

WSR 21-15-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-112—Filed July 7, 2021, 2:35 p.m., effective July 8, 2021]

Effective Date of Rule: July 8, 2021.

Purpose: The purpose of this emergency rule is to [close] recreational salmon fisheries in Catch Record Card Area 7.

Citation of Rules Affected by this Order: 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 emergency rule is necessary to close salmon seasons in Marine Area 7. Estimates of landed catch to date indicate that anglers have caught the allotted mark-selective Chinook quota (1382) for Marine Area 7 agreed to in this year's list of agreed [to] fisheries. Washington department of fish and wildlife staff will continue analyzing the data collected throughout the fishery and will reevaluate if there are remaining impacts for future opportunities.

This rule does not affect the Bellingham Bay Fishery scheduled for August 16 through September 30, 2021.

There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 7, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000D Puget Sound salmon—Saltwater seasons and daily limits. Effective July 8, 2021, until further notice, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 7 except the Bellingham Bay Fishery, shall be modified as

described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 7: Salmon: Closed.

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WSR 21-15-003

EMERGENCY RULES

EASTERN WASHINGTON UNIVERSITY

[Filed July 7, 2021, 3:32 p.m., effective July 7, 2021, 3:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This regulation is necessary to protect the health and safety of campus by providing a mechanism to enforce a COVID-19 vaccine mandate.

Purpose: This regulation is necessary to protect the health and safety of campus by providing a mechanism to enforce a COVID-19 vaccine mandate. In accordance with the direction provided by the governor in Proclamation 20-12.3 and the department of health's guidelines for institutions of higher education, Eastern Washington University is adopting a COVID-19 vaccine requirement and this regulation is necessary for purposes of enforcing the requirement among the student body. There is not sufficient time to complete the regular rule-making process before classes begin in August.

Citation of Rules Affected by this Order: New WAC 172-108-110.

Statutory Authority for Adoption: RCW 28B.35.120(12).

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: See purpose statement.

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

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

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

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

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

Date Adopted: June 24, 2021.

Annika Scharosch
Associate Vice President

OTS-3186.1

NEW SECTION

WAC 172-108-110 Enforcement of immunization requirements. (1)

The university may impose a fine on students who fail to provide documentation of an immunization required by the university or obtain a waiver for medical or religious reasons as set forth in EWU Policy

602-02 (Immunizations). The fine may be up to two hundred fifty dollars per term for each academic term a student is enrolled and fails to comply with university requirements. The fine may be waived if the student complies with the immunization requirements within fourteen calendar days from the date notice of the fine is sent to the student as specified below.

(2) The university will provide written notice of the fine to students who fail to comply with the immunization requirements no later than thirty days after the initial date of the academic term. Notice will be sent via email to students' official university emails. Students will be given an opportunity to contest the notice by filing a request for a brief adjudicative hearing within fourteen calendar days of the date when the initial notice is sent to the student's official university email account. To request review of the fine, the student must submit a written request to: Student Rights and Responsibilities, 129 Showalter Hall, Cheney, WA 99004-2496 or via email to srr@ewu.edu. The request must set forth the reasons why the student disagrees with the fine. If a student fails to timely request a brief adjudicative hearing, the fine will become final.

(3) If a student timely files a request for a brief adjudicative hearing, a presiding officer will be appointed and will consider any materials submitted by the student in writing contesting the initial fine. Within ten calendar days of receipt of the request for a hearing, the presiding officer or designee will send an initial order setting forth the officer's decision and the reasons for such decision. The order should also communicate any appeal options available.

(4) The student may appeal the initial order by filing a written appeal with the dean of students within twenty-one calendar days from the date the initial order was sent to their official university email account. To request an appeal, the student must submit a written request to: Dean of Students, 301 Pence Union Building, Cheney, WA 99004-2496 or via email to dos@ewu.edu. The appeal must set forth the reasons why the student believes the initial order was incorrect. If a student fails to timely appeal, the initial order will be final.

(5) If a student timely files a request for an appeal, a presiding officer will be appointed and will consider any materials reviewed by the presiding officer at the initial hearing along with any materials submitted by the student with the appeal. Within twenty calendar days of the receipt of the appeal, the presiding officer or designee will send a final order setting forth the officer's decision and the reasons for such decision. This order will be the university's final decision. The order should communicate that judicial review of the university's decision may be available under chapter 34.05 RCW.

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WSR 21-15-005
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed July 7, 2021, 4:25 p.m., effective July 7, 2021, 4:25 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Implement Proclamation of the Governor 20-05 as amended by Proclamation of the Governor 21-11, which authorizes the department to license outdoor preschools July 1 through 31, 2011.

Citation of Rules Affected by this Order: Amending WAC 110-300D-0001 and 110-300D-0015.

Statutory Authority for Adoption: RCW 43.216.740.

Other Authority: Proclamation of the Governor 20-05, as amended by Proclamation 21-11 issued July 6, 2021.

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

Reasons for this Finding: Proclamation of the Governor 20-05 declared a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. On July 6, 2011, Proclamation of the Governor 21-11 amended Proclamation 20-05 to continue, through July 31, 2021, outdoor preschool licenses authorized by RCW 43.216.740. These emergency rules prevent the closure of currently licensed outdoor preschools and the severe hardship that their closure would likely create for the enrolled children and families the programs serve, namely the children going without preschool or enrollment in an indoor-based preschool with a higher risk of COVID-19 transmission or their parents' inability to work due to the lack of adequate child care.

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

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

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

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

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

Date Adopted: July 7, 2021.

Brenda Villarreal
Rules Coordinator

OTS-3098.1

AMENDATORY SECTION (Amending WSR 19-07-021, filed 3/12/19, effective 4/12/19)

WAC 110-300D-0001 Authority. (1) Chapter 43.216 RCW establishes the department of children, youth, and families' responsibility and authority to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) Under RCW 43.216.740(1), the department must establish a pilot project to license outdoor, nature-based early learning and child care programs (the "pilot project") (~~(to commence August 31, 2017, and conclude June 30, 2021)~~).

(3) Pursuant to RCW 43.216.740(2), the department shall adopt rules to implement the pilot project and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor pre-schools in Washington state.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.740 and chapter 43.216 RCW. WSR 19-07-021, § 110-300D-0001, filed 3/12/19, effective 4/12/19.]

AMENDATORY SECTION (Amending WSR 19-07-021, filed 3/12/19, effective 4/12/19)

WAC 110-300D-0015 Pilot project licenses—Licensing rules. (1) To participate in the outdoor, nature-based early learning and child care program pilot project, the applicant must apply to the department for and obtain a license to operate a pilot project.

(2) The department will select outdoor classroom sites after considering:

(a) The criteria described in RCW 43.216.740 (4) and (5);

(b) The characteristics of an applicant's outdoor classroom and whether those characteristics are a part of any existing licensed outdoor classroom; and

(c) The department's ability to monitor the applicant's outdoor classroom sites identified in the application.

(3) To protect the health and safety of children enrolled in outdoor classrooms, agency participants in this pilot project must agree, enter into, and comply with the terms and conditions of an outdoor classroom agreement prepared by the department. The outdoor classroom agreement shall require compliance with the following minimum terms and conditions:

(a) Compliance with the background check requirements contained in chapter 110-06 WAC;

(b) Compliance with the outdoor classroom agreement; and

(c) Compliance with the federal Child Care Development Fund (45 C.F.R. Part 98) requirements.

(4) Pursuant to RCW 34.05.310 (2)(b), the department will use this pilot project to test the feasibility of complying with or administering draft new rules or draft amendments to existing rules.

(5) To establish a uniform set of requirements for outdoor classrooms, the department may draft new rules or add amendments to existing rules; or add or amend current licensed child care rules under chapter ~~(s)~~ 110-300 ~~(, 110-300A, and 110-300B)~~ WAC.

[Statutory Authority: RCW 43.216.055, 43.216.065, 43.216.740 and chapter 43.216 RCW. WSR 19-07-021, § 110-300D-0015, filed 3/12/19, effective 4/12/19.]

WSR 21-15-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-111—Filed July 7, 2021, 4:26 p.m., effective July 10, 2021]

Effective Date of Rule: July 10, 2021.

Purpose: The purpose of this emergency rule is to open commercial razor clam seasons in Razor Clam Area 2.

Citation of Rules Affected by this Order: Repealing WAC 220-340-12000F; and amending WAC 220-340-120.

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: Based on historical catches and on-site inspection, there are adequate clams to support a twelve-week commercial razor clam season. Washington department of health has confirmed biotoxin levels currently fall below the regulatory threshold. This emergency rule is needed to open the commercial razor clam season in Razor Clam Area 2. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 7, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-12000F Commercial razor clams. Notwithstanding the provisions of WAC 220-340-120, effective July 10 through August 31, 2021, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 2 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter Point.

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REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2021:

WAC 220-340-12000F Commercial razor clams.

WSR 21-15-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-113—Filed July 7, 2021, 6:54 p.m., effective July 7, 2021, 6:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to delay opening seasons for sockeye salmon in Baker Lake.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000E.

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 delay the opening of seasons for sockeye salmon in Baker Lake. As of July 7, 2021, there are not enough sockeye in Baker Lake to provide a meaningful opportunity. The Washington department of fish and wildlife will continue to monitor sockeye returns to the lake and will reevaluate opening retention of sockeye after July 16.

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

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

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

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

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

Date Adopted: July 7, 2021.

Amy H. Windrope
for Kelly Susewind
Director

REPEALER

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

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

WSR 21-15-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-114—Filed July 8, 2021, 1:39 p.m., effective July 9, 2021]

Effective Date of Rule: July 9, 2021.

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

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

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

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

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

Reasons for this Finding: This rule opens the 2021 tribal summer commercial fisheries above Bonneville Dam, and in accordance with state/tribal MOUs/MOAs for below Bonneville Dam. This rule is consistent with actions of the Columbia River Compact on June 8, June 23, and July 8, 2021. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

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

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings

and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: July 8, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000P Columbia River salmon seasons. Effective July 9, 2021, until further notice the following provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 regarding tribal commercial fisheries above and below Bonneville Dam, shall be as described below. All other provisions of WAC 220-301-010, WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090 not addressed herein, or unless amended by emergency rule, remain in effect:

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

(a) Seasons:

(i) 6:00 AM Monday July 12 to 6:00 PM Thursday, July 15, 2021

(ii) 6:00 AM Monday July 19 to 6:00 PM Thursday, July 22, 2021

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

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

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2021.

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

(a) Season: Immediately through 11:59 PM July 31, 2021.

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

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

(d) Standard river mouth and dam sanctuary closures remain in place for this gear, except for the Spring Creek Hatchery sanctuary is not in effect during the summer management period that runs from June 16 through July 31, 2021.

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

(a) Season: Immediately through 11:59 PM July 31, 2021, only during days and times opened under tribal rules.

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

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

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

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

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

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

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

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

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REPEALER

The following section of Washington Administrative Code is repealed, effective July 9, 2021:

WAC 220-359-02000N Columbia River salmon seasons. (21-103)

WSR 21-15-017
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 9, 2021, 9:55 a.m., effective July 13, 2021]

Effective Date of Rule: July 13, 2021.

Purpose: The department of labor and industries (L&I) is adopting emergency rules to amend the current outdoor heat exposure rules under chapter 296-62 WAC, General occupational health standards; and chapter 296-307 WAC, Safety standards for agriculture, to address extreme high heat procedures. When the temperatures are at or exceed one hundred degrees Fahrenheit, employers must:

- Have and maintain one or more areas with shade at all times while employees are present sufficient to accommodate the number of employees on a meal or rest period. The shade shall be located as close as practicable to the areas where employees are working. In lieu of shade, employers may use other sufficient means to reduce body temperature provided by the employer under the existing requirement to have sufficient means to reduce body temperature when employees show symptoms of heat-related illness.
- Ensure that employees take preventative cool-down rest periods of at least ten minutes every two hours. The preventative cool-down rest period required may be provided concurrently with any other meal or rest period.

In addition, the emergency rules:

- Specify that employees are allowed and encouraged to take a preventative cool-down rest in the shade or using another means provided by the employer to reduce body temperature when they feel the need to do so to protect themselves from overheating.
- Update the training requirements for employers and supervisors to include preventative cool-down rests and preventative cool-down rest breaks under the extreme high temperature procedures.
- Define the term "shade."
- Clarify that drinking water be suitably cool in temperature.
- Clarify that time during preventative cool-down rest and preventative cool-down rest periods under the extreme high temperature procedures must be paid unless taken during an unpaid meal break.

Citation of Rules Affected by this Order: New WAC 296-62-09555 and 296-307-09755; and amending WAC 296-62-09520, 296-62-09530, 296-62-09540, 296-62-09560, 296-307-09720, 296-307-09730, 296-307-09740, and 296-307-09760.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 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: RCW 49.17.050(4) directs L&I to "[p]rovide for the promulgation of health and safety standards and the control of conditions in all work places concerning ... harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that

no employee will suffer material impairment of health or functional capacity L&I to adopt feasible and necessary rules to protect the health and lives of Washington workers." Heat-related illness ranges from relatively harmless conditions such as heat edema (swelling) and heat cramps to more serious illness such as heat syncope (fainting) and heat exhaustion. The most serious and often fatal form of heat-related illness is heat stroke. However, heat exhaustion can make workers more susceptible to falls, equipment-related injuries, and other on-the-job safety hazards.

The recent significant and unprecedented heat wave highlights the dangers of extreme heat, and makes it clear that this is an urgent issue. The current rules require employers respond once a worker shows symptoms of heat-related illness but does not affirmatively address preventative measures to avoid overheating other than access to drinking water. L&I received a petition requesting the department adopt emergency rules to address preventative measures to require access to shade, preventative cool-down breaks, and provisions to ensure the drinking water is cool, especially when there is extreme high heat. The hazards of heat are well documented, as is the increase in risk associated with the increase in temperature. L&I accepted a petition for emergency rules to address requirements for employers to engage in key preventative steps when the temperature increases to higher levels of risk. This will better prepare all parties for any further extreme heat events anticipated to continue to occur this summer.

