

WSR 20-12-002**EMERGENCY RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed May 20, 2020, 1:36 p.m., effective May 20, 2020, 1:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The rule making is proposed in order to prevent individuals from fraudulently obtaining unemployment benefits. This rule suspends weekly benefit payments to individuals when the department suspects the claim has been fraudulently filed until the end of the following week and requires individuals to respond to a request for information about the suspected fraud. Under the rule, if the department denies benefits prior to the end of the next week, then the suspended payment is also denied. If the department does not deny benefits prior to the end of the next week, then the suspended payment is paid in addition to the regular weekly payment.

Citation of Rules Affected by this Order: New WAC 192-140-096.

Statutory Authority for Adoption: RCW 50.12.040.

Other Authority: Unemployment Insurance Program Letter 1-16, Change 1 (Jan. 13, 2017); Unemployment Insurance Program Letter No. 04-01 (Oct. 27, 2000).

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: As a consequence of emergency measures taken in order to combat the spread of COVID-19, including new federal benefits made available under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the amount of unemployment benefits paid by the employment security department have risen to unprecedented levels. There has been a significant rise in fraud, particularly, instances of imposter fraud. In the month of April, the department paid \$1.6 million in imposter fraud payments. Emergency rules are needed to prevent the further payment of fraudulent benefits and to ensure unemployment benefits are paid only to eligible individuals.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 20, 2020.

Dan Zeitlin
Policy Director

NEW SECTION

WAC 192-140-096 What happens if the department suspects my claim is fraudulent? (1) Starting with the week ending May 16, 2020, if the department discovers it has reason to suspect that your claim has been fraudulently filed, the department will:

(a) Send you a request for information about the suspected fraud; and

(b) For the week in which the department discovered it had reason to suspect your claim has been fraudulently filed, suspend payment of your weekly benefit until the end of the week following the discovery. If you have asked to backdate your claim, and the department has not yet paid the weekly benefit for those backdated weeks, the department will also suspend payment of the weekly benefits for those backdated weeks until the end of the week following the discovery.

(2) If you do not respond to the request for information about the suspected fraud:

(a) The department will presume you are either not eligible or disqualified from receiving benefits and will deny benefits; and

(b) This denial will last for an indefinite period of time; and

(c) Once you provide the requested information, the department will issue a redetermination under RCW 50.20.160 allowing benefits if you provide enough information to establish your claim was not fraudulently filed and you are otherwise eligible and qualified to receive benefits. If the information provided is insufficient to show the claim was not fraudulently filed, the department will not issue a redetermination under RCW 50.20.160.

(3) If the department has suspended payment of your weekly benefits pursuant to subsection (1)(b) of this section and the department has issued a determination denying benefits prior to the end of the following week, then the department will not pay the suspended weekly benefits.

(4) If the department has suspended payment of your weekly benefits pursuant to subsection (1)(b) of this section and the department has not issued a determination denying benefits prior to the end of the following week, the department will pay the suspended weekly benefits by a payment method of the department's choosing.

(5) An individual in whose name a claim is fraudulently filed by an imposter is not responsible to repay sums improperly paid on the claim and the fraudulent claim does not affect the individual's eligibility for benefits. A claim is fraudulently filed by an imposter when someone else files a claim using another individual's personal and employment information without the individual's knowledge or consent.

WSR 20-12-004**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 20-84—Filed May 20, 2020, 2:32 p.m., effective May 23, 2020]

Effective Date of Rule: May 23, 2020.

Purpose: This rule is needed to close spring Chinook seasons on the Snake River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000Z.

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

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

Reasons for this Finding: This emergency rule is needed to close spring Chinook seasons in the Little Goose area of the Snake River, effective May 23, 2020. Based on effort and harvest observed to date, harvest allocation is expected to be reached May 22. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, 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: May 20, 2020.

Kelly Susewind
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective May 23, 2020:

WAC 220-312-05000Z Freshwater exceptions to statewide rules—Eastside. (20-80)

WSR 20-12-008 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 20-87—Filed May 22, 2020, 9:30 a.m., effective May 26, 2020]

Effective Date of Rule: May 26, 2020.

Purpose: To reopen recreational fisheries in coastal waters, effective May 26, 2020, which were previously closed due to the COVID-19 situation and to comply with Governor Inslee's statewide proclamation to "stay home, stay healthy." Reopening these recreational fisheries is consistent

with the Governor's Proclamation amendment 20-25.2 for the partial reopening of outdoor recreational activities.

This rule returns coastal fisheries (Marine Areas 1 through 4) to permanent rules, unless otherwise amended. The recreational fisheries reopening under this emergency rule include coastal bottomfish, sturgeon, gamefish, forage fish, coastal and Columbia River crab, coastal shrimp, other coastal food fish and shellfish. In Marine Areas 5 through 13, recreational clam, mussel, and oyster fisheries will remain closed until the expiration of this emergency rule or until further notice.

Citation of Rules Affected by this Order: Repealing WAC 220-310-16000A, 220-310-08000B, 220-313-07000V, 220-314-02000F, 220-316-01000A and 220-330-01000G; and amending WAC 220-330-010.

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

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

Reasons for this Finding: This rule is needed to reopen coastal recreational fishing opportunities, as well as crab harvest in the Columbia River, effective May 26, 2020, pursuant to the Governor's Proclamation amendment 20-25.2, issued April 27, 2020, indicating that recreational activities including fishing may resume, when and where permitted. In addition, these openings have been coordinated with local and state health officials.

The governor's proclamation amendment also includes requirements to exclude gatherings with people who are not members of the same household and maintain social distancing for the continued protection of public health and safety. The fishery openings considered that requirement as a basis for the decision to reopen fisheries, but do not incorporate those social distance elements within the regulations themselves. While not imposed in the Washington department of fish and wildlife's fishery rules, they are and remain, a requirement of the governor's proclamation. Failure to abide by those social distance requirements could result in increased health risks requiring future fishery closures.

Puget Sound (Marine Areas 5 through 13) clam, oyster, and mussel seasons will remain closed until further notice, or until the rule expires on July 23, 2020, due to concerns of local and state health authorities and the lack of ability for appropriate monitoring because of COVID-19 restraints.

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 6.

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: May 22, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-01000H Shellfish—Daily limits. Effective May 26, 2020 and until further notice, or until this expires on July 23, 2020 the following provisions of WAC 220-330-010, WAC 220-330-110, and WAC 220-330-140, regarding clam, mussel and oyster seasons in Marine Areas 5 through 13, shall be as described below. All other provisions of WAC 220-330-010, WAC 220-330-110, and WAC 220-330-140 not addressed herein, or unless otherwise amended, remain in effect:

It is unlawful to harvest or attempt to harvest clams, mussels, and oysters in Marine Areas 5, 6, 7, 8, 8-1, 8-2, 9, 10, 11, 12, and 13.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m., May 26, 2020:

- WAC 220-310-16000A Daily limits of forage fish and other food fish not otherwise provided for. (20-68)
- WAC 220-310-08000B Game fish seasons—General rules. (20-68)
- WAC 220-313-07000V Coastal salmon—Saltwater seasons and daily limits. (20-68)
- WAC 220-314-02000F Possession limit—Bottomfish. (20-68)
- WAC 220-316-01000A Sturgeon—Areas, seasons, limits and unlawful acts. (20-68)
- WAC 220-330-01000G Shellfish—Daily limits. (20-68)

WSR 20-12-009

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed May 22, 2020, 9:58 a.m., effective May 22, 2020, 9:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-193 (Rule 193) and 458-20-221 (Rule 221) provide guidance regarding the need for a seller to have a physical presence in Washington in order to establish the required nexus for the state to impose a sales or use tax collection obligation on retail sales into Washington. The United States Supreme Court's recent decision in *South*

Dakota v. Wayfair, 138 S.Ct. 2080 (2018), allowed Washington to impose a sales or use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision and RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, the department required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Recent legislation (SSB 5581 (2019)) further clarified the sales tax collection obligation for remote sellers. Until the final rules reflecting these changes are adopted through the standard rule-making process, the department wants the public to be aware that the current Rules 193 and 221 may contain outdated or incomplete information regarding who is required to collect sales or use tax on taxable retail sales into Washington.

Citation of Rules Affected by this Order: Amending WAC 458-20-193 and 458-20-221.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060, and 82.32.733.

Other Authority: RCW 34.05.350.

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

Reasons for this Finding: Taxpayers rely on Rules 193 and 221 to determine whether they are required to collect sales or use tax on taxable retail sales sourced to Washington. Effective October 1, 2018, the department imposed a sales or use tax collection obligation on remote sellers meeting certain thresholds, under the authority of RCW 82.08.0254, 82.12.0255, and 82.32.733. SSB 5581 (2019) further clarified the sales tax collection obligation for remote sellers. Because of these changes in the law, Rules 193 and 221 require substantive updates using the standard rule-making process. Until these rules are amended, the department wants to ensure the public does not use current Rules 193 and 221 to determine their sales or use tax collection obligations beginning October 1, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 22, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-06-078, filed 3/6/18, effective 4/6/18)

WAC 458-20-193 Interstate sales of tangible personal property. (1) **Introduction.** The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Recent legislation (Substitute Senate Bill No. 5581 (2019)) further clarified the sales tax collection obligation for remote sellers. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements. This rule explains the application of the business and occupation (B&O) and retail sales taxes to interstate sales of tangible personal property.

(a) The following rules may also be helpful:

(i) WAC 458-20-178 Use tax and the use of tangible personal property.

(ii) WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.

(iii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(iv) WAC 458-20-19401 Minimum nexus threshold for apportionable receipts.

(b) This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(c) **Tangible personal property.** For purposes of this rule, the term "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses, but does not include steam, electricity, or electrical energy. It includes prewritten computer software (as such term is defined in RCW 82.04.215) in tangible form. However, this rule does not address electronically delivered prewritten computer software or remote access software.

(2) **Scope of rule.** In general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington. This rule explains the applicable nexus and place of sale requirements with respect to sales of tangible personal property. This rule does not cover sales of intangibles or services and does not address the use tax obligation of a purchaser of goods in Washington. For information on payment responsibilities for use tax see WAC 458-20-178.

(3) **Organization of rule.** This rule is divided into three parts:

(a) Part I - Nexus standards for sales of tangible personal property;

(b) Part II - Sourcing sales of tangible personal property; and

(c) Part III - Drop shipment sales.

Part I - Nexus Standards for Sales of Tangible Personal Property

(101) **Introduction.** A seller is subject to the state's B&O tax and retail sales tax with respect to sales of tangible personal property, if that seller has nexus. Washington applies specific nexus standards and thresholds that are used to determine whether a seller of tangible personal property has nexus. The nexus standards and thresholds described in this rule pertain only to sellers of tangible personal property. The remainder of Part 1 of this rule describes these nexus standards and thresholds and how they apply in the context of Washington's wholesaling and retailing B&O classifications and the retail sales tax.

(102) **Physical presence nexus standard.** A person who sells tangible personal property in a retail sale is deemed to have nexus with Washington if the person has a physical presence in this state, which need only be demonstrably more than the slightest presence. RCW 82.04.067(6). This standard applies to retail sales both in the retail sales tax and retailing B&O tax context.

(a) **Physical presence.** A person is physically present in this state if:

(i) The person has property in this state;

(ii) The person has one or more employees in this state;

(iii) The person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington; or

(iv) The person is a remote seller as defined in RCW 82.08.052 and is unable to rebut the substantial nexus presumption for remote sellers set out in RCW 82.04.067 (6)(c)(ii).

