Marine Area 12: Closed to the harvest of all species of shrimp.

(12) Marine Area 13: Open until further notice to harvest of all species except spot shrimp with a 200 foot maximum fishing depth restriction. All spot shrimp caught must be returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

REPEALER

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

WAC 220-330-07000A Shrimp—Areas and seasons. (20-130)

The following section of the Washington Administrative Code is repealed effective October 16, 2020:

WAC 220-330-07000B Shrimp—Areas and seasons. (20-140)

WSR 20-15-149
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Office of the Secretary)

[Filed July 22, 2020, 8:25 a.m., effective July 23, 2020]

Effective Date of Rule: July 23, 2020.

Purpose: The department is filing this first extension of its emergency rule at WSR 20-08-049, that was effective March 25, 2020, and expires on July 23, 2020, in response to the public health crisis created by the COVID-19 virus (commonly referred to as the "coronavirus"). The extended emergency rule allows electronic filing and electronic distribution of notices and orders to the office of administrative hearings (OAH) via email by striking the email prohibition, adding a provision for email filing with OAH, and adding clarifying language. The department of social and health services (DSHS) is actively undertaking the appropriate procedures to adopt the rule as a permanent rule, and filed a CR-101 Pre-proposal statement of inquiry as WSR 20-15-061 on July 10, 2020.

Citation of Rules Affected by this Order: Amending WAC 388-02-0075 How does a party file documents?

Statutory Authority for Adoption: RCW 43.17.060, 43.20A.550, 34.05.020, 34.05.350.

Other Authority: Proclamation by the Governor 20-05.

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

Reasons for this Finding: To protect public health, safety, and welfare there is an emergent need to allow electronic filing and electronic distribution of notices and orders to OAH supporting "social distancing" due to the public health crisis created by the COVID-19 virus (commonly referred to as the "coronavirus"), and associated state of emergency in all Washington counties as proclaimed by Governor Insee's "Proclamation by the Governor 20-05." OAH has issued "temporary emergency policy and procedures" authorizing electronic filings for DSHS, health care authority and department of children, youth, and families caseloads, effective March 25, 2020. Instructions for using secure email filing are available at www.oah.wa.gov.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 15, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0075 How does a party file documents?

(1) A party may file documents by delivering them to OAH or BOA by:

- (a) Personal service (hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax transmission if the party mails a copy of the document the same day;
- (d) Commercial delivery service; or
- (e) Legal messenger service.

(2) ~~((A))~~ Any party (cannot) may file documents with OAH by secure email. The BOA does not accept electronic submission except by fax.

WSR 20-15-152

EMERGENCY RULES

STATE BOARD OF EDUCATION

[Filed July 22, 2020, 8:48 a.m., effective July 22, 2020, 8:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making on chapters 180-90 and 180-111 WAC is to establish an emergency waiver program to grant local education agencies and private schools flexibility in credit graduation requirements for the graduating class of 2020 in response to the novel coronavirus (COVID-19). The rule making allows flexibility from instructional hour or school day requirements for private schools for the 2019-20 school year.

The rule making also includes a change to chapter 180-90 WAC to allow private schools to operate online programs without use of physical buildings if the emergency situation continues into the 2020-21 school year.

Citation of Rules Affected by this Order: New WAC 180-111-010, 180-111-020, 180-111-030, 180-111-040 and 180-111-050; and amending WAC 180-90-141 and 180-90-160.

Statutory Authority for Adoption: Sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965); RCW 28A.195.-010.

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: Sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965) authorizes the state board of education to engage in rule making to provide flexibility in response to the novel coronavirus (COVID-19) emergency. Immediate adoption and amendment of 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.

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 5, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 2, Repealed 0.

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

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

Date Adopted: July 21, 2020.

Randy Spaulding
Executive Director

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

WAC 180-90-141 Loss of private school approval.

The state board of education may rescind approval of a private school for one or more of the following reasons:

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

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

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

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

(3) Failure to provide verification that the physical facilities of the school meet the health and fire safety standards.

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

WAC 180-90-160 Minimum standards and certificate form. (1) The annual certificate required by WAC 180-90-130 shall be in substantial compliance with the form and substance of the following:

CERTIFICATE OF COMPLIANCE
WITH STATE STANDARDS

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

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

or

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

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

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

(i) 450 Hours for students in kindergarten.

(ii) 1000 Hours for students in grades one through twelve.