The current outdoor heat exposure rules require employers with employees working outdoors to have a written outdoor heat exposure safety program, ensure sufficient quantity of drinking water is readily accessible to employees at all times, and that employees have the opportunity to drink at least one quart of drinking water per hour, and train workers and supervisors on heat-related illness. The rules also require employees showing signs or demonstrating symptoms of heat-related illness be relieved from duty, provided with a sufficient means to reduce body temperature and must be monitored to determine whether medical attention is necessary. Sufficient means to reduce body temperature includes shade, misting stations, or temperature controlled environments such as air-conditioned trailers. The current rules, in effect annually from May 1 through September, apply when the temperature is at or above eighty-nine degrees Fahrenheit with lower temperature thresholds for work in double-layer clothes or nonbreathing clothes.

Current rules also require an employer plan for and have sufficient means to reduce body temperatures once employees show symptoms of heat-related illness - whether shade, misting stations, a temperature controlled environment such as an air conditioned trailer, or other means. The emergency rules now require access to shade or the other cooling methods provided by the employer for preventative cool-down rests when needed and for required preventative cool-down rest periods when temperatures are at or above one hundred degrees. These provisions aimed at preventing overheating will help to prevent heat-related illness. California has the same requirements in its permanent occupational outdoor heat exposure rule at lower temperature thresholds. In addition, the current rules require drinking water be "suitable to drink" and L&I has long interpreted that water suitable to drink does not include water so hot that employees do not wish to drink it. California's rule also requires water be suitably cool.

As such, L&I has determined the requirements of the emergency rules are both feasible and necessary to protect workers. Given the

recent heat wave and increase[d] temperatures due to climate change, immediate adoption of emergency rules is necessary for the preservation of the public health and safety 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.

L&I will also be initiating the permanent rule-making process for a comprehensive reexamination of the current rules.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 2, Amended 8, Repealed 0.

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

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

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

Date Adopted: July 9, 2021.

Joel Sacks
Director

OTS-3194.1

AMENDATORY SECTION (Amending WSR 19-01-094, filed 12/18/18, effective 1/18/19)

WAC 296-62-09520 Definitions. Acclimatization. The body's temporary adaptation to work in heat that occurs as a person is exposed to it over time.

Double-layer woven clothing. Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.

Drinking water. Potable water that is suitable to drink and suitably cool in temperature. Drinking water packaged as a consumer product and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain caffeine are acceptable.

Engineering controls. The use of devices to reduce exposure and aid cooling (i.e., air conditioning).

Environmental factors for heat-related illness. Working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-62-095.

Heat-related illness. A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

Outdoor environment. An environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.

Shade. A blockage of direct sunlight. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person inside it, unless the car is running with air conditioning. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use.

Vapor barrier clothing. Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of nonbreathing clothing.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 19-01-094, § 296-62-09520, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09520, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09530 Employer and employee responsibility. (1) Employers of employees exposed at or above temperatures listed in WAC 296-62-09510(2) Table 1 must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP); and

(b) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration.

(3) Employees shall be allowed and encouraged to take a preventative cool-down rest when they feel the need to do so to protect themselves from overheating using the means to reduce body temperature required under WAC 296-62-09550. Preventative cool-down rest time must be paid unless taken during a meal period.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09530, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09540 Drinking water. (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC 296-62-09510(2) Table 1:

(a) Employers must ensure that a sufficient quantity of suitably cool drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09540, filed 6/4/08, effective 7/5/08.]

NEW SECTION

WAC 296-62-09555 Extreme high heat procedures. When temperatures are at or exceed 100 degrees Fahrenheit:

(1) Employers shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling, and not adjoining a radiant heat source such as machinery or a concrete structure. The amount of shade present shall be at least enough to accommodate the number of employees on a meal or rest period. The shade shall be located as close as practicable to the areas where employees are working.

(2) In lieu of shade, employers may use other sufficient means to reduce body temperature required under WAC 296-62-09550 if sufficient to accommodate all employees on a meal or rest period.

(3) Employers must ensure that employees take preventative cool-down rest periods of at least ten minutes every two hours. The preventative cool-down rest period required may be provided concurrently with any meal or rest period required under WAC 296-126-092 and must be paid unless taken during a meal period.

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AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09560 Information and training. All training must be provided to employees and supervisors, in a language the employee or supervisor understands, prior to outdoor work which exceeds a temperature listed in WAC 296-62-09510(2) Table 1, and at least annually thereafter.

(1) Employee training. Training on the following topics must be provided to all employees who may be exposed to outdoor heat at or above the temperatures listed in WAC 296-62-09510(2) Table 1:

(a) The environmental factors that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, caffeine use, nicotine use, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The employer's procedure for providing employees with sufficient means to reduce body temperature for the preventative cool-down rest under WAC 296-62-09530(3) and the requirement for preventative rest periods during extremely high heat under WAC 296-62-09555.

(d) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

~~((d))~~ (e) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

~~((e))~~ (f) The importance of acclimatization;

~~((f))~~ (g) The different types of heat-related illness, the common signs and symptoms of heat-related illness; and

~~((g))~~ (h) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures.

(2) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC 296-62-09510(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-62-095 through 296-62-09560;

(c) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures; and

(d) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09560, filed 6/4/08, effective 7/5/08.]

OTS-3195.1

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

WAC 296-307-09720 Definitions. Acclimatization. The body's temporary adaptation to work in heat that occurs as a person is exposed to it over time.

Double-layer woven clothing. Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.

Drinking water. Potable water that is suitable to drink and suitably cool in temperature. Drinking water packaged as a consumer product and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain caffeine are acceptable.

Engineering controls. The use of devices to reduce exposure and aid cooling (i.e., air conditioning).

Environmental factors for heat-related illness. Working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-307-097.

Heat-related illness. A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

Outdoor environment. An environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.

Shade. A blockage of direct sunlight. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person inside it, unless the car is running with air conditioning. Shade may be provided by any natural or artificial means that does not expose the employees to unsafe or unhealthy conditions and that does not deter or discourage access or use.

Vapor barrier clothing. Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of nonbreathing clothing.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-09720, filed 10/20/20, effective 11/20/20; WSR 09-07-098, § 296-307-09720, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09730 Employer and employee responsibility. (1) Employers of employees exposed at or above temperatures listed in WAC 296-307-09710(2) Table 1 must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP); and

(b) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration.

(3) Employees shall be allowed and encouraged to take a preventative cool-down rest when they feel the need to do so to protect themselves from overheating using the means to reduce body temperature required under WAC 296-307-09750. Preventative cool-down rest time must be paid unless taken during a meal period.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09730, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09740 Drinking water. (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC 296-307-09710(2) Table 1:

(a) Employers must ensure that a sufficient quantity of suitably cool drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09740, filed 3/18/09, effective 5/1/09.]

NEW SECTION

WAC 296-307-09755 Extreme high heat procedures. When temperatures are at or exceed 100 degrees Fahrenheit:

(1) Employers shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling, and not adjoining a radiant heat source such as machinery or a concrete structure. The amount of shade present shall be at least enough to accommodate the number of employees on a meal or rest period. The shade shall be located as close as practicable to the areas where employees are working.

(2) In lieu of shade, employers may use other sufficient means to reduce body temperature required under WAC 296-307-09750 if sufficient to accommodate all employees on a meal or rest period.

(3) Employers must ensure that employees take preventative cool-down rest periods of at least ten minutes every two hours. The preventative cool-down rest period required may be provided concurrently with any other meal or rest period under WAC 296-131-020 and must be paid if taken during work time.

Note: Agricultural workers paid on a piece-rate basis must be separately compensated for rest breaks and piece-rate down time. See *Lopez Demetrio v. Sakuma Brothers Farms Inc.*, 183 Wn.2d 649, 355 P.3d 258 (2015); *Carranza v. Dovex Fruit Company*, 190 Wn.2d 612, 416 P.3d 1205 (2018). For more information, see L&I Employment Standards Administrative Policy ES.C.6.2 at https://lni.wa.gov/workers-rights/_docs/esc6.2.pdf.

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AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09760 Information and training. All training must be provided to employees and supervisors, in a language the employee or supervisor understands, prior to outdoor work which exceeds a temperature listed in WAC 296-307-09710(2) Table 1, and at least annually thereafter.

(1) Employee training. Training on the following topics must be provided to all employees who may be exposed to outdoor heat at or above the temperatures listed in WAC 296-307-09710(2) Table 1:

(a) The environmental factors that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, caffeine use, nicotine use, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The employer's procedure for providing employees with sufficient means to reduce body temperature for the preventative cool-down rest under WAC 296-307-09730(3) and the requirement for preventative rest periods during extremely high heat under WAC 296-307-09755.

(d) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

~~((d))~~ (e) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

~~((e))~~ (f) The importance of acclimatization;

~~((f))~~ (g) The different types of heat-related illness, the common signs and symptoms of heat-related illness; and

~~((g))~~ (h) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures.

(2) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC 296-307-09710(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-097 through 296-307-09760;

(c) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures; and

(d) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09760, filed 3/18/09, effective 5/1/09.]

WSR 21-15-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-115—Filed July 12, 2021, 5:01 p.m., effective July 17, 2021]

Effective Date of Rule: July 17, 2021.

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

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

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

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

Reasons for this Finding: This emergency rule is needed to open seasons for sockeye salmon in Baker Lake. The 2021 Baker Lake sockeye preseason forecast is sufficient to allow for a targeted harvest season, and harvestable numbers of sockeye have been transported to Baker Lake.

The Washington department of fish and wildlife plans to closely monitor the fishery to ensure lake escapement goals are met. This fishery may close early if fishery monitoring data indicates the sockeye escapement goal to the lake is threatened. The lake escapement goal is one thousand five hundred sockeye to spawn naturally in the lake and tributaries.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 12, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000F Freshwater exceptions to statewide rules—Puget Sound. Effective July 17 through August 31, 2021, the following provisions of WAC 220-312-040, regarding recreational salmon seasons fishing for Baker Lake, shall be as described below. All other provi-

sions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Baker Lake (Whatcom Co.): Salmon:

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

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

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WSR 21-15-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-116—Filed July 13, 2021, 5:06 p.m., effective July 13, 2021, 5:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open gamefish seasons in the Hoh River and Hoh River, South Fork.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

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

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

Reasons for this Finding: This emergency rule is necessary to open recreational gamefish seasons for the Hoh River, including the South Fork and are interim until permanent rules take effect. The department is in the process of adopting permanent rules that are necessary to implement the state's share of the fishing plans agreed to with resource comanagers at the 2021-22 North of Falcon proceedings. The current permanent rule is inconsistent with the agreed 2021-22 North of Falcon fishery sharing and conservation package. 2021-22 permanent rules for the Hoh River and Hoh River, South Fork, resulting from North of Falcon proceedings have been filed and will be effective August 1, 2021.

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

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

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

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

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

Date Adopted: July 13, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000L Freshwater exceptions to statewide rules—Coast. Effective immediately through July 31, 2021, provisions of WAC 220-312-020 regarding gamefish seasons for the Hoh River (Jefferson Co.) and Hoh River, South Fork (Jefferson Co.) shall be modified as described below. All other provisions of WAC 220-312-020 not addressed

herein, or unless otherwise amended by emergency rule remain in effect (including rules regarding fishing from a floating device, internal combustion motor restrictions and statewide steelhead rules):

(1) Hoh River (Jefferson Co.): From the Olympic National Park boundary near the mouth upstream to the Olympic National Park boundary below mouth of South Fork Hoh River:

(a) Open immediately through July 31, 2021.

(b) Gamefish: Statewide minimum size and daily limit, except:

(i) Release wild rainbow trout.

(ii) Cutthroat minimum size 14".

(c) It is unlawful to use anything other than one single-point barbless hook.

(d) It is unlawful to use bait.

(2) Hoh River, South Fork (Jefferson Co.): Outside the Olympic National Park Boundary:

(a) Open immediately through July 31, 2021.

(b) Gamefish: Statewide minimum size and daily limit, except:

(i) Release wild rainbow trout.

(ii) Cutthroat minimum size 14".

(c) It is unlawful to use anything other than one single-point barbless hook.

(d) It is unlawful to use bait.

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WSR 21-15-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-117—Filed July 14, 2021, 5:05 p.m., effective July 19, 2021]

Effective Date of Rule: July 19, 2021.

Purpose: The purpose of this emergency rule is to close sockeye retention in the Columbia River from the I-182 Bridge at Pasco/Richland to Chief Joseph Dam.

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

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

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

Reasons for this Finding: This emergency rule is necessary because recreational anglers are expected to harvest the in-season sockeye salmon catch quota by the end of Sunday, July 18, 2021. The sockeye catch quota was originally ten thousand nine hundred fish based on a preseason run size estimate of 155,600. In early July, the *U.S. v. Oregon* technical advisory committee downgraded the run size to 149,600 decreasing the allowable catch quota to approximately seven thousand five hundred fish. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 14, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000T Freshwater exceptions to statewide rules—Columbia River. Effective July 19, 2021, until further notice, the provisions of WAC 220-312-060 regarding recreational salmon seasons from the I-182 Bridge at Pasco/Richland upstream to Chief Joseph Dam, shall be modified as described below. All other provisions of WAC

220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

From the I-182 Bridge at Pasco/Richland to Chief Joseph Dam: Salmon: It is unlawful to retain sockeye salmon.

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WSR 21-15-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-118—Filed July 15, 2021, 8:18 a.m., effective July 15, 2021, 8:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open spot shrimp pot harvest in Marine Fish/Shellfish Management and Catch Reporting Area 26D; and to increase the weekly nonspot shrimp catch limit in Shrimp Management Areas 1A, 1B, 1C, 2E, and 2W combined from six hundred pounds to one thousand pounds.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000E and 220-340-03000I; and amending WAC 220-340-520 and 220-340-030.