(b) **Property.** A person has property in this state if the person owns, leases, or otherwise has a legal or beneficial interest in real or personal property in Washington.

(c) **Employees.** A person has employees in this state if the person is required to report its employees for Washington unemployment insurance tax purposes, or the facts and circumstances otherwise indicate that the person has employees in the state.

(d) **In-state activities.** Even if a person does not have property or employees in Washington, the person is physically present in Washington when the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington. It is immaterial that the activities that establish nexus are not significantly associated with a particular sale into this state.

For purposes of this rule, the term "agent or other representative" includes an employee, independent contractor, commissioned sales representative, or other person acting either at the direction of or on behalf of another.

A person performing the following nonexclusive list of activities, directly or through an agent or other representative, generally is performing activities that are significantly associated with establishing or maintaining a market for a person's products in this state:

- (i) Soliciting sales of goods in Washington;
- (ii) Installing, assembling, or repairing goods in Washington;
- (iii) Constructing, installing, repairing, or maintaining real property or tangible personal property in Washington;
- (iv) Delivering products into Washington other than by mail or common carrier;
- (v) Having an exhibit at a trade show to maintain or establish a market for one's products in the state, except as described in subsection (102)(f) of this rule;

(vi) An online seller having a brick-and-mortar store in this state accepting returns on its behalf;

(vii) Performing activities designed to establish or maintain customer relationships including, but not limited to:

(A) Meeting with customers in Washington to gather or provide product or marketing information, evaluate customer needs, or generate goodwill; or

(B) Being available to provide services associated with the product sold (such as warranty repairs, installation assistance or guidance, and training on the use of the product), if the availability of such services is referenced by the seller in its marketing materials, communications, or other information accessible to customers.

(e) **Remote sellers - Click-through nexus.** Effective September 1, 2015, a remote seller as defined in RCW 82.08.052 is presumed to meet the physical presence nexus standard described in this subsection for purposes of the retail sales tax if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, refers potential customers to the remote seller, whether by link on an internet web site or otherwise, but only if the cumulative gross receipts from sales by the remote seller to customers in this state who are referred to the remote seller through such agreements exceeds ten thousand dollars during the preceding calendar year. For more information related to the presumption and how to rebut the presumption, see RCW 82.08.052 and 82.04.067 (6)(c)(ii).

(f) **Trade convention exception.** For the physical presence nexus standard described in this subsection, the department may not make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per calendar year in Washington state in determining if such person is physically present in this state for the purposes of establishing substantial nexus with this state. This does not apply to persons making retail sales at a trade convention in this state, including persons taking orders for products or services where receipt will occur at a later time in Washington state. RCW 82.32.531.

Definitions. The following definitions apply only to (f) of this subsection:

(i) "Not marketed to the general public" means that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

(ii) "Physically present in this state" and "substantial nexus with this state" have the same meaning as provided in RCW 82.04.067.

(iii) "Trade convention" means an exhibition for a specific industry or profession, which is not marketed to the general public, for the purposes of:

(A) Exhibiting, demonstrating, and explaining services, products, or equipment to potential customers; or

(B) The exchange of information, ideas, and attitudes in regards to that industry or profession.

(103) **Economic nexus thresholds.** RCW 82.04.067 establishes substantial nexus thresholds that apply to persons who sell tangible personal property. For more information on the economic nexus thresholds, see WAC 458-20-19401.

Application to retail sales. Effective July 1, 2017, for B&O tax purposes, a person making retail sales taxable under RCW 82.04.250(1) or 82.04.257(1) is deemed to have substantial nexus with Washington if the person's receipts meet the economic nexus thresholds under RCW 82.04.067 (1)(c)(iii) and (iv). The receipts threshold is met if the person has more than two hundred sixty-seven thousand dollars of receipts (as adjusted by RCW 82.04.067(5)) from this state or at least twenty-five percent of the person's total receipts are in this state. For more information, see WAC 458-20-19401.

(104) **Application of standards and thresholds to wholesale sales.** The physical presence nexus standard described in subsection (102) of this rule, applies to wholesale sales for periods prior to September 1, 2015. Effective September 1, 2015, wholesale sales taxable under RCW 82.04.257(1) and 82.04.270 are subject to the RCW 82.04.-067 (1) through (5) economic nexus thresholds. Wholesaling activities not taxable under RCW 82.04.257(1) and 82.04.270 remain subject to the physical presence nexus standard. For more information, see WAC 458-20-19401.

(105) **Effect of having nexus.**

(a) **Retail sales.** A person that makes retail sales of tangible personal property and meets either the physical presence nexus standard or whose receipts meet the economic nexus thresholds described in RCW 82.04.067 (1)(c)(iii) or (iv) is subject to B&O tax on that person's retail sales received in the state. In addition, a person that makes retail sales of tangible personal property and meets the physical presence nexus standard, including as described in subsection (102)(e) of this rule, is also responsible for collecting and remitting retail sales tax on that person's sales of tangible personal property sourced to Washington, unless a specific exemption applies.

(b) **Wholesale sales.** A person that makes wholesale sales of tangible personal property and has nexus with Washington (as described in subsection (104) of this rule) is subject to B&O tax on that person's wholesale sales sourced to Washington.

(106) **Trailing nexus.** Effective July 1, 2017, for B&O tax purposes, a person is deemed to have substantial nexus with Washington for the current year if that person meets any of the requirements in RCW 82.04.067 in either the current or immediately preceding calendar year. Thus, a person who stops the business activity that created nexus in Washington continues to have nexus in the calendar year following any calendar year in which the person met any of the requirements in RCW 82.04.067 (also known as "trailing nexus").

Prior to July 1, 2017, RCW 82.04.220 provided that for B&O tax purposes a person who stopped the business activity

that created nexus in Washington continued to have nexus for the remainder of that calendar year, plus one additional calendar year.

The department of revenue applies the same trailing nexus period for retail sales tax and other taxes reported on the excise tax return.

(107) **Public Law 86-272.** Public Law 86-272 (15 U.S.C. Sec. 381 et. seq.) applies only to taxes on or measured by net income. Washington's B&O tax is measured by gross receipts. Consequently, Public Law 86-272 does not apply.

Part II - Sourcing Sales of Tangible Personal Property

(201) **Introduction.** RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on "sourcing rules" established under the streamlined sales and use tax agreement. Sourcing rules for the lease or rental of tangible personal property are beyond the scope of this rule, as are the sourcing rules for "direct mail," "advertising and promotional direct mail," or "other direct mail" as such terms are defined in RCW 82.32.730. See RCW 82.32.-730 for further explanation of the sourcing rules for those particular transactions.

(202) Receive and receipt.

(a) **Definition.** "Receive" and "receipt" mean the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property.

(b) Receipt by a shipping company.

(i) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the purchaser.

(ii) A "shipping company" for purposes of this rule means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated (e.g., an entity wholly owned by the seller or purchaser) or unaffiliated (e.g., third-party carrier) with the seller or purchaser. A shipping company is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively. Whether an entity is a "shipping company" for purposes of this rule applies only to sourcing sales of tangible personal property and does not apply to whether a "shipping company" can create nexus for a seller.

(203) **Sourcing sales of tangible personal property - In general.** The following provisions in this subsection apply to sourcing sales of most items of tangible personal property.

(a) **Business location.** When tangible personal property is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

Example 1. Jane is an Idaho resident who purchases tangible personal property at a retailer's physical store location in Washington. Even though Jane takes the property back to Idaho for her use, the sale is sourced to Washington because Jane received the property at the seller's business location in Washington.

Example 2. Department Store has retail stores located in Washington, Oregon, and in several other states. John, a Washington resident, goes to Department Store's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store. Although Department Store has

nexus with Washington through its Washington store locations, Department Store is not liable for B&O tax and does not have any responsibility to collect Washington retail sales tax on this transaction because the purchaser, John, took possession of the luggage at the seller's business location outside of Washington.

Example 3. An out-of-state purchaser sends its own trucks to Washington to receive goods at a Washington-based seller and to immediately transport the goods to the purchaser's out-of-state location. The sale occurs in Washington because the purchaser receives the goods in Washington. The sale is subject to B&O and retail sales tax.

Example 4. The same purchaser in Example 3 uses a wholly owned affiliated shipping company (a legal entity separate from the purchaser) to pick up the goods in Washington and deliver them to the purchaser's out-of-state location. Because "receive" and "receipt" do not include possession by the shipping company, the purchaser receives the goods when the goods arrive at the purchaser's out-of-state location and not when the shipping company takes possession of the goods in Washington. The sale is not subject to B&O tax or retail sales tax.

(b) **Place of receipt.** If the sourcing rule explained in (a) of this subsection does not apply, the sale is sourced to the location where receipt by the purchaser or purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, as known to the seller.

(i) The term "purchaser" includes the purchaser's agent or designee.

(ii) The term "purchaser's donee" means a person to whom the purchaser directs shipment of goods in a gratuitous transfer (e.g., a gift recipient).

(iii) Commercial law delivery terms, and the Uniform Commercial Code's provisions defining sale or where risk of loss passes, do not determine where the place of receipt occurs.

(iv) The seller must retain in its records documents used in the ordinary course of the seller's business to show how the seller knows the location of where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(B) If shipped by a shipping company, a waybill, bill of lading or other contract of carriage indicating where delivery occurs; or

(C) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

- The seller's name and address;
- The purchaser's name and address;
- The place of delivery, if different from the purchaser's address; and
- The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

Example 5. John buys luggage from a Department Store that has nexus with Washington (as in Example 2), but has the store ship the luggage to John in Washington. Department Store has nexus with Washington, and receipt of the luggage by John occurred in Washington. Department Store owes Washington retailing B&O tax and must collect Washington retail sales tax on this sale.

Example 6. Parts Store is located in Washington. It sells machine parts at retail and wholesale. Parts Collector is located in California and buys machine parts from Parts Store. Parts Store ships the parts directly to Parts Collector in California, and Parts Collector takes possession of the machine parts in California. The sale is not subject to B&O or retail sales taxes in this state because Parts Collector did not receive the parts in Washington.

Example 7. An out-of-state seller with nexus in Washington uses a third-party shipping company to ship goods to a customer located in Washington. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes. The sale is subject to B&O and retail sales tax in this state because the purchaser has taken possession of the goods in Washington.

Example 8. A Washington purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller at its out-of-state location, and deliver those goods to the Washington purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer. When the affiliated shipping company takes possession of the goods out-of-state, the Washington purchaser has not received the goods out-of-state. Possession by a shipping company on behalf of a purchaser is not receipt for purposes of this rule, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the buyer. Receipt occurs when the buyer takes possession of the goods in Washington. The sale is subject to B&O and retail sales tax in this state.

Example 9. An in-state seller arranges for shipping its goods to an out-of-state purchaser by first delivering its goods to a Washington-based shipping company at its Washington location for further transport to the out-of-state customer's location. Possession of the goods by the shipping company in Washington is not receipt by the purchaser for Washington tax purposes, and the sale is not subject to B&O and retail sales tax in Washington.

Example 10. An out-of-state manufacturer/seller of a bulk good with nexus in Washington sells the good to a Washington-based purchaser in the business of selling small quantities of the good under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant. The Washington purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packag-

ing facility before shipment to Washington. The sale is not subject to B&O and retail sales tax in this state because the purchaser received the goods outside of Washington.

