

**WSR 22-12-006**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-74—Filed May 19, 2022, 12:31 p.m., effective June 18, 2022]

Effective Date of Rule: June 18, 2022.

Purpose: Opens Lake Roosevelt for recreational sturgeon fishing.

Citation of Rules Affected by this Order: Amending WAC  
220-312-060 [220-312-050].

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

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

Reasons for this Finding: This rule is necessary to open a harvest fishery for white sturgeon in Lake Roosevelt. White sturgeon hatchery programs began in 2001 in British Columbia (BC) and 2004 in Washington. Stocking ranged from 2,000-12,000 juvenile sturgeon per year from 2001 to 2010 (including both Washington and BC releases). Survival of hatchery-produced juvenile sturgeon was higher than anticipated, resulting in a surplus of hatchery-origin sturgeon available for harvest from Lake Roosevelt. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: May 19, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-05000L Freshwater exceptions to statewide rules—Eastside.** Effective June 18, 2022 until further notice, the following provisions of WAC 220-312-050 regarding recreational sturgeon seasons and harvest rules for Lake Roosevelt shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended, remain in effect:

(1) It is permissible to fish for sturgeon in waters of Lake Roosevelt from Grand Coulee Dam upstream to the China Bend Boat Ramp (in-

cluding the Spokane River from Highway 25 Bridge upstream to 400' below Little Falls Dam, Colville River upstream to Meyers Falls and the Kettle River upstream to Barstow Bridge):

(a) Daily limit: 1 sturgeon; minimum fork length 50 inches, maximum fork length 63 inches. Annual limit 2 sturgeon. Anglers must cease fishing for the day after obtaining a daily limit and for the season after the annual limit has been taken.

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

(c) Only one single-point barbless hook and bait per rod is allowed.

(d) Night closure is in effect for sturgeon.

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

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**WSR 22-12-011**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-77—Filed May 19, 2022, 4:40 p.m., effective May 24, 2022]

Effective Date of Rule: May 24, 2022.

Purpose: The purpose of this emergency rule is to open additional spring Chinook fisheries downstream of Highway 730 at the Washington/Oregon Border.

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

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

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

Reasons for this Finding: The *U.S. v. Oregon* technical advisory committee recently updated the 2022 upriver spring Chinook return to 180,000. Additional spring Chinook directed angling opportunities are available. This rule modification reopens 2022 spring recreational salmon seasons in the Columbia River from the Rocky Point/Tongue Point line upstream to Bonneville Dam, and from Bonneville Dam to Highway 730 at the Washington/Oregon border, including hatchery steelhead. Endangered Species Act (ESA) impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of May 11 and 18, 2022. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate 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: May 19, 2022.

Nate Pamplin  
for Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia.** Effective May 24 through June 15, 2022, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Rocky Point/Tongue Point line to Hwy. 730 at the Washington/Oregon border, and shad seasons from the mouth to the Bonneville 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:

**(1) From a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line) to a deadline marker on the Washington bank at Beacon Rock:**

Salmon and steelhead: Effective May 24 through June 15, 2022: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

**(2) From a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock upstream to Bonneville Dam:**

(a) All species: Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Salmon and steelhead: Effective May 24 through June 15, 2022: Daily limit is 6, no more than 2 adults may be retained of which no

more than 1 may be an adult Chinook. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

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

Salmon and steelhead: Effective May 26 and May 28, 2022 only: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

**(4) From a line drawn from a fishing boundary sign located on the Washington bank approximately 1000' upstream of the Dalles Dam boat ramp projected easterly across the Columbia River to a boundary sign located on the Oregon bank approximately 200' above The Dalles Dam fish ladder exit to Highway 730 at the Washington/Oregon border:**

Salmon and steelhead: Effective May 26 and May 28, 2022 only: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

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REPEALER

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

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

**WSR 22-12-012**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-78—Filed May 19, 2022, 4:43 p.m., effective May 19, 2022, 4:43 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