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: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca 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 nonspot commercial harvest.
- (2) Defines spot pot gear requirements.
- (3) Defines nonspot gear requirements.
- (4) Implements labeling requirements for groundline pot gear.
- (5) Implements restrictions for the concurrent use of spot shrimp and on-spot [nonspot] shrimp pot gear.
- (6) Implements a fishing declaration requirement for all shrimp pot fisheries in Puget Sound.
- (7) Sets harvest restrictions for and opens the nonspot commercial pot fishery.
- (8) Sets harvest restrictions for and opens the spot commercial pot fishery.
- (9) Sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery.
- (10) Requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

The emergency regulation opens spot shrimp pot harvest in Marine Fish/Shellfish Management and Catch Reporting Area 26D to allow for a commercial clean-up of quota that could not be offered to the recreational fishery due to the low amount of available quota. This regulation also increases the weekly nonspot shrimp catch limit in Shrimp Management Areas 1A, 1B, 1C, 2E, and 2W combined from six hundred pounds to one thousand pounds to ensure full utilization of the state share before the commercial season closes. Sections of this regulation define open areas to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and nonspot shares while also achieving the 50/50 harvest defined by the federal court order. Sections of this regulation add additional

reporting requirements to allow managers to track commercial fishing effort. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 14, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000F Puget Sound shrimp pot and trawl fishery—

Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W and 3, as well as Marine Fish/Shellfish Management and Catch Area 26D are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) Sub-areas 23A-W, 23A-C, and 23A-S of Marine Fish/Shellfish Management and Catch Reporting Area 23A are closed to the commercial harvest of non-spot shrimp until the commercial spot shrimp share is taken.

(ii) Marine Fish/Shellfish Management and Catch Area 26D is closed to the commercial harvest of non-spot shrimp.

(iii) Shrimp Management Area 1A is closed to the commercial harvest of non-spot shrimp until the commercial spot shrimp share is taken.

(iv) Discovery Bay Shrimp District is open to the commercial harvest of non-spot shrimp.

(v) Shrimp Management Areas 1B, 2E, and 2W and Sub-area 23A-E of Catch Reporting Area 23A are closed to the commercial harvest of spot shrimp.

(b) There is no minimum size limit for spot shrimp or non-spot shrimp.

(c) Shrimp pot gear used for commercial harvest must meet the following requirements:

(i) A shrimp pot may not exceed a maximum 153 inch bottom perimeter and a maximum of 24 inch height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(iv) Spot shrimp may only be harvested using pots with a minimum mesh size of 1 inch. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(v) Non-spot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(d) Buoys must have the number of pots deployed per groundline recorded on each end-buoy of a groundline.

(e) It is lawful to concurrently deploy spot shrimp pots and non-spot pots with the following restrictions:

(i) Spot pots and non-spot pots may not be deployed concurrently within the same Catch Reporting Area, with the following exceptions:

Spot and non-spot pots may be concurrently deployed in Catch Area is 23A but not within the same sub-area (23A-E, 23A-W, 23A-C, or 23A-S).

Non-spot pots may be deployed within Sequim Bay, defined as that portion of Marine Fish/Shellfish Catch Area 25A south of a line true west from Travis Spit to the Miller Peninsula, concurrently with spot shrimp pots in the remaining portion of 25A outside of Sequim Bay.

(ii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.

(f) Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and the amount of pounds that are being targeted prior to the deployment of any shrimp gear to either shrimp.report@dfw.wa.gov, by text message to 360-302-6372, or by other electronic means designated by the Department.

(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 catch area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

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

(b) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 1000 pounds per non-spot shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

(c) 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).

(d) 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.

(3) Shrimp Spot Pot Harvest Restrictions:

(a) The spot shrimp catch accounting period starts May 1, 2021 at 12:00 a.m. through August 10, 2021 at 11:59 p.m.

(b) It is unlawful for the total harvest within the spot shrimp accounting period to exceed 4,500 pounds of spot shrimp per license from Shrimp Management Areas 1A, 1C, and 3 combined.

(c) It is unlawful for more than 3,000 pounds of spot shrimp per license to be landed prior to Tuesday, July 13, 2021 at 11:59 p.m.

(4) Shrimp trawl Harvest Restrictions:

(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 effective immediately, until further notice.

(c) The waters of south Lopez Sound (the portion of Catch Area 22A south of a line projected east and west from the northern tip of Trump Island) will open at 12:00 a.m. on July 10, 2021.

(d) The remaining portion of Shrimp Management Area 1B and Catch Areas 20B and 22A outside the area described in sections 4 (b, c) above is open effective immediately, until further notice.

(e) Catch Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) will open at 12:00 a.m. on July 1, 2021.

(f) Catch Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) will open at 12:00 a.m. on August 1, 2021

(g) Trawling is allowed only in waters deeper than 120 feet in Catch Area 20A.

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

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

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

NEW SECTION

WAC 220-340-03000J Shellfish harvest logs. Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to shrimp.report@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must in-

clude the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

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REPEALER

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

- WAC 220-340-52000E Puget Sound shrimp pot and trawl fishery—Season. (21-97)
- WAC 220-340-03000I Shellfish harvest logs. (21-97)

WSR 21-15-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-115—Filed July 15, 2021, 12:07 p.m., effective July 17, 2021]

Effective Date of Rule: July 17, 2021.

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

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

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

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

Reasons for this Finding: This emergency rule is needed to open seasons for sockeye salmon in Baker Lake. The 2021 Baker Lake sockeye preseason forecast is sufficient to allow for a targeted harvest season and harvestable numbers of sockeye have been transported to Baker Lake.

The Washington department of fish and wildlife plans to closely monitor the fishery to ensure lake escapement goals are met. This fishery may close early if fishery monitoring data indicates the sockeye escapement goal to the lake is threatened. The lake escapement goal is one thousand five hundred sockeye to spawn naturally in the lake and tributaries.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 12, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000G Freshwater exceptions to statewide rules—Puget Sound. Effective July 17 through August 31, 2021, the following provisions of WAC 220-312-040, regarding recreational salmon seasons fishing for Baker Lake, shall be as described below. All other provi-

sions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Baker Lake (Whatcom Co.): Salmon:

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

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

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WSR 21-15-058
EMERGENCY RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-19—Filed July 15, 2021, 1:05 p.m., effective July 15, 2021, 1:05 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Temporarily prohibiting the use of credit history to determine premiums and eligibility for coverage in private automobile, homeowners, and renter's insurance products.

Citation of Rules Affected by this Order: New WAC 284-24A-088 and 284-24A-089.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.480, 48.19.020, 48.19.035, 48.19.080.

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 commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory, and with enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory.

Insurance companies which use credit-based insurance scoring claim that credit scoring is a predictive tool to identify risk of loss from a specific consumer. This credit-based insurance score is then used to determine premiums charged to each consumer.

On February 29, 2020, the governor of the state of Washington issued Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States. On March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) the President of the United States declared a national emergency concerning the novel coronavirus disease (COVID-19) outbreak in the United States. Addressing the state of emergency caused by the coronavirus pandemic has required difficult steps that have had a severe financial impact on large groups within our state.

In part to mitigate the financial impacts of the COVID-19 pandemic to individual households, on March 27, 2020, the President of the United States signed the CARES Act (P.L. 116-136). Section 4021 of the CARES Act addresses credit reporting during the pandemic. The CARES Act requires financial institutions to report consumers as current if they were not previously delinquent or, for consumers that were previously delinquent, not to advance the level of delinquency, for credit obligations for which the furnisher makes payment accommodations to consumers affected by COVID-19 and the consumer makes any payments the accommodation requires. Section 4022 of the CARES Act requires certain lenders to offer forbearance options to borrowers, and imposed a moratorium on foreclosures for certain home loans. In addition, section 3513 of the CARES Act specifically addresses the furnishing of federally-held student loans for which payments are suspended. This provision results in all nondefaulted federally-held student loans being reported as current.

In addition, the governor of the state of Washington has issued several emergency proclamations limiting state agencies from charging late fees and penalties, and placing a moratorium on garnishment actions (Emergency Proclamation 20-49, and subsequent amendments) and evictions (Emergency Proclamation 20-19, and subsequent amendments). The critical consumer protections included in these proclamations have also had the effect of preventing creditors from taking actions that are otherwise reportable on a consumer's credit history.

The result of the CARES Act is that all credit bureaus are collecting a credit history that is objectively inaccurate for some consumers and therefore results in an unreliable credit score being assigned to them. Consequently, this untrustworthy credit score degrades any predicative value that may be found in a consumer's credit-based insurance score.

The commissioner finds that the current protections to consumer credit history at the state and federal level have disrupted the credit reporting process. This disruption has caused credit-based insurance scoring models to be unreliable and therefore inaccurate when applied to produce a premium amount for an insurance consumer in Washington state. This makes the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

There is evidence that the negative economic impacts of the pandemic have disproportionately fallen on people of color. Therefore, when the CARES Act protections are eliminated, and negative credit information can be fully reported again, credit histories for people of color will have been disproportionately eroded by the pandemic.

Remaining consumer credit protections in the CARES Act will expire after the national state of emergency. When the CARES Act fully expires, a large volume of negative credit corrections will flood consumer credit histories. This flood of negative credit history has not been accounted for in the current credit scoring models. Without data to demonstrate that the predictive ability of credit scoring models based on pre-pandemic credit and claims histories is unchanged, the predicative ability of current credit scoring models cannot be assumed. This will make the use of currently filed credit-based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

It is impossible to know precisely when the state and federal states of emergency will end. Insurance companies must have an alternative to the currently unreliable credit scoring models they have in place before the protections of the CARES Act end. Therefore, it is necessary to immediately implement changes to the use of credit scoring.

The commissioner is implementing this emergency rule making to support the effects of the previous emergency rule, on the same subject and as filed in WSR 21-07-103, and the normal rule making that is currently underway, on the same subject and as filed in WSR 21-13-131.

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

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

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

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

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

Date Adopted: July 15, 2021.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-24A-88 Findings and intent of temporary prohibition (1)

The Commissioner is tasked with ensuring that insurance rates are not excessive, inadequate, or unfairly discriminatory, and with enacting rules that ensure the use of credit history and credit history factors in setting insurance premiums is not excessive, inadequate, or unfairly discriminatory.

(2) Insurance companies which use credit-based insurance scoring claim that credit scoring is a predictive tool to identify risk of loss from a specific consumer. This credit-based insurance score is then used to determine premiums charged to each consumer.

(3) On February 29, 2020, the Governor of the State of Washington issued Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States. On March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) the President of the United States declared a national emergency concerning the novel coronavirus disease (COVID-19) outbreak in the United States. Addressing the state of emergency caused by the coronavirus pandemic has required difficult steps that have had a severe financial impact on large groups within our state.

(4) In part to mitigate the financial impacts of the COVID 19 pandemic to individual households, on March 27, 2020, the President of the United States signed the CARES Act (P.L. 116-136). Section 4021 of the CARES Act addresses credit reporting during the pandemic. The CARES Act requires financial institutions to report consumers as current if they were not previously delinquent or, for consumers that were previously delinquent, not to advance the level of delinquency, for credit obligations for which the furnisher makes payment accommodations to consumers affected by COVID-19 and the consumer makes any payments the accommodation requires. Section 4022 of the CARES Act requires certain lenders to offer forbearance options to borrowers, and imposed a moratorium on foreclosures for certain home loans. In addition, section 3513 of the CARES Act specifically addresses the furnishing of federally-held student loans for which payments are suspended. This provision results in all non-defaulted federally-held student loans being reported as current.

(5) In addition, the Governor of the State of Washington has issued several emergency proclamations limiting state agencies from charging late fees and penalties, and placing a moratorium on garnishment actions (Emergency Proclamation 20-49, and subsequent amendments) and evictions (Emergency Proclamation 20-19, and subsequent amendments). The critical consumer protections included in these proclama-

tions have also had the effect of preventing creditors from taking actions that are otherwise reportable on a consumer's credit history.

(6) The result of the CARES Act is that all credit bureaus are collecting a credit history that is objectively inaccurate for some consumers and therefore results in an unreliable credit score being assigned to them. Consequently, this untrustworthy credit score degrades any predicative value that may be found in a consumer's credit-based insurance score.

(7) The Commissioner finds that the current protections to consumer credit history at the state and federal level have disrupted the credit reporting process. This disruption has caused credit-based insurance scoring models to be unreliable and therefore inaccurate when applied to produce a premium amount for an insurance consumer in Washington state. This makes the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

(8) There is evidence that the negative economic impacts of the pandemic have disproportionately fallen on people of color. Therefore, when the CARES Act protections are eliminated, and negative credit information can be fully reported again, credit histories for people of color will have been disproportionately eroded by the pandemic.

(9) Remaining consumer credit protections in the CARES Act will expire after the national state of emergency. When the CARES Act fully expires, a large volume of negative credit corrections will flood consumer credit histories. This flood of negative credit history has not been accounted for in the current credit scoring models. Without data to demonstrate that the predictive ability of credit scoring models based on pre-pandemic credit and claims histories is unchanged, the predicative ability of current credit scoring models cannot be assumed. This will make the use of currently filed credit based insurance scoring models unfairly discriminatory within the meaning of RCW 48.19.020.

(10) It is impossible to know precisely when the state and federal states of emergency will end. Insurance companies must have an alternative to the currently unreliable credit scoring models they have in place before the protections of the CARES Act end. Therefore, it is necessary to immediately implement changes to the use of credit scoring.

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

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 284-24A-88 is probably intended to be WAC 284-24A-088.

NEW SECTION

WAC 284-24A-89 Temporary prohibition of use of credit history

(1) Notwithstanding any other provision of this chapter, this section applies to all personal insurance pertaining to private passenger automobile coverage, renter's coverage, and homeowner's coverage issued in the state of Washington while this rule is effective.

(2) The insurance commissioner finds that as a result of the broad negative economic impact of the coronavirus pandemic, the dis-

proportionately negative economic impact the coronavirus pandemic has had on communities of color, and the disruption to credit reporting caused by both the state and federal consumer protections designed to alleviate the economic impacts of the pandemic, for private passenger automobile coverage, renter's coverage, and homeowner's coverage issued in the state of Washington, the use of insurance credit scores results in premiums that are excessive, inadequate, or unfairly discriminatory within the meaning of RCW 48.19.020 and RCW 48.18.480.

(3) For all private passenger automobile coverage, renter's coverage, and homeowner's coverage issued in the state of Washington, insurers shall not use credit history to determine personal insurance rates, premiums, or eligibility for coverage.

(4) For purposes of this section, insurers shall not use credit history to place insurance coverage with a particular affiliated insurer or insurer within an overall group of affiliated insurance companies.

(5) In order to comply with this section, insurers subject to this rule may substitute any insurance credit score factor used in a rate filing with a neutral rating factor.

