

WSR 21-02-005
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed December 23, 2020, 2:33 p.m., effective December 23, 2020, 2:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule amendment to chapter 392-380 WAC is to clarify the procedural and substantive due process requirements governing the exclusion of children from schools pursuant to RCW 28A.210.120 and 28A.210.320 for the 2020-21 school year.

Citation of Rules Affected by this Order: Amending chapter 392-380 WAC.

Statutory Authority for Adoption: RCW 28A.210.160 and 28A.210.320(3).

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

Reasons for this Finding: Recent rules adopted by the Washington state board of health that went into effect August 1, 2020, regarding school immunization requirements increase the possibility that students may be excluded from school due to noncompliance with these requirements at the start of the 2020-21 school year. This, coupled with the current lack of clarity in chapter 392-380 WAC regarding procedural and substantive due process safeguards for students who are excluded from school due to noncompliance with immunization requirements, create an urgent need to immediately amend chapter 392-380 WAC to preserve public health, safety, and the general welfare.

On October 7, 2020, the office of superintendent of public instruction initiated permanent rule making to amend chapter 392-380 WAC.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 23, 2020.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2569.1

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(~~(6)~~).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(~~(1)~~).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(~~(2)~~).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for school attendance when a child is not fully immunized, as prescribed by the state board of health (WAC (~~(246-100-166(5))~~) 246-105-060(2)).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the school, on a form prescribed by the department of health, which complies with RCW 28A.210.090.

(6) "Life-threatening condition" shall mean a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(7) "Medication or treatment order" shall mean the authority a registered nurse obtains under RCW 18.79.260(2). The order shall be signed by a licensed health care practitioner listed under RCW 18.79.260(2).

(8) "Nursing plan" shall mean a plan of care developed for the student consistent with the standards of nursing conduct or practice set out in department of health regulations, WAC 246-840-700 et seq. The nursing plan implements the medication or treatment order.

(9) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance:

(a) Due to failure to:

(i) Submit a schedule of immunization(~~(7)~~) or a certificate of exemption as prescribed in WAC 246-105-050; or

(ii) Maintain the conditions for conditional status attendance prescribed in WAC 246-105-060; or

(b) In the case of a life-threatening health condition, due to failure to submit a medication or treatment order and any medication or equipment identified in the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(10) "School day" shall mean the same as in RCW 28A.150.030 and shall be inclusive of school or district sponsored field trip experiences and extracurricular activities and summer school.

(11) "Parent" shall (~~mean parent, legal guardian, or other adult in loco parentis~~) have the same meaning as in WAC 392-172A-01125.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-020, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-045 School attendance conditioned upon presentation of proofs. (1) The initial attendance of every student at every public school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each public school shall prohibit the further presence at school of each student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210.080(1). Such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by ((a) the student's parent(, ~~guardian or other adult in loco parentis~~)).

(3) The initial attendance of every student at every public school who has a life-threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life-threatening health condition the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life-threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-045, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-050 Written notice prior to exclusions from school.

~~((1) Schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 392-380-045.~~

~~(2) The written notice for public school students shall:~~

~~(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.~~

~~(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.~~

~~(c) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.~~

~~(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.~~

~~(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or treatment plan is received, or until a hearing officer determines that the student is no longer excluded from school.)~~ **(1) Written notice.**

Before excluding a student from school for failure to comply with WAC 392-380-045, a school must provide written notice of the exclusion to the student's parents in person, by mail, or by email. The written notice must include:

(a) The school's decision to exclude the student from school, effective immediately upon the parents' receipt of the notice.

(b) The duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with RCW 28A.210.080, a medication or treatment plan in accordance with RCW 28A.210.320, or until a chief administrator determines that the student is no longer excluded from school.

(c) Notice of the applicable laws, including a copy of the applicable laws.

(d) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.210.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(e) The student's and parents' right to a hearing to challenge the decision under WAC 392-380-080, including where and to whom the hearing must be requested and a description of the hearing process.

(2) Language assistance. The school must ensure the written notice is provided in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-050, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-080 Prehearing and hearing process. (~~((1) If a request for hearing is received by the school district, it shall schedule a hearing. The hearing must be scheduled within three school days of receiving the request. The hearing may be continued to a later date if the parent requests a longer period.~~

~~(2) The school district shall establish a hearing process consistent with the procedures set forth for disciplinary cases under chapter 392-400 WAC.)~~ **(1) Requesting a hearing.** A student or the parent may request a hearing to the chief administrator orally or in writing.

(2) Notice. Within one school day after receiving the hearing request, unless otherwise agreed to by the parents, the chief administrator must provide the parents written notice in person, by mail, or by email of the time, date, and location of the hearing.

(3) Hearing. The school must hold a hearing within three school days from the date the school's chief administrator received the hearing request, unless otherwise agreed to by the parents. At the hearing, the chief administrator must provide the parents an opportunity to explain how their student is in compliance with school attendance requirements under WAC 392-380-045.

(4) Hearing decision. The chief administrator must deliver a written hearing decision to the parents in person, by certified mail, or by email within two school business days after the hearing. The written decision must include:

(a) The decision to affirm or reverse the exclusion;

(b) If the decision to exclude the student is affirmed, the duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with WAC 392-380-045(1) or a medication or treatment plan in accordance with WAC 392-380-045(3); and

(c) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.219.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(5) Language assistance. The school must ensure the notice, hearing proceedings, and written hearing decision are in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-080, filed 5/25/07, effective 6/25/07.]

WSR 21-02-006
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed December 23, 2020, 2:35 p.m., effective December 23, 2020, 2:35 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to amend WAC 392-410-135(1) for the 2020-21 school year only. The amendment allows that instructional minutes for physical education can be less than the regularly required one hundred instructional minutes per week for students in grades 1-8. Physical education instruction must still be provided to students in grades 1-12, unless otherwise waived per RCW 28A.230.040.

Citation of Rules Affected by this Order: Amending WAC 392-410-135(1).

Statutory Authority for Adoption: 28A.230.040.

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

Reasons for this Finding: The COVID-19 pandemic has required many school districts to provide instruction remotely in school year 2020-21, either completely or partially, in order to ensure the safety of their students, staff, and communities. The immediate adoption of this emergency rule is therefore necessary for the preservation of the public health, safety, and general welfare in order to provide flexibility for school districts to offer physical education instructional time for all students in grades 1-8. This change does not remove the requirement for all students in grades 1-8 to receive instruction in physical education, per RCW 28A.230.040.

On October 7, 2020, the office of superintendent of public instruction initiated permanent rule making to amend WAC 392-410-135(1) for the remainder of the 2020-21 school year.

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

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

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

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

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

Date Adopted: December 23, 2020.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2517.2

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-410-135 Physical education—Grade school and high school requirement. (1) Grades (~~(1-8)~~) 1 through 8. Pursuant to RCW 28A.230.040, an average of at least one hundred instructional minutes per week per year in physical education shall be required of all pupils in the common schools in the grade school program (grades (~~(1-8)~~) 1 through 8) unless waived pursuant to RCW 28A.230.040. For the 2020-21 school year only, the instructional minutes can be less than one hundred instructional minutes per week; however, physical education instruction must be provided to all pupils in the common schools in the grade school program (grades 1 through 8) unless waived pursuant to RCW 28A.230.040.

(2) Grades (~~(9-12)~~) 9 through 12. Pursuant to RCW 28A.230.050, a one credit course or its equivalent shall be offered in physical education for each grade in the high school program (grades (~~(9-12)~~) 9 through 12).

[Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-410-135, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.04.120. WSR 00-23-031, § 180-50-135, filed 11/8/00, effective 12/9/00. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-50-135, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.04.120 (6) and (8) and 28A.05.060. WSR 85-20-026 (Order 19-85), § 180-50-135, filed 9/24/85. Statutory Authority: RCW 28A.04.120 (6) and (8). WSR 84-21-004 (Order 12-84), § 180-50-135, filed 10/4/84.]

WSR 21-02-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-267—Filed December 23, 2020, 5:12 p.m., effective December 30, 2020]

Effective Date of Rule: December 30, 2020.

Purpose: The purpose of this emergency rule is to reduce steelhead limits in the Snake River and its tributaries.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000M; and amending WAC 220-312-050.

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

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

Reasons for this Finding: The 2020 Columbia River return through October 22 (Fall Fact Sheet No. 13) lists a current return of upriver steelhead at 107,341 and an updated forecast of 109,500 (77,200 Group A and 32,300 Group B). This is an overall increase within the steelhead return from the preseason forecast of 95,500 (85,900 Group A and 9,600 Group B). The revised forecast includes a decrease to Group A steelhead and large increase in Group B steelhead. The Washington department of fish and wildlife (WDFW) has concerns with tributary stocks (Group A stocks), in particular the Tucannon and Touchet River stocks, thus necessitating lower limits in the mainstem Snake River downstream of the Lower Granite Dam. PIT tag estimates indicate that numbers of steelhead returning to the Touchet River, Tucannon River and Walla Walla River are lower than expected; concerns for broodstock needs and impacts to wild fish; it is important to reduce daily limits to 1 hatchery steelhead in order to protect steelhead within these waters. Grande Ronde River returns for Washington and Oregon stocks are healthy enough to continue to allow a daily limit of 2 hatchery fish through the end of the season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 23, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000M Freshwater exceptions to statewide rules—
Eastside. Effective December 30, 2020 through April 15, 2021 the following provisions of WAC 220-312-050 regarding steelhead daily limits and handling rules for steelhead and salmon regarding the Snake River and its tributaries, the Grande Ronde, Touchet, Tucannon, and Walla Walla rivers shall be modified as below. All other provisions of WAC 220-312-050 not addressed herein, or otherwise amended by emergency rule, remain in effect:

(1) **Grande Ronde River (Asotin County):** From the mouth to the Washington/Oregon border: Effective December 30, 2020 through April 15, 2021: Steelhead:

(a) Daily limit 2 hatchery steelhead.