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

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

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

Reasons for this Finding: The *U.S. v. Oregon* technical advisory committee (TAC) met most recently on Monday, May 16, to review the up-river spring Chinook return and upgraded the forecast to 180,000 adults at the Columbia River mouth compared to the preseason forecast of 122,900 adults. Given the upriver spring Chinook run size projection, allocation sharing and allowable commercial gear policy guidance, and expected balance due to select area commercial fisheries not fully utilizing the commercial share, a mainstem nontreaty tangle net commercial fishery was adopted at the May 18, 2022, compact hearing. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 15, February 23, April 20, and May 18, 2022. This harvest opportunity allows for public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: May 19, 2022.

Nate Pamplin  
for Kelly Susewind  
Director

NEW SECTION

**WAC 220-358-03000K Columbia River seasons below Bonneville.**

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

**(1) Mainstem Columbia River:**

Open_Dates	Open_Days	Open_Time	Open_Duration
May 23	Monday	10:00 am - 9:00 pm	1 day

(a) **Open Area:** SMCRA 1D and 1E reduced. Hayden Island power lines (west towers) upstream to the upper commercial deadline at Beacon Rock. (reduced Zones 4-5).

(b) **Sanctuaries:** Sandy and Washougal rivers.

(c) **Allowable Possession:** Adipose fin-clipped (hatchery) Chinook salmon, white sturgeon, and shad. A maximum of sixteen (16) adult adi-

pose fin-clipped Chinook may be possessed or sold by each participating vessel. The first sixteen (16) adult hatchery fish must be retained and no additional drifts may be conducted once the Chinook limit has been retained. Jacks (Chinook less than 24-inches in total length) do not count against the adult landing limit. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit applies to mainstem fisheries only.

(d) **Gear:** Drift nets only. 4 1/4" maximum mesh size (tangle net). Single-wall multi-filament net only. Monofilament tangle nets are not allowed. Mesh size is determined by placing three consecutive meshes under hand tension, and the measurement is taken from the inside of one vertical knot to the inside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Net length not to exceed 150 fathoms. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline.

(e) **Net length** may be increased from 150 to 175 fathoms for nets constructed with a steelhead excluder panel, weedlines, or droppers. An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4" maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the lead line) independent of the attached floats. Weedlines or droppers must extend a minimum of five feet above the 4 1/4 maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks as required under subsection (1)(f)(ii) of this section.

(f) **Miscellaneous Regulations:**

(i) **Soak times** are defined as the time elapsed from when the first of the web is deployed into the water until the web is fully retrieved from the water, must not exceed 45 minutes.

(ii) **Red corks** are required at 25-fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

(iii) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked; pumps must continue to run until the net is fully retrieved and completely on board the vessel. Pumps



shall continue to run whenever a fish is in the recovery box. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is a least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All sturgeon not lawful to possess, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any non-legal salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(iv) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during the fishery. In addition, cooperation with department personnel prior to a fishing period is expected.

(v) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live-capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live-capture certification.

**(2) Select Areas:**

**(a) Tongue Point and South Channel Select Areas:**

Open_Dates	Open_Days	Open_Time	Open_Duration
May 19 - Jun 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	11 nights
Jun 16 - Jul 15	Mon, Thu (nights)	7:00 pm - 7:00 am	9 nights

(i) **Open Area definitions:** Immediately through July 15, 2022:

(A) **Tongue Point:** Area as described in OAR 635-042-0170 (1)(a) and WAC 220-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1" N latitude 123°45'34.0" W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

(B) **South Channel:** Defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(ii) **Gear:** Gillnets:

(A) Immediately through July 15, 2022: 9 3/4-inch maximum mesh size.

(B) The maximum net length is 1,500 feet (250 fathoms).

(C) In the Tongue Point Area, the lead line weight may not exceed two pounds per any one fathom.