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

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient

units for meeting state board of education graduation requirements, except as provided in chapter 180-111 WAC; and/or

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

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

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

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

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

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

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

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

(f) The physical facilities of the school are adequate to meet the program offered, and all school facilities and practices are in substantial compliance with reasonable health and fire safety standards, as substantiated by current inspection reports of appropriate health and fire safety officials which are on file in the chief administrator's office;

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

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

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

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

contained in chapter 180-90 WAC. I have reported all such deviations herewith.

Dated this day of, 20 . . .

.....

(signed)

.....

(title)

.....

(phone number)

(2) Approval by the state board of education is contingent upon on-going compliance with the standards certified herein. The school shall notify the state board of education of any deviation from these standards which occurs after the action taken by the state board of education. Such notification shall be filed within thirty days of occurrence of the deviation.

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

(4) Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.

**WSR 20-15-153
EMERGENCY RULES
STATE BOARD OF EDUCATION**

[Filed July 22, 2020, 8:49 a.m., effective July 22, 2020, 8:49 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule making on chapter 180-16 WAC is to enable local education agencies to deliver instructional hours and school days during state and local public health response that could limit the ability to hold in-person instruction during the 2020-21 school year.

The rule making allows modalities other than in-person delivery of instruction to count as instructional hours for the 2019-20 school year. The rule making is intended to allow for predictability for districts if they need to change delivery methods for instruction due to public health measures. The rules commit the state board of education (SBOE) to revisiting the rule-making concept by July 2021. The rule making also requires submission of reopening templates during basic education compliance at least two weeks before school reopening and no later than September 15.

Citation of Rules Affected by this Order: Amending WAC 180-16-195 and 180-16-200.

Statutory Authority for Adoption: RCW 28A.150.220 (7).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: RCW 28A.150.220(7) states that SBOE shall adopt rules to implement and ensure compliance with program requirements of basic education. To ensure that basic education can be delivered during the emergency state and local public health response to COVID-19, SBOE has engaged in rule making so districts can count modalities of delivering instruction other than in-person delivery as instructional hours for the 2020-21 school year. Due to planning needs of school districts and other local education agencies, emergency rule making is necessary to provide predictability in counting instructional hours so that school districts may immediately implement public health measures if necessary. Immediate adoption and amendment of 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.

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 2, Repealed 0.

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

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

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

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

Date Adopted: July 21, 2020.

Randy Spaulding
Executive Director

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

WAC 180-16-195 Annual reporting and review process. (1) **Annual school district reports.** A review of each school district's kindergarten through twelfth grade program shall be conducted annually for the purpose of determining compliance or noncompliance with basic education program approval requirements. On or before September 15th of each school year, each school district superintendent shall complete and return the program assurance form distributed by the state board of education. The form shall be designed to elicit data necessary to make a determination of a school district's compliance or noncompliance with basic education program approval requirements. For the 2020-21 school year, local education agencies shall submit a copy of the reopening schools plan to the state board of education and superintendent of public instruction two weeks before school begins and no later than September 15, 2020. The form shall be submitted electronically and signed by:

(a) The school board president or chairperson, and

(b) The superintendent of the school district.

(2) **State board staff review.**

(a) State board of education staff shall review each school district's program assurance form, may conduct on-site visits of selected school districts, as needed and subject to funding support, and shall prepare recommendations and reports for presentation to the state board of education: Provided, that, if a school district's initial program assurance form does not establish compliance with the basic education program approval requirements, the district shall be provided the opportunity to explain the deficiency or deficiencies.

(b) School districts may use the personnel and services of the educational service district to assist the district and schools in the district that are out of compliance with basic education program approval requirements.

(3) **Annual certification of compliance or noncompliance—Withholding of funds for noncompliance.**

(a) At the November meeting of the state board of education, or at such other meeting as the board shall designate, the board shall certify by motion each school district as being in compliance or noncompliance with the basic education program approval requirements.

(b) A certification of compliance shall be effective for the then current school year subject to any subsequent ad hoc review and determination of noncompliance as may be deemed necessary by the state board of education or advisable by the superintendent of public instruction. In addition, a certification of compliance shall be effective tentatively for the succeeding school year until such time as the state board takes its annual action certifying compliance or noncompliance with the program approval requirements.

(c) A certification of noncompliance shall be effective until program compliance is assured by the school district to the satisfaction of state board of education staff, subject to review by the state board.