(b) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(c) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

(2) **Snake River (Franklin/Walla Walla Counties):**

(a) From the Burbank to Pasco railroad bridge at Snake River mile 1.25 to Lower Granite Dam: Effective December 30 through March 31, 2021: Steelhead:

(i) Daily limit 1 hatchery steelhead.

(ii) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(iii) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

(b) From Lower Granite Dam to the Idaho/Oregon state line: Effective January 1 through March 31, 2021: Steelhead:

(i) Daily limit 2 hatchery steelhead.

(ii) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(iii) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

(3) **Touchet River (Walla Walla County): from the mouth to the confluence of the North and South Forks:** Effective December 30, 2020 through April 15: Steelhead:

(a) Daily limit 1 hatchery steelhead.

(b) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(c) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

(4) **Tucannon River (Columbia/Garfield Counties):** from the mouth to the Tucannon Hatchery Road Bridge: Effective December 30, 2020 through April 15, 2021: Steelhead:

(a) Daily limit 1 hatchery steelhead.

(b) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(c) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

(5) **Walla Walla River (Walla Walla County):** from the mouth to the Washington/Oregon border: Effective December 30, 2020 through April 15, 2021: Steelhead:

(a) Daily limit 1 hatchery steelhead.

(b) Anglers may not continue to fish for steelhead once their daily limit of steelhead has been retained.

(c) Anglers may not remove any Chinook, Coho, or steelhead from the water if it is not to be retained as part of the daily limit.

[]

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 April 16, 2021:

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

WSR 21-02-011

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed December 24, 2020, 8:21 a.m., effective December 24, 2020, 8:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-72-020 Certificate requirements and 246-72-080 Renewals and updating license information. Current certificate requirements for medical marijuana certified consultants (MMCC) under WAC 246-72-020 require an initial applicant to have obtained a cardiopulmonary resuscitation (CPR) card from a training course that includes both a written examination and skills demonstration test in order to receive a MMCC credential from the department of health (department). The department is amending this section of rule to temporarily suspend the skills demonstration portion of the CPR requirement to allow initial applicants to move forward in the department's application process during the coronavirus disease (COVID-19) response. WAC 246-72-080 Renewals does not specify CPR requirements include a skills demonstration test to be compliant, however the department interprets this requirement to be the same as defined in WAC 246-72-020. Therefore, the department is also revising WAC 246-72-080 in this rule making to clarify that the in-person CPR requirement suspension applies to renewing applicants as well as initial applications. This is the second filing of these emergency rules and they remain necessary as the COVID-19 pandemic continues to make in-person courses unavailable. This filing will supersede the original filing on August 26, 2020, under WSR 20-18-027.

Citation of Rules Affected by this Order: Amending WAC 246-72-020 and 246-72-080.

Statutory Authority for Adoption: RCW 69.51A.290.

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

Reasons for this Finding: RCW 69.51A.290 provides the department authority to adopt rules and requirements for licensing and regulating the MMCC. Under the COVID-19 pandemic restrictions, in-person CPR training programs have been suspended making it impossible for current and new applicants to obtain licensure and continue providing services allowed under WAC 246-72-030 to patients in Washington during the COVID-19 pandemic. The skills demonstration portion of the CPR requirement was adopted in rule back in 2017 to address patient concerns relating to certified consultant trainings. A consultant's role includes spending a significant amount of time assisting patients (some with acute or chronic health conditions) with getting registered and product selection.

The immediate amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare. Licensees have shared that they are struggling to meet the CPR requirements to gain or maintain their MMCC. Furthermore, retailers are required to have an MMCC on staff in order to serve patients from the medical marijuana community. If licensees are not able to gain or renew their certification, not only will the MMCC be unable to provide care, but the retail store itself may no longer be able to provide services to medical patients at all, making it very difficult or impossible for

patients to access their medication. By temporarily suspending the skills demonstration portion of the CPR training requirement under WAC 246-72-020 and 246-72-080, both new and renewing applicants will be able to continue with certification and provide the necessary health care services to patients in need. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 20, 2020.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

OTS-2302.1

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-020 Certificate requirements. An applicant for a medical marijuana consultant certificate must submit to the department:

- (1) A completed initial application on forms provided by the department;
- (2) Fees required under WAC 246-72-110;
- (3) Certificate of successful completion from an approved training program;
- (4) Proof of being age twenty-one or older. Acceptable forms of proof are a copy of the applicant's valid driver's license or other government-issued identification card, United States passport, or certified birth certificate;
- (5) Proof of current CPR certification from a course requiring completion of ~~((both))~~ a written ~~((and skills demonstration))~~ test; and
- (6) Any other documentation required by the secretary.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-020, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-020, filed 3/17/16, effective 3/18/16.]

OTS-2528.1

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-080 Renewals and updating license information. (1)

Certificates must be renewed every year on the certificate holder's birthday. Initial certificates issued within ninety days of the certificate holder's birthday do not expire until the person's next birthday.

(2) Renewals:

(a) Prior to the certificate expiration date, courtesy renewal notices are mailed to the address on file. Certificate holders must return the renewal notice when renewing their credential. Failure to receive a courtesy renewal notice does not relieve or exempt the renewal requirement.

(b) The certificate holder must attest to completion of annual certification requirements, including current CPR certification as outlined in WAC 246-72-020.

(c) Renewal fees are accepted by the department no sooner than ninety days prior to the expiration date.

(3) Duplicate certificate: A certificate holder may obtain a duplicate certificate by submitting a written request to the department and paying the fee as required in WAC 246-72-990.

(4) Name changes: It is the responsibility of each certificate holder to maintain his or her correct name on file with the department. Requests for name changes must be submitted in writing to the department along with documentation showing the name was legally changed.

(5) Address changes: It is the responsibility of each certificate holder to maintain his or her current address on file with the department. Requests for address changes must be made in writing. The mailing address on file with the department will be used for mailing of all official matters to the certificate holder.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-080, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-080, filed 3/17/16, effective 3/18/16.]

WSR 21-02-019

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed December 28, 2020, 11:34 a.m., effective January 1, 2021]

Effective Date of Rule: January 1, 2021.

Purpose: Purpose: The department is proposing amending WAC 458-20-277 (Rule 277) to incorporate changes to the certified service provider contract adopted by the streamlined sales tax governing board that become effective January 1, 2021.

Citation of Rules Affected by this Order: Amending WAC 458-20-277.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 82.32.715.

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 82.32.715 requires the rule to provide the monetary allowances for certified service providers, which may be guided by the provisions for monetary allowances adopted by the streamlined sales tax governing board. Immediate adoption is necessary to explain the changes to the roles, responsibilities, and monetary allowances of certified service providers that are provided under the contract approved by the streamlined sales tax governing board. Since a new contract has been adopted and will be effective January 1, 2020 [2021], immediate amendment is needed to make the rule consistent with the provisions of the terms of the contract that are currently in effect.

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

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

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

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

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

Date Adopted: December 28, 2020.

Atif Aziz
Rules Coordinator

OTS-2801.1

AMENDATORY SECTION (Amending WSR 16-06-040, filed 2/24/16, effective 3/26/16)

WAC 458-20-277 Certified service provider(s)—Compensation.

(1) **Introduction.**

(a) Washington has entered into the streamlined sales and use tax agreement (SSUTA) pursuant to RCW 82.58.030. Washington became an associate member state on July 1, 2007, and was granted full membership status as of July 1, 2008.

(b) This rule explains ((compensation paid to)) the monetary allowances for certified service providers (CSPs) ((as defined in RCW)) with respect to CSP-compensated sellers (also referred to as "model 1 sellers"). See RCW 82.32.020, 82.32.715, and 82.58.080. The rule also lists rights and responsibilities applicable to these CSPs when collecting and remitting retail sales and use taxes in Washington. ((Washington became a full member state on July 1, 2008. See SSB 5089 (chapter 6, Laws of 2007)). The websites referenced in this rule are))

(c) This rule is effective for periods beginning January 1, 2021, and is guided by the terms specified in the CSP contract approved by the streamlined sales tax governing board as of August 31, 2020, to be effective January 1, 2021, (CSP contract). The CSP contract is the agreement executed between each CSP and the streamlined sales tax governing board under which CSPs perform services in SSUTA associate and member states. To the extent there is a conflict between RCW 82.32.715 and the CSP contract, RCW 82.32.715 controls.

(d) For periods prior to January 1, 2021, refer to terms of the applicable CSP contract in effect for such prior period.

(e) For more information concerning SSUTA visit the SSUTA website located at: <http://www.streamlinedsalestax.org>. The SSUTA website may include a list of the current member and associate states, information concerning the CSP contract, CSP certification, and a list of current CSPs, and other information referenced in this rule. The SSUTA website is not maintained by Washington or the department of revenue (department) ((. These referenced websites)) and may contain recommendations or provisions that require a change to Washington law prior to becoming effective in Washington.