(D) In the South Channel Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(b) **Blind Slough and Knappa Slough Select Areas:**

Open_Dates	Open_Days	Open_Time	Open_Duration
May 19 - Jun 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	11 nights
Jun 16 - Jul 15	Mon, Thu (nights)	7:00 pm - 7:00 am	9 nights

(i) **Open Area definitions:**

(A) **Blind Slough:** Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

(B) **Knappa Slough:** Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed.

(ii) **Gear:** Gillnets:

(A) Immediately through July 15, 2022: 9 3/4-inch maximum mesh size.

(B) The maximum net length is 600 feet (100 fathoms).

(C) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(iii) **Miscellaneous:** Permanent transportation rules in effect. In accordance with WACs 220-352-040 (1)(i) and 220-301-010 (11)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(c) **Deep River Select Area:**

Open_Dates	Open_Days	Open_Time	Open_Duration
May 19 - Jun 14	Mon, Wed, Thu (nights)	7:00 pm - 7:00 am	11 nights

(i) **Open Area:** From the mouth of Deep River defined as a line from USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(ii) **Gear:** Gillnets:

(A) Immediately through June 14, 2022: 9 3/4-inch maximum mesh size.

(B) The maximum net length is 600 feet (100 fathoms).

(C) There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(D) Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream, or channel any net longer than three-fourths the width of the stream (WAC 220-354-010(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of nets, whether fishing singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided by department rule (WAC 220-353-060(1)).

(iii) **Miscellaneous:**

(A) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff.

(B) Immediately through April 15, 2022: fishers are required to call 360-846-5268 or 360-795-0319 to confirm the place and time of sampling.

(C) April 18 through June 14, 2022: a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

(d) **Allowable Sales:** Salmon (except Chum), white sturgeon and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries. Retention and sales of non-adipose fin-clipped Chinook from ongoing Select Area commercial fisheries is prohibited from 10:00 am Monday May 23 through 12:00 pm (noon) Tuesday May 24, 2022.

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

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

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

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

REPEALER

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

WAC 220-358-03000J Columbia River seasons below  
Bonneville. (22-36)

## WSR 22-12-013

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

[Filed May 20, 2022, 7:54 a.m., effective May 20, 2022, 7:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-358 WAC, Temporary worker housing. The department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule for temporary worker housing. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed subsequent emergency rules through January 21, 2022 (WSR 22-04-010 and 22-04-017), to protect occupants from COVID-19 hazards in licensed temporary worker housing.

The emergency rule: (a) Maintains the requirements for operators to educate occupants on COVID-19 in a language or languages they understand and the requirement to conspicuously post information regarding COVID-19 in a language commonly understood by the occupants; (b) updates the education requirements to include what to do if an occupant is exposed to SARS-CoV-2; and what to do if they test positive for SARS-CoV-2; (c) maintains the language stating existing law regarding allowing entry of community health workers and community-based outreach workers to provide additional information; (d) updates the term "face covering" to "face coverings/mask" to reflect current terms used. Maintains the requirement for operators to provide face coverings/masks to occupants for use in accordance with DOH guidelines or as required by L&I rules but removes the requirements to instruct occupants and visitors about face coverings; (e) removes requirements related to physical distancing, bed placement, and use of bunk beds in sleeping quarters, and the alternative group shelter option. Operators must comply with the bed placement and bunk bed use requirements under the permanent rule under WAC 246-358-135; (f) maintains the requirement for ventilation; (g) removes requirement related to cleaning and disinfecting surfaces except for the requirement to clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or confirmed SARS-CoV-2 positive cases have been and the requirement to ensure adequate supplies of soap and single-use paper towels at all sinks to allow for frequent handwashing; (h) updates the requirements related to screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases as follows: (i) Removes the requirement to provide thermometers to each occupant or training a person to check all occupants temperatures daily, instead operators must ensure that an adequate number of "no touch" or "no contact" thermometers be available for occupants to use; (ii) updates the requirement to notify local health officers and provide transportation for any needed medical evaluation upon identification; includes individuals known [to have] SARS-CoV-2 in addition to individuals suspected of having COVID-19; (iii) updates terms referring to confirmed cases; (iv) requires the identification of close contacts in accordance with DOH or local health officer close contact definition; (v) updates the quarantine and isolation requirements for close contacts and individuals who test positive for COVID[-19] to follow current DOH guidance, which could vary by vaccination status. Adds that close contacts must follow the DOH guidance for symptom mon-