Example 11. Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Company ABC directs Company XYZ to ship the goods by a for-hire carrier to a commercial storage warehouse in Washington. The goods will be considered as having been received by Company ABC when the goods are delivered at the commercial storage warehouse. Assuming Company XYZ has nexus, Company XYZ is subject to B&O tax and must collect retail sales tax on the sale.

(c) **Other sourcing rules.** There may be unique situations where the sourcing rules provided in (a) and (b) of this subsection do not apply. In those cases, please refer to the provisions of RCW 82.32.730 (1)(c) through (e).

(204) **Sourcing sales of certain types of property.**

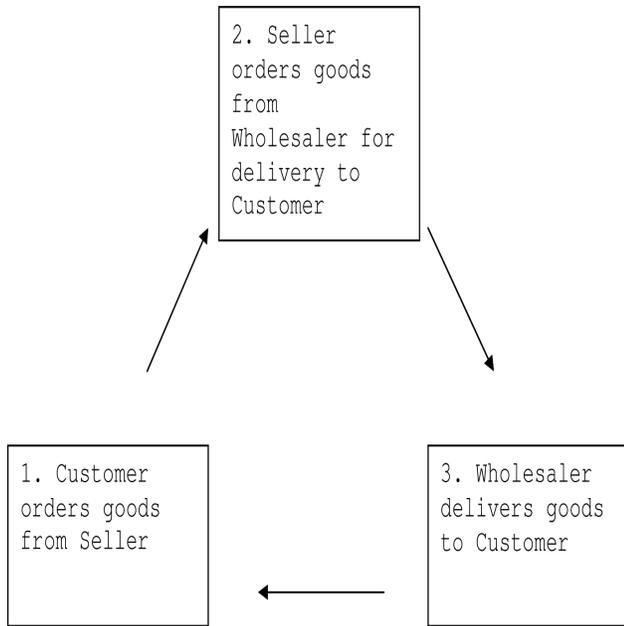
(a) **Sales of commercial aircraft parts.** As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

(b) **Sales of motor vehicles, watercraft, airplanes, manufactured homes, etc.** Sales of the following types of property are sourced to the location at or from which the property is delivered in accordance with RCW 82.32.730 (7)(a) through (c): Watercraft; modular, manufactured, or mobile homes; and motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as "transportation equipment" as defined in RCW 82.32.730. See WAC 458-20-145 (2)(b) for further information regarding the sourcing of these sales.

(c) **Sales of flowers and related goods by florists.** Sales by a "florist" are subject to a special origin sourcing rule. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules, see RCW 82.32.-730 (7)(d) and (9)(e) and WAC 458-20-158.

Part III - Drop Shipments

(301) **Introduction.** A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a wholesaler and instructs that wholesaler to deliver the property directly to the seller's customer. The place of receipt in a drop shipment transaction is where the property is delivered (i.e., the seller's customer's location). Below is a diagram of a basic drop shipment transaction:



The following subsections discuss the taxability of drop shipments in Washington when:

- (a) The seller and wholesaler do not have nexus;
- (b) The seller has nexus and the wholesaler does not;
- (c) The wholesaler has nexus and the seller does not; and
- (d) The seller and wholesaler both have nexus. In each of the following scenarios, the customer receives the property in Washington and the sale is sourced to Washington. Further, in each of the following scenarios, a reseller permit or other approved exemption certificate has been acquired to document any wholesale sales in Washington. For information about reseller permits issued by the department, see WAC 458-20-102.

(302) **Seller and wholesaler do not have nexus.** Where the seller and the wholesaler do not have nexus with Washington, sales of tangible personal property by the seller to the customer and the wholesaler to the seller are not subject to B&O tax. In addition, neither the seller nor the wholesaler is required to collect retail sales tax on the sale.

(303) **Seller has nexus but wholesaler does not.** Where the seller has nexus with Washington but the wholesaler does not have nexus with Washington, the wholesaler's sale of tangible personal property to the seller is not subject to B&O tax and the wholesaler is not required to collect retail sales tax on the sale. The sale by the seller to the customer is subject to wholesaling or retailing B&O tax, as the case may be. The seller must collect retail sales tax from the customer unless specifically exempt by law.

(304) **Wholesaler has nexus but seller does not.** Where the wholesaler has nexus with Washington but the seller does not have nexus with Washington, wholesaling B&O tax applies to the sale of tangible personal property by the wholesaler to the seller for shipment to the seller's customer. The sale from the seller to its Washington customer is not subject to B&O tax, and the seller is not required to collect retail sales tax on the sale.

Example 12. Seller is located in Ohio and does not have nexus with Washington. Seller receives an order from Customer, located in Washington, for parts that are to be shipped to Customer in Washington for its own use as a consumer. Seller buys the parts from Wholesaler, which has nexus with Washington, and requests that the parts be shipped directly to Customer. Seller is not subject to B&O tax and is not required to collect retail sales tax on its sale to Customer because Seller does not have nexus with Washington. The sale by Wholesaler to Seller is subject to wholesaling B&O tax because Wholesaler has nexus with Washington and Customer receives the parts (i.e., the parts are delivered to Customer) in Washington.

(305) **Seller and wholesaler have nexus with Washington.** Where the seller and wholesaler have nexus with Washington, wholesaling B&O tax applies to the wholesaler's sale of tangible personal property to the seller. The sale from the seller to the customer is subject to wholesaling or retailing B&O tax as the case may be. The seller must collect retail sales tax from the customer unless the sale is specifically exempt by law.

AMENDATORY SECTION (Amending WSR 89-06-016, filed 2/23/89, effective 4/1/89)

WAC 458-20-221 Collection of use tax by retailers and selling agents. The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Recent legislation (Substitute Senate Bill No. 5581 (2019)) further clarified the sales tax collection obligation for remote sellers. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements.

(1) **Statutory requirements.** RCW 82.12.040(1) provides that every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state must obtain a certificate of registration and must collect use tax from purchasers at the time it makes sales of tangible personal property for use in this state. The legislature has directed the department of revenue to specify, by rule, activities which constitute engaging in business activities within this state. These are activities which are sufficient under the Constitution of the United States to require the collection of use tax.

(2) **Definitions.**

(a) "Maintains a place of business in this state" includes:

- (i) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business; or

(ii) Soliciting sales or taking orders by sales agents or traveling representatives.

(b) "Engages in business activities within this state" includes:

(i) Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, telephone, television, radio or other electronic media, or magazine or newspaper advertisements or other media; or

(ii) Being owned or controlled by the same interests which own or control any seller engaged in business in the same or similar line of business in this state; or

(iii) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect use tax.

(c) "Purposefully or systematically exploiting the market provided by this state" is presumed to take place if the gross proceeds of sales of tangible personal property delivered from outside this state to destinations in this state exceed five hundred thousand dollars during a period of twelve consecutive months.

(3) **Liability of buyers for use tax.** Persons in this state who buy articles of tangible personal property at retail are liable for use tax if they have not paid sales tax. See WAC 458-20-178.

(4) **Obligation of sellers to collect use tax.** Persons who obtain a certificate of registration, maintain a place of business in this state, maintain a stock of goods in this state, or engage in business activities within this state are required to collect use tax from persons in this state to whom they sell tangible personal property at retail and from whom they have not collected sales tax. Use tax collected by sellers shall be deemed to be held in trust until paid to the department. Any seller failing to collect the tax or, if collected, failing to remit the tax is personally liable to the state for the amount of tax. (For exceptions as to sale to certain persons engaged in interstate or foreign commerce see WAC 458-20-175.)

(5) **Local use tax.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b)(i) of this section may elect to collect local use tax at a uniform statewide rate of .005 without the necessity of reporting taxable sales to the local jurisdiction of delivery. Amounts collected under the uniform rate shall be allocated by the department to counties and cities in accordance with ratios reflected by the distribution of local sales and use taxes collected from all other taxpayers. Persons not electing to collect at the uniform statewide rate or not eligible to collect at the uniform state rate shall collect local use tax in accordance with WAC 458-20-145.

(6) **Reporting frequency.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b) of this section shall not be required to file returns and remit use tax more frequently than quarterly.

(7) **Selling agents.** RCW 82.12.040 of the law provides, among other things, as follows:

(a) "Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter."

(b) However, in those cases where the agent receives compensation by reason of a sale made pursuant to an order given directly to his principal by the buyer, and of which the agent had no knowledge at the time of sale, the said agent will be relieved of all liability for the collection of or payment of the tax. Furthermore, in other cases where payment is made by the buyer direct to the principal and the agent is unable to collect the tax from the buyer, the agent will be relieved from all liability for the collection of the tax from the buyer and for payment of the tax to the department, provided that within ten days after receipt of commission on any such sale, the agent shall forward to the department a written statement showing the following: Name and address of purchaser, date of sale, type of goods sold, and selling price. (Agents may avoid all liability for collection of this tax, provided their principals obtain a certificate of registration.)

(8) **Time and manner of collection.** The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax. It is a misdemeanor for a retailer to refund, remit, or rebate to a purchaser or transferee, either directly or indirectly, by whatever means, all or any part of the use tax.

(9) **Effective date.** This rule shall take effect on April 1, 1989.

WSR 20-12-013

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-88—Filed May 22, 2020, 5:13 p.m., effective May 26, 2020]

Effective Date of Rule: May 26, 2020.

Purpose: To reopen recreational fisheries in Marine Areas 1 through 3, effective May 26, 2020, which were previously closed due to the COVID-19 situation and to comply with Governor Inslee's statewide proclamation to "stay home, stay healthy." Reopening these recreational fisheries is consistent with the Governor's Proclamation amendment 20-25.2 for the partial reopening of outdoor recreational activities.

This rule returns coastal fisheries (Marine Areas 1 through 3) to permanent rules, unless otherwise amended. The recreational fisheries reopening under this emergency rule include coastal bottomfish, sturgeon, gamefish, forage fish, coastal and Columbia River crab, coastal shrimp, other coastal food fish and shellfish. All recreational fish and shell-

fish fisheries in Marine Area 4, and recreational clam, mussel, and oyster fisheries in Marine Areas 5 through 13 will remain closed until the expiration of this emergency rule or until further notice.

Citation of Rules Affected by this Order: Repealing WAC 220-310-16000A, 220-310-08000B, 220-313-07000V, 220-314-02000F, 220-316-01000A, 220-330-01000G and 220-330-01000H; and amending WAC 220-330-010.

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

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

Reasons for this Finding: This rule is needed to reopen coastal recreational fishing opportunities in Marine Areas 1 through 3, as well as crab harvest in the Columbia River, effective May 26, 2020, pursuant to the Governor's Proclamation amendment 20-25.2, issued April 27, 2020, indicating that recreational activities including fishing may resume, when and where permitted. In addition, these openings have been coordinated with local and state health officials.

The governor's proclamation amendment also includes requirements to exclude gatherings with people who are not members of the same household and maintain social distancing for the continued protection of public health and safety. The fishery openings considered that requirement as a basis for the decision to reopen fisheries, but do not incorporate those social distance elements within the regulations themselves. While not imposed in the Washington department of fish and wildlife's fishery rules, they are and remain, a requirement of the governor's proclamation. Failure to abide by those social distance requirements could result in increased health risks requiring future fishery closures.

Puget Sound (Marine Areas 5 through 13) clam, oyster, and mussel seasons will remain closed until further notice, or until the rule expires on July 23, 2020, due to concerns of local and state health authorities and the lack of ability for appropriate monitoring because of COVID-19 restraints.

All recreational fish and shellfish fisheries in Marine Area 4 remain closed until further notice, or until the rule expires on July 23, 2020, due to concerns of local and state health authorities.