(a) For purposes of this section, "neutral factor" means a single constant factor calculated such that, when it is applied in lieu of insurance-score-base rating factors to all policies in an insurer's book of business, the total premium for the book of business is unchanged.

(b) For purposes of this section, insurers may, but are not required to, implement the neutral factor by peril or coverage.

(6) Insurers may not include rate stability rules in filings submitted to comply with this section.

(7) The prohibitions in this rule shall apply to all new policies effective and existing policies processed for renewal on or after June 20, 2021. Each insurer must submit rate filings to amend its current rating plans with the insurance commissioner for all insurance policies covered by this rule by May 6, 2021. If the policy application form refers to the use of consumer credit information, an amended form filing must also be submitted by May 6, 2021. The amendments should be limited to the changes required by this rule.

(8) This rule takes effect immediately. To the extent this rule is adopted as a permanent rule it shall remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.

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Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 284-24A-89 is probably intended to be WAC 284-24A-089.

WSR 21-15-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-119—Filed July 15, 2021, 4:26 p.m., effective July 15, 2021, 4:26 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to modify recreational fishing seasons and rules for Puget Sound Marine Areas and coastal and Puget Sound freshwater areas to conform with those agreed to with comanagers during the 2021/2022 North of Falcon proceedings.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000C; and amending WAC 220-313-060, 220-312-020, and 220-312-040.

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

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

Reasons for this Finding: This emergency rule is necessary to modify salmon seasons in Marine Areas 10, 12, and 13, as well as gamefish and salmon seasons in the coastal and Puget Sound freshwater areas listed in this emergency rule, to conform with seasons and rules agreed to with comanagers during the 2021 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 Nongovernmental 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: July 15, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000E Puget Sound salmon—Saltwater seasons and daily limits. Effective immediately through July 31, 2021, the following provisions of WAC 220-313-060 regarding salmon seasons for the areas and during the times listed below in Marine Areas 10, 12, and 13 shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Catch Record Card Area 10:

(a) East Elliot Bay: Waters of Elliott Bay between a line from Duwamish Head to Pier 91 up to the mouth of the Duwamish River including Harbor Island (Duwamish Waterways): Salmon: Immediately through July 31: Closed.

(b) Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge in Bremerton, south of a line true west from Battle Point, and west of a line drawn true south from Point White:

(i) Daily limit 3.

(ii) Release chum and wild Chinook.

(c) Free-flowing freshwaters downstream of the mouth at Gorst Creek, Blackjack Creek, Chico Creek, Curley Creek, and Grovers Creek, effective immediately through July 31: Closed.

(3) Catch Record Card Area 12: Waters north of Ayock Point except waters north of a true east line from the mouth of Turner Creek to the Toandos Peninsula: Salmon: Open immediately through July 31:

(a) Daily limit 4.

(b) Release chum and Chinook.

(4) Catch Record Card Area 13, including the Fox Island Fishing Pier: Salmon: Open immediately through July 31, 2021:

(a) Daily limit 2, except no more than 1 Chinook may be retained when angling from the Fox Island Fishing Pier.

(b) Chinook minimum length 20 inches.

(c) Release chum and wild Chinook, except wild Chinook may be retained when angling from the Fox Island Fishing Pier.

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NEW SECTION

WAC 220-312-02000M Freshwater exceptions to statewide rules—

Coast. Effective immediately through July 31, 2021, provisions of WAC 220-312-020 regarding gamefish and salmon seasons for Bear Creek (Bogachiel tributary), Bear Creek (Sol Duc tributary), Beaver Creek (Sol Duc tributary), Thunder Creek, Bogachiel, Clawah (including North and South forks), Dickey (including East and West forks), Quillayute, Sitkum and Sol Duc rivers shall be modified as described below. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) Bear Creek (Clallam Co.) (Bogachiel River tributary): It is unlawful to use anything other than one single-point barbless hook.

(2) Bear Creek (Clallam Co.) (Sol Duc River tributary): It is unlawful to use anything other than one single-point barbless hook.

(3) Beaver Creek (Clallam Co.) (Sol Duc River tributary): It is unlawful to use anything other than one single-point barbless hook.

(4) Bogachiel River (Clallam Co.):

(a) It is unlawful to use anything other than one single-point barbless hook.

(b) From the mouth to the Highway 101 Bridge: Salmon:

(i) Daily limit 4; up to 2 adults may be retained.

(ii) Release wild adult Chinook and wild adult coho.

(5) Calawah River (Clallam Co.):

(a) It is unlawful to use anything other than one single-point barbless hook.

(b) From the mouth to the Highway 101 Bridge: Salmon:

(i) Daily limit 4; up to 2 adults may be retained.

(ii) Release wild adult Chinook and wild adult coho.

(6) Calawah River, North Fork (Clallam Co.): It is unlawful to use anything other than one single-point barbless hook.

(7) Calawah River, South Fork (Clallam Co.): It is unlawful to use anything other than one single-point barbless hook.

(8) Dickey River, including East and West forks (Clallam Co.):

(a) It is unlawful to use anything other than one single-point barbless hook.

(b) From the Olympic National Park boundary upstream to the confluence of East and West forks: Salmon:

(i) Daily limit 4; up to 2 adults may be retained.

(ii) Release wild adult Chinook and wild adult coho.

(9) Quillayute River (Clallam County), outside of Olympic National Park:

(a) It is unlawful to use anything other than one single-point barbless hook.

(b) Salmon:

(i) Daily limit 4; up to 2 adults may be retained.

(ii) Release wild adult Chinook and wild adult coho.

(10) Sitkum River (Clallam Co.): It is unlawful to use anything other than one single-point barbless hook.

(11) Sol Duc River (Clallam Co.):

(a) It is unlawful to use anything other than one single-point barbless hook.

(b) From the mouth to the concrete pump station at the Sol Duc Hatchery: Salmon:

(i) Daily limit 4; up to 2 adults may be retained.

(ii) Release wild adult Chinook and wild adult coho.

(11) Thunder Creek (Clallam Co.) (Tributary to East Fork Dickey River): It is unlawful to use anything other than one single-point barbless hook.

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NEW SECTION

WAC 220-312-04000H Freshwater exceptions to statewide rules—Puget Sound. Effective immediately through July 31, 2021, provisions of WAC 220-312-040 regarding gamefish and salmon seasons for Clarks Creek, Chambers Creek, Green (Duwamish) River, Minter Creek and Voight Creek shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) Chambers Creek (Pierce Co.), from the mouth to the markers 400 feet below the Boise-Cascade Dam: Salmon:

(a) Daily limit 6; up to 4 may be adults.

(b) Release chum, wild Chinook and wild coho.

(2) Clarks Creek (Pierce Co.): Closed waters.

(3) Green (Duwamish) River (King Co.): From 150 feet upstream and 150 downstream from a point directly across the river from the mouth of Keta Creek (Crisp) including both banks of the river: Closed waters.

(4) Minter Creek (Kitsap Co.): Gamefish: Closed.

(5) Voight Creek (Pierce Co.), from the mouth to the Highway 162

Bridge: Closed waters.

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REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-313-06000C Puget Sound salmon—Saltwater seasons
and daily limits. (21-98)

WSR 21-15-067
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 16, 2021, 8:14 a.m., effective July 16, 2021, 8:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) is adopting emergency rules regarding wildfire smoke under chapter 296-62 WAC, General occupational health standards. L&I recognizes the hazard of wildfire smoke exposure is increasing every year and potentially presents serious health risks to all workers, especially those working outside in industries such as construction and agriculture. L&I has received a petition for rule making regarding wildfire smoke protections after the historic 2020 wildfires, which created unprecedented smoke conditions in the state. The state of California has adopted similar temporary and permanent workplace safety and health rules regarding wildfire smoke.

A major component of wildfire smoke is particulate matter with an aerodynamic diameter less than 2.5 micrometers ($PM_{2.5}$); inhalation of $PM_{2.5}$ can cause cardiovascular health effects and increases the risk of death. $PM_{2.5}$ is elevated during wildfire smoke events, causing a risk to workers.

This emergency rule applies to workplaces where the employer should reasonably anticipate that employees may be exposed to wildfire smoke. Exempt workplaces and operations are:

- Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to open doors to enter and exit.
- Enclosed vehicles in which the air is filtered by a cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to open doors to enter or exit.
- Employees exposed to a concentration of $PM_{2.5}$ of $20.5\mu\text{g}/\text{m}^3$ (equivalent Washington air quality advisory level or "WAQA" of 101, equivalent Air Quality Index or "AQI" of 69) or more for a total of one hour or less during a shift.
- Firefighters engaged in wildland firefighting.

This emergency rule includes:

- Requirements for employers to determine $PM_{2.5}$ levels at their worksites by checking one of the listed web-based sources or directly measuring $PM_{2.5}$ at their worksite.
- Requirements for hazard communication to notify employees when the $PM_{2.5}$ levels reach $55.5\mu\text{g}/\text{m}^3$ (WAQA 173, AQI 151).
- Requirements for training both supervisors and line staff who may be exposed to $PM_{2.5}$ levels of $20.5\mu\text{g}/\text{m}^3$ (WAQA 101, AQI 69) or above on the hazards of wildfire smoke and the procedures regarding the employer's plan for ensuring workers are protected from wildfire smoke.
- Requirements for monitoring and allowing for medical care for employees who display symptoms of illness related to wildfire smoke.

- Requirements for implementation of engineering and administrative controls whenever PM_{2.5} reaches 55.5 µg/m³ (WAQA 173, AQI 151) and such controls are feasible.
- Requirements for supplying respiratory protection for employees use on a voluntary basis whenever PM_{2.5} reaches 55.5 µg/m³ (WAQA 173, AQI 151).

The emergency rule ensures that workers in Washington are provided protections from the hazard of wildfire smoke inhalation while L&I proceeds with the implementation of the wildfire smoke permanent rule making.

In addition, L&I filed a Preproposal statement of inquiry (CR-101) on October 20, 2021, WSR 20-21-093, regarding permanent rule making for hazards relating to wildfire smoke events. Some additions made as part of the emergency rule will be considered for permanent rule making. The department will be seeking comments from affected stakeholders during the permanent rule-making process.

Citation of Rules Affected by this Order: New WAC 296-62-085, 296-62-08510, 296-62-08520, 296-62-08530, 296-62-08540, 296-62-08550, 296-62-08560, 296-62-08570, 296-62-08580, 296-62-08585, and 296-62-08590.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.240.

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

Reasons for this Finding: Wildfire smoke is composed of harmful chemicals and tiny particles suspended in the air that present a significant health hazard for workers exposed to it. These particles can irritate the lungs and cause serious or even fatal health effects, such as reduced lung function, bronchitis, worsening of asthma, and heart failure. Compared with the general public, workers have additional risk factors in that they may spend more time outdoors in the smoke, and have more physical exertion, which increases the amount of smoke that they breathe into their lungs. Individuals considered sensitive to wildfire smoke exposure, such as those with asthma, are also part of the workforce.

The United States Environmental Protection Agency's (EPA) AQI is an informational tool for reporting air quality. Under the Clean Air Act, the EPA sets and reviews national air quality standards for several air pollutants, including PM_{2.5}. AQI is a scale of 1 to 500 divided into six color-coded categories that correspond to different levels of health concerns (good, moderate, unhealthy for sensitive groups, unhealthy, very unhealthy, and hazardous). The AQI level of 101 is categorized as "unhealthy for sensitive groups" and corresponds to PM_{2.5} concentrations of 35.5 µg/m³. The Washington state department of ecology has an informational tool called WAQA. The WAQA is similar to the AQI as both use color-coded categories to show when air quality ranges from good to hazardous; however, the WAQA has lower PM_{2.5} concentrations associated with each level. For example, the WAQA index of 101 for unhealthy for sensitive [groups] corresponds to a PM_{2.5} concen-

tration of 20.5 $\mu\text{g}/\text{m}^3$ and the WAQA level of 151 for unhealthy corresponds to a concentration $\text{PM}_{2.5}$ 35.5 $\mu\text{g}/\text{m}^3$.

California is currently the only state with rules for occupational exposure to wildfire smoke, although Oregon is in the process of developing rules. California's rule requires employers take preventative measures when the current EPA AQI is 151 or greater (unhealthy). Specific to respirators, California's rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at an AQI of 151 (55.4 $\mu\text{g}/\text{m}^3$). Mandatory respirator use is required when the AQI is greater than 500 (500 $\mu\text{g}/\text{m}^3$). Mandatory respirator use requires compliance with California's respiratory program rules, including fit testing and medical evaluations.

For the past several summers, the L&I's division of occupational safety and health (DOSH) received inquiries about wildfire smoke hazards for outdoor workers. DOSH has put out guidance and information on best practices but recognizes there is a gap under current rules to adequately protect workers from this hazard and to ensure employers and workers understand what is required. After the unprecedented wildfire smoke events in 2020, the department reviewed the need for rules and also received a petition requesting rule making. The department determined that rule making was needed to address the hazard. The department held five virtual stakeholder meetings from January - June 2021 to discuss development of a permanent rule and emergency rules.

However, it has not been practicable to adopt a permanent rule in time for this year's wildfire season where immediate action is necessary. Immediate adoption of a rule is necessary for the preservation of worker health and safety and it would be contrary to the public interest to wait until a permanent rule can be adopted. The fire season is imminent and existing regulations are not sufficient to protect workers from the dangers of wildfires. Washington state is experiencing an historic drought that is exacerbating fire danger across the state, and abnormally high temperatures and dry conditions have led to the early development of dangerous fire fuel conditions throughout the state. This has been exacerbated by the recent heat waves in the Pacific Northwest. Wildfire smoke can travel hundreds to thousands of miles and wildfires in other states and in Canada can cause hazardous air quality levels in Washington. Active wildfires are occurring in Washington at this time, as well as in California, Oregon, Canada, and Idaho. The governor issued Emergency Proclamation 21-10 on July 6, 2021, implementing a statewide burn ban due to the likelihood of wildfires.

While the department provided draft emergency rules for stakeholder input, the emergency process does not allow for the opportunity for notice and comment that are part of the permanent rule-making process.

So L&I is taking emergency action to avert the development of wildfire smoke-related illnesses among Washington's workforce and ensure employers can train employees, plan for their response, and obtain the necessary respirators for employee voluntary use when wildfire events do happen.