(d) Upon the certification of noncompliance of a school district, state board of education staff shall notify the superintendent of public instruction and the school district of a certification of noncompliance immediately after the board meeting at which certification occurred.

(e) A withholding of basic education allocation funding from a school district shall not occur for noncompliance if the school district has remediated the noncompliance situation within sixty school business days from the time the district receives notice of the noncompliance from the state board of education. The state board of education may extend the sixty days timeline only if the district demonstrates by clear and convincing evidence to the satisfaction of the state board of education that sixty days is not reasonable to make the necessary corrections. For the purposes of this section, a school business day shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(f) At the discretion of the state board of education, after notification by the state board of education to a school district regarding an existing noncompliance, may recommend with-

holding of funds or may enter into a compliance agreement with the school district that shall include, but not be limited to, the following criteria:

(i) A deadline for school district remediation of the non-compliance(s).

(ii) A listing of all the noncompliance areas and the necessary terms that must be satisfied in each area in order for the school district to gain compliance status. This listing also shall specify additional deadlines for the accomplishment of the stated terms if different from the final deadline as specified in subsection (1) of this section.

(iii) A closing statement specifying that a school district's failure to remediate a noncompliance by the determined deadline may result, at the state board of education's or its designee's discretion, in the recommendation to the superintendent of public instruction of withholding of the district's basic education allocation funding by the superintendent of public instruction.

(iv) The date and the signatures of the superintendent of the school district, the chair of the district's board of directors, and the chair of the state board of education, or his/her designee, to the agreement. A copy of the completed compliance agreement shall be sent to the chairperson of the school district's board of directors and the school district superintendent.

(g) In the event a school district fails to sign a compliance agreement within five school business days from the date of issuance or does not satisfy all of the terms of the signed compliance agreement within the designated amount of time, the state board of education may recommend to the superintendent of public instruction withholding state funds for the basic education allocation until program compliance is assured.

(h) Any school district may appeal to the state board of education the decision of noncompliance by the state board of education. Such appeal shall be limited to the interpretation and application of these rules by the state board of education. Such appeal shall not stay the withholding of any state funds pursuant to this section or completion of the compliance agreement.

(4) The provisions of subsection (3) (g) of this section shall not apply if the noncompliance is related to the district's fiscal condition and results in the implementation of a financial plan under RCW 28A.505.140(3).

AMENDATORY SECTION (Amending WSR 14-19-032, filed 9/8/14, effective 10/9/14)

WAC 180-16-200 Total instructional hour requirement. (1) Kindergarten total instructional hour requirement - Four hundred fifty hours annual minimum, increased to an annual minimum one thousand instructional hours according to an implementation schedule under RCW 28A.150.315.

(2) Grades 1-12 total instructional hour requirement - District-wide annual average of one thousand hours, increased beginning in the 2015-16 school year to:

(a) At least a district-wide average of one thousand eighty instructional hours for students enrolled in grades nine through twelve and a district-wide annual average of one thousand instructional hours in grades one through eight; or

(b) A district-wide annual average of one thousand twenty-seven instructional hours in grades one through twelve.

(3) For nonhigh school districts, a district-wide annual average of one thousand instructional hours in such grades as are offered by the district.

(4) For the 2020-21 school year, "instructional hours" as defined in RCW 28A.150.205 are not limited to in-person educational services. Local education agencies may count as instructional hours towards the minimum district-wide annual average those hours of educational activity planned by and under the direction of school district staff that are delivered through learning modalities which may include, but are not limited to, distance learning, hybrid classrooms, rotating schedules, or other methods that allow for delivery of basic education services during the COVID-19 epidemic. The following are applicable to the 2020-21 school year:

(a) Nothing in this section supersedes applicable statutory or office of superintendent of public instruction funding allocation requirements;

(b) Days in which instructional hours are offered shall count as school days for the purpose of meeting the minimum one hundred eighty-day school year requirement;

(c) Local education agencies must implement a system consistent with OSPI attendance rules; and

(d) The state board of education will revisit this rule no later than its regularly scheduled July 2021 board meeting.

WSR 20-15-162

EMERGENCY RULES

LIQUOR AND CANNABIS BOARD

[Filed July 22, 2020, 10:40 a.m., effective July 22, 2020, 10:40 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-12 WAC, General—Applicable to all licensees, the Washington state liquor and cannabis board (board) (WSLCB) has adopted emergency rules that establish summary license suspension and petition for stay provisions that are necessary for the enforcement of any violation of any governor's proclamation issued as a result of the COVID-19 outbreak. This filing supersedes and replaces emergency rules filed as WSR 20-09-026 on April 6, 2020.