(2) ~~((CSP compensation for volunteer sellers.))~~ **Definitions.**

(a) **What is a CSP for purposes of this rule?** A CSP is an agent of the CSP-compensated seller certified under the SSUTA to perform ((all of)) a seller's retail sales and use tax functions, other than the seller's obligation to remit retail sales and use tax on its own purchases. ((For more information concerning CSP certification or a list of current CSPs, visit the SSUTA website located at: <http://www.streamlinedsalestax.org>.) The sales and use tax functions contemplated are those services necessary to:

(i) Set up and integrate a CSP's certified automated system with a seller's system, including a product mapping process;

(ii) Calculate the amount of tax due on a transaction at the time of sale, including determining the jurisdiction to which each of a seller's transactions is sourced, determining whether the transaction is subject to tax, and determining the amount of state and local sales or use tax due on the transaction;

(iii) Generate and file the required sales and use tax returns, including compiling and maintaining the required data, preparing the simplified electronic return (SER), filing the required SER, and remitting tax funds;

(iv) Respond to and provide supporting documentation with respect to notices and sales tax and use tax audits;

(v) Protect the privacy of tax information it obtains; and

(vi) Maintain compliance with the streamlined organization's minimum standards for certification.

(b) What is a ((volunteer)) CSP-compensated seller? A ((volunteer)) CSP-compensated seller is ((any)) a seller that has selected a CSP, as agent, to perform ((all of)) that seller's retail sales and use tax functions as described in subsection (2)(a) of this rule, ((other than the obligation to remit retail sales and use tax on the seller's own purchases and)) who has ((voluntarily)) registered through the ((SSUTA central registration system (CRS) in accordance with the terms of the CSP contract (CSP contract). The CSP contract is the agreement executed between each CSP and the streamlined sales tax governing board under which CSPs perform services in SSUTA associate and member states)) streamlined sales tax registration system (SSTRS), and meets all of the criteria to qualify as a CSP-compensated seller under the terms of Section D.2(b) of the CSP contract.

(c) What are member states and associate member states? Member states are those states that have petitioned and been granted full membership under the SSUTA. Associate member states are those states that have petitioned and been designated associate member status under the SSUTA. ((Washington became an associate member state on July 1, 2007. Washington has been granted full membership status as of July 1, 2008. For a list of the current member and associate member states, visit the SSUTA website at: <http://www.streamlinedsalestax.org>.)

(d) What are monetary allowances? As a condition of becoming an associate member and member state, Washington has agreed to permit CSPs to act as agents for sellers in collecting and remitting sales and use taxes in Washington. Washington has agreed to provide monetary allowances to CSPs acting as agents for ((volunteer)) CSP-compensated sellers. A CSP will obtain these monetary allowances by retaining a portion of the Washington retail sales and use ((tax)) taxes covered by the SSUTA that they collect. However, monetary allowances will not reduce the retail sales and use taxes collected for and remitted to local taxing jurisdictions. The calculation of these monetary allowances is discussed in subsection (3) of this rule.

(e) What is a certified automated system (CAS)? A certified automated system is software certified by Washington under the SSUTA: To calculate the sales and use tax imposed by each taxing jurisdiction on a transaction; to determine the amount of tax to remit; and to maintain a record of the transaction.

(3) How are monetary allowances calculated? The formula for determining monetary allowances ((is set forth)) in this rule is guided by the compensation formula set out in Section D.5 of the CSP contract. This monetary allowance is the CSP's sole form of compensation with respect to ((volunteer)) CSP-compensated sellers ((during the term of the CSP contract and)). The formula is the same with respect to all CSPs.

((This)) The monetary allowance is calculated ((by using the following formula: (The combined volume of taxes due to all member and associate member states from a volunteer seller in such capacity) multiplied by (the applicable base rate). Simply stated, the formula is (combined collected taxes) x (base rate). Affiliated volunteer sellers will be treated as a single volunteer seller if they are related persons under 267(b) or 707(b) of the United States Internal Revenue Code. The base rate resets annually. Table A below sets forth the

schedule for "combined collected taxes" and the applicable "base rate":

Table A

Combined Collected Taxes:		Base Rate:
\$0.00	- \$250,000	8%
\$250,000.01	- \$1,000,000	7%
\$1,000,000.01	- \$2,500,000	6%
\$2,500,000.01	- \$5,000,000	5%
\$5,000,000.01	- \$10,000,000	4%
\$10,000,000.01	- \$25,000,000	3%
Over \$25,000,000.01		2%))

as a percentage of the taxes that are covered by the SSUTA due to Washington:

(a) CSP-compensated sellers with gross sales in preceding calendar year less than or equal to \$100,000. For CSP-compensated sellers with gross sales in Washington less than or equal to \$100,000 in the preceding calendar year, the allowance equals six percent of the first \$8,000 of taxes due in Washington in the calendar year. Thereafter, the allowance is five percent of taxes due in Washington that exceed \$8,000 but do not exceed \$500,000 in the calendar year, and two percent of the taxes due in Washington in excess of the first \$500,000 in the current calendar year.

(b) CSP-compensated sellers with gross sales in the preceding calendar year exceeding \$100,000. For CSP-compensated sellers who had gross sales in Washington exceeding \$100,000 in the preceding calendar year, the allowance equals five percent of the first \$500,000 of taxes due in Washington and two percent of the taxes due in Washington in excess of the first \$500,000 in the current calendar year.

(4) Change in status of CSP-compensated sellers.

(a) Can ((volunteer)) CSP-compensated sellers lose ((volunteer seller)) CSP-compensated seller status? ((Volunteer)) CSP-compensated seller status ceases when ((the seller conducts)), as a result of activities the seller conducts in Washington ((that would require the seller to legally register in Washington as described in the CSP contract)), the seller fails to meet one or more of the criteria required for qualification as a CSP-compensated seller identified in subsection (2) of this rule.

(b) Seller statements. Each ((volunteer)) CSP-compensated seller must periodically send written statements or written representations (statement) to the CSP verifying that the seller continues to qualify as a ((volunteer)) CSP-compensated seller in Washington. The ((volunteer)) CSP-compensated seller must send the first statement twenty-four consecutive months from the date on which the CSP began remitting sales and use taxes for the ((volunteer)) CSP-compensated seller in Washington. Subsequently, ((volunteer)) CSP-compensated sellers will send a statement every ((twelve consecutive months thereafter)) year. A CSP may request a statement verifying a seller's ((volunteer)) CSP-compensated seller status at any time. ((The CSP must notify the department when a seller loses volunteer seller status and this notification must be sent no later than ten business days after receipt of a seller's statement indicating the seller is no longer a volunteer seller. Notice to the department must be provided consistent with the notice provisions contained in the CSP contract. Entitlement to mone-

~~tary allowances will be terminated after a seller sends a statement that the seller is no longer a volunteer seller.))~~ If the statement indicates a seller is no longer a CSP-compensated seller, the CSP must provide notice of the change in status. The change in status is then effective on the first day of the month following the calendar month the statement was obtained. A CSP-compensated seller's failure to respond to CSP may result in that person losing its status as a CSP-compensated seller.

(c) **When will monetary allowances terminate?** Generally, a CSP is entitled to retain monetary allowances granted prior to receiving a statement indicating that the seller has lost ((volunteer)) CSP-compensated seller status. However, entitlement to monetary allowances will end on the first day of the month following ((receipt of such statement)) notice of change in status. Regardless, a CSP will be entitled to monetary allowances for services performed under this rule with respect to a ((volunteer)) CSP-compensated seller for a period of twenty-four months (beginning on the date the CSP commenced remitting sales and use taxes for the ((volunteer)) CSP-compensated seller in Washington and ending twenty-four consecutive months later). If a CSP fails to obtain a statement and the seller is determined not to be a CSP-compensated seller, the CSP will forfeit compensation and such compensation will be forfeited to the later of the due date of the missing statement or the date the seller lost its status as a CSP-compensated seller. Additionally, Washington may also challenge the status of a CSP-compensated seller if the state believes it does not meet the requirements for a CSP-compensated seller.

~~((4))~~ (5) CSP rights and responsibilities.

(a) **Responsibility for retail sales and use taxes.** A CSP is liable to the member states and associate member states for the retail sales and use taxes on the sales transactions that it processes.

If the CSP does not remit the collected retail sales and use taxes when due, those taxes are delinquent. Washington may send a notice of delinquency to a CSP for these delinquent taxes. The CSP must then remit the delinquent taxes within ten business days of that notification. If the CSP does not remit the delinquent taxes within those ten business days, the CSP is not entitled to monetary allowances with respect to the delinquent taxes and is liable for the payment of the taxes along with penalties and interest. However, if the taxes are delinquent because a seller has not remitted part or all of the delinquent taxes to the CSP, the CSP will be given relief if it properly notifies the department and timely files the required return. In order to obtain this relief, the CSP must notify the department of the seller's failure to remit the retail sales and use taxes to the CSP and file the required return within ten business days of the date on which those delinquent taxes should have been remitted to the department. If the CSP has timely filed the return without payment and provided the notice required under the CSP contract, and the seller subsequently remits the taxes due to the CSP within sixty days of the due date of the remittance, the CSP will still be entitled to the monetary allowance provided in the CSP contract for those taxes, provided the CSP remits the taxes due to Washington within ten business days after receiving the taxes due from the seller. Notice by the CSP under this subsection must be provided consistent with the notice provisions contained in the CSP contract.