Consistent with the mandate under the WISH Act, the department has looked at the best available evidence and determined that there are feasible measures to address the health hazards wildfire smoke presents for workers. The emergency rule requires employers to implement engineering and administrative controls and make respirators

available for voluntary use at a PM_{2.5} concentration of 55.5 µg/m³ (unhealthy under the AQI) but encourages employers to take these actions at a PM_{2.5} concentration [concentration] of 20.5 (unhealthy for sensitive groups under the WAQA). Under this approach, enforcement levels is [are] set at the same as California, which has been a feasible approach. The permanent rule process will continue to examine the hazards of PM_{2.5} exposure levels and appropriate protections necessary.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 11, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 11, 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 11, Amended 0, Repealed 0.

Date Adopted: July 16, 2021.

Joel Sacks
Director

OTS-3201.2

PART I-3—WILDFIRE SMOKE

NEW SECTION

WAC 296-62-085 Wildfire smoke.

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NEW SECTION

WAC 296-62-08510 Purpose and scope. (1) This standard applies to workplaces where the employer should reasonably anticipate that employees may be exposed to wildfire smoke; and

(2) The following workplaces and operations are exempt from this section:

(a) Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to open doors to enter and exit.

(b) Enclosed vehicles in which the air is filtered by a cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to open doors to enter or exit.

(c) Employees exposed to a concentration of NowCast PM_{2.5} of 20.5µg/m³ (NowCast *Washington Air Quality Advisory 101*, NowCast Air Quality Index 69) or more for a total of one hour or less during a shift.

(d) Firefighters engaged in wildland firefighting.

Note: Requirements for workers performing wildland firefighting can be found in chapter 296-305 WAC.

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NEW SECTION

WAC 296-62-08520 Definitions. NIOSH. The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

NowCast Air Quality Index (AQI). The method used by the U.S. Environmental Protection Agency (EPA) to communicate air quality using color-coded categories. It shows the air quality for the most current hour available by using a calculation that involves multiple hours of past data using the NowCast. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

NowCast PM_{2.5}. The concentration of PM_{2.5} for the most current hour available by using a calculation that involves multiple hours of past data using the NowCast. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

NowCast Washington air quality advisory (WAQA). The method used by the Washington state department of ecology to communicate air quality using color-coded categories. It shows the air quality for the most current hour available by using a calculation that involves multiple hours of past data using the NowCast. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

PM_{2.5}. Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller. Measured in micrograms per cubic meter (µg/m³).

Sensitive groups. People with preexisting health conditions and those who are sensitive to air pollution who are among those most likely to experience health problems from exposure to wildfire smoke. Examples of sensitive groups include:

- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;
 - People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, flu, or those with, or recovering from COVID-19;
 - People with existing heart or circulatory problems, such as irregular heart beat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
 - Children under eighteen years old, and adults over age sixty-five;
 - Pregnant women;
 - People with diabetes;
 - People with other medical or health conditions which can be exacerbated by exposure to wildfire smoke as determined by a physician.
- Wildfire smoke.** Emissions from fires in wildlands or in adjacent developed areas.
- Wildlands.** Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

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NEW SECTION

WAC 296-62-08530 Identification of harmful exposures. The employer shall determine employee exposure to PM_{2.5} for worksites covered by this section before each shift and periodically thereafter, as needed to protect the health of the employee, by any of the following methods:

- (1) Obtain the PM_{2.5} levels using one of the following measures and sources:
- (a) NowCast PM_{2.5}, available at:
- U.S. Forest Service AirFire website <http://tools.airfire.org/> monitoring; or
 - Other online sources.
- (b) NowCast AQI, available at:
- U.S. EPA AirNow website <https://www.airnow.gov/>;
 - "EPA AirNow" mobile app (free);
 - U.S. Forest Service AirFire website <http://tools.airfire.org/> monitoring;
 - EPA Enviroflash.info <http://www.enviroflash.info/>;
 - Other online sources; or
 - Directly from the U.S. EPA or local clean air agency by telephone, email, text, or other effective method.
- (c) NowCast WAQA, available at:
- Washington Air Monitoring Network website <https://enviwa.ecology.wa.gov/home/map>;
 - "AirQualityWA" mobile app (free);
 - Washington Smoke Information website <https://wasmoke.blogspot.com/>; or
 - Directly from the Washington state department of ecology, or local clean air agency by telephone, email, text, or other effective method.

(d) If the NowCast WAQA or NowCast AQI are used, the employer must use the following table to find the equivalent WAQA or AQI for PM_{2.5}.

NowCast PM _{2.5} in Micrograms per Cubic Meter (µg/m ³)	NowCast Washington Air Quality Advisory (WAQA)	NowCast Air Quality Index (AQI)
20.5µg/m ³	101	69
55.5µg/m ³	173	151

(2) Measure PM_{2.5} levels at the work location in accordance with WAC 296-62-08585 Appendix A of this part.

EXCEPTION: The employer does not have to determine employee exposure as required by this subsection if the employer assumes the NowCast PM_{2.5} is more than 55.5µg/m³ (WAQA 173, AQI 151) and uses that assumption to comply with the requirements in WAC 296-62-085 through 296-62-08590.

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NEW SECTION

WAC 296-62-08540 Hazard communication. For any worksite covered by this section, the employer must establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

The system shall include effective procedures for:

(1) Informing employees:

(a) When the NowCast PM_{2.5} as identified in WAC 296-62-08530 is 55.5µg/m³ (WAQA 173, AQI 151) or more; and

(b) Of the protective measures available to them to reduce their wildfire smoke exposures.

(2) Encouraging employees to inform the employer of:

(a) Worsening air quality; and

(b) Any adverse symptoms that may be the result of wildfire smoke exposure such as asthma attacks, difficulty breathing, and chest pain.

(3) Including wildfire smoke in the written accident prevention program. At a minimum, the written program must include the information in WAC 296-62-08590 Appendix B.

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NEW SECTION

WAC 296-62-08550 Information and training. The employer must provide all workers effective information and training regarding wildfire smoke before work that exposes the worker to PM_{2.5} levels of 20.5µg/m³ (WAQA 101, AQI 69) or more, and at least annually thereafter.

(1) Information and training must be provided in a manner and language readily understood by the workers.

(2) At a minimum, the training must include the information in WAC 296-62-08590 Appendix B.

(3) Supervisor training. Prior to supervising employees performing work that exposes the worker to PM_{2.5} levels that are 20.5µg/m³ (WAQA 101, AQI 69) or more, supervisors must have training on the information in WAC 296-62-08590 Appendix B, and the following topics:

(a) Procedures the supervisor must follow to implement the applicable provisions of WAC 296-62-085 through 296-62-08590 wildfire smoke;

(b) Procedures the supervisor must follow if an employee exhibits adverse symptoms of wildfire smoke exposure, including appropriate emergency response procedures; and

(c) Procedures for moving or transporting employees to an emergency medical service provider, if necessary.

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NEW SECTION

WAC 296-62-08560 Exposure symptom response. (1) Employees displaying adverse symptoms of wildfire smoke exposure must be monitored to determine whether medical attention is necessary.

(2) Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical treatment, and may not retaliate against affected employees for seeking such treatment.

(3) Employers must also have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke exposure.

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NEW SECTION

WAC 296-62-08570 Exposure controls. (1) Where the NowCast PM_{2.5} is 20.5µg/m³ (WAQA 101, AQI 69) or more, the employer is encouraged to implement exposure controls.

(2) Where the NowCast PM_{2.5} is 55.5µg/m³ (WAQA 173, AQI 151) or more, the employer must implement exposure controls whenever feasible.

(3) Such controls include:

(a) Providing enclosed buildings, structures, or vehicles where the air is adequately filtered;

(b) Providing portable HEPA filters in enclosed areas;

(c) Relocating work to a location with a lower ambient air concentration of PM_{2.5};

(d) Changing work schedules to a time with a lower ambient air concentration of PM_{2.5};

(e) Reducing work intensity;

(f) Providing additional rest periods.

EXCEPTION: In emergencies, including rescue and evacuation, engineering and administrative controls in WAC 296-62-08570 (1) and (2) are not required. Emergencies include utilities, communications, and medical operations, when such operations are directly aiding firefighting or emergency response.

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NEW SECTION

WAC 296-62-08580 Respiratory protection. (1) Where the NowCast $PM_{2.5}$ is $20.5\mu g/m^3$ (WAQA 101, AQI 69) or more, the employer is encouraged to provide respirators at no cost to employees upon request. Alternatively, workers may request to provide and wear their own respiratory protection voluntarily.

(2) Where the NowCast $PM_{2.5}$ is $55.5\mu g/m^3$ (WAQA 173, AQI 151) or more, the employer must provide respirators at no cost to all employees, and encourage employees to use respirators.

(3) Respirators shall be NIOSH-approved devices that effectively protect the wearers from inhalation of $PM_{2.5}$, such as N95 filtering facepiece respirators.

(4) Employers may provide KN95 filtering facepiece respirators during the 2021 wildfire season.

(5) Respirators shall be cleaned, stored, maintained, and replaced so that they do not present a health hazard to users.

(6) Employers shall use WAC 296-62-08590 Appendix B of this part in lieu of the advisory information in Table 2 of WAC 296-842-11005 for training regarding voluntary use of respirators for wildfire smoke.

Note: For voluntary use of filtering facepiece respirators, such as N95 respirators, some of the requirements of chapter 296-842 WAC, Safety Standards for Respirators, do not apply, such as fit testing and medical evaluations. If elastomeric respirators are used voluntarily, additional requirements from chapter 296-842 WAC, Respirators apply such as medical evaluations and establishing a respiratory protection program.

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NEW SECTION

WAC 296-62-08585 Appendix A: Protection from wildfire smoke measuring $PM_{2.5}$ levels at the worksite (mandatory if an employer monitors with a direct reading instrument). (1) An employer may use a direct-reading particulate monitor to identify harmful exposures as required by WAC 296-62-08530, if the employer can demonstrate that it has complied with this appendix and selected a monitor that:

(a) Does not underestimate employee exposures to wildfire smoke;
or

(b) May underestimate wildfire smoke exposures, but the employer has obtained information on the possible error of the monitor from the manufacturer or other published literature and has accounted for the error of the monitor when determining exposures to $PM_{2.5}$ to ensure that employee exposure levels are not underestimated.

(2) The monitor shall be designed and manufactured to measure the concentration of airborne particle sizes ranging from an aerodynamic diameter of 0.3 micrometers or less, up to and including 2.5 micrometers ($\leq 0.3\mu m$ to $2.5\mu m$). The employer may use a monitor that measures a particle size range beyond these limits, if the employer treats the results as the $PM_{2.5}$ levels.

(3) The employer shall ensure that the monitor it uses is calibrated, maintained, and used, including the use of necessary accessories, in accordance with the manufacturer's instructions for accurately measuring $PM_{2.5}$ concentrations.

(4) The person supervising, directing, or evaluating workplace monitoring for PM_{2.5} shall have the training or experience necessary to apply this section and to ensure the correct use of the monitor and the interpretation of the results, so that exposures are not underestimated.

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NEW SECTION

WAC 296-62-08590 Appendix B: Protection from wildfire smoke information to be provided to employees (mandatory). (1) The health effects of wildfire smoke.

Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter can irritate the lungs and cause persistent coughing, phlegm, wheezing, or difficulty breathing. Particulate matter can also cause more serious problems, such as reduced lung function, bronchitis, worsening of asthma, heart failure, and early death.

Greater concentrations of particulate matter in the air create more of a hazard for workers. This rule requires that employers implement protections for workers once the amount of particulate matter in the air reaches a certain concentration: A NowCast PM_{2.5} 55.5µg/m³ (WAQA 173, AQI 151).

However, some workers may experience health effects at NowCast PM_{2.5} levels of 20.5µg/m³ (WAQA 101, AQI 69) or lower, especially if they belong to a sensitive group. Employers are encouraged to implement exposure controls and provide respirators at no cost to employees where the NowCast PM_{2.5} is 20.5µg/m³ (WAQA 101, AQI 69). Employees may request to provide their own respirator for voluntary use at any NowCast PM_{2.5} level below 55.5µg/m³ (WAQA 173, AQI 151).

Sensitive groups. People with preexisting health conditions and those who are sensitive to air pollution who are among those most likely to experience health problems from exposure to wildfire smoke. Examples of sensitive groups include:

- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;

- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, flu, or those with, or recovering from COVID-19;

- People with existing heart or circulatory problems, such as irregular heart beat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;

- Children under eighteen years old, and adults over age sixty-five;

- Pregnant women;

- People with diabetes;

- People with other medical or health conditions which can be exacerbated by exposure to wildfire smoke as determined by a physician.

(2) The right to obtain medical treatment without fear of reprisal.

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical treatment, and may not punish affected employees for seeking such treatment. Employers must also have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke exposure.

(3) How employees can obtain the NowCast PM_{2.5} in the air.

Various government agencies monitor the air at locations throughout Washington and report the NowCast PM_{2.5} for those places. Both the Washington air quality advisory (WAQA) and the Air Quality Index (AQI) use the air quality data from these regulatory monitors. While both the WAQA and AQI use the same data to provide an indicator of how unhealthy the current air quality is, the WAQA uses lower thresholds for reporting the health hazard.

Although the government monitoring stations may measure several pollutants, this chapter only uses PM_{2.5}. There are several ways to determine the PM_{2.5} levels. Note that if you choose to use an index such as WAQA or AQI, use the following table to find the equivalent WAQA or AQI for PM_{2.5}.

NowCast PM _{2.5} in Micrograms per Cubic Meter (µg/m ³)	NowCast Washington Air Quality Advisory (WAQA)	NowCast Air Quality Index (AQI)
20.5µg/m ³	101	69
55.5µg/m ³	173	151

(4) Some sources to obtain this data include:

(a) NowCast PM_{2.5}, available at:

- U.S. Forest Service AirFire website <https://tools.airfire.org/> monitoring.

(b) NowCast AQI, available at:

- U.S. EPA AirNow website <https://www.airnow.gov/>;
- "EPA AirNow" mobile app (free);
- U.S. Forest Service AirFire website <https://tools.airfire.org/> monitoring;
- EPA Enviroflash.info <http://www.enviroflash.info/> (provides notifications).