Citation of Rules Affected by this Order: New WAC 314-12-250 and 314-12-275.

Statutory Authority for Adoption: RCW 66.08.0501.

Other Authority: RCW 66.44.010, 70.155.150, 70.345-020.

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: WSLCB has the authority and responsibility to adopt rules for the preservation of public health. The immediate re-adoption of a rule establishing summary license suspension and petition for stay provisions is

necessary for the enforcement of governor's proclamations issued as a result of the COVID-19 outbreak.

On February 29, 2020, Governor Inslee issued Proclamation 20-05 that confirmed the person-to-person spread of the novel coronavirus (COVID-19) in Washington state, and proclaimed a State of Emergency for all counties throughout the state of Washington based on the COVID-19 outbreak in the United States.

On March 16, 2020, Governor Inslee issued Proclamation 20-13 that imposed statewide limits on food and beverage services, and areas of congregation to limit opportunities for disease exposure and transmission in the state. Proclamation 20-13 was based on both guidance from the United States Center[s] for Disease Control and Prevention to reduce the size of gatherings from two hundred fifty persons to fifty persons, and the necessity to prohibit any number of people from congregating in public venues for the purposes of entertainment, recreation, food or beverage service, theater, bowling or other similar activities.

On March 23, 2020, Governor Inslee issued Proclamation 20-25, entitled "Stay Home - Stay Healthy" that among other things, imposed limits on conducting or participating in essential activities and employment in essential activities, temporarily prohibited certain public and private gatherings, and established a list of essential and nonessential businesses in Washington state. Nonessential businesses were prohibited from operation except for performing basic minimum operations. Essential businesses were encouraged to remain open and maintain operations.

On July 7, 2020, Governor Inslee issued Proclamation 20-25.6, amending Proclamations 20-05 and 20-25 et seq. entitled "Safe Start - Stay Healthy" County-by-County Phased Reopening. Proclamation 20-25.6 extends and amends the four-phase plan for opening the state of Washington, and incorporates issued amendatory proclamations, including 20-13.

Establishments licensed by the board are subject to the restrictions of Governor's Proclamations 20-05, 20-13, and 20-25. Although some establishments licensed by the board are considered essential, others are not or are subject to specific limitations.

These emergency rules serve a two-pronged purpose:

- Allows the board to serve an order of summary license suspension after a preliminary staff investigation indicates that a liquor, tobacco, or vapor product licensee has violated any governor's proclamation issued as a result of the COVID-19 outbreak, and that immediate cessation of licensed activities are necessary for the preservation of public health and welfare; and
- Provides a framework and process for an affected WSLCB licensee to petition the board for a stay of summary suspension, consistent with the provisions of chapter 34.05 RCW.

These rules may be extended, rescinded or considered for inclusion in adopted rules at a later date as appropriate.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 22, 2020.

Jane Rushford
Chair

NEW SECTION

WAC 314-12-250 Summary license suspension. (1) The board may serve an order of summary suspension of any license under this Title 314 WAC after the board's enforcement division has:

(a) Completed a preliminary staff investigation of a violation of a governor's proclamation; and

(b) Upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this section is effective twenty-four hours after personal service of the summary suspension order on the licensee or employee thereof, unless the licensee becomes compliant as provided in the order before the expiration of the twenty-four hour period.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing will be held within ninety calendar days of the effective date of the summary suspension ordered by the board. The ninety day period may be extended for good cause.

NEW SECTION

WAC 314-12-275 Petition for stay. (1) When the board summarily suspends a license under WAC 314-12-250, an affected licensee may petition the board for a stay of suspension. A petition for a stay of suspension must be received by the board within ten calendar days of service of the summary suspension order on the licensee. The petition for stay must clearly describe the basis for the stay.

(2) A hearing will be held before an administrative law judge within fourteen calendar days of receipt of a timely petition for stay. The hearing is limited to consideration of whether a stay should be granted, or whether the terms of the suspension will be modified to allow the conduct of limited activities under current licenses.

(3) Any hearing conducted under subsection (2) of this section will be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing must consist of

the documentary information upon which the summary suspension was based. The licensee is permitted to supplement the record with additional documentation during the brief adjudicative proceeding. The licensee must demonstrate by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, income alone from licensed activities is not deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay is effective immediately upon service unless another date is specified in the order.