(b) **CSP liability relief.** The department is responsible for maintaining the state's taxability matrix.

(i) A CSP is not liable for charging or collecting the incorrect amount of sales or use tax where that error results from reliance on incorrect data provided in the department's taxability matrix, or from tax rates, boundaries, and taxing jurisdiction assignments listed in Washington's rates and boundaries databases.

(ii) Beginning July 1, 2015, if the taxability matrix is amended, sellers and certified service providers are relieved from liability to the state and to local jurisdictions to the extent that the seller or certified service provider relied on the immediately preceding version of the state's taxability matrix. Relief under this subsection (~~((4))~~) (5)(b) of this rule is available until the first day of the calendar month that is at least thirty days after the department submits notice of a change to the state's taxability matrix to the streamlined sales tax governing board.

(iii) To obtain a copy of the taxability matrix, visit the SSUTA website located at: streamlinedsalestax.org. Additionally, CSPs will be held harmless and not liable for sales and use taxes, interest, and penalties on those taxes not collected due to reliance on Washington's certification of the CSP's CAS. Pursuant to RCW 82.58.080, sellers that contract with a CSP are not liable to Washington for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresents the type of items it sells or commits fraud.

(c) **Seller's contract with the CSP.** A CSP must provide the department with a copy of its agreement with contracting sellers if requested.

(d) **Credits or refunds with respect to bad debt.** A CSP may, on the behalf of a seller, claim credits or refunds for sales taxes paid on bad debts. Bad debts have the same meaning provided in 26 U.S.C. Section 166, as amended in 2003. Bad debts do not include expenses incurred in collecting bad debts; repossessed property; and amounts due on property in the possession of the seller until the full purchase price has been paid. See RCW 82.08.037, 82.12.037, and WAC 458-20-196 for more information regarding bad debts.

(e) **Retention of personally identifiable consumer information.** With limited exceptions, CSPs must perform their services without retaining personally identifiable consumer information. A CSP may retain personally identifiable consumer information only as long as it is needed to ensure the validity of tax exemptions or to show the intended use of the goods or services purchased. See RCW 82.32.735 for more information regarding personally identifiable consumer information.

(f) **Filing of tax returns and remittance of retail sales and use taxes.** CSP will file retail sales and use excise tax returns using Washington's electronic filing system (E-file). CSPs will remit retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fedwire Funds Transfer System.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-06-040, § 458-20-277, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.32.715. WSR 08-01-017, § 458-20-277, filed 12/7/07, effective 1/7/08.]

WSR 21-02-025
EMERGENCY RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed December 28, 2020, 1:42 p.m., effective December 31, 2020]

Effective Date of Rule: December 31, 2020.

Purpose: To repeal WAC 480-100-238 because it is being superseded by new rules adopted under WSR 21-02-022, which will be effective January 1, 2021.

Citation of Rules Affected by this Order: Repealing WAC 480-100-238.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160; chapters 80.28, 19.280, and 19.405 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 repeal of WAC 480-100-238 was fully contemplated during the rule-making process which culminated in WSR 21-02-022, and the repeal was left out only inadvertently. Should the new rules (WAC 480-100-600 through 480-100-665) adopted under WSR 21-02-022 go into effect while WAC 480-100-238 is also still in effect, it will create duplicative and conflicting standards for utilities. Because the new section was adopted to replace and expand upon WAC 480-100-238, repealing WAC 480-100-238 simultaneously with the effective date of the new rules will allow a seamless transition into the new regulatory requirements and fulfill the expected outcome of the rule-making process carried out in Commission Dockets UE-191023 and UE-190698 to implement the Clean Energy Transformation Act as it relates to integrated resource planning. This emergency rule making will be followed by an expedited rule making to permanently repeal WAC 480-100-238.

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 1.

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

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

Date Adopted: December 28, 2020.

Mark L. Johnson
Executive Director
and Secretary

OTS-2803.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-100-238 Integrated resource planning.

WSR 21-02-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-271—Filed December 28, 2020, 3:11 p.m., effective December 28, 2020, 3:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close recreational crabbing in all waters of Marine Area 2.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000V; and amending WAC 220-330-040.

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: Test results from the Washington department of health show that crab tested in the Marine Areas 1 and 2, including Marine Areas 2-1 Willapa Bay and 2-2 Grays Harbor are not safe for human consumption. Levels of domoic acid, detected through routine testing have exceeded the federally established action level. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: December 28, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000W Crab—Areas and seasons Notwithstanding the provisions of WAC 220-330-040 effective Immediately, until further notice, recreational crab seasons in waters of Marine Area 1, 2, 2-1 and 2-2 shall be modified as follows. All other provisions of WAC 220-330-040 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Effective immediately until further notice, it is unlawful to fish for Dungeness crab in Marine Areas 1 and 2, including Marine Areas 2-1 Willapa Bay and 2-2 Grays Harbor.

(2) Effective immediately it is unlawful to set, maintain, operate, or possess in those waters listed in subsections (1) of this section, any baited or unbaited shellfish pots or ring nets for any reason;

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

REPEALER

The following section of Washington Administrative code is repealed:

WAC 220-330-04000V Crab—Areas and seasons.

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

WSR 21-02-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-269—Filed December 29, 2020, 2:05 p.m., effective January 1, 2021]

Effective Date of Rule: January 1, 2021.

Purpose: The Washington department of fish and wildlife (WDFW) adopted a rule to create and populate a new chapter 220-460 WAC that defines commercial whale watching licensing processes and rules for holders of commercial whale watching licenses. The purpose of this emergency rule is to apply immediate protections for southern resident killer whales (SRKW) to reduce the daily and cumulative impacts of commercial whale watching on SRKW during the period before the rule goes into effect.

Citation of Rules Affected by this Order: New WAC 220-460-00100A.

Statutory Authority for Adoption: RCW 77.12.047, 77.65.615, 77.65.620, 77.15.020, 77.15.160, 77.04.012, 77.04.55 [77.04.055].

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: This rule is necessary for the preservation of general welfare during a gap in time between WDFW adopting rules and the intended protections going into effect. This emergency rule will provide protections for SRKW beginning on January 1, 2021.

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

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

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

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

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

Date Adopted: December 29, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-460-00100A Commercial whale watching of southern resident killer whales From January 1, 2021 through January 23, 2021, the following definitions and rules regarding commercial whale watching shall be in effect:

1. **Definitions.** For the purposes of this chapter, the following definitions apply:

a. **Commercial whale watching.** "Commercial whale watching" shall be defined as the act of taking, or offering to take, passengers aboard a vessel in order to view marine mammals in their natural habitat for a fee.

b. **Commercial whale watching vessel.** "Commercial whale watching vessel" shall be defined as any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching. "Vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water.

i. "Motorized commercial whale watching vessel" shall be defined as any vessel with an engine being used as a means of transportation for individuals to engage in commercial whale watching, regardless of whether the engine is in use. This definition includes sailboats with inboard or outboard motors.

ii. "Nonmotorized commercial whale watching vessel" shall be defined as any vessel without an engine being used as a means of transportation for individuals to engage in commercial whale watching. This definition includes human-powered watercraft such as kayaks and paddleboards.

c. **Commercial whale watching vessel operators.** "Commercial whale watching vessel operators" shall be defined to include operators of commercial vessels and kayak rentals that are engaged in the business of commercial whale watching. The term "operators" shall be used to identify primary operators and alternate operators who conduct commercial whale watching tours, including operators who direct the movement or positioning of any nonmotorized commercial whale watching vessels involved in a tour.

2. It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale between January 1 and January 23, 2021.

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WSR 21-02-040

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed December 30, 2020, 9:06 a.m., effective December 30, 2020, 9:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-817-580 Novel coronavirus disease 2019 screening, this emergency rule allows dentists to delegate administration of novel coronavirus disease 2019 (COVID-19) screening tests to registered dental assistants, licensed expanded function dental auxiliaries, and licensed dental hygienists with appropriate supervision and demonstration of competency.

Citation of Rules Affected by this Order: New WAC 246-817-580.

Statutory Authority for Adoption: RCW 18.260.040, 18.260.070, 18.29.050, and 18.32.0365.

Other Authority: RCW 18.32.002.

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 COVID-19, screening for the disease is essential in dental practice. Dentistry produces large amounts of aerosols and it is important for dentists to appropriately screen patients prior to dental treatment. Delegation of COVID-19 screening test of patients assists dentists by reducing their workload to effectively continue dental care to patients. Knowing whether a patient is positive for COVID-19 will assist dentists in appropriate oral health treatment planning for the patient.

Screening needs to be conducted now, as we are in the middle of a pandemic. Standard rule making takes approximately nine to twelve months. The rule is necessary for the preservation of public health, safety, and general welfare of dental patients and staff. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

As dental procedures are proceeding during this pandemic, there is an influx of patients needing dental care and a greater need of the dental workforce. Allowing dentists to delegate COVID-19 screening tests with supervision to appropriately credentialed dental staff, will allow dentists to provide safe dental care to more patients.