(c) NowCast WAQA, available at:

- Washington Air Monitoring Network website <https://enviwa.ecology.wa.gov/home/map>;
- "Air Quality WA" mobile app (free);
- Washington Smoke Information website <https://wasmoke.blogspot.com/>.

Employees who do not have access to the internet or phone can contact their employer for the NowCast PM_{2.5}.

(5) The requirements of WAC 296-62-085 through 296-62-08590, wildfire smoke rule.

If employees may be exposed to wildfire smoke, then the employer is required to:

(a) Check the NowCast PM_{2.5} before and periodically during each shift.

(b) Provide training to employees if they are exposed to wildfire smoke at NowCast PM_{2.5} levels of 20.5µg/m³ (WAQA 101, AQI 69) or more.

(c) Implement a two-way communication system.

(d) Provide engineering and administrative controls when the NowCast PM_{2.5} is 55.5µg/m³ (WAQA 173, AQI 151) or more if feasible.

(e) Provide respirators and encourage their use when the NowCast $PM_{2.5}$ is $55.5\mu g/m^3$ (WAQA 173, AQI 151) or more.

Employers shall alert employees when the NowCast $PM_{2.5}$ is $55.5\mu g/m^3$ (WAQA 173, AQI 151) or more, and what protective measures are available to employees.

Employers shall encourage employees to inform their employers if they notice the air quality is getting worse, or if they are suffering from any symptoms due to the air quality, without fear of reprisal.

The employer's communication system is: _____

(6) The employer's methods to protect employees from wildfire smoke.

Employers are encouraged to take action to protect employees from wildfire smoke when the NowCast $PM_{2.5}$ is $20.5\mu g/m^3$ (WAQA 101, AQI 69) and must take action to protect employees from wildfire smoke when the NowCast $PM_{2.5}$ is $55.5\mu g/m^3$ (WAQA 173, AQI 151). Examples of protective methods include:

(a) Locating work in enclosed structures or vehicles where the air is filtered.

(b) Changing procedures such as moving workers to a place with a lower $PM_{2.5}$.

(c) Reducing work time in areas with unfiltered air.

(d) Increasing rest time and frequency, and providing a rest area with filtered air.

(e) Reducing the physical intensity of the work to help lower the breathing and heart rates.

The employer's control system at this worksite is: _____

(7) The importance, limitations, and benefits of using a respirator when exposed to wildfire smoke.

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the $PM_{2.5}$ is $20.5\mu g/m^3$ or lower, to provide additional protection.

When the NowCast $PM_{2.5}$ is $20.5\mu g/m^3$ (WAQA 101, AQI 69) or more, employers are encouraged to make proper respirators available to workers who may choose to use them voluntarily.

When the NowCast $PM_{2.5}$ is $55.5\mu g/m^3$ (WAQA 173, AQI 151) or more, employers must make proper respirators available to workers who may choose to use them voluntarily.

If an employer declines to provide respirators to a worker below NowCast $PM_{2.5}$ of $55.5\mu g/m^3$ (WAQA 173, AQI 151), the worker may request to provide their own respirator for voluntary use. The training contained in this section, meets the requirements for voluntary use respirator training.

A respirator should be used properly and kept clean.

The following precautions must be taken:

(a) Employers shall select respirators certified for protection against the specific air contaminants at the workplace. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention certifies respirators. A label or statement of certification should appear on the respirator or res-

pirator packaging. It will list what the respirator is designed for (particulates, for example). KN95 respirators may also be used if adequate supply of NIOSH approved respirators is not available.

Surgical masks or items worn over the nose and mouth such as scarves, T-shirts, and bandannas will not provide protection against wildfire smoke. An N95 filtering facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations. The manufacturer's instructions for medical evaluations, fit testing, and shaving should also be followed to ensure the best protection against wildfire smoke, although doing so is not required for voluntary use of filtering facepiece respirators.

(c) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect workers against gases or vapors, and it will not supply oxygen.

(d) Employees should keep track of their respirator so that they do not mistakenly use someone else's respirator.

(e) Employees who have a heart or lung problem should ask their doctor before using a respirator.

(8) How to properly put on, use, and maintain the respirators provided by the employer.

To get the most protection from a respirator, there must be a tight seal around the face. A respirator will provide much less protection if facial hair interferes with the seal. Loose-fitting powered air purifying respirators may be worn by people with facial hair since they do not have seals that are affected by facial hair.

The proper way to put on a respirator depends on the type and model of the respirator.

For those who use an N95 or other filtering facepiece respirator mask that is made of filter material:

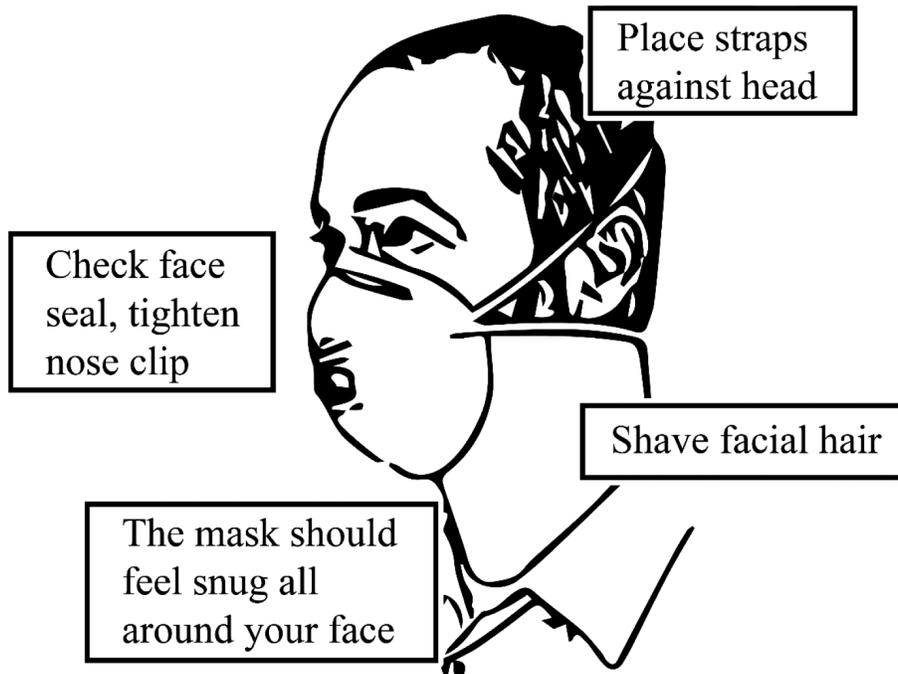
(a) Place the mask over the nose and under the chin, with one strap placed below the ears and one strap above.

(b) Pinch the metal part (if there is one) of the respirator over the top of the nose so it fits securely.

(c) Perform a seal check:

(i) Cover the respirator with both hands and exhale. If air leaks where the respirator seals against the face, readjust the respirator and nosepiece and try again. When a proper fit is achieved, the respirator should bulge from the face and not leak around the seal.

(ii) Cover the respirator with both hands and inhale. If air leaks where the respirator seals against the face, readjust the respirator and nosepiece and try again. When a proper fit is achieved, the respirator should collapse slightly and not leak around the seal.



For a respirator that relies on a tight seal to the face, check how well it seals to the face by following the manufacturer's instructions for user seal checks. Adjust the respirator if air leaks between the seal and the face. The more air leaks under the seal, the less protection the user receives.

Respirator filters should be replaced if they get damaged, deformed, dirty, or difficult to breathe through. Filtering facepiece respirators are disposable respirators that cannot be cleaned or disinfected. A best practice is to replace filtering facepiece respirators at the beginning of each shift.

If you have symptoms such as difficulty breathing, dizziness, or nausea, go to an area with cleaner air, take off the respirator, and get medical help.

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WSR 21-15-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-120—Filed July 16, 2021, 11:57 a.m., effective July 19, 2021]

Effective Date of Rule: July 19, 2021.

Purpose: The purpose of this emergency rule is to close salmon fishing in the Skykomish River, from the mouth to Wallace River.

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

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

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

Reasons for this Finding: This action is necessary to ensure broodstock collection goals for the Wallace River Hatchery are met. As of July 15, 2021, the Wallace River Hatchery has collected one thousand eight hundred thirty-eight Chinook, which is short of the five thousand fish collection goal. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000I Freshwater exceptions to statewide rules—Puget Sound. Effective July 19 through July 31, 2021, provisions of WAC 220-312-040 regarding salmon seasons for the Skykomish River shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

Skykomish River (Snohomish Co.); from the mouth to Wallace River: Salmon: Closed.

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WSR 21-15-073
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-121—Filed July 16, 2021, 12:11 p.m., effective July 19, 2021]

Effective Date of Rule: July 19, 2021.

Purpose: The purpose of this emergency rule is to close Chinook retention in Marine Area 5.

Citation of Rules Affected by this Order: 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: The current estimate of total legal-sized Chinook encounters through July 15 is 5,894 (seventy-eight percent) of the total 7,565 legal-sized encounters agreed up in this year's list of agreed fisheries. Because of the high number of encounters this early in the season, Chinook retention will be suspended. Encounter estimates will be updated again after Chinook retention ends, and staff will reevaluate and determine the best course of action for the remainder of the season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000F Puget Sound salmon—Saltwater seasons and daily limits. Effective July 19 through August 15, 2021, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 5 shall be as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect: Salmon:

(a) Daily limit 2.

(b) Release chum, Chinook, and wild coho.

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WSR 21-15-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-122—Filed July 16, 2021, 12:16 p.m., effective July 17, 2021]

Effective Date of Rule: July 17, 2020 [2021].

Purpose: The purpose of this emergency rule is to close recreational salmon fishing in the Tulalip Terminal Area.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000B; 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: The Tulalip Terminal Fishing Area (Tulalip Bubble) will temporarily close at 11:59 p.m., Friday, July 16, 2021, until further notice. The Washington department of fish and wildlife (WDFW) and comanagers have increased broodstock objectives for hatchery programs within the Snohomish Watershed. Actual returns to date to the Bernie Gobin Hatchery are lower than expected, therefore, WDFW and comanagers determined that it is necessary to close fisheries in the near terminal area until broodstock requirements have been fulfilled. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000G Puget Sound salmon—Saltwater seasons and daily limits. Effective July 17, 2021, until further notice, the following provisions of WAC 220-313-060 regarding salmon seasons for the section of Marine Area 8-2 known as the Tulalip Terminal Area as defined below shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 8-2; the Tulalip Terminal Area:

(a) Tulalip Terminal Area is defined as: 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.

(b) Salmon: Closed

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REPEALER

The following section of Washington Administrative Code is repealed, effective July 17, 2021:

WAC 220-313-06000B Puget Sound salmon—Saltwater seasons and daily limits. (21-80)

**WSR 21-15-075
EMERGENCY RULES
DEPARTMENT OF**

CHILDREN, YOUTH, AND FAMILIES

[Filed July 16, 2021, 12:44 p.m., effective July 18, 2021]

Effective Date of Rule: July 18, 2021.

Purpose: Amend WAC 110-15-0280 to align with department of children, youth, and family's (DCYF) chapter 110-03 WAC, Administrative hearings.

Citation of Rules Affected by this Order: Amending WAC 110-15-0280.

Statutory Authority for Adoption: RCW 43.216.905, 43.216.906.

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: DCYF has conflicting rules regarding an administrative appeal process that impacts the general welfare. The emergency amendment will harmonize the conflicting rules. Observing the permanent rule-making time requirements for notice and comment would be contrary to the public interest. DCYF has begun permanent rule making to amend WAC 110-15-0280.

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

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

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

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

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

Date Adopted: July 16, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0280 Right to request an administrative hearing. (1) WCCC consumers have a right to request ((a hearing under chapter 388-02 WAC)) administrative hearings on any action affecting WCCC benefits.

(2) Child care providers may request administrative hearings ((under chapter 388-02)) WAC only for WCCC overpayments. A provider's burden of proof is a preponderance of the evidence.

(3) To request a hearing, a consumer or provider:

- (a) Contacts the ((DSHS)) DCYF office which sent them the notice;
or
- (b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and
- (c) Makes the request for a hearing within:
- (i) Ninety days of the date a decision is received for consumers;
or
- (ii) Twenty-eight days of the date a decision is received for providers.
- (4) The office of administrative hearings administrative law judge enters initial or final orders as provided in ((WAC ~~388-02-0217~~)) chapter 110-03 WAC. Initial orders may be appealed to a DSHS review judge under chapter ((~~388-02~~)) 110-03 WAC.
- (5) To request a hearing under the seasonal child care program, see WAC ((~~170-290-3860 and 170-290-3865~~)) 110-15-3860 and 110-15-3865.

[WSR 18-14-078, recodified as § 110-15-0280, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0280, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0280, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0280, filed 10/28/09, effective 12/1/09.]

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

WSR 21-15-078
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 16, 2021, 2:23 p.m., effective July 16, 2021, 2:23 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: 2019's Clean Energy Transformation Act amends RCW 82.08.962 and 82.12.962 related to sales and use tax remittances for machinery and equipment used in generating electricity (sections 18 and 19, chapter 288, Laws of 2019, E2SSB 5116). Under the amendments, the sales and use tax remittances are available for certain clean energy projects when certified by the department of labor and industries (L&I) that the developer of the project complied with specific labor standard requirements and the machinery and equipment is installed on or after January 1, 2020, and completed by December 31, 2029.

The emergency rules address:

- Standards for certification for:
 - Procurement from and contracts with women-owned, minority-owned, and veteran-owned businesses;
 - Procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations;
 - Apprenticeship utilization;
 - Preferred entry for workers living in the area where the project is being constructed;
 - Payment of prevailing wages; and
 - Project labor agreements and community workforce agreements.
- Requirements and processes for related to application, records and documentation, and certification.

An initial emergency rule (WSR 19-24-061) and CR-101 Preproposal statement of inquiry (WSR 19-24-062) were filed on November 27, 2019. A second emergency rule (WSR 20-08-089) was filed on March 27, 2020. A third emergency rule (WSR 20-16-012) was filed on July 23, 2020. A fourth emergency rule (WSR 20-24-020) was filed on November 20, 2020. A fifth emergency rule (WSR 21-07-089) was filed on March 19, 2021.