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 7.

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: May 22, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-310-16000B Daily limits of forage fish and other food fish not otherwise provided for. Effective May 26 and until further notice, or until this expires on July 23, 2020 the following provisions of WAC 220-310-160, regarding forage fish and food fish seasons in Marine Area 4, shall be as described below. All other provisions of WAC 220-310-160 not addressed herein, or unless otherwise amended, remain in effect:

It is unlawful to fish for or possess forage fish or food fish not otherwise provided for in Marine Area 4.

NEW SECTION

WAC 220-310-08000C Game fish seasons—General rules. Effective May 26 and until further notice, or until this expires on July 23, 2020 the following provisions of WAC 220-310-080, regarding game fish seasons in Marine Area 4, shall be as described below. All other provisions of WAC 220-310-080 not addressed herein, or unless otherwise amended, remain in effect:

It is unlawful to fish for or possess game fish in Marine Area 4.

NEW SECTION

WAC 220-313-07000W Coastal salmon—Saltwater seasons and daily limits. Effective May 26 and until further notice, or until this expires on July 23, 2020 the following provisions of WAC 220-313-070, regarding salmon seasons in Marine Area 4, shall be as described below. All other provisions of WAC 220-313-070 not addressed herein, or unless otherwise amended, remain in effect:

It is unlawful to fish for or possess salmon in Marine Areas 4.

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

NEW SECTION

WAC 220-314-02000G Possession limit—Bottomfish. Effective May 26 and until further notice, or until this expires on July 23, 2020 the following provisions of WAC 220-314-020 and WAC 220-314-040, regarding bottomfish seasons in Marine Area 4, shall be as described below. All other provisions of WAC 220-314-020 and WAC 220-314-040 not addressed herein, or unless otherwise amended, remain in effect:

It is unlawful to fish for or possess bottomfish or other food fish in Marine Area 4.

NEW SECTION

WAC 220-316-01000B Sturgeon—Areas, seasons, limits and unlawful acts. Effective May 26 and until further notice, or until this expires on July 23, 2020 the following provisions of WAC 220-316-010, regarding bottomfish seasons in Marine Area 4, shall be as described below. All other provisions of WAC 220-316-010 not addressed herein, or unless otherwise amended, remain in effect:

It is unlawful to fish for or possess sturgeon in Marine Area 4.

NEW SECTION

WAC 220-330-01000I Shellfish—Daily limits. Effective May 26, 2020 and until further notice, or until this expires on July 23, 2020 the following provisions of WAC 220-330-010, WAC 220-330-040, WAC 220-330-070, 220-330-090, 220-330-110, 220-330-140, and WAC 220-330-180, regarding all shellfish seasons in Marine Area 4 and clam, mussel and oyster seasons in Marine Areas 5 through 13, shall be as described below. All other provisions of WAC 220-330-010, WAC 220-330-040, WAC 220-330-070, 220-330-090, 220-330-110, 220-330-140, and WAC 220-330-180 not addressed herein, or unless otherwise amended, remain in effect:

(a) It is unlawful to harvest or attempt to harvest shellfish in Marine Area 4.

(b) It is unlawful to harvest or attempt to harvest clams, mussels, and oysters in Marine Areas 5, 6, 7, 8, 8-1, 8-2, 9, 10, 11, 12, and 13.

REPEALER

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

WAC 220-330-01000H Shellfish—Daily limits. (20-87)

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m., May 26, 2020:

WAC 220-310-16000A Daily limits of forage fish and other food fish not otherwise provided for. (20-68)

WAC 220-310-08000B Game fish seasons—General rules. (20-68)

WAC 220-313-07000V Coastal salmon—Saltwater seasons and daily limits. (20-68)

WAC 220-314-02000F Possession limit—Bottomfish. (20-68)

WAC 220-316-01000A Sturgeon—Areas, seasons, limits and unlawful acts. (20-68)

WAC 220-330-01000G Shellfish—Daily limits. (20-68)

WSR 20-12-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-85—Filed May 22, 2020, 5:17 p.m., effective May 29, 2020]

Effective Date of Rule: May 29, 2020.

Purpose: This rule opens salmon seasons in the Tulalip Terminal Area, Fridays through mid-day on Monday, from May 29 through September 7, 2020. Coho retention is not allowed.

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

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

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

Reasons for this Finding: This rule is needed to open salmon seasons for the Tulalip Terminal Area in Marine Area 8-2. This rule is pursuant to the Governor's Proclamation amendment 20-25.2, issued April 27, 2020, indicating that recreational activities including fishing may resume, when and where permitted.

These rules have been agreed to with comanagers during the 2020 North of Falcon proceedings and are entered in the permanent rule-making process. Retention of coho is not allowed due to low expected returns to the Snohomish River.

The governor's proclamation amendment also includes requirements to exclude gatherings with people who are not members of the same household and maintain social distancing for the continued protection of public health and safety. These fishery openings considered that requirement as a basis for the decision to reopen fisheries, but do not incorporate those social distance elements within the regulations themselves. While not imposed in the Washington department of fish and wildlife's fishery rules, they are and remain, a requirement of the governor's proclamation. Failure to abide by those social distance requirements could result in increased health risks requiring future fishery closures.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 22, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000R Puget Sound salmon—Saltwater seasons and daily limits. Effective May 29 through September 7, 2020, the following provisions of WAC 220-313-060 regarding salmon seasons for the Tulalip Terminal Area shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended, remain in effect:

Catch Record Card Area 8-2:

1. Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point and not including waters east of a line drawn from Mission Point to Hermosa Point:

a. Open 12:01 a.m. Friday through 11:59 a.m. Monday each week:

i. Daily limit 2.

ii. Release coho.

iii. Chinook minimum size 22 inches.

b. Closed the following time periods: 12:00 p.m. Monday through 12:00 a.m. Friday each week.

2. Waters east of a line from Mission Point to Hermosa Point: Closed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-313-06000R Puget Sound salmon—Saltwater seasons and daily limits.

**WSR 20-12-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-86—Filed May 22, 2020, 5:39 p.m., effective May 28, 2020]

Effective Date of Rule: May 28, 2020.

Purpose: Amend recreational shrimp rules in Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-330-070.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and meet conservation objectives. Harvestable amounts of spot shrimp are available, but

recreational shares will only support a limited number of open days in the Marine Areas listed in this section. In addition, this emergency regulation opens the Marine Area 5, 6, and 7 seasons one hour before sunrise to one hour after sunset, which is the default daily start time[s] and [end] times for those areas. Marine Area 13 will remain closed for spot shrimp for conservation reasons. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 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: May 22, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-07000W Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-330-070, effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Area 5: Open May 28 each day until further notice for all shrimp species.

(2) Marine Area 7 South: Open May 28 and June 1, 11, 15, 26, 28, and 30 for all shrimp species.

(3) Marine Area 7 East: Open May 28 and June 1, 11, 15, 26, 28, and 30 for all shrimp species.

a. Open July 1 until further notice to harvest of all shrimp species except spot shrimp, with a 200-foot maximum fishing depth restriction. All spot shrimp caught from July 1 onward must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

(4) Marine Areas 6 (excluding the Discovery Bay Shrimp District) and 7 West:

a. Open May 28 for all shrimp species;

b. Open June 1 - 13 for all shrimp species;

c. Beginning June 18 open Thursdays through Sunday each week for all shrimp species until quota is attained.

(5) Marine Areas 8-1 and 8-2:

a. Open June 11 from 7:00 a.m. through 1:00 p.m. for all shrimp species.

b. Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on June 11 in Marine Area 8-2.

c. Open June 16 until further notice to harvest of all shrimp species except spot shrimp, with a 150-foot maximum fishing depth restriction. All spot shrimp caught from June 16 onward must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(6) Marine Area 9: Open June 11 from 7:00 a.m. through 1:00 p.m. for all shrimp species.

a. Open June 16 until further notice to harvest of all shrimp species except spot shrimp with a 150-foot maximum fishing depth restriction. All spot shrimp caught from June 16 onward must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(7) Marine Area 10 west of a line from West Point to Alki Point: Open June 11 from 7:00 a.m. through 11:00 a.m. for all shrimp.

(8) Marine Area 10 east of a line from West Point to Alki Point: Open June 11 from 7:00 a.m. through 1:00 p.m. for all shrimp.

(9) Marine Area 11: Open June 11 from 7:00 a.m. through 1:00 p.m. for all shrimp.

a. Open June 16 until further notice to harvest of all shrimp species except spot shrimp, with a 150-foot maximum fishing depth restriction. All spot shrimp caught from June 16 onward must be immediately returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 150 feet deep.

(10) Marine Area 12: Open June 11, 15, 16, 28, and July 15, 28 from 9:00 a.m. through 1:00 p.m. for all shrimp.

(11) Discovery Bay Shrimp District: Open June 11, 15, 28 from 7:00 a.m. through 3:00 p.m. for all shrimp.

(12) Marine Area 13: Open June 1 until further notice to harvest of all species except spot shrimp with a 200-foot maximum fishing depth restriction. All spot shrimp caught must be returned to the water unharmed. It is unlawful to set or pull shrimp gear in waters greater than 200 feet deep.

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 20-12-017
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 26, 2020, 11:19 a.m., effective May 26, 2020, 11:19 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 adopting a new section to chapter 296-800 WAC 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: New WAC 296-800-14035.

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

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

Reasons for this Finding: L&I is taking action to help prevent the spread of COVID-19 and respond to the Governor's Proclamation 20-25, Stay Home, Stay Healthy, and its amendments allowing a phased-in reopening of businesses 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. Recent proclamation amendments established a phased-in approach to reopening Washington state, referred to as "Safe Start Washington."

The Stay Home, Stay Healthy proclamation and amendments create a systematic framework to reduce the spread of COVID from person-to-person interactions, ensuring continuity of critical functions and a phased-in reopening of businesses and activities such that the number of new cases is greatly reduced and medical facilities and providers are not overwhelmed by a spike in COVID-19 cases. Business operations and employee exposures are one component of the overall public health emergency response presented by COVID-19 and ensuring compliance with the proclamation requirement helps to protect the safety and health of employees.

The conditions of businesses reopening in the governor's orders are also consistent with the social/physical distancing and health and sanitation requirements of chapter 49.17 RCW and the Center[s] for Disease Control and Prevention. Chapter 49.17 RCW and L&I rule require employers to provide a safe and healthy workplace free from recognized hazards, and an employer can be cited for a violation of the "safe place" rule where there are no specific rules to address the particular hazard. And, for COVID-19, lack of social distancing or failure to address symptomatic employees can be cited under the safe place standard. This emergency rule ensures clarity that restrictions and conditions on business under the emergency proclamations are also health and safety requirements under chapter 49.17 RCW and that employers can be subject to a citation and monetary penalties for violations.

This emergency rule is necessary for the preservation of public health, safety, and general welfare of all employees. Emergency rule making is necessary here because providing

for a full notice and comment time period will allow businesses to reopen or reopen without following all conditions for reopening, endangering employees and the public during the public comment time period. The governor's proclamation has found that the hazards of the unnecessary spread of COVID-19 present an immediate threat to public health and safety. The Governor's Stay Home, Stay Healthy order is currently in effect, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

Date Adopted: May 26, 2020.

Joel Sacks
Director

NEW SECTION

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

(2) Employers must comply with all conditions for operation required by emergency proclamation issued under RCW 43.06.220, including Safe Start phased reopening requirements for all business and any industry specific requirements.

(3) An "emergency proclamation" means a proclamation that is in effect, including proclamation amendments and conditions, and issued under RCW 43.06.220.