itoring and face covering/masking post-exposure, and that close contacts of a suspect SARS-CoV-2 case that is ruled out do not need to continue to be treated as close contacts; (vi) maintains the requirements for daily licensed health care professional visits for occupants in isolation with symptoms. For asymptomatic occupants in isolation, a licensed health care professional visit is required upon initial placement in isolation and upon request of the asymptomatic occupant or the licensed health care professional. Maintains the other requirements related to licensed health care professional visits, including options to use telehealth; and (vii) removes the requirements related to vaccine verification. Operators may need to verify vaccine status to determine quarantine requirements for close contacts under DOH guidance.

Both L&I and DOH each filed a Preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-10-050, regarding permanent amendments to the existing permanent rules to address hazards from COVID-19 or other outbreaks of airborne infectious diseases. Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation requirements, and isolation requirements during an outbreak.

Citation of Rules Affected by this Order: New WAC 246-358-002.

Statutory Authority for Adoption: RCW 70.114A.065.

Other Authority: RCW 43.70.335.

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: DOH and L&I continue to take action to help prevent the spread of COVID-19. Given the evolution of the pandemic, L&I and DOH have continued to review new information, data, and science as it [be]comes available to determine what requirements are necessary to protect temporary worker housing occupants from COVID-19 and similar airborne infectious disease hazards. L&I and DOH have also been reviewing and considering information related to the implementation of the requirements in emergency rules and stakeholder input. As the COVID-19 pandemic continues to present a hazard to temporary worker housing occupants, emergency rules are needed to address the hazard while the potential permanent changes are under development. However, this emergency rule removes many previous requirements that are no longer necessary to address on an emergency basis due to changes in case counts and hospitalizations and the increased vaccination rates. This includes requirements related to physical distancing, bed spacing and bunk bed use restrictions for sleeping quarters with unvaccinated occupants, and the group shelter alternative for bed spacing. Requirements related to training, ventilation, and isolation and quarantine are still critical. Given the current stage of the pandemic, DOH and L&I plan to take elements in this emergency rule and work to finalize proposed permanent rules. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the 2022 growing season.

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 1, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 20, 2022.

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

## OTS-2301.18

### NEW SECTION

**WAC 246-358-002 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure.** (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from the hazards posed by SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19):

(a) Educate occupants and allow entry of community workers:

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing; the use of face coverings/masks; proper respiratory etiquette; the importance of prompt sanitizing of frequently touched items; common symptoms and risk factors; how to get a vaccine and where to get answers about vaccine questions; what to do if they develop symptoms of COVID-19; what to do if they are exposed to SARS-CoV-2; and what to do if they test positive for SARS-CoV-2.

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information. For the purposes of this section, a community health worker is defined as a frontline public health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the worker to serve as a liaison/link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A community-based outreach worker is defined as a legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to secure medical treatment - all in a language commonly understood by the occupants.

(c) The operator must provide at no cost an adequate number of face coverings/masks for occupants to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules.

(d) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility/building has a mechanical ventilation system, maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. TWH operators must have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation or the percentage of outside air that circulates into the system and verify the following:

(A) Make sure all HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) Maximize the HVAC system's outdoor air intake. Make sure exhaust air is not pulled back into the building through the HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions such as wildfire smoke.

(D) Use appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) when changing filters.

(E) Maintenance checks must occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks must occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turn on mechanical ventilation systems (i.e., HVAC) or open windows whenever the TWH facility or building is occupied.