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

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

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

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

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

Date Adopted: October 23, 2020.

Aaron Stevens, DMD, Chairperson
Dental Quality Assurance Commission

OTS-2716.2

NEW SECTION

WAC 246-817-580 Novel coronavirus disease 2019 screening. (1) A supervising dentist may delegate the administration of a test for screening of novel coronavirus disease 2019 to a registered dental assistant and licensed expanded function dental auxiliary under the dentist's close supervision, provided the registered dental assistant and licensed expanded function dental auxiliary has demonstrated skills necessary to perform the task competently.

(2) A supervising dentist may delegate the administration of a test for screening of novel coronavirus disease 2019 to a licensed dental hygienist under the dentist's general supervision, provided the licensed dental hygienist has demonstrated skills necessary to perform the task competently.

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WSR 21-02-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-272—Filed December 30, 2020, 5:26 p.m., effective December 31, 2020, 11:59 p.m.]

Effective Date of Rule: December 31, 2020, 11:59 p.m.

Purpose: Amends rules for Puget Sound commercial crab fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500R; and amending WAC 220-340-455.

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 provisions of this emergency rule:

(1) Closes the Everett Flats portion of Crab Management Region 2E to commercial harvest at 11:59 p.m. on December 31, 2020, as provisioned in the 2020-2021 Region 2 East harvest management plan.

(2) Permits commercial crab harvest in Puget Sound within Crab Management Regions 1, 2 East, 2 West, 3-2, and 3-3 until further notice.

(3) Maintains current pot limits in Regions 1, 2 East, 2 West, 3-2, and 3-3.

(4) Commercial crab harvest in Crab Management Region 3-1 remains closed until further notice.

In Regions 1, 2 East, 2 West, 3-2, and 3-3 the available quota is sufficient to accommodate continued commercial harvest. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound Dungeness crab commercial fishing season is structured to meet harvest allocation objectives negotiated between state and tribal comanagers and outlined in related management plans. WSR 21-01-079 requiring fishers to declare intent to participate in Region 1 and 2E fisheries, remains in effect.

There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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

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

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

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

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

Date Adopted: December 30, 2020.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500S Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-450, effective 11:59 p.m. on December 31, 2020 until further notice;

(1) It is illegal to harvest Dungeness crab for commercial purposes in Crab Management Region 3-1.

(2) It is permissible to harvest Dungeness crab for commercial purposes in Crab Management Regions 1, 2 East, 2 West, 3-2, and 3-3.

(3) It is permissible to harvest Dungeness crab for commercial purposes in the following areas in Crab Management Region 1:

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

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

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

(4) It is permissible to harvest Dungeness crab for commercial purposes in the following area in Crab Management Region 2 West:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(5) It is permissible to harvest Dungeness crab for commercial purposes in the following areas in Crab Management Region 2 East:

(a) That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(6) The following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(d) That portion of catch area 26AE east of a line from the spiral staircase at Howarth Park due north to the southernmost end of Gedney Island and that portion of 24B east of a line from the northernmost end of Gedney Island to the southern tip of Camano Head and south of a line drawn from the southern tip of Camano Head to Hermosa Point on the Tulalip reservation.

(7) It is unlawful for any person to deploy more than 75 pots per license per buoy tag number in Crab Management Regions 2W, 3-2, and 3-3 with the intent of harvesting Dungeness crab for commercial purposes.

(8) It is unlawful for any person to deploy more than 50 pots per license per buoy tag number in Crab Management Region 1 with the intent of harvesting Dungeness crab for commercial purposes.

(9) It is unlawful for any person to deploy more than 35 pots per license per buoy tag number in Crab Management Region 2 East with the intent of harvesting Dungeness crab for commercial purposes.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. December 31, 2020:

WAC 220-340-45500R Commercial crab fishery—Seasons and areas—Puget Sound. (20-263)

WSR 21-02-047
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 31, 2020, 8:26 a.m., effective December 31, 2020, 8:26 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Under the emergency rule:

- Employers must not allow employees to perform work where a business activity is prohibited by an emergency proclamation.
- Employers must comply with all conditions for operation required by emergency proclamation, 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 supersedes the emergency rule adopted on December 16, 2020, filed as WSR 21-01-141, as conditions have changed due to a new governor's proclamation being in effect (Proclamation 20-25.11).

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 ["]Safe Start" orders further build on these by continuing the Safe Start plan for county-by-county phased reopening. The current, "Stay Safe-Stay Healthy" order is a rollback of county-by-county phased reopening in response to a COVID-19 outbreak surge.

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 ca-

ses 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, state-wide and county level data was considered. In setting the conditions for businesses for the current "Stay Safe-Stay Healthy" order, the increase in cases and hospitalizations, evidence of how the virus is spread, and factors that increase the risk for person-to-person COVID-19 transmission 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 Centers 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 31, 2020.

Joel Sacks
Director

OTS-2313.3

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.

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WSR 21-02-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-01—Filed January 4, 2021, 4:31 p.m., effective January 5, 2021]

Effective Date of Rule: January 5, 2021.

Purpose: The purpose of this emergency rule is to close recreational sturgeon retention in the Columbia River, from The Dalles Dam to John Day Dam.

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

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

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

Reasons for this Finding: This rule is needed to close white sturgeon retention in The Dalles Pool. Catches in the first three days of fishing were much higher than expected. Creel data indicates harvest has surpassed the quota of one hundred thirty-five sturgeon. There is insufficient time to adopt permanent regulations.

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

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

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

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

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

Date Adopted: January 4, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia River. Effective January 5, 2021, until further notice, sturgeon retention in the Columbia River from The Dalles Dam to John Day Dam, is prohibited. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule.

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WSR 21-02-074
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
[Filed January 5, 2021, 3:31 p.m., effective January 8, 2021]

Effective Date of Rule: January 8, 2021.

Purpose: The department is extending the amendment of the rule listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow nursing facilities to provide clinical records to residents and resident representatives in ten working days instead of two working days. Current state rules specify clinical records be accessible to residents and their representatives for review within twenty-four hours and copies must be provided within two working days. The amendment lengthens the time nursing homes have to provide the resident access to, or copies of the requested clinical record from two to ten days. The amendment does not permit the nursing facility to deny the resident access to records.

The department filed a CR-101 Preproposal statement of inquiry on September 3, 2020, as WSR 20-19-009 to begin the permanent rule-making process. In addition, under the rule development phase of rule making, the department is in discussions about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID-19 is necessary.

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

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

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

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

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

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

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

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

Date Adopted: December 29, 2020.

Katherine I. Vasquez
Rules Coordinator

SHS-4809.1

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

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

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

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

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

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

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

(2) The resident has the right(÷

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

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

(3) The resident has the right to:

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

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) The nursing home must:

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

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

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

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

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

WSR 21-02-076

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed January 5, 2021, 4:10 p.m., effective January 5, 2021, 4:10 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending WAC 182-505-0215 to expand the children's health insurance program (CHIP) to include coverage for eligible children of public employees.

Citation of Rules Affected by this Order: Amending WAC 182-505-0215.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Affordable Care Act section 10203 (b)(2)(D) permits the agency to expand CHIP to include coverage for eligible children of public employees, specifically, it permits states to extend CHIP coverage to eligible children of public employees when it is demonstrated that the cost of employer-based coverage would exceed five percent of the family's income.

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

Reasons for this Finding: The Washington state legislature passed section 211(66), chapter 357, Laws of 2020, which directs the agency to implement a CHIP state plan amendment in calendar year 2020, once approved by the federal Centers for Medicare and Medicaid Services (CMS). The state plan amendment maintains CHIP coverage as secondary payer for eligible child dependents of employees eligible for school employee or public employee benefit coverage. CMS approved the state plan amendment August 28, 2020, with a retroactive effective date of January 1, 2020. Since the previous emergency rule making filed under WSR 20-19-106, which is set to expire January 16, 2021, the agency completed permanent rule making and filed a CR-103P Rule-making order December 23, 2020 (WSR 21-01-027 [21-01-207]). The permanent rule is effective January 23, 2021. This emergency rule will cover the gap between the expiration of the emergency rule and the effective date of the 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 1, Repealed 0.

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

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

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

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

Date Adopted: January 5, 2021.

Wendy Barcus
Rules Coordinator

OTS-2648.1

AMENDATORY SECTION (Amending WSR 19-21-103, filed 10/16/19, effective 1/1/20)

WAC 182-505-0215 Children's Washington apple health with premiums. (1) A child is eligible for Washington apple health with premiums if the child:

- (a) Meets the requirements in WAC 182-505-0210(1);
- (b) Has countable income below the standard in WAC 182-505-0100 (6) (b); and
- (c) Pays the required premium under WAC 182-505-0225, unless the child is exempt under WAC 182-505-0225 (2) (c).

(2) A child is not eligible for Washington apple health with premiums if the child:

- (a) Is eligible for no-cost Washington apple health;
- (b) Has creditable health insurance coverage as defined in WAC 182-500-0020 (~~(c)~~).

(c) A child with creditable health insurance coverage may be eligible for Washington apple health with premiums if the child:

- (i) Is eligible for public employees benefits board (PEBB) health insurance coverage based on a family member's employment with a Washington state agency, or a Washington state university, community college, or technical college; or
- (~~(d)~~) (ii) Is eligible for school employees benefits board (SEBB) health insurance coverage based on a family member's employment with a Washington school district, charter school, or educational service district; and
- (iii) Meets the requirements in WAC 182-505-0210(1).