**WSR 20-12-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-89—Filed May 27, 2020, 10:55 a.m., effective May 27, 2020,
10:55 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends Puget Sound commercial shrimp rules by closing commercial spot shrimp fishing on May 28, 2020, and June 1, 2020, in order to avoid gear conflicts with sport

[spot] shrimp fishers during the first recreational openings. This rule also adds depth restrictions for nonspot shrimp and closes Region 1A to the harvest of nonspot shrimp to align with management agreements in the 1, 2-East and 2-West Regional Management plans.

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

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

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

Reasons for this Finding: The 2020 State/Tribal Shrimp Harvest Management Plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule: (1) Defines the shrimp management areas and regions open to spot and non-spot commercial harvest; (2) sets harvest restrictions for and opens the nonspot commercial pot fishery; (3) sets harvest restrictions for and opens the spot commercial pot fishery; (4) sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery; and (5) requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers. The emergency regulation is required to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and ongoing changes of public health practices arising from the global COVID-19 pandemic. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort and to limit interaction between the state commercial harvesters and recreational users. This regulation finalizes recreational shrimp dates, provides flexibility in avoiding overlap between the recreational and commercial sectors in light of changing management circumstances arising from COVID-19, clarifies language to accurately reflect how shrimp harvest has been historically enforced, and to clarify rules governing concurrent harvest of spot shrimp and nonspot shrimp in Region 3 and Region 1, as agreed to in the Region 3 and Region 1 Management Plans to limit handling mortality of spot shrimp. This regulation also aligns state regulations with depth harvest restrictions of nonspot shrimp that has been agreed to in the 2-East and 2-West Regional Management Plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 27, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000N Puget Sound shrimp pot and trawl fishery—Season. Effective immediately and until further notice, or until this rule expires on August 28, 2020 pursuant to RCW 34.05.350, the following provisions of WAC 220-340-520 regarding Puget Sound commercial shrimp pot harvest, non-spot shrimp harvest, spot shrimp harvest, trawl shrimp harvest and sales shall be described below. All other provisions of WAC 220-340-520 remain in effect.

(1) Shrimp Pot Harvests:

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

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

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

(iii) In Catch Area 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 6:00 a.m. June 16, 2020.

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

(2) Shrimp Non-spot Pot Harvest Restrictions

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

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

(c) It is unlawful to harvest non-spot shrimp from Catch Reporting Area (Catch Area) 23A until the spot quota is attained in all sub-areas of 23A. Catch Area 23A is comprised of 23-E, 23A-W, 23A-C, and 23A-S.

(d) It is unlawful to harvest non-spot shrimp from Shrimp Management Area 1A until the spot quota is attained in all Catch Areas. Shrimp Management Area 1A is comprised Catch Areas 20B and 22A.

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

(f) Harvest of non-spot shrimp is not permitted deeper than 150 feet in Region 2E. Region 2E is comprised of Catch Areas 24A, 24B, 24C, 24D, and 26AE (26A northerly of a line drawn from the southern tip of Possession Point on

Whidbey Island 110° true to the shipwreck on the opposite shore).

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

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

(3) Shrimp Spot Pot Harvest Restrictions:

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

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

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

(d) It is lawful to commercially harvest spot shrimp until 11:59 p.m. July 14, 2020, except between the hours of 12:00 a.m. to 11:59 p.m. on Wednesday, May 28th, 2020 or between the hours of 12:00 a.m. to 11:59 p.m. on Monday, June 1st.

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

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

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

(4) Shrimp trawl gear:

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

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

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

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

Reviser's note: The 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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-52000M Puget Sound shrimp pot and trawl fishery—Season. (20-77)

WSR 20-12-025
RECISSION OF EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 27, 2020, 11:12 a.m.]

The Washington state liquor and cannabis board rescinds its emergency rule filed on February 5, 2020, as WSR 20-05-002, concerning marijuana processor license privileges, requirements and fees described in WAC 314-55-077(13).

Jane Rushford
Chair

WSR 20-12-028
RECISSION OF EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 27, 2020, 11:30 a.m.]

The Washington state liquor and cannabis board rescinds its emergency rule filed on February 5, 2020, as WSR 20-05-003, concerning marijuana retailer license privileges, requirements and fees described in WAC 314-55-079(14).

Jane Rushford
Chair

WSR 20-12-029
RECISSION OF EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 27, 2020, 11:32 a.m.]

The Washington state liquor and cannabis board rescinds its emergency rule filed on February 5, 2020, as WSR 20-05-004, concerning marijuana ingredient disclosure described in WAC 314-55-1055.

Jane Rushford
Chair

WSR 20-12-030

RECISSION OF EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 27, 2020, 11:34 a.m.]

The Washington state liquor and cannabis board rescinds its emergency rule filed on February 5, 2020, as WSR 20-05-001, concerning summary license suspension and petition for stay provisions concerning vapor products described in WAC 314-35-090 and 314-35-095.

Jane Rushford
Chair

WSR 20-12-035
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 27, 2020, 11:55 a.m., effective May 27, 2020, 11:55 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 create 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 online service.

Citation of Rules Affected by this Order: New 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: 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, and March 19, 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 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 the 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 the 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.

This emergency rules 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 adoption of rule that prohibits the use of vitamin E acetate and preserves of [the] public health, safety and general welfare 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 27, 2020.

Jane Rushford
Chair

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 multistate outbreak of lung disease associated with the use of vapor products, the Centers for Disease Control (CDC) conducted laboratory tests of twenty-nine samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. All of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. The CDC did not determine that vitamin E acetate was present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples.

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

(2) No person including, but not limited to, a person licensed under chapter 69.50 RCW, may sell, offer for sale,

or possess with intent to sell, or offer for sale, vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell, or offer for sale, vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

WSR 20-12-036
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 27, 2020, 11:58 a.m., effective May 27, 2020, 11:58 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 allows 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.

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: 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, and March 19, 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 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 the 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 the 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.

This emergency rule allows the board to take disciplinary action against any licensed marijuana processor that fails to comply with the provisions of WAC 314-55-1065 prohibiting the use of vitamin E acetate.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate adoption of rule that establishes provisions for both the enforcement of WAC 314-55-1065, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of a rule establishing provisions for the enforcement of WAC 314-55-1065 that prohibits 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 27, 2020.

Jane Rushford
Chair

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.

WSR 20-12-037

EMERGENCY RULES

LIQUOR AND CANNABIS

BOARD

[Filed May 27, 2020, 12:00 p.m., effective May 27, 2020, 12:00 p.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 allows 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.

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: 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, and March 19, 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 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 the 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 the 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.

This emergency rule allows the board to take disciplinary action against any licensed marijuana retailer that fails to comply with the provisions of WAC 314-55-1065 prohibiting the use of vitamin E acetate.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate adoption of rule that establishes provisions for both the enforcement of WAC 314-55-1065, and preservation of public health, safety and general welfare is necessary. Therefore, the immediate adoption of a rule establishing provisions for the enforcement of WAC 314-55-1065 that prohibits 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 27, 2020.

Jane Rushford
Chair

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.

closure, 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).

Citation of Rules Affected by this Order: New 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: 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, and March 19, 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

WSR 20-12-039

EMERGENCY RULES

LIQUOR AND CANNABIS

BOARD

[Filed May 27, 2020, 12:05 p.m., effective May 27, 2020, 12:05 p.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 create WAC 314-55-1055 Ingredient dis-

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

- During the 2020 legislative session, the governor submitted [a] request legislation (SB 6254) aimed at increasing regulation of vapor products in Washington. The bill included a ban of vitamin E acetate, however the legislature failed to pass SB 6254. Due to the clear association of vitamin E acetate with EVALI and absent legislative action to ban vitamin E acetate the 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 the 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.

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

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

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

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

Date Adopted: May 27, 2020.

Jane Rushford
Chair

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.

WSR 20-12-048

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed May 28, 2020, 2:04 p.m., effective June 16, 2020]

Effective Date of Rule: June 16, 2020.

Purpose: This rule is needed [to] open sockeye salmon and steelhead seasons in the Columbia River from Megler Astoria Bridge to the Highway 395 Bridge at Pasco, and from the Interstate 182 Bridge to Priest Rapids Dam. This rule will also allow fishing from a vessel from Beacon Rock to the Hamilton Island boat ramp, a section that was previously

restricted to bank fishing via emergency rule to protect spring Chinook.

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

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

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

Reasons for this Finding: This rule is needed to open recreational salmon fishing opportunities in the Columbia River.

Washington closed fisheries statewide beginning March 25 to help combat the spread of COVID-19 in the state. This rule is pursuant to the Governor's Proclamation amendment 20-25.2, issued April 27, 2020, indicating that recreational activities including fishing may resume, when and where permitted beginning May 5, 2020.

The governor's proclamation amendment also includes requirements to exclude gatherings with people who are not members of the same household and maintain social distancing for the continued protection of public health and safety. These fishery openings considered that requirement as a basis for the decision to reopen fisheries, but do not incorporate those social distance elements within the regulations themselves. While not imposed in Washington department of fish and wildlife's (WDFW) fishery rules, they are and remain, a requirement of the governor's proclamation. Failure to abide by those social distance requirements could result in increased health risks requiring future fishery closures.

Sockeye retention will be allowed, while Chinook seasons that are typically open will be closed and steelhead limits are reduced. Sockeye runs are projected to be higher than in recent years, while steelhead and summer Chinook runs are projected to be lower than in recent years.

These rules are consistent with agreements made during the 2020 North of Falcon season setting process. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 28, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000L Freshwater exceptions to statewide rules—Columbia Effective June 16 through July 31, 2020, provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons are modified as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended.

(1) From Megler Astoria Bridge to Hwy. 395 Bridge at Pasco:

Salmon and steelhead: Effective June 16 through July 31, 2020: Daily limit is 2, up to 2 salmon or 1 salmon and 1 steelhead may be retained. Release all salmon other than sockeye.

(2) From the Interstate 182 Bridge to Priest Rapids Dam

Salmon and steelhead: Effective June 16 through July 31, 2020: Daily limit is 2 salmon. Release all salmon and steelhead other than sockeye.

REPEALER

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

WAC 220-312-06000K Freshwater exceptions to statewide rules—Columbia (20-79)

WSR 20-12-058 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 20-93—Filed May 29, 2020, 1:59 p.m., effective June 1, 2020]

Effective Date of Rule: June 1, 2020.

Purpose: This rule is needed to close Drano Lake and Wind River salmon and steelhead seasons June 1, 2020, until further notice or until this rule expires on September 25, 2020, pursuant to RCW 34.05.350.

This rule also carries forward existing emergency rules that amend salmon rules for Cispus River, Cowlitz Falls Reservoir, Cowlitz River, Kalama River, Klickitat River, and Lewis River, until further notice or until their expiration as listed within the rule pursuant to RCW 34.05.350.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000J; and amending WAC 220-312-030.

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 recreational salmon and steelhead angling in the Wind River and Drano Lake. Returns of upriver spring Chinook to several hatchery facilities in the Columbia and Snake River

basins are currently projected to fall below levels needed to meet broodstock collection goals. These facilities can utilize spring Chinook stocks collected at Little White Salmon and Carson National Fish Hatcheries for brood. Closing the Wind River and Drano Lake fisheries will provide additional fish for these hatchery facilities and help ensure future hatchery returns and fishing opportunities. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 29, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000K Freshwater exceptions to statewide rules—Southwest. Effective June 1, 2020 and until further notice or until this rule expires on September 25, 2020 the provisions of WAC 220-312-030 regarding salmon and steelhead seasons for Cispus River, Cowlitz Falls Reservoir, Cowlitz River, Drano Lake, Kalama River, Klickitat River, Lewis River and Wind River shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended:

1) **Cispus River (Lewis Co.):** effective immediately until further notice or until this expires on June 20, 2020: Chinook salmon: closed.