(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.

(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields near the building. The operator must instruct resi-



dents to remove or redirect personal fans to prevent blowing air from one worker to another.

(e) Clean and disinfect surfaces. The operator must:

(i) Clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or confirmed SARS-CoV-2 positive cases have been, according to CDC guidelines and before the space is used by others.

(ii) Ensure adequate supplies of soap and single-use paper towels at all sinks to allow for frequent handwashing.

(2) COVID-19 screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases.

(a) The operator must develop and implement a plan to identify and isolate occupants with suspect SARS-CoV-2 and positive SARS-CoV-2, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, fatigue, sore throat, congestion or runny nose, nausea or vomiting, diarrhea, and loss of taste or smell. The operator must ensure that an adequate number of thermometers or "no touch" or "no contact" thermometers are available for occupants to use. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

(ii) A "suspect SARS-CoV-2 case" is defined as a person with signs and symptoms compatible with COVID-19 above who has not been tested yet, or refuses testing. Upon identification of any individual known to have or suspected of having a SARS-CoV-2 case, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Identify close contacts in accordance with the Washington state department of health or local health officer close contact definition. Individuals who have been in close contact with the symptomatic suspect SARS-CoV-2 case or person who has tested positive for SARS-CoV-2 with a viral test must follow Washington state department of health or local health officer guidance for close contact, including quarantine, symptom monitoring, and face covering/masking. Close contacts of a suspect case who is ruled out do not need to continue to be treated as close contacts.

(iv) Any occupant in quarantine, regardless of vaccination status, must continue to be screened for symptoms of COVID-19 as described in (a)(i) in this subsection.

(v) Isolate suspect SARS-CoV-2 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with family members.

(vi) Individuals who test positive for SARS-CoV-2 with a viral test must be isolated and only housed with other confirmed cases and must have separate bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the confirmed occupant will have the option to isolate with the family members.

(vii) The operator must report suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants in isolation to the division of occupational safety and health (DOSH) within 24 hours after placement. This notification can be made by telephone to the department of labor and

industries toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits or assesses symptomatic occupants daily and asymptomatic occupants upon initial placement in isolation and upon request of the asymptomatic occupant or the licensed health care professional, at the employer's expense to perform a health check for each individual in isolation. Evaluations by licensed health care providers may be performed in-person, using audio telemedicine, or video telemedicine. At a minimum, the health care professional must review symptoms; temperature; oxygen saturation via pulse oximetry; and determine if additional medical services are needed, such as an in-person evaluation or treatment. If the licensed health care professional is not already familiar with the occupant's medical history, the licensed health care professional must obtain relevant medical history from the occupant.

(ii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services. If the health care provider has a question about the safety, health, or well-being for the occupant in isolation, they may contact the housing operator for further information.

(iii) For evaluations done by telehealth, the operator must ensure each occupant in isolation has or is provided a working telephone with a clear connection. The operator must also provide the occupant with a U.S. Food and Drug Administration approved pulse oximeter and thermometer with written and verbal instructions on use and interpretation of their results in the occupant's preferred language.

(iv) If an occupant prefers not to self-operate the pulse oximeter, and/or thermometer, the employer must ensure that they have competent assistance.

(v) Interpretation services must be provided when the medical professional is not fluent in the occupant's preferred language.

(vi) For the purposes of this subsection, a licensed health care professional means:

(A) An individual licensed under chapter 18.79 RCW as a registered nurse;

(B) An individual licensed under chapter 18.71 RCW as a physician;

(C) An individual licensed under chapter 18.71A RCW as a physician assistant;

(D) An individual licensed under chapter 18.57 RCW as an osteopathic physician;

(E) An individual licensed under chapter 18.57A RCW as an osteopathic physician assistant;

(F) An individual licensed under chapter 18.79 RCW as an advanced registered nurse practitioner; and

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) and authorized to monitor suspect SARS-CoV-2 cases or SARS-CoV-2 positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

(H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner.