[Statutory Authority: RCW 41.05.021, 41.05.160, 41.05.050, 41.05.065, 34.05.010, 74.09.500 and 42 C.F.R. 457.310. WSR 19-21-103, § 182-505-0215, filed 10/16/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-018, § 182-505-0215, filed 5/30/17, effective 6/30/17. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-505-0215, filed 7/29/14, effective 8/29/14. WSR 12-13-056, recodified as § 182-505-0215, filed 6/15/12, effective 7/1/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-542-0010, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-542-0010, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.08.090, 74.09.050, and Title XXI of the Social Security Act. WSR 06-15-134, § 388-542-0010, filed 7/19/06, effective 8/19/06. Statutory Authority: RCW 74.08.090, 74.09.510, 74.09.522, 74.09.450, and 2004 c 276. WSR 04-16-064, § 388-542-0010, filed 7/30/04, effective 8/30/04.]

WSR 21-02-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-02—Filed January 5, 2021, 4:27 p.m., effective January 5, 2021, 4:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to add waters that were inadvertently left out of WSR 21-01-051. The rule will modify rules for coastal tributary streams, including Willapa and Grays Harbor tributaries, in order to prohibit fishing from a floating device, implement selective gear rules except that only one single point barbless hook is allowed and to require release of all rainbow trout.

Citation of Rules Affected by this Order: Repealing WAC 220-312-02000F; and amending WAC 220-312-020.

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

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

Reasons for this Finding: These measures are being taken to protect wild steelhead stocks. The majority of coastal wild steelhead runs are expected to return below escapement targets as they have the past four seasons and have failed to meet management objectives. These rules are expected to result in a reduction of wild steelhead encounters by more than fifty percent. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 5, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000G Freshwater exceptions to statewide rules—Coast. Effective immediately through March 31, 2021 the following provisions of WAC 220-312-020, regarding gamefish seasons, steelhead daily limits, fishing from a floating device, and gear and hook restrictions for coastal tributaries, including tributaries of Grays

Harbor and Willapa Bay shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

1. Bear River (Pacific Co.):

(a) Effective immediately through February 28, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective March 1 through March 31, 2021: All species:

Closed.

2. Big River (Clallam Co.), outside Olympic National Park:

(a) Effective immediately through February 28, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective March 1 through March 31, 2021: All species:

Closed.

3. Bogachiel River (Clallam Co.), from the mouth to Olympic National Park boundary: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

4. Calawah River: (Clallam Co.), from the mouth to the forks: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

5. Calawah, South Fork (Clallam Co.), from the mouth to Olympic National Park boundary:

(a) Effective immediately through February 28, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective March 1 through March 31, 2021: All species:

Closed.

6. Cedar Creek (Jefferson Co.), from the mouth to Olympic National Park boundary: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

7. Chehalis River (Grays Harbor Co.), from the mouth upstream, including all forks: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

8. Clearwater River (Jefferson Co.), from the mouth to Snahapish River: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

9. Cloquallum Creek (Grays Harbor/Mason Co.), from the mouth to the outlet at Stump Lake: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

10. Copalis River (Grays Harbor Co.): Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

11. Dickey River (Clallam Co.), from the Olympic National Park boundary upstream to the confluence of the east and west forks: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

12. Dickey River, East Fork (Clallam Co.): Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

13. Dickey River, West Fork (Clallam Co.): Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

14. Elk Creek (Lewis/Pacific Co.): Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

15. Elk River (Grays Harbor Co.): Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

16. Fork Creek (Pacific Co.), from Fork Creek Hatchery rack upstream 500 feet at fishing boundary sign: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

17. Goodman Creek (Jefferson Co.), outside of Olympic National Park boundary: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

18. Hoh River (Jefferson Co.), from Olympic National Park boundary upstream to Olympic National Park boundary below mouth of South Fork Hoh: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

19. Hoh River, South Fork (Jefferson Co.), outside of Olympic National Park boundary: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

20. Hoquiam River including West and East forks (Grays Harbor Co.): Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

21. Humptulips River (Grays Harbor Co.), from the mouth to confluence of East and West forks: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

22. Humptulips River, West Fork (Grays Harbor Co.), from the mouth to Donkey Creek: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

23. Johns River (Grays Harbor Co.), from the mouth (Hwy. 105 Bridge) to Ballon Creek: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

24. Kalaloch Creek (Jefferson Co.), outside Olympic National Park boundary: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

25. Moclips River (Grays Harbor Co.), from the mouth to Quinault Indian Reservation boundary: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

26. Mosquito Creek (Jefferson Co.), from Olympic National Park boundary upstream to Goodman 30000 Mainline Bridge: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

27. Naselle River (Pacific Co.), from the Hwy. 101 Bridge to the North Fork: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

28. Naselle River, South (Pacific Co.), from the mouth to Bean Creek: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

29. Nemah River, Middle (Pacific Co.):

(a) Effective immediately through February 28, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective March 1 through March 31, 2021: All species: Closed

30. Nemah River, North (Pacific Co.), from Hwy. 101 Bridge to Cruiser Creek:

(a) Effective immediately through February 28, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective March 1 through March 31, 2021: All species: Closed

31. Nemah River, South (Pacific Co.):

(a) Effective immediately through February 28, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

(b) Effective March 1 through March 31, 2021: All species: Closed

32. Newaukum River, including South Fork (Lewis Co.), from mouth to Hwy. 508 Bridge near Kearny Creek: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

33. Newaukum River, Middle Fork (Lewis Co.), from mouth to Taucher Rd. Bridge: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

34. Newaukum River, North (Lewis Co.), from mouth to 400' below Chehalis City water intake: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

35. North River (Grays Harbor/Pacific Co.), from the Hwy. 105 bridge to Raimie Creek: Effective immediately through February 28, 2021:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release all rainbow trout.

36. Palix River (Pacific Co.):

- (a) From Hwy. 101 Bridge to the mouth of the Middle Fork:
 - (i) Effective immediately through February 28, 2021:
 - (A) All species: Fishing from a floating device is prohibited.
 - (B) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (C) Release all rainbow trout.
 - (ii) Effective March 1 through March 31, 2021: All species:

Closed

- (b) From the confluence with the Middle Fork upstream (all forks including South fork Palix River and Canon River):
 - (i) Effective December 16, 2020 through February 28, 2021:
 - (A) All species: Fishing from a floating device is prohibited.
 - (B) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
 - (C) Release all rainbow trout.
 - (ii) Effective March 1 through March 31, 2021: All species:

Closed

37. Quillayute River (Clallam Co.), from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers: Effective immediately through March 31, 2021:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release all rainbow trout.

38. Quinault River, Upper (Grays Harbor/Jefferson Co.), from the mouth at upper end of Quinault Lake upstream to Olympic National Park boundary: Effective immediately through March 31, 2021:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release all rainbow trout.

39. Salmon River (Jefferson Co.), from outside Quinault Indian Reservation and Olympic National Park: Effective immediately through February 28, 2021:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release all rainbow trout.

40. Satsop River and East Fork (Grays Harbor Co.), from the mouth to bridge at Schafer State Park, and from 400' below Bingham Creek Hatchery dam to the dam: Effective immediately through March 31, 2021:

- (a) All species: Fishing from a floating device is prohibited.
- (b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.
- (c) Release all rainbow trout.

41. Satsop River, Middle Fork (Grays Harbor Co./Mason Co.): Effective immediately through February 28, 2021:

- (d) All species: Fishing from a floating device is prohibited.

(e) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(f) Release all rainbow trout.

42. Satsop River, West Fork (Grays Harbor Co.): Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

43. Skookumchuck River (Lewis/Thurston Co.), from mouth to 100' below outlet of TransAlta WDFW steelhead rearing pond located at the base of Skookumchuck Dam: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

44. Smith Creek (near North River) (Pacific Co.):

(a) Effective immediately through February 28, 2021:

(i) All species: Fishing from a floating device is prohibited.

(ii) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(iii) Release all rainbow trout.

45. Sol Duc River (Clallam Co.), from mouth to Hwy. 101 Bridge upstream of Klahowya campground: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

46. Sooes River (Clallam Co.), outside of Makah Indian Reservation: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

47. Stevens Creek (Grays Harbor Co.), from mouth to cable crossing downstream of WDFW hatchery outlet and from WDFW hatchery outlet to Hwy. 101 Bridge: Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

48. Thunder Creek (Clallam Co.), from mouth to D2400 Rd.: Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

49. Van Winkle Creek (Grays Harbor Co.), from mouth to 400' below outlet of Lake Aberdeen Hatchery: Effective immediately through January 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

50. Willapa River (Pacific Co.), from mouth (City of South Bend boat launch) to Hwy. 6 Bridge (near the town of Lebam): Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

51. Willapa River, South Fork (Pacific Co.): Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

52. Wishkah River (Grays Harbor Co.), from the mouth to 200' below the weir at the Wishkah Rearing Ponds and from 150' upstream to 150' downstream of the Wishkah adult attraction channel/outfall structure (within the posted fishing boundary): Effective immediately through February 28, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

53. Wynoochee River (Grays Harbor Co.): Effective immediately through March 31, 2021:

(a) All species: Fishing from a floating device is prohibited.