2) **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** effective immediately until further notice or until this expires on June 20, 2020:

Chinook salmon: closed.

3) **Cowlitz River (Cowlitz Co.):** effective immediately until further notice or until this expires on June 20, 2020: Chinook salmon: closed.

4) **Drano Lake (Skamania Co.):** In the waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Highway 14 bridge, effective June 1 until further notice or until this expires on September 25, 2020:

Salmon and steelhead: closed.

5) **Kalama River (Cowlitz Co.):** From the mouth upstream to 1000 feet below the fishway at the upper salmon hatchery, effective immediately until further notice or until this expires on June 20, 2020:

Salmon: Daily limit 6; up to 1 may be an adult. Release all salmon other than hatchery Chinook and hatchery coho.

6) **Klickitat River (Klickitat Co.):**

(a) From the mouth (Burlington Northern Railroad bridge) to Fisher Hill Bridge:

Salmon and steelhead; effective immediately until further notice or until this rule expires July 8, 2020:

Salmon: Daily limit 6, up to 1 adult may be retained. Release wild Chinook.

(b) From 400 feet upstream of #5 fishway to boundary markers below Klickitat Salmon Hatchery, until further notice or until this rule expires July 8, 2020:

Salmon: Daily limit 6; no more than 1 adult may be retained: Release wild Chinook.

7) **Lewis River (Clark/Cowlitz Co.):** effective immediately until further notice or until this expires on June 20, 2020:

Salmon: closed.

8) **Wind River (Skamania Co.):** From the mouth to 800 yards downstream of Carson National Fish Hatchery, effective June 1 until further notice or until this expires on September 25, 2020:

Salmon and steelhead: closed.

REPEALER

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

WAC 220-312-03000J Southwest—Freshwater exceptions to statewide rules. (20-44)

WSR 20-12-069

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-91—Filed June 1, 2020, 11:20 a.m., effective June 1, 2020, 11:20 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington department of fish and wildlife (WDFW) is reopening its lands to overnight camping in Washington counties that have been approved to move to Phase 2 of the Governor's Safe Start plan where camping is otherwise allowed (e.g., campgrounds, water access areas, and dispersed camping on wildlife areas). Individuals staying overnight on WDFW lands must comply with the social distancing and public safety precautions described in the Safe Start plan.

All lands within counties that remain in Phase 1 shall remain closed to camping to comply with the governor's order to "Stay Home, Stay Healthy," and the Governor's Safe Start plan.

Citation of Rules Affected by this Order: Repealing WAC 220-500-10000A; and amending WAC 220-500-100.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, and 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: Under the Governor's Safe Start plan, counties with an average of less than ten new COVID-19 cases per one hundred thousand residents over a fourteen day period are eligible to apply for a variance to move to Phase 2. The application process requires support from the local health officer, the local board of health, local hospitals, and the county commission or council. Each county must demonstrate that they have adequate local hospital bed capacity as well as adequate personal protection equipment supplies to keep health care workers safe and must submit a plan describing how they intend to comply with the provisions of the Safe Start plan. As of this date, there are twenty-four counties that have been approved to move to Phase 2 and an additional three counties that are eligible to apply.

Additionally, WDFW does not allow camping on its lands in western Washington; therefore, even if westside counties are in Phase 2, camping on WDFW lands would still be prohibited in those areas.

WDFW lands in those counties that remain in Phase 1 in central and eastern Washington where camping on WDFW lands is typically allowed shall remain closed to camping until further notice or the previous emergency rule (WSR 20-08-043) expires on July 23, 2020.

Individuals and families from the same household who use WDFW lands for camping must comply with the Governor's Safe Start plan for Phase 2, such as limiting travel distance, and practicing social distancing and self-sanitation measures. Individuals and families are also required to comply with any county COVID-19 requirements, which may include mandatory face coverings when recreating outdoors.

WDFW will continue to reassess the camping restrictions as additional counties are approved to move to Phase 2 of the Governor's Safe Start plan.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 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: June 1, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-500-10000B Camping. Effective June 1, 2020, and until further notice, or until this expires on July 23, 2020, the provisions of WAC 220-500-100 shall be as described below for lands in the following counties: Benton, Chelan, Clark, Douglas, Franklin, Klickitat, Okanogan, and Yakima. All other provisions of WAC 220-500-100 not addressed herein, or unless otherwise amended, remain in effect:

(1) It is unlawful to establish or occupy a camp on department lands.

(2) It is unlawful to establish or occupy a residence camp on department lands. For purposes of this section, a residence camp is an encampment, occupancy, or presence on department lands that is the principal place of residence for the person or occupant.

(3) A residence camp on department lands is declared to be a public nuisance and may be abated by the department after ten days of notice by the department.

REPEALER

The following sections of the Washington Administrative Code are repealed, effective June 1, 2020:

WAC 220-500-10000A Camping. (20-50)

WSR 20-12-070

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-95—Filed June 1, 2020, 12:11 p.m., effective June 1, 2020, 12:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The Washington department of fish and wildlife (WDFW) is repealing the suspension of the sale and issuance of nonresident recreational fishing licenses, which went into effect on April 27, 2020, at 5:00 p.m.

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

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

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: WDFW is repealing the suspension of the sale and issuance of nonresident recreational fishing licenses with the expiration of the Governor's "Stay Home, Stay Healthy" order. With the governor's additional guidance for responsible outdoor recreation, WDFW believes that fishing opportunities to nonresident anglers can safely be offered.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 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: June 1, 2020.

Kelly Susewind
Director

REPEALER

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

WAC 220-220-00100A General recreational license rules.
(20-62)

WSR 20-12-075

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed June 1, 2020, 2:51 p.m., effective June 1, 2020, 2:51 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-335-510 Definitions—Home health, the department of health (department) is adopting an emergency rule to amend WAC 246-335-510(3) to include physician assistants in the list of practitioners authorized to order home health services and to sign plans of care to match federal and state regulation changes due to the coronavirus disease (COVID-19) pandemic.

This change authorizing physician assistants to certify the need for home health services was enacted by the 116th U.S. Congress in Section 3708 of H.R. 748 "Coronavirus Aid, Relief and Economic Security (CARES) Act." The CARES Act requires that this become a permanent federal regulation change effective no later than six months after the signing of the CARES Act.

Citation of Rules Affected by this Order: Amending WAC 246-335-510.

Statutory Authority for Adoption: RCW 70.127.120.

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

Reasons for this Finding: The immediate amendment of this rule is necessary for the preservation of public health, safety, and general welfare. By taking this immediate measure, the department aligns with other state and federal actions that assist facilities to meet the needs of more patients on a more expedient timeline. Expanding the types of authorizing practitioners to include physician assistants will allow facilities to more quickly discharge appropriate stable patients by ordering home health services, rather than have a delayed stay in a hospital or other facility during the current public health emergency created by the COVID-19 pandemic.

Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the federal guidelines.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: June 1, 2020.

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

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-510 Definitions—Home health. The definitions in the section apply throughout WAC 246-335-505 through 246-335-560 unless the context clearly indicates otherwise:

(1) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, a respiratory therapist licensed under chapter 18.89 RCW, an occupational therapist licensed under chapter 18.59 RCW, a speech therapist licensed under chapter 18.35 RCW, a dietitian or nutritionist as defined in subsection (5) of this section, or social worker licensed under chapter 18.320 RCW to assess health status and progress.

(2) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's needs.

(3) "Authorizing practitioner" means the individual practitioners licensed in Washington state, or another state

according to the exemption criteria established in chapters 18.57, 18.71, and 18.79 RCW, and authorized to approve a home health plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW;

(b) A podiatric physician and surgeon licensed under chapter 18.22 RCW; ~~((e))~~

(c) A physician assistant licensed under chapter 18.71A or 18.57A RCW; or

(d) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW.

(4) "Cardiopulmonary resuscitation" or "CPR" means a procedure to support and maintain breathing and circulation for a person who has stopped breathing (respiratory arrest) or whose heart has stopped (cardiac arrest).

(5) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

(6) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health aide" means an individual who is a nursing assistant certified or nursing assistant registered under chapter 18.88A RCW.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(11) "Home medical supplies or equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(12) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

(13) "Licensed nurse" means a licensed practical nurse or registered nurse under chapter 18.79 RCW.

(14) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. Maintenance care consists of periodic monitoring by a licensed nurse, therapist, dietician or nutritionist, or social worker to assess a patient's health status and progress.

(15) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide home health services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW and 246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

(16) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

(17) "Patient" means an individual receiving home health services.

(18) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietician or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

(19) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(20) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

(21) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

(22) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. "Telemedicine" does

not include the use of audio-only telephone, facsimile, or electronic mail.

(23) "Therapist" means an individual who is:

(a) A physical therapist licensed under chapter 18.74 RCW;

(b) A respiratory therapist licensed under chapter 18.89 RCW;

(c) An occupational therapist licensed under chapter 18.59 RCW;

(d) A speech therapist licensed under chapter 18.35 RCW; or

(e) A massage therapist licensed under chapter 18.108 RCW.

(24) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

WSR 20-12-077

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed June 1, 2020, 3:54 p.m., effective June 1, 2020, 3:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-72-020, medical marijuana consultant certification requirements, current rules require an applicant to obtain a cardiopulmonary resuscitation (CPR) card from a course that includes both written examination and skills demonstration in order to receive or renew their certification. The department of health (department) is amending this rule to temporarily suspend the skills demonstration portion of the CPR requirement. This emergency rule allow[s] an applicant to move forward in the application process without the need to obtain CPR training from an in-person training course and allow them to continue with licensure and serving the cannabis patient community.

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

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 medical marijuana consultant certification (MMCC). Under the coronavirus disease (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 shop 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, both new and renewing applicants will be able to continue with certification and providing 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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 1, 2020.

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

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.

WSR 20-12-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-96—Filed June 1, 2020, 4:08 p.m., effective June 1, 2020, 4:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Washington department of fish and wildlife (WDFW) is reopening its lands to overnight camping in Washington counties that have been approved to move to Phase 2 of the Governor's Safe Start plan where camping is otherwise allowed (e.g., campgrounds, water access areas, and dispersed camping on wildlife areas), including Klickitat County. Individuals staying overnight on WDFW lands must comply with the social distancing and public safety precautions described in the Safe Start plan.

All lands within counties that remain in Phase 1 shall remain closed to camping to comply with the governor's order to "Stay Home, Stay Healthy," and the Governor's Safe Start plan.

Citation of Rules Affected by this Order: Repealing WAC 220-500-10000B; and amending WAC 220-500-100.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, and 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: Under the Governor's Safe Start plan, counties with an average of less than ten new COVID-19 cases per one hundred thousand residents over a fourteen day period are eligible to apply for a variance to move to Phase 2. The application process requires support from the local health officer, the local board of health, local hospitals, and the county commission or council. Each county must demonstrate that they have adequate local hospital bed capacity as well as adequate personal protection equipment supplies to keep health care workers safe and must submit a plan describing how they intend to comply with the provisions of the Safe Start plan.