Citation of Rules Affected by this Order: New WAC 296-140-001, 296-140-002, 296-140-003, and 296-140-004.

Statutory Authority for Adoption: Sections 18 and 19, chapter 288, Laws of 2019; RCW 82.08.962 and 82.12.962; (E2SSB 5116), Laws of 2019.

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 required to adopt emergency rules to define and set minimum requirements for all labor standards associated with the certification for tax remittance, set requirements for all good faith efforts, and set other requirements to documentation and the certification process. This rule making renews the emergency rules while the permanent rule-making process continues. This emergency rule is adopted under new chapter 296-140 WAC, Clean energy labor standards certification. As directed by E2SSB 5116, L&I is continuing work on permanent rule making for these requirements.

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 4, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 16, 2021.

Joel Sacks
Director

OTS-1924.3

**Chapter 296-140 WAC
CLEAN ENERGY LABOR STANDARDS CERTIFICATION**

NEW SECTION

WAC 296-140-001 Definitions. (1) "Category 1 clean energy project" means a project to:

(a) Construct a facility capable of generating not less than 1000 watts AC of electricity using any of the following principal sources of power: Fuel cells; wind; biomass energy; geothermal resource; tidal or wave energy; or technology that converts otherwise lost energy from exhaust; or

(b) Construct solar energy systems capable of generating not less than 500 kilowatts AC of electricity.

(2) "Category 2 clean energy project" means a project to construct solar energy systems capable of generating more than 100 kilowatts AC, but no more than 500 kilowatts AC of electricity.

(3) "Community workforce agreement (CWA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the CWA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

(4) "Department" means the department of labor and industries.

(5) "Good faith efforts" means the efforts by the project developer or its designated principle contractor that maximize the likelihood that the project will be built in compliance with the standards

for certification. The totality of the circumstances and factors will be reviewed to determine good faith. Good faith efforts are not necessary when the standard requirements have been met.

(6) "Labor hours" means the total hours of laborers, workers, or mechanics receiving an hourly wage who are directly employed by the contractor and all subcontractors working upon the project. Labor hours does not include hours worked by foremen, superintendents, or owners except where the hours worked are counted in satisfying the required apprentice to journey supervision ratio as required by apprenticeship standards.

(7) "Local resident" means Washington laborers, workers, or mechanics receiving an hourly wage who live within fifty miles of the project being constructed unless the project is being constructed in a rural county, then it is defined as Washington workers who live within two hundred miles of the project.

(8) "Minority-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a minority business enterprise (MBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(9) "Project labor agreement (PLA)" means a prehire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. Sec. 158(f). To establish the terms and conditions for employment on a single construction project, the PLA must be a single agreement covering all labor organizations representing the building and construction employees involved in the project and covers all contractors and subcontractors working on the project.

(10) "Registered apprentice" means an apprentice registered in an apprenticeship program approved by the Washington state apprenticeship and training council according to chapter 49.04 RCW.

(11) "Rural county" has the same definition as RCW 82.14.370(5).

(12) "Women-owned business" means a business certified with the office of minority and women's business enterprises (OMWBE) as a women business enterprise (WBE) or a minority women business enterprise (MWBE) under chapter 326-20 WAC.

(13) "Veteran-owned business" means a business certified by the Washington state department of veteran affairs under RCW 43.60A.190 or a business considered a veteran-owned business under 38 C.F.R. Part 74.

[]

NEW SECTION

WAC 296-140-002 Labor standard certification for Category 1 clean energy projects under RCW 82.08.962 and 82.12.962. (1) To qualify for the department certification for the fifty percent tax remittance for a Category 1 clean energy project, the project must meet the following minimum requirements:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses.

(i) Have twenty-one percent of the contracts awarded to women-owned businesses, minority-owned businesses, or veteran-owned businesses; or

(ii) Good faith efforts which include, but are not limited to:

(A) Proactive outreach to firms that are women, minority, and veteran-owned businesses; advertising in local community publications and publications appropriate to identified firms;

(B) Participating in community job fairs, conferences, and trade shows;

(C) Identification of interested women, minority, and veteran-owned businesses that have the capability to perform the work of the contract;

(D) Providing reasonable time for women, minority, and veteran-owned businesses to fully and meaningfully respond to bid solicitations, that includes providing adequate information about the plans, specifications, and requirements of the contract along with timely responses to subcontractor inquiries and proposals;

(E) Apportioning contract work items into economically feasible units to facilitate women, minority, and veteran-owned businesses' participation and where possible, establishing flexible time frames for performance to encourage participation;

(F) Adequately researching interested subcontractors and their capabilities before rejecting their proposals; and

(G) Not relying on price alone in the selection of subcontractors and considering reasonable quotes from women, minority, and veteran-owned businesses, even if other quotes are less expensive.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) Awards contracts to businesses that have no findings of violation of federal or state wage and hour laws and regulations in a final and binding order by an administrative agency or court of competent jurisdiction in the twenty-four month period prior to the bid date; or

(ii) Good faith efforts which include, but are not limited to:

(A) Efforts to hire contractors with a history of compliance with wage and hour laws.

(B) Adequately researching interested subcontractors and their wage and hour history before rejecting their proposals.

(C) If the only qualified contractor is one that does not meet the standard, requiring remedial measures that allow for ongoing review of compliance with wage and hour laws.

(c) Standard for apprenticeship utilization.

(i) Have a minimum of fifteen percent of the project's labor hours performed by registered apprentices; or

(ii) Good faith efforts which include, but are not limited to:

(A) The project developer or its designated principle contractor or subcontractors participate in state-approved apprenticeship programs but no apprentices were available or not enough apprentices were available during the project. It is expected that contractors participate in apprenticeship programs for occupations where they have employees being trained;

(B) If apprentices are not available for dispatch at the beginning of the project, it is expected that the contractor check back with the program periodically to see if apprentices are available;

(C) The following situations do not meet the requirements for good faith efforts:

(I) Falling short of the requirement due to subcontractors not using apprentices;

(II) Not using a state-approved apprenticeship program while you are trying to get your own program approved by the Washington state apprenticeship and training council;

(III) Not using a state-approved apprenticeship program due to cost;

(IV) Not using a state-approved apprenticeship program because you are an out-of-state contractor;

(V) Not replacing an apprentice that quit or was fired; or not using enough apprentices because certain work is too dangerous or the apprentices do not have the appropriate skills.

(d) Standard for preferred entry for workers living in the area where the project is being constructed:

(i) Have a minimum of thirty-five percent of total labor work hours performed by local residents except for projects located in rural counties, which may have a minimum of twenty percent of total labor hours by local residents; or

(ii) Good faith efforts which include, but are not limited to:

(A) Listing the job with the local Washington WorkSource office in advance of the start of the project or contract;

(B) Requesting the dispatch of local workers through union halls;

(C) Informing community partners/organizations of opportunities in advance of the start of the project or contract;

(D) Developing an employment hiring plan prior to the start of the project detailing how the local hiring requirements will be met; and

(E) Designating a jobs coordinator to be responsible for the local hire requirements with the experience and qualifications necessary to identify and recruit local workers, and provide referrals as appropriate to comply with local hire requirements.

(2) To qualify for the department certification for the seventy-five percent tax remittance for a Category 1 clean energy project, the project must meet the following minimum requirements:

(a) Meet the standards for certification for the fifty percent tax remittance under WAC 296-140-002(1); and

(b) Pay all workers performing labor hours on the project wages not less than prevailing wages as determined by the department under chapter 39.12 RCW.

(3) To qualify for the department certification for the one hundred percent remittance for a Category 1 clean energy project, the project must have: A signed PLA or CWA for the project prior to construction starting on the project. Separately meeting the standards for certification for the fifty percent and seventy-five percent tax remittance under subsections (1) and (2) of this section are not required.

(4) The inability to meet any of the standards based on conflicts with state or federal law may constitute good faith.

[]

NEW SECTION

WAC 296-140-003 Labor standard certification for Category 2 clean energy projects under RCW 82.08.962 and 82.12.962. To qualify for the department certification for the fifty percent tax remittance for a Category 2 clean energy project, the project must meet the

standards for procurement from and contracts with women, minority, or veteran-owned businesses, procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations, apprenticeship utilization, and preferred entry for workers living in the area where the project is being constructed under WAC 296-140-002 (1) and (4).

[]

NEW SECTION

WAC 296-140-004 Application, records and documentation, and certification. (1) Businesses applying for the department certification must complete an application in a form required by the department prior to the start of the project.

(2) Businesses must maintain records and documentation open to review to verify compliance with the labor standards or the good faith efforts. Records and documentation include, but are not limited to:

(a) Standard for procurement from and contracts with women, minority, or veteran-owned businesses:

(i) A list of all businesses that have had contracts on the project, including information about their certifications for the women-owned businesses, minority-owned businesses, or veteran-owned businesses that have been contracted with on the project, including:

(A) A description of the work of the contract;

(B) The dollar amount of the contract;

(ii) Written confirmation from each women-owned business, minority-owned business, or veteran-owned business that it is participating in the contract;

(iii) Documentation and evidence to support good faith efforts as necessary; and

(iv) Other records and documentation requested by the department.

(b) Standard for procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations.

(i) A list of all the businesses contracted with, including the unified business identifier number, the federal employer identification number, other identifying information requested by the department, and information obtained concerning their federal and state wage and hour laws and regulations compliance history;

(ii) A copy of documents related to the contract invitation or bid such as the contract solicitation, bid request, or request for proposal; a copy of the responding bids, proposals, or offer; and a copy of any final contracts and amendments;

(iii) A description of the process used to determine prospective contractors' compliance with federal and state wage and hour laws and regulations;

(iv) Documentation and evidence to support good faith efforts as necessary; and

(v) Other records and documentation requested by the department.

(c) Standard for apprenticeship utilization.

(i) The name, occupational title, and registration number for each registered apprentice;

(ii) The number of apprentices and labor hours worked, categorized by occupational title and employer;

- (iii) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
 - (iv) Copies of weekly or monthly reporting forms and payroll records used to capture the required information;
 - (v) A statement affirming the hours reported meeting the definition of "labor hours" as defined by WAC 296-140-001;
 - (vi) Documentation and evidence to support good faith efforts as necessary; and
 - (vii) Other records and documentation requested by the department.
- (d) Standard for preferred entry by local workers.
- (i) The total number of workers performing labor hours on the project;
 - (ii) The total number of workers performing labor hours hired who meet the definition of a local worker under WAC 296-140-001 for the job category selected;
 - (iii) Employment records that contain the address of individuals hired to work on the project;
 - (iv) Documentation and evidence to support good faith efforts as necessary; and
 - (v) Other records and documentation requested by the department.
- (e) Standard for payment of prevailing wages.
- (i) Documentation showing all workers performing labor hours on the project were paid not less than chapter 39.12 RCW prevailing rates of wage; and
 - (ii) Payroll records. For projects that are also public works, labor and industries public work reporting online system for the project will eliminate the need to maintain documents and is acceptable as the system of record.
- (f) Records and documents for a standard for a PLA or CWA. A signed copy of the PLA or CWA for the project.
- (3) The department may require periodic reporting of compliance in a form and method prescribed by the department. Where a project seeking certification under this rule is also a public works project, public works reporting requirements may satisfy reporting requirements.
- (4) For Category 1 clean energy projects seeking certification for the fifty and seventy-five percent tax remittance and Category 2 clean energy projects seeking certification for the fifty percent tax remittance, businesses must submit notice of project completion in a form required by the department. After receiving the notice of completion, the department will determine if the certification standards are met based on a review of the documentation as requested by the department. If the standards were met, the department will issue the certification to the applicant.
- (5) For Category 1 clean energy projects seeking certification for the one hundred percent tax remittance, the department will issue certification upon the receipt of the required application for certification and a signed copy of the PLA or CWA for the project.

[]

WSR 21-15-108

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed July 20, 2021, 1:58 p.m., effective July 20, 2021, 1:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-710, 246-945-712, 246-945-714, 246-945-716, 246-945-718, 246-945-720, 246-945-722, 246-945-724, 246-945-726, and 246-945-728, medication assistance. The pharmacy quality assurance commission (commission) and department of health (department) are filing jointly to reinstate medication assistance rules as permitted under chapter 69.41 RCW. Specifically, this rule establishes criteria for medication assistance in community-based and in-home care settings in accordance with chapter 69.41 RCW. The definition for medication assistance provided in RCW 69.41.010(15) states:

"Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department ...

These emergency rules provide further definitions for terms used within this definition such as "enabler" and establish those "other means of medication assistance as defined by rule adopted by the department." These rules help impacted individuals retain their independence and live in the least restrictive setting, such as their own home, longer by providing means and guidance for medication assistance. Also, with the direction provided in RCW 69.41.010(15), the rules are being filed under the joint authority of the commission and the department.

Citation of Rules Affected by this Order: New WAC 246-945-710, 246-945-712, 246-945-714, 246-945-716, 246-945-718, 246-945-720, 246-945-722, 246-945-724, 246-945-726, and 246-945-728.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.010(15), 69.41.075.

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 commission's new chapter 246-945 WAC became effective in July 2020. The old rules, including the former rules on medication assistance (chapter 246-888 WAC), were repealed in March 2021. The commission's repeal of chapter 246-888 WAC has resulted in unintended disruptions for medication assistance in the community-based and in-home care settings permitted under chapter 69.41 RCW. Emergency rule making is necessary to immediately restore medication assistance regulations to preserve patient safety and welfare while the commission and the department work on permanent rule making.

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

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 10, Amended 0, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 0, Repealed 0.

Date Adopted: April 7, 2021.

Teri Ferreira, RPh, Chair
Pharmacy Quality Assurance Commission
and Kristin Peterson, JD
Deputy Secretary
Policy and Planning

OTS-2998.2

PART 5 - MEDICATION ASSISTANCE

NEW SECTION

WAC 246-945-710 Scope and applicability. (1) This section through WAC 246-945-728 only apply to medication assistance provided in community-based care settings and in-home care settings.

(2) The following definitions apply to this section through WAC 246-945-728 unless the context requires otherwise:

(a) "Medication" means legend drugs and controlled substances;
and

(b) "Practitioner" has the same meaning as in RCW 69.41.010(17).