(b) All species: Selective Gear Rules in effect, except only 1 single-point barbless hook is allowed.

(c) Release all rainbow trout.

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

REPEALER

The following section of Washington Administrative Code is repealed:

WAC 220-312-02000F Freshwater exceptions to statewide rules—Coast (20-252)

WSR 21-02-080
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-03—Filed January 5, 2021, 4:42 p.m., effective January 6, 2021, 7:00 p.m.]

Effective Date of Rule: January 6, 2021, 7:00 p.m.

Purpose: The purpose of this rule is to increase pot limits for commercial crab in Region 2E from thirty-five pots per license to fifty, effective 7:00 p.m., January 6, 2021.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500S; and amending WAC 220-340-455.

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 provisions of this emergency rule:

(1) Permit commercial crab harvest in Puget Sound within Crab Management Regions 1, 2 East, 2 West, 3-2, and 3-3 until further notice.

(2) Maintain current pot limits in Regions 1, 2 West, 3-2, and 3-3.

(3) Increase pot limit in Region 2 East to fifty pots per license.

(4) Commercial crab harvest in Crab Management Region 3-1 remains closed until further notice.

In Regions 1, 2 East, 2 West, 3-2, and 3-3 the available quota is sufficient to accommodate continued commercial harvest. These provisions are in conformity with agreed management plans with applicable tribes. These management plans are entered into as required by court order. The Puget Sound Dungeness crab commercial fishing season is structured to meet harvest allocation objectives negotiated between state and tribal comanagers and outlined in related management plans. WSR 21-01-079 requiring fishers to declare intent to participate in Region 1 and 2E fisheries, remains in effect.

There is insufficient time to adopt permanent rules. Further adjustment of season structure may be made pending updated harvest data.

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

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

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

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

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

Date Adopted: January 5, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500T Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-450, effective 7:00 p.m. on January 6, 2021 until further notice;

(1) It is illegal to harvest Dungeness crab for commercial purposes in Crab Management Region 3-1.

(2) It is permissible to harvest Dungeness crab for commercial purposes in Crab Management Regions 1, 2 East, 2 West, 3-2, and 3-3.

(3) It is permissible to harvest Dungeness crab for commercial purposes in the following areas in Crab Management Region 1:

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

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

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

(4) It is permissible to harvest Dungeness crab for commercial purposes in the following area in Crab Management Region 2 West:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W).

(5) It is permissible to harvest Dungeness crab for commercial purposes in the following areas in Crab Management Region 2 East:

(a) That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

(6) The following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123°7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected true north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(d) That portion of catch area 26AE east of a line from the spiral staircase at Howarth Park due north to the southernmost end of Gedney Island and that portion of 24B east of a line from the northernmost end of Gedney Island to the southern tip of Camano Head and south of a line drawn from the southern tip of Camano Head to Hermosa Point on the Tulalip reservation.

(7) It is unlawful for any person to deploy more than 75 pots per license per buoy tag number in Crab Management Regions 2W, 3-2, and 3-3 with the intent of harvesting Dungeness crab for commercial purposes.

(8) It is unlawful for any person to deploy more than 50 pots per license per buoy tag number in Crab Management Region 1 with the intent of harvesting Dungeness crab for commercial purposes.

(9) It is unlawful for any person to deploy more than 50 pots per license per buoy tag number in Crab Management Region 2 East with the intent of harvesting Dungeness crab for commercial purposes.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. January 6, 2021:

WAC 220-340-45500S Commercial crab fishery—Seasons and areas—Puget Sound. (20-263)

WSR 21-02-083
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 6, 2021, 9:04 a.m., effective January 6, 2021, 9:04 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule revision is to allow the office of superintendent of public instruction flexibility to disburse state funding assistance for school district projects which are also receiving small district modernization grant funds to assist school districts in minimizing project financing costs and provide additional time for a school district to secure sufficient local funding to meet its local funding obligations.

Citation of Rules Affected by this Order: Amending WAC 392-344-130 Disbursements of moneys—Sequence of payments.

Statutory Authority for Adoption: RCW 28A.525.020.

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

Reasons for this Finding: The immediate adoption of this emergency rule-making order is necessary to allow districts who receive the small district modernization grants additional time to secure the local funding required and complete the projects on time.

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

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

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

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

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

Date Adopted: January 5, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2841.1

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-344-130 Disbursement of moneys—Sequence of payments.

The order in which funds shall be disbursed for school facility construction shall be as follows:

(1) Prior to payment of state funding assistance, the school district shall make payments on all claims submitted until such time as the total amount of local funds obligated by the district have been expended.

(2) When local funds have been expended as in subsection (1) of this section, payments of state funding assistance shall then be made: Provided, That for projects authorized for state funding assistance pursuant to WAC 392-344-115(2) after June 30, 1993, payment shall be made after receipt of written certification by the school district board of directors that the school facility project authorized for state funding assistance has been or will be completed according to the purposes for which the state funding assistance is being provided.

(3) Payment of state funding assistance for projects receiving small district modernization grant funds authorized under RCW 28A.525.159 may receive payment prior to the expenditure of local funds obligated by the district with the approval of the superintendent of public instruction. The maximum amount of state funding assistance a district may receive prior to the expenditure of local funds obligated by the district is ninety percent.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-344-130, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-344-130, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and 1994 c 6 sp.s. WSR 94-13-019, § 180-29-130, filed 6/3/94, effective 7/4/94. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-130, filed 10/17/83.]

WSR 21-02-092
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 6, 2021, 11:38 a.m., effective January 6, 2021, 11:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-1065 Prohibition—Vitamin E acetate, the Washington state liquor and cannabis board (board) has adopted an emergency rule to extend WAC 314-55-1065 that prohibits 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 on-line service. This filing supersedes and replaces emergency rules filed as WSR 20-19-080 on September 16, 2020.

Citation of Rules Affected by this Order: Amending WAC 314-55-1065.

Statutory Authority for Adoption: HB 2826 (chapter 133, Laws of 2020), effective March 25, 2020; RCW 69.50.342, 69.50.345.

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. HB 2826 concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new section (m), providing that the board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the board determines, following a determination by the Washington state department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

On November 19, 2019, March 19 and July 17, 2020, the Washington state board of health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- 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 multistate 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. Tetrahydrocannabinol 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 [were] 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.
- During the 2020 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, SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the board by HB 2826, and upon the determination of SBOH that vitamin E acetate is a drug of concern and should be banned, the board adopted an emergency rule on May 27, 2020, as WAC 314-55-1065 prohibiting the use of vitamin E acetate. That emergency rule has been extended.

The extension of this emergency rule provides that no person including, but not limited to, a person licensed under chapter 69.50 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.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate extension of rule that prohibits the use of vitamin E acetate and preserves of [the] public health, safety and general welfare is necessary. Therefore, the immediate extension of a rule prohibiting the use of vitamin E acetate is necessary.

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

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

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

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

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

Date Adopted: January 6, 2021.

Jane Rushford
Chair

OTS-2295.1

NEW SECTION

WAC 314-55-1065 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 multi-state 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 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.

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WSR 21-02-093
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 6, 2021, 11:39 a.m., effective January 6, 2021, 11:39 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-077 Marijuana processor license—Privileges, requirements and fees, the Washington state liquor and cannabis board (board) has adopted an emergency rule as WAC 314-55-077(16) that continues to allow the board to take disciplinary action against any licensed marijuana processor failing to comply with the provisions of WAC 314-55-1065 concerning prohibition of the sale of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 20-19-081 on September 15, 2020.

Citation of Rules Affected by this Order: Amending WAC 314-55-077.

Statutory Authority for Adoption: HB 2826 (Chapter 133, Laws of 2020), effective March 25, 2020; RCW 69.50.342, 69.50.345.

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. HB 2826 concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new section (m), providing that the board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the board determines, following a determination by the Washington state department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

On November 19, 2019, March 19 and July 17, 2020, the Washington state board of health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- 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 multistate 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 [were] 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.

- During the 2020 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, SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the board by HB 2826, and upon the determination of SBOH that vitamin E acetate is a drug of concern and should be banned, the board adopted an emergency rule on May 27, 2020, as WAC 314-55-1065 under WSR 20-12-035, prohibiting the sale of vitamin E acetate. That emergency rule has been extended.

The extension of this emergency rule allows the board to take disciplinary action, without interruption, against any licensed marijuana processor that fails to comply with the provisions of it [its] emergency rule WAC 314-55-1065 prohibiting the use of vitamin E acetate consistent with the authority of chapter 69.50 RCW.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate extension of rule that provides uninterrupted enforcement of WAC 314-55-1065, and preserves public health, safety and general welfare is necessary. Therefore, the immediate extension of this emergency rule concerning enforcement provisions for WAC 314-55-1065 prohibiting the sale of vitamin E acetate is necessary.

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

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

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

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

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

Date Adopted: January 6, 2021.

Jane Rushford
Chair

OTS-2297.1

AMENDATORY SECTION (Amending WSR 20-01-172, filed 12/18/19, effective 1/1/20)

WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees. (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) Application and license fees.

(a) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The board may reopen the marijuana processor application window at subsequent times when the board deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4) (a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the board or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5) (a) A marijuana processor may blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(6) Recipes, product, packaging, and labeling approval.