(vii) Facilitate transportation for in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.

(viii) Guarantee that the occupants have ready access to telephone service to summon emergency care.

(ix) Provide occupants with information about paid leave and workers compensation.

(x) Permit access to other medical professionals who offer health care services in addition to the licensed health care professional(s) contracted to provide health checks.

(xi) The operator must provide food and water.

(xii) If the operator uses other isolation facilities, such as hotels, the operator must verify that the isolation facility complies with requirements of this section prior to transporting workers to the facility. Isolated workers may also be housed in county or state run isolation centers.

(3) The operator must revise the facility's written TWH management plan to include implementation of the requirements in this section, as applicable.

(a) The plan must identify a single point of contact at the TWH for COVID-19 related issues.

(b) The operator must share the plan with all occupants on the first day the plan is operational or the first day the occupant arrives at the TWH. The operator must designate a person that will ensure all occupants are aware of all aspects of the plan and be available to answer questions.

(c) If changes are made to the TWH management plan, the operator must submit the revised TWH management plan to the state department of health within 10 calendar days of the effective date of this section.

(d) Failure to submit a revised plan or properly implement the requirements of this section may result in administrative action, including license suspension or fines.

(4) Consistent with WAC 246-358-040(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(5) In the event that any provisions of this section are in conflict with other regulations in this chapter, such other regulation shall be deemed superseded for purposes of this chapter.

[ ]

**WSR 22-12-014**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed May 20, 2022, 11:31 a.m., effective May 20, 2022, 11:31 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 296-307 WAC, Temporary worker housing.

The department of health (DOH) in conjunction with the department of labor and industries (L&I) continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule for temporary worker housing. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025 respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed subsequent emergency rules through January 21, 2022, (WSR 22-04-010 and 22-04-017) to protect occupants from COVID-19 hazards in licensed temporary worker housing.

The emergency rule:

- Maintains the requirements for operators to educate occupants on COVID-19 in a language or languages they understand and the requirement to conspicuously post information regarding COVID-19 in a language commonly understood by the occupants.
- Updates the education requirements to include what to do if an occupant is exposed to SARS-CoV-2; and what to do if they test positive for SARS-CoV-2.
- Maintains the language stating existing law regarding allowing entry of community health workers and community-based outreach workers to provide additional information.
- Updates the term "face covering" to "face covering/mask" to reflect current terms used. Maintains the requirement for operators to provide face coverings/masks to occupants for use in accordance with DOH guidelines or as required by L&I rules, but removes the requirements to instruct occupants and visitors about face coverings.
- Removes requirements related to physical distancing, bed placement, and use of bunk beds in sleeping quarters, and the alternative group shelter option. Operators must comply with the bed placement and bunk bed use requirements under the permanent rule under WAC 296-307-16170.
- Maintains the requirement for ventilation.
- Removes requirement related to cleaning and disinfecting surfaces except for the requirement to clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or confirmed SARS-CoV-2 positive cases have been and the requirement to ensure adequate supplies of soap and single-use paper towels at all sinks to allow for frequent handwashing.
- Updates the requirements related to screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases as follows:
  - Removes the requirement to provide thermometers to each occupant or training a person to check all occupants temperatures daily, instead operators must ensure that an adequate number of "no touch" or "no contact" thermometers be available for occupants to use.