[]

NEW SECTION

WAC 246-945-712 Self-administration with assistance, independent self-administration, and medication administration. (1) Self-administration with assistance means assistance with legend drugs and controlled substances rendered by a nonpractitioner to an individual residing in a community-based care setting or an in-home care setting. It includes reminding or coaching the individual to take their medication, handing the medication container to the individual, opening the

medication container, using an enabler, or placing the medication in the hand of the individual/resident. The individual/resident must be able to put the medication into their mouth or apply or instill the medication. The individual/resident does not necessarily need to state the name of the medication, intended effects, side effects, or other details, but must be aware that they are receiving medication. Assistance may be provided by a nonpractitioner with prefilled insulin syringes. Assistance is limited to handing the prefilled insulin syringe to an individual/resident. Assistance with the administration of any other intravenous or injectable medication is specifically excluded. The individual/resident retains the right to refuse medication. Self-administration with assistance shall occur immediately prior to the ingestion or application of a medication.

(2) Independent self-administration occurs when an individual/resident is independently able to directly apply a legend drug or controlled substance by ingestion, inhalation, injection or other means. In licensed assisted living facilities, self-administration may include situations in which an individual cannot physically self-administer medications but can accurately direct others. These regulations do not limit the rights of people with functional disabilities to self-direct care according to chapter 74.39 RCW.

(3) If an individual/resident is not able to physically ingest or apply a medication independently or with assistance, then the medication must be administered to the individual/resident by a person legally authorized to do so (e.g., physician, nurse, pharmacist). All laws and regulations applicable to medication administration apply. If an individual/resident cannot safely self-administer medication or self-administer with assistance or cannot indicate an awareness that they are taking a medication, then the medication must be administered to the individual/resident by a person legally authorized to do so.

[]

NEW SECTION

WAC 246-945-714 Self-administration with assistance in a community-based care setting or an in-home setting. (1) An individual/resident, or their representative, in a community-based care setting or an in-home setting may request self-administration with assistance.

(2) No additional separate assessment or documentation of the needs of the individual/resident are required in order to initiate self-administration with assistance. It is recommended that providers document their decision-making process in the health record of the individual or resident health record.

(3) A nonpractitioner may help in the preparation of legend drugs and controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate.

[]

NEW SECTION

WAC 246-945-716 Enabler. (1) Enablers are physical devices used to facilitate an individual's/resident's self-administration of a medication. Physical devices include, but are not limited to, a medicine cup, glass, cup, spoon, bowl, prefilled syringes, syringes used to measure liquids, specially adapted table surface, straw, piece of cloth, or fabric.

(2) An individual's hand may also be an enabler. The practice of "hand-over-hand" administration is not allowed. Medication administration with assistance includes steadying or guiding an individual's hand while he or she applies or instills medications such as ointments, eye, ear, and nasal preparations.

[]

NEW SECTION

WAC 246-945-718 Alteration of medication for self-administration with assistance. Alteration of a medication for self-administration with assistance includes, but is not limited to, crushing tablets, cutting tablets in half, opening capsules, mixing powdered medications with foods or liquids, or mixing tablets or capsules with foods or liquids. Individuals/residents must be aware that the medication is being altered or added to their food.

[]

NEW SECTION

WAC 246-945-720 Medication alteration. A practitioner practicing within their scope of practice must determine that it is safe to alter a legend drug or controlled substance. If the medication is altered, and a practitioner has determined that such medication alteration is necessary and appropriate, the determination shall be communicated orally or by written direction. Documentation of the appropriateness of the alteration must be on the prescription container, or in the individual's/resident's record.

[]

NEW SECTION

WAC 246-945-722 Types of assistance provided by nonpractitioner. A nonpractitioner can transfer a medication from one container to another for the purpose of an individual dose. Examples include: Pouring a liquid medication from the medication container to a calibrated spoon or medication cup.

[]

NEW SECTION

WAC 246-945-724 Oxygen order/prescription requirements. Under state law, oxygen is not a medication and is not covered under this rule. While oxygen is not considered a medication under state law, oxygen does require an order/prescription from a practitioner.

[]

NEW SECTION

WAC 246-945-726 Self-administration with assistance of medication through a gastrostomy or "g-tube." If a prescription is written as an oral medication via "g-tube," and if a practitioner has determined that the medication can be altered, if necessary, for use via "g-tube," the rules as outlined for self-administration with assistance would also apply.

[]

NEW SECTION

WAC 246-945-728 Other medication assistance requirements. A practitioner, nonpractitioner, and an individual/resident or their representative should be familiar with the rules specifically regulating the residential setting. The department of social and health services has adopted rules relating to medication services in assisted living facilities and adult family homes.

[]

WSR 21-15-113
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed July 21, 2021, 8:27 a.m., effective July 21, 2021]

Effective Date of Rule: July 21, 2021.

Purpose: The department is extending the suspension of the rules listed below to ensure long-term care facilities and providers are not significantly impeded during the hiring process due to an inability to access required tuberculosis (TB) testing as a result of the COVID-19 epidemic. Clinics providing TB testing continue to be short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state. These emergency rules help increase the number of long-term care workers necessary to provide essential services for some of Washington's most vulnerable residents.

Citation of Rules Affected by this Order: Repealing WAC 388-76-10265, 388-76-10285, 388-78A-2484 and 388-107-0490; and amending WAC 388-76-10290(1), 388-78A-2480(1), 388-78A-2485(1), 388-101D-0650(1), 388-101D-0660(3), and 388-107-0460(1).

Statutory Authority for Adoption: RCW 70.128.040, 71A.12.030; and chapters 18.20 and 70.97 RCW.

Other Authority: Chapters 70.128, 71A.12, and 74.34 RCW.

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

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. While vaccinations are being distributed, this alone has not yet significantly improved staffing availability in long-term care facilities. Although the state has begun to implement a reopening plan, clinics providing TB testing continue to be short of staff and have limited availability throughout the state partially due to higher than normal requests for services related to overdue standard screening tests such as TB. Adult family homes and many assisted living facilities are dependent upon community services to provide TB testing. These clinics are unable to meet the demand for testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state.

Ongoing communication with stakeholders indicates a need to continue these suspended rules as the COVID[-19] pandemic is still impacting the ability of long-term care facilities to meet these requirements.

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

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 0.

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

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

Date Adopted: July 15, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4796.2

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10290 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the adult family home must:

- (1) ~~((Ensure that the person has a chest X-ray within seven days; (2)))~~ Ensure each resident or employee with a positive test result is evaluated for signs and symptoms of tuberculosis; and
 ((~~3~~)) (2) Follow the recommendation of the person's health care provider.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10290, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10290, filed 10/16/07, effective 1/1/08.]

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

WAC 388-78A-2480 Tuberculosis—Testing—Required. ~~((1) The assisted living facility must develop and implement a system to ensure each staff person is screened for tuberculosis within three days of employment.~~

~~(2))~~ For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any assisted living facility employee or temporary employee of the assisted living facility, excluding volunteers and contractors.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2480, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2480, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 18.20.090. WSR 06-24-073, § 388-78A-2480, filed 12/4/06, effective

1/4/07; WSR 06-01-047, § 388-78A-2480, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. WSR 04-16-065, § 388-78A-2480, filed 7/30/04, effective 9/1/04.]

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

WAC 388-78A-2485 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the assisted living facility must:

(1) ~~((Ensure that the staff person has a chest X-ray within seven days;~~

~~(2))~~ (2)) Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and

~~((3))~~ (2) Follow the recommendation of the resident or staff person's health care provider.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2485, filed 6/18/13, effective 7/19/13; WSR 10-03-066, § 388-78A-2485, filed 1/15/10, effective 2/15/10.]

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0650 What must a group training home do to detect and manage tuberculosis? To detect and manage tuberculosis, a group training home must:

(1) ~~((Ensure each employee has a tuberculin test no more than three days after beginning to work with clients unless otherwise exempt under this chapter;~~

~~(2))~~ (2)) Implement policies and procedures that comply with tuberculosis standards set by the Centers for Disease Control and Prevention and applicable state laws;

~~((3))~~ (2) Comply with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection; and

~~((4))~~ (3) Comply with chapter 296-842 WAC requirements to protect the health and safety of clients who may come into contact with people who have infectious tuberculosis.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.12.040 and 71A.22.010. WSR 18-23-101, § 388-101D-0650, filed 11/20/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

WAC 388-101D-0660 When is a group training home employee not required to complete a tuberculin test? (1) A group training home employee is not required to complete a tuberculin test if the employee:

- (a) Has documentation of an FDA-approved tuberculin test with negative results from within the last twelve months;
- (b) Has documentation of a positive FDA-approved tuberculin test with documented evidence of:
- (i) Adequate therapy for active disease; or
 - (ii) Completion of treatment for latent tuberculosis infection preventive therapy;
- (c) Self-reports a history of positive test results under subsection (2) or (3) of this section.
- (2) If a group training home employee self-reports a history of positive test results with chest X-ray results from the last twelve months, the employee must:
- (a) Provide a copy of the normal X-ray results to the group training home; and
 - (b) Be evaluated for signs and symptoms of tuberculosis.
- ~~(3) ((If a group training home employee self-reports a history of positive test results without chest X-ray results, the employee must:~~
- ~~(a) Be referred to a medical provider;~~
 - ~~(b) Complete a chest X-ray within seven days; and~~
 - ~~(c) Be cleared by a medical professional before returning to work if the X-ray is abnormal and consistent with tuberculosis.~~
- ~~(4))~~ A group training home volunteer working less than four hours a month is exempt from tuberculin test requirements.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 71A.12.040 and 71A.22.010. WSR 18-23-101, § 388-101D-0660, filed 11/20/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

WAC 388-107-0460 Tuberculosis (TB)—Testing—Required. The enhanced services facility must:

- ~~((1) Develop and implement a system to ensure staff have TB testing upon employment or starting service; and~~
- ~~(2))~~ Ensure that staff have an annual risk assessment completed using the Washington state department of health approved criteria.

[Statutory Authority: Chapter 70.97 RCW. WSR 14-19-071, § 388-107-0460, filed 9/12/14, effective 10/13/14.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|------------------|--|
| WAC 388-76-10265 | Tuberculosis—Testing—Required. |
| WAC 388-76-10285 | Tuberculosis—Two step skin testing. |
| WAC 388-78A-2484 | Tuberculosis—Two step skin testing. |
| WAC 388-107-0490 | Tuberculosis (TB)—Two-step skin testing. |

WSR 21-15-116
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-123—Filed July 21, 2021, 8:51 a.m., effective July 21, 2021, 8:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open recreational halibut season in Marine Areas 3 through 10.

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

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: There is sufficient Washington sport allocation to open additional days in Puget Sound (Marine Areas 5 - 10), Neah Bay (Marine Area 4) and La Push (Marine Area 3) to recreational fishing for Pacific halibut. State regulations will conform to rules adopted by the National Marine Fisheries Service. Halibut catch will continue to be closely monitored by Washington department of fish and wildlife staff, the season will close after September 25 or earlier if quotas are achieved.

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

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

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

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

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

Date Adopted: July 20, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000F Halibut—Seasons—Daily and possession limits.

Notwithstanding the provisions of WAC 220-314-040, and 220-314-010, effective July 21 through September 25, 2021, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-040, and 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

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

Open August 19, 20, 21, 26, 27, 28; September 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, and 25, 2021. (Open Thursdays through Saturdays from August 19 through September 25, 2021.)

(2) **Catch Record Card Areas 5 through 10:**

Open August 19, 20, 21, 26, 27, 28; September 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, and 25, 2021. (Open Thursdays through Saturdays from August 19 through September 25, 2021.)

(3) **Catch Record Card Areas 1, 2, 11, 12 and 13:** Closed.

[]

REPEALER

The following section of Washington Administrative Code is repealed, effective July 21, 2021:

WAC 220-314-03000E Halibut—Seasons—Daily and possession limits. (21-88)

WSR 21-15-119
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-124—Filed July 21, 2021, 9:59 a.m., effective July 24, 2021]

Effective Date of Rule: July 24, 2021.

Purpose: The purpose of this emergency rule is to reduce the daily Chinook limit in Marine Area 4.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500A; and amending WAC 220-313-075.

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 purpose of this rule is to reduce the daily limit to one Chinook per angler in Catch Record Card Area 4. While there are available Chinook remaining in the Area 4 quota, the recent closure of adjacent Catch Area 5 to Chinook retention is expected to lead to increased fishing effort and increased catch of Chinook in Area 4. Lowering the limit to one Chinook per angler will allow the Area 4 fishery to remain open further into the season without exceeding its quota.

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

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

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

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

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

Date Adopted: July 21, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-07500B Pacific Ocean salmon—Seasons—Closed areas.

Effective July 24 through September 15, 2021 the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

(1) **Catch Record Card Area 1:** Open immediately, through September 15, 2021:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.
- (2) **Catch Record Card Area 2:** Open immediately, through September 15, 2021:
 - (a) Open Sundays through Thursdays only (closed Fridays and Saturdays).
 - (b) Daily limit of 2 salmon; no more than one may be a Chinook.
 - (c) Release wild coho.
 - (d) Chinook minimum length 22 inches.
 - (e) Coho minimum length 16 inches.
 - (f) June 19, 2021 through August 8, 2021 the Grays Harbor Control Zone is open. See WAC 220-306-040.
- (3) **Catch Record Card Area 3:** Open immediately, through September 15, 2021:
 - (a) Daily limit of 2 salmon.
 - (b) Release wild coho.
 - (c) Chinook minimum length 24 inches.
 - (d) Coho minimum length 16 inches.
 - (4) **Catch Record Card Area 4:**
 - (a) Open July 24 through July 31, 2021:
 - (i) Daily limit of 2 salmon; no more than one may be a Chinook.
 - (ii) Release wild coho.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) Waters east of a true north-south line through Sail Rock are closed.
 - (b) Open August 1 through September 15, 2021:
 - (i) Daily limit of 2 salmon; no more than one may be a Chinook.
 - (ii) Release wild coho and chum.
 - (iii) Chinook minimum length 24 inches.
 - (iv) Coho minimum length 16 inches.
 - (v) No chinook retention in waters east of the Bonilla-Tatoosh line.

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

REPEALER

The following section of Washington Administrative Code is repealed, effective July 24, 2021:

WAC 220-313-07500A Pacific Ocean salmon—Seasons—Closed areas. (21-90)