Additionally, WDFW does not allow camping on its lands in western Washington; therefore, even if westside counties are in Phase 2, camping on WDFW lands would still be prohibited in those areas.

WDFW lands in those counties that remain in Phase 1 in central and eastern Washington where camping on WDFW lands is typically allowed shall remain closed to camping until further notice or the previous emergency rule (WSR 20-08-043) expires on July 23, 2020.

Individuals and families from the same household who use WDFW lands for camping must comply with the Governor's Safe Start plan for Phase 2, such as limiting travel distance, and practicing social distancing and self-sanitation measures. Individuals and families are also required to comply with any county COVID-19 requirements, which may include mandatory face coverings when recreating outdoors.

WDFW will continue to reassess the camping restrictions as additional counties are approved to move to Phase 2 of the Governor's Safe Start plan.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 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: June 1, 2020.

Kelly Susewind
 Director

NEW SECTION

WAC 220-500-10000C Camping. Effective immediately, and until further notice or until this expires on July 23, 2020, the provisions of WAC 220-500-100 shall be as described below for lands in the following counties: Benton, Chelan, Clark, Douglas, Franklin, Okanogan, and Yakima. All other provisions of WAC 220-500-100 not addressed herein, or unless otherwise amended, remain in effect:

(1) It is unlawful to establish or occupy a camp on department lands.

(2) It is unlawful to establish or occupy a residence camp on department lands. For purposes of this section, a residence camp is an encampment, occupancy, or presence on department lands that is the principal place of residence for the person or occupant.

(3) A residence camp on department lands is declared to be a public nuisance and may be abated by the department after ten days of notice by the department.

REPEALER

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

WAC 220-500-10000B Camping. (20-91)

WSR 20-12-081
EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed June 2, 2020, 7:58 a.m., effective June 2, 2020, 7:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To expand the reasons for which an employee may use accrued sick leave due to the novel coronavirus disease 2019 (COVID-19); to allow an employee to request a statement of necessity to preserve leave acquired over two hundred forty hours between February 29, 2020, and the filing of the statement of necessity until the expiration of Proclamation 20-05 or any amendment thereto; housekeeping changes to WAC 357-31-345, 357-31-346, 357-31-347 and WAC 357-46-055 to state when leave without pay is taken due to COVID-19 a general government employee's anniversary date, unbroken service date, periodic increment date (PID) and seniority date is not adjusted and a higher education employee's PID and seniority date is not adjusted (these WACs were amended on an emergency basis on March 11, 2020, to reference WAC 357-31-327. The emergency amendment to WAC 357-31-327 was rescinded on March 25, 2020, and the references to these WAC were not removed from these WAC at that time); to allow an employee to request shared leave as a result of COVID-19; and to allow an employer to request written verification to support an employee's request to receive shared leave for COVID-19 reasons.

Citation of Rules Affected by this Order: Amending WAC 357-31-130, 357-31-215, 357-31-345, 357-31-346, 357-31-347, 357-31-390, 357-31-405, and 357-46-055.

Statutory Authority for Adoption: Chapter 41.06 RCW.

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: To align Title 357 WAC with Governor Inslee's issued Proclamation 20-05 that declares a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor further declared that state agencies and departments are directed to use state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the outbreak. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impacts the life and health of our people, as well as the economy of Washington state, and is a public disaster that affects life, health, property or the public peace.

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 8, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: June 2, 2020.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-130 When may an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(d) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(f) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(h) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76-.020. An employer may require the request for leave under

this section be supported by verification in accordance with WAC 357-31-730.

(i) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(j) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to eighteen weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement;

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255; ~~((or))~~

(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1)(i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or

(d) When a child is a family member of an employee or member of an employee's household and the child's school or place of care has been closed while proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, is in effect.

AMENDATORY SECTION (Amending WSR 17-18-028, filed 8/28/17, effective 10/2/17)

WAC 357-31-215 When may vacation leave be accumulated above the maximum two hundred forty hours? There are two circumstances in which vacation leave may be accumulated above the maximum of two hundred forty hours.

(1) If an employee's request for vacation leave is denied by the employer, and the employee is close to the maximum vacation leave (two hundred forty hours), the employer must grant an extension for each month that the employer defers the employee's request for vacation leave. The employer must maintain a statement of necessity justifying the extension.

(2) As an alternative to subsection (1) of this section, employees may also accumulate vacation leave in excess of two hundred forty hours as follows:

(a) An employee may accumulate the vacation leave hours between the time the two hundred forty hours is accrued and his/her next anniversary date of state employment.

(b) Leave accumulated above two hundred forty hours must be used by the next anniversary date and in accordance

with the employer's leave policy. If such leave is not used before the employee's anniversary date, the excess leave is automatically lost and considered to have never existed.

(c) A statement of necessity, as described in subsection (1) of this section, can only defer leave that the employee has not accrued as of the date of the statement of necessity. Any accrued leave in excess of two hundred forty hours as of the date of the statement of necessity cannot be deferred regardless of circumstances except in accordance with subsection (3) of this section. For example:

On June 15th, an employee is assigned to work on a special project. It is expected that the assignment will last six months. Due to an ambitious timeline and strict deadlines, the employee will not be able to take any vacation leave during that time.

- On June 15th, the employee's vacation leave balance is two hundred sixty hours.

- The employee accrues ten hours monthly.

- The employee's anniversary date is October 16th.

Because the employee will not be able to use leave from June 15th through December 15th the employee files a statement of necessity asking to defer the leave accrued during this time. This deferred leave will not be lost as long as the employee uses the deferred hours by their next anniversary date (October 16th of the following year).

The twenty hours of excess vacation leave the employee had on June 15th are not covered by the statement of necessity.

(3) Beginning February 29, 2020, a statement of necessity, as described in subsection (1) of this section, may be used to preserve leave acquired over two hundred forty hours between February 29, 2020, and the filing of the statement of necessity. This is effective until the expiration of proclamation 20-43, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.

AMENDATORY SECTION (Amending WSR 09-11-068, filed 5/14/09, effective 6/16/09)

WAC 357-31-345 How does leave without pay affect a general government employee's anniversary date, unbroken service date, periodic increment date, and seniority date? (1) For a general government employee, the anniversary date, unbroken service date, and periodic increment date is adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

(a) Military leave of absence without pay as provided in WAC 357-31-370;

(b) Compensable work-related injury or illness leave;

(c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; ~~((and/or))~~

(e) Voluntarily reducing the effect of an employer's lay-off; and/or

(f) Novel coronavirus disease 2019 (COVID-19).

(2) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not

due to one of the reasons listed above, the employee's anniversary date, unbroken service date and periodic increment date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(3) For a general government employee the seniority date is adjusted for leave without pay in accordance with WAC 357-46-055.

AMENDATORY SECTION (Amending WSR 16-11-055, filed 5/13/16, effective 6/20/16)

WAC 357-31-346 Does leave without pay affect a higher education employee's periodic increment date?

For a higher education employee, the periodic increment date will be moved forward by one month when any period of leave without pay which exceeds ten working days in a month except when the leave without pay is taken for:

- (1) Military leave of absence without pay as provided in WAC 357-31-370;
- (2) Compensable work-related injury or illness leave; ~~((and/or))~~
- (3) Scheduled periods of leave without pay for cyclic appointments in accordance with WAC 357-19-295; ~~and/or~~
- (4) Novel coronavirus disease 2019 (COVID-19).

AMENDATORY SECTION (Amending WSR 05-12-081, filed 5/27/05, effective 7/1/05)

WAC 357-31-347 Does leave without pay affect a higher education employee's seniority date? (1) In accordance with WAC 357-46-053, each higher education employer's layoff procedure defines how seniority is determined including any adjustments made for periods of leave without pay. As provided by WAC 357-19-297, scheduled cyclic leave without pay for an employee in cyclic year positions does not affect the employee's seniority date; ~~or~~

(2) When leave without pay is taken due to the novel coronavirus 2019 (COVID-19) the seniority date will not be adjusted for the period of leave without pay.

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

- (1) The employee:
 - (a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment or physical or mental condition which is of an extraordinary or severe nature;
 - (b) Has been called to service in the uniformed services;
 - (c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a non-profit organization engaged in humanitarian relief in the dev-

astated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(d) Is a victim of domestic violence, sexual assault or stalking as defined in RCW 41.04.655;

(e) Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability;

(f) Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;

(g) Needs the time for parental leave as defined in WAC 357-31-395(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability as defined in WAC 357-31-395(4).

(2) The condition(s) listed in subsection (1)(a) through (d) of this section is likely to cause, the employee to go on leave without pay status or terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete leave in accordance with WAC 357-31-435. ~~((If the employee qualifies under subsection (1)(g) or (h) of this section the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC 357-31-435.))~~

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) ~~((If the illness or injury is work related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a))~~ (a) Until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring a state of emergency in the state of Washington, or any amendment thereto, whichever is later, an employer may permit an employee to receive shared leave as a result of the 2019 novel coronavirus (COVID-19). An employer should consider whether one of the following circumstances exists in determining whether to grant shared leave under this subsection:

(i) The employee tests positive for COVID-19 or has symptoms of COVID-19 and is seeking a medical diagnosis;

(ii) The employee, or a relative or household member, is isolated or quarantined as recommended, requested or ordered by a public health official or health care provider as a result of suspected or confirmed infection with or exposure to COVID-19;

(iii) The employee is considered under the criteria set by the Centers for Disease Control and Prevention (CDC) to be at increased risk of severe illness and death due to COVID-19;

(iv) The employee cannot work due to the closure of their child's school and/or the unavailability of a child care provider due to COVID-19; or

(v) The employee is not sick but has been advised by a health care provider not to be in the workplace due to risk of COVID-19 but does not fall into the CDC high risk categories.

(b) An employer may permit use of shared leave under this subsection without considering the other requirements of this section.

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit? An employee may be required to submit the following documentation before the employer approves or disapproves the employee's request for shared leave:

(1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition.

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required.

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a non-profit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault or stalking: An advocate for victims of domestic violence, sexual assault or stalking; an attorney; a member of the clergy; or a medical or other professional.

(5) Employees seeking shared leave under WAC 357-31-390 (1)(e) or (f), the employee must provide documentation in accordance with WAC 357-31-805.

(6) Employees seeking shared leave under WAC 357-31-390 (1)(g), the employer may require verification of the birth or adoption of the child or proof of a current foster parent license or a court document for foster care or placement.

(7) Employees seeking shared leave under WAC 357-31-390 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner verifying that the employee has a pregnancy disability.

(8) For employees seeking shared leave under WAC 357-31-390(6), the employer may require written verification submitted electronically, confirming the circumstances of isolation or quarantine, that the employee is high risk, that no other suitable person is available to provide child care, or other circumstances listed in WAC 357-31-390 (6)(a)(i) through (v). This may include a signed affidavit from the employee, or any other information requested by the employer.

AMENDATORY SECTION (Amending WSR 14-06-007, filed 2/20/14, effective 3/24/14)

WAC 357-46-055 How is a general government employee's seniority date determined? (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;

(b) Compensable work-related injury or illness leave;

(c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; ~~((and/or))~~

(e) Reducing the effects of layoff; and/or

(f) Novel coronavirus disease 2019 (COVID-19).

(g) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(2) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;

(b) Compensable work-related injury or illness leave;

(c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; ~~((and/or))~~

(e) Reducing the effects of layoff; and/or

(f) Novel coronavirus disease 2019 (COVID-19).

WSR 20-12-082
RECISSION OF EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed June 2, 2020, 7:58 a.m.]