(a) A marijuana processor licensee must obtain label and packaging approval from the board for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the board for approval.

More information on the product, packaging, and label review process is available on the board's website.

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the board. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the board or its designee.

(c) If the board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Marijuana-infused edible products in solid or liquid form must be homogenized to ensure uniform disbursement of cannabinoids.

(9) A marijuana processor may infuse food or drinks with marijuana, provided that:

(a) The product or products do not require cooking or baking by the consumer;

(b) Coatings applied to the product or products are compliant with the requirements of this chapter;

(c) The product and package design is not similar to commercially available products marketed for consumption by persons under twenty-one years of age, as defined by WAC 314.55.105 (1)(c).

(10) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(11) Other food items that may not be infused with marijuana to be sold in a retail store include:

(a) Any food that has to be acidified to make it shelf stable;

(b) Food items made shelf stable by canning or retorting;

(c) Fruit or vegetable juices (this does not include shelf stable concentrates);

(d) Fruit or vegetable butters;

(e) Pumpkin pies, custard pies, or any pies that contain egg;

(f) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(g) Dried or cured meats.

(h) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(i) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(12) Consistent with WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources, and use that extraction to prepare allowable marijuana-infused solid or liquid

products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

The board may designate other food items that may not be infused with marijuana.

(13) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

(14) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(15) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A marijuana processor may accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

(16) The board may take disciplinary action against any marijuana processor that fails to comply with the provisions of WAC 314-55-1065.

[Statutory Authority: RCW 69.50.342, 69.50.345 and 2019 c 393. WSR 20-01-172, § 314-55-077, filed 12/18/19, effective 1/1/20. Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-077, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-077, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-077, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-077, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-077, filed 10/21/13, effective 11/21/13.]

WSR 21-02-094
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 6, 2021, 11:42 a.m., effective January 6, 2021, 11:42 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-079 Marijuana retailer license—Privileges, requirements and fees, the Washington state liquor and cannabis board (board) has adopted an emergency rule as WAC 314-55-079(14) that continues to allow the board to take disciplinary action against any licensed marijuana retailer failing to comply with the provisions of WAC 314-55-1065 concerning prohibition of the sale of vitamin E acetate. This filing supersedes and replaces emergency rules filed as WSR 20-19-082 on September 16, 2020.

Citation of Rules Affected by this Order: Amending WAC 314-55-079.

Statutory Authority for Adoption: HB 2826 (chapter 133, Laws of 2020), effective March 25, 2020; RCW 69.50.342, 69.50.345.

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. HB 2826 concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new section (m), providing that the board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the board determines, following a determination by the Washington state department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

On November 19, 2019, March 19 and July 17, 2020, the Washington state board of health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- 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 multistate 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 [were] 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.

- During the 2020 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, SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the board by HB 2826, and upon the determination of SBOH that vitamin E acetate is a drug of concern and should be banned, the board adopted an emergency rule on May 27, 2020, as WAC 314-55-1065 under WSR 20-15-035, prohibiting the sale of vitamin E acetate. That emergency rule has been extended.

This extension of this emergency rule allows the board to take disciplinary action, without interruption, against any licensed marijuana retailer that fails to comply with the provisions of extended emergency rule WAC 314-55-1065 prohibiting the use of vitamin E acetate consistent with the authority of chapter 69.50 RCW.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate extension of rule that provides uninterrupted enforcement of WAC 314-55-1065, and preserves public health, safety, and general welfare is necessary. Therefore, the immediate extension of this emergency rule concerning enforcement provisions for WAC 314-55-1065 prohibiting the sale of vitamin E acetate is necessary.

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

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

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

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

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

Date Adopted: January 6, 2021.

Jane Rushford
Chair

OTS-1798.2

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-079 Marijuana retailer license—Privileges, requirements, and fees. (1) A marijuana retailer license allows the licensee to sell only useable marijuana, marijuana concentrates, marijuana-infused products, marijuana paraphernalia, and lockable boxes to store marijuana at retail in licensed retail outlets to persons twenty-one years of age and older, except as allowed for persons under twenty-one years of age consistent with RCW 69.50.357 and WAC 314-55-080.

(2) The WSLCB may accept applications for marijuana retail licenses at time frames published on its website at www.lcb.wa.gov. Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the WSLCB will determine the maximum number of marijuana retail locations per county.

(a) The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

(b) The number of retail licenses determined by the board can be found on the WSLCB website at www.lcb.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than five retail marijuana licenses.

(4) Application and license fees.

(a) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is responsible for fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana retailer license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(5) Internet sales and delivery of product to customers are prohibited.

(6) Sales of marijuana-infused products not permissible under WAC 314-55-077 are prohibited.

(7) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(8) All marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(9) A marijuana retailer may not sell lockable boxes for less than the cost of acquisition or sell boxes received as a donation. The donation of lockable boxes must come from a person or entity that is not a licensed marijuana producer, processor, or retailer.

(10) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(11) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in WAC 314-55-085.

(12) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(13) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097.

(14) The board may take disciplinary action against any marijuana retailer that fails to comply with the provisions of WAC 314-55-1065.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-079, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342, 69.50.345, 2016 c 170, 2016 c 171, and 2016 c 17. WSR 16-19-102, § 314-55-079, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-079, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-079, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-079, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-079, filed 10/21/13, effective 11/21/13.]

WSR 21-02-095
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 6, 2021, 11:45 a.m., effective January 6, 2021, 11:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting, the Washington state liquor and cannabis board (board) has adopted an emergency rule to extend WAC 314-55-1055 Ingredient Disclosure, requiring the disclosure of all ingredients used in the production of marijuana concentrates for inhalation and marijuana extracts for inhalation consistent with the provisions of WAC 314-55-1065 concerning prohibition of the sale of vitamin E acetate, and HB 2826 (chapter 133, Laws of 2020). This filing supersedes and replaces emergency rules filed as WSR 20-19-083 on September 16, 2020.

Citation of Rules Affected by this Order: Amending WAC 314-55-1055.

Statutory Authority for Adoption: HB 2826 (chapter 133, Laws of 2020), effective March 25, 2020; RCW 69.50.342, 69.50.345.

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. HB 2826 concerning marijuana vapor products went into effect on March 25, 2020. Among other things, HB 2826 amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new section (m), providing that the board may, by rule, prohibit any device used in conjunction with a marijuana vapor product and prohibit the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the board determines, following a determination by the Washington state department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

HB 2826 further amended RCW 69.50.342(1) regarding the board's rule-making authority by adding a new section (n), providing that the board may establish, by rule, requirements for processors to submit under oath to the department of health a complete list of all constituent substances and the amount and sources thereof in each marijuana vapor product, including all additives, thickening agents, preservatives, compounds, and any other substance used in the production and processing of each marijuana vapor product.

On November 19, 2019, March 19 and July 17, 2020, the Washington state board of health (SBOH) offered the following background and reasoning for its ban of vitamin E acetate:

- 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, CDC activated its Emergency Operations Center to

aid in the investigation of the multistate 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. CDC has identified vitamin E acetate as a chemical of concern and recommends that vitamin E acetate not be added to any vapor products.
- During the 2020 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, SBOH determined that continuing a ban is necessary to protect the public health, safety and welfare.

Consistent with the statutory authority provided to the board by HB 2826, and upon the determination of SBOH that vitamin E acetate is a drug of concern and should be banned, the board adopted an emergency rule on May 27, 2020, as WAC 314-55-1065 prohibiting the sale of vitamin E acetate. That emergency rule has been extended.

The extension of this emergency rule requires that marijuana licensees disclose all compounds, including but not limited to ingredients, solvents, additives, preservatives, thickening agents, terpenes, and other substances used to produce or added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation at any point during production and processing, regardless of source or origin. Disclosure must be made to the board on forms provided by the board, and submitted to an email address or other platform provided or maintained by the board until permanent rules are established to create a framework for submission of such forms to the department of health consistent with HB 2826.

The immediate extension of rule requiring disclosure of compounds and other substances, including but not limited to vitamin E acetate added to marijuana concentrates for inhalation or marijuana-infused extracts for inhalation is necessary for the preservation of public health, safety and general welfare. Extension of this emergency rule provides continuity of existing efforts to assist public health officials in isolating the compounds and products that may be connected to lung disease.

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

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

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

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

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

Date Adopted: January 6, 2021.

Jane Rushford
Chair

OTS-1783.3

NEW SECTION

WAC 314-55-1055 Ingredient disclosure. (1) All licensed marijuana processors and producers must disclose all ingredients used in the production of marijuana concentrates for inhalation and marijuana-infused extracts for inhalation.

(2) All chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, must be disclosed to the board as follows:

(a) On a form provided by the board and stored by the licensee, either electronically or in hard copy, and made available for inspection if requested by an employee of the board; and

(b) In a manner directed by the board including, but not limited to, submission to an email address or other online platform provided and maintained by the board.

(3) The complete list of all chemicals, compounds, additives, preservatives, thickening agents, terpenes, and other substances used at any point in the production or processing of marijuana concentrates for inhalation or marijuana-infused extracts for inhalation, regardless of source or origin, that is required under subsection (2) of this section must be kept and maintained, consistent with recordkeeping requirements described in WAC 314-55-087, at the facility in which the products are processed. The list must be updated whenever there is any change in product composition.

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