The office of financial management (OFM) requests to rescind three emergency rules filed on OTS 2120.1 and one emergency rule filed on OTS 2118.1, WSR 20-07-051 on March 11, 2020. The purpose of OFM's request to rescind WAC 357-31-345, 357-31-346, 357-31-347, and 357-46-055 is as follows:

WAC 357-31-345 How does leave without pay affect a general government employee's anniversary date, unbroken service date, periodic increment date, and seniority date? This emergency rule was written to state a general government employee's anniversary date, unbroken service date, periodic increment date and seniority date is not adjusted for any leave without pay which exceeds fifteen consecutive calendar days when the leave is taken for novel coronavirus disease 2019 (COVID-19) in accordance with WAC 357-31-327. The emergency amendment to WAC 357-31-327 was rescinded on March 25, 2020, therefore the reference to "in accordance with WAC 357-31-327" should have been also removed from WAC 357-31-345. A new emergency rule will be filed to amend WAC 357-31-345 to remove the reference to WAC 357-31-327.

WAC 357-31-346 Does leave without pay affect a higher education employee's periodic increment? This emergency rule was written to state a higher education employee's periodic increment date will not be moved forward by one month when the leave without pay exceeds ten working days in a month when the leave without pay is taken for novel coronavirus disease 2019 (COVID-19) in accordance with WAC 357-31-327. The emergency amendment to WAC 357-31-327 was rescinded on March 25, 2020, therefore the reference to "in accordance with WAC 357-31-327" should have been also removed from WAC 357-31-346. A new emergency rule will be filed to amend WAC 357-31-346 to remove the reference to WAC 357-31-327.

WAC 357-31-347 Does leave without pay affect a higher education employee's seniority date? This emergency rule was written to state a higher education employee's seniority date will not be adjusted when leave without pay is taken due to the novel coronavirus 2019 (COVID-19) in accordance with WAC 357-31-327. The emergency amendment to WAC 357-31-327 was rescinded on March 25, 2020, therefore the reference to "in accordance with WAC 357-31-327" should have been also removed from WAC 357-31-345. A new emergency rule will be filed to amend WAC 357-31-347 to remove the reference to WAC 357-31-327.

WAC 357-46-055 How is a general government employee's seniority date determined? This emergency rule was written to state a general government seniority date is not adjusted for leave without pay when the leave is taken for novel coronavirus disease 2019 (COVID-19) in accordance with WAC 357-31-327. The emergency amendment to WAC 357-31-327 was rescinded on March 25, 2020, therefore the reference to "in accordance with WAC 357-31-327" should have been also removed from WAC 357-46-055. A

new emergency rule will be filed to amend WAC 357-46-055 to remove the reference to WAC 357-31-327.

Should you have any questions regarding this matter, please contact Brandy Chinn 360-407-4141.

Roselyn Marcus
 Assistant Director of Legal
 and Legislative Affairs

WSR 20-12-099
RECISSION OF EMERGENCY RULES
HORSE RACING COMMISSION

[Filed June 3, 2020, 8:17 a.m.]

The Washington horse racing commission would like to rescind the Rule making order Emergency rule only (CR-103E), WSR 20-08-029, filed on March 23, 2020.

Contact Douglas L. Moore if you have any questions.

WSR 20-12-100
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-78—Filed June 3, 2020, 8:41 a.m., effective June 15, 2020]

Effective Date of Rule: June 15, 2020.

Purpose: This rule is needed to open a harvest fishery for white sturgeon in Lake Roosevelt.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000A; 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: This rule is necessary to open a harvest fishery for white sturgeon in Lake Roosevelt. Fishery managers in Washington state and British Columbia began sturgeon hatchery programs in the early 2000s in response to a decades-long decline in the white sturgeon population in Lake Roosevelt. Survival rates for those hatchery-produced juvenile sturgeon were much higher than was anticipated. As a result, there is a surplus of these fish available for harvest from Lake Roosevelt. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: June 3, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000A Freshwater exceptions to statewide rules—Eastside. Effective June 15 through September 30, 2020, the following provisions of WAC 220-312-050 regarding recreational sturgeon seasons and harvest rules shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended, remain in effect:

1. Effective June 15 through September 30, 2020, it is permissible to fish for sturgeon in waters of Lake Roosevelt from Grand Coulee Dam upstream to the China Bend Boat Ramp (including the Spokane River from Highway 25 Bridge upstream to 400' below Little Falls Dam, Colville River upstream to Meyers Falls and the Kettle River upstream to Barstow Bridge):

(a) Daily limit: 1 sturgeon; minimum fork length 50 inches, maximum fork length 63 inches. Annual limit 2 sturgeon. Anglers may continue catch and release fishing for sturgeon after the daily limit is retained only if the annual limit has not been retained.

(b) It is unlawful to fish for sturgeon after the annual limit has been retained.

(c) Anglers may fish for sturgeon with two poles with the purchase of a Two-pole endorsement.

(d) Night closure is in effect for sturgeon.

(e) All other statewide rules for white sturgeon apply.

2. Effective September 1 through September 30, 2020, it is permissible to fish for sturgeon in waters of Lake Roosevelt from the China Bend Boat Ramp upstream to the Canadian Border:

(a) Daily limit: 1 sturgeon; minimum fork length 50 inches, maximum fork length 63 inches. Annual limit 2 sturgeon. Anglers may continue catch and release fishing for sturgeon after the daily limit is retained only if the annual limit has not been retained.

(b) It is unlawful to fish for sturgeon after the annual limit has been retained.

(c) Anglers may fish for sturgeon with two poles with the purchase of a Two-pole endorsement.

(d) Night closure is in effect for sturgeon.

(e) All other statewide rules for white sturgeon apply.

REPEALER

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

WAC 220-312-05000A Freshwater exceptions to statewide rules—Puget Sound.

WSR 20-12-101
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-94—Filed June 3, 2020, 8:49 a.m., effective June 8, 2020]

Effective Date of Rule: June 8, 2020.

Purpose: To reopen recreational clam, mussel, and oyster fisheries in Marine Areas 5-13 effective June 8, 2020, which were previously closed due to the COVID-19 situation and to comply with Governor Inslee's statewide proclamation to "Stay Home, Stay Healthy." Reopening these recreational fisheries is consistent with the Governor's Proclamation amendment 20-25.2 for the partial reopening of outdoor recreational activities.

Public beaches listed in this rule will amend or extend seasons because clam, mussel, and oyster harvest was closed during usual seasons.

This rule returns Puget Sound (Marine Areas 5 through 13) clam, mussel, and oyster fisheries to permanent rules, unless otherwise amended. All recreational fish and shellfish fisheries in Marine Area 4 will remain closed until the expiration of this emergency rule or until further notice.

Citation of Rules Affected by this Order: Repealing WAC 220-330-01000I; and amending WAC 220-330-010, 220-330-110, and 220-330-140.

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 reopen Puget Sound recreational clam, mussel, and oyster harvesting opportunities in Marine Areas 5 through 13, effective June 8, 2020, pursuant to the Governor's Proclamation amendment 20-25.2, issued April 27, 2020, indicating that recreational activities including fishing may resume, when and where permitted. In addition, these openings have been coordinated with local and state health officials.

Due to the COVID-19 related closure of all clam, mussel, and oyster harvest from March 26 through June 8, 2020, the public beaches listed in this rule have amended or extended seasons because clams, mussels, and oysters were not harvested during their normal seasons. Sufficient amounts of clams, mussels, and oysters remain available for harvest in these areas to allow for the seasons listed.

The governor's proclamation amendment also includes requirements to exclude gatherings with people who are not members of the same household and maintain social distancing for the continued protection of public health and safety. The fishery openings considered that requirement as a basis for the decision to reopen fisheries, but do not incorporate

those social distance elements within the regulations themselves. While not imposed in Washington department of fish and wildlife's fishery rules, they are and remain, a requirement of the governor's proclamation. Failure to abide by those social distance requirements could result in increased health risks requiring future fishery closures.

All recreational fish and shellfish fisheries in Marine Area 4 remain closed until further notice, or until the rule expires on July 23, 2020, due to concerns of local and state health authorities.

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 3, 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: June 3, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-01000J Shellfish—Daily limits. Effective June 8, 2020 and until further notice, or until this expires on July 23, 2020 the following provisions of WAC 220-330-010, WAC 220-330-040, WAC 220-330-070, 220-330-090, 220-330-110, 220-330-140, and WAC 220-330-180, regarding all shellfish seasons in Marine Area 4 shall be as described below. All other provisions of WAC 220-330-010, WAC 220-330-040, WAC 220-330-070, 220-330-090, 220-330-110, 220-330-140, and WAC 220-330-180 not addressed herein, or unless otherwise amended, remain in effect:

It is unlawful to harvest or attempt to harvest shellfish in Marine Area 4.

NEW SECTION

WAC 220-330-11000J Clams other than razor clams, mussels—Areas and seasons. Notwithstanding the provisions of WAC 220-330-110, effective June 8, 2020, the following provisions of WAC 220-330-110 shall be as described below until further notice or until this emergency regulation expires on October 1, 2020. All other provisions of WAC 220-330-110 not addressed herein, or unless otherwise amended, remain in effect:

(1) Ala Spit: All public tidelands of Ala Spit are open August 1 through August 31, 2020 only.

(2) Belfair State Park: Open July 15, 2020 until further notice.

(3) Dosewallips State Park: The area defined by boundary markers and signs posted on the beach is open June 8 through September 30, 2020 only.

(4) Eagle Creek: Open June 8 through September 15, 2020 only.

(5) Frye Cove County Park: Open August 1 through August 31, 2020 only.

(6) Hope Island State Park (South Puget Sound): Open August 1 through August 31, 2020 only.

(7) Point Whitney Lagoon: Open June 8 through June 30, 2020 only.

(8) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open June 8 through June 30, 2020 only.

(9) Port Gamble Heritage Park Tidelands: Open July 1, 2020 until further notice.

(10) Potlatch DNR tidelands: Open June 8 through September 30, 2020 only.

(11) Potlatch State Park: Open June 8 through September 30, 2020 only.

(12) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open September 1 through September 30, 2020 only.

(13) Sequim Bay State Park: Open June 8 through July 15, 2020 only.

(14) Triton Cove Tidelands: Open June 8 through September 15, 2020 only.

NEW SECTION

WAC 220-330-14000H Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-330-140, effective June 8, 2020, the following provisions of WAC 220-330-140 shall be as described below until further notice or until this emergency regulation expires on October 1, 2020. All other provisions of WAC 220-330-140 not addressed herein, or unless otherwise amended, remain in effect:

(1) Ala Spit: All public tidelands of Ala Spit are open August 1 through August 31, 2020 only.

(2) Belfair State Park: Open July 15, 2020 until further notice.

(3) Frye Cove County Park: Open August 1 through August 31, 2020 only.

(4) Hope Island State Park (South Puget Sound): Open August 1 through August 31, 2020 only.

(5) Point Whitney Lagoon: Open June 8 through August 31, 2020 only.

(6) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open June 8 through August 31, 2020 only.

(7) Port Gamble Heritage Park Tidelands: Open July 1, 2020 until further notice.

(8) Potlatch DNR tidelands: Open June 8 through September 30, 2020 only.

(9) Potlatch State Park: Open June 8 through September 30, 2020 only.

(10) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near

Purdy Bridge is open September 1 through September 30, 2020 only.

(11) Sequim Bay State Park: Open June 8 through July 15, 2020 only.

REPEALER

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

WAC 220-330-01000I Shellfish—Daily limits. (20-88)