- Updates the requirement to notify local health officers and provide transportation for any needed medical evaluation upon identification; includes individuals known [to have] SARS-CoV-2 in addition to individuals suspected of having COVID-19.
- Updates terms referring to confirmed cases.
- Requires the identification of close contacts in accordance with DOH or local health officer close contact definition.
- Updates the quarantine and isolation requirements for close contacts and individuals who test positive for COVID[-19] to follow current DOH guidance, which could vary by vaccination status. Adds that close contacts must follow the DOH guidance for symptom monitoring and masking post-exposure, and that close contacts of a suspect SARS-CoV-2 case that is ruled out do not need to continue to be treated as close contacts.
- Maintains the requirements for daily licensed health care professional visits for employees in isolation with symptoms. For asymptomatic employees in isolation, a licensed health care professional visit is required upon initial placement in isolation and upon request of the asymptomatic employee or the licensed health care professional. Maintains the other required related to licensed health care professional visits, including options to use telehealth.
- Removes the requirements related to vaccine verification. Operators may need to verify vaccine status to determine quarantine requirements for close contacts under DOH guidance.

Both L&I and DOH each filed a Preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-10-050, regarding permanent amendments to the existing permanent rules to address hazards from COVID-19 or other outbreaks of airborne infectious diseases. Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation requirements, and isolation requirements during an outbreak.

Citation of Rules Affected by this Order: New WAC 296-307-16102.

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: DOH and L&I continue to take action to help prevent the spread of COVID-19. Given the evolution of the pandemic, L&I and DOH have continued to review new information, data, and science as it comes available to determine what requirements are necessary to protect temporary worker housing occupants from COVID-19 and similar airborne infectious disease hazards. L&I and DOH have also been reviewing and considering information related to the implementation of the requirements in emergency rules and stakeholder input. As the COVID-19 pandemic continues to present a hazard to temporary worker housing occupants, emergency rules are needed to address the hazard while the potential permanent changes are under development. However, this emergency rule removes many previous requirements that are no

longer necessary to address on an emergency basis due to changes in case counts and hospitalizations and the increased vaccination rates. This includes requirements related to physical distancing, bed spacing and bunk bed use restrictions for sleeping quarters with unvaccinated occupants, and the group shelter alternative for bed spacing. Requirements related to training, ventilation, and isolation and quarantine are still critical. Given the current stage of the pandemic, DOH and L&I plan to take elements in this emergency rule and work to finalize proposed permanent rules.

This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the 2022 growing season.

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 1, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 20, 2022.

Joel Sacks  
Director

**OTS-2279.15**

NEW SECTION

**WAC 296-307-16102 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure.** (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from the hazards posed by SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19):

(a) Educate occupants and allow entry of community workers:

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing; the use of face coverings/masks; proper respiratory etiquette; the importance of prompt sanitizing of frequently touched items; common symptoms and risk factors; how to get a vaccine and where to get answers about vaccine questions; what to do if they develop symptoms of COVID-19; what to do if they are exposed to SARS-CoV-2; and what to do if they test positive for SARS-CoV-2.

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information. For the purposes of this section, a community health worker is

defined as a frontline public health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the worker to serve as a liaison/link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A community-based outreach worker is defined as a legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

**Note:** When there is a designated or recognized office at an employer's establishment, all visitors should check in to provide their name and contact information and complete a screening to ensure they are symptom free. To the extent possible, a minimum number of visitors should be allowed at a time and 6-foot physical distancing should be maintained. Personal protective equipment must be worn at all times.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to secure medical treatment - all in a language commonly understood by the occupants.

(c) The operator must provide at no cost an adequate number of face coverings/masks for occupants to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules.

(d) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility/building has a mechanical ventilation system, maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. TWH operators must have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation or the percentage of outside air that circulates into the system and verify the following:

(A) Make sure all HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with a minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) Maximize the HVAC system's outdoor air intake. Make sure exhaust air is not pulled back into the building through HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions such as wildfire smoke.

(D) Use appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) when changing filters.

(E) Maintenance checks must occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks must occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turn on mechanical ventilation systems (i.e., HVAC) or open windows whenever the TWH facility or building is occupied.

(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.

(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

(e) Clean and disinfect surfaces. The operator must:

(i) Clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or confirmed SARS-CoV-2 positive cases have been, according to CDC guidelines and before the space is used by others.

(ii) Ensure adequate supplies of soap and single-use paper towels at all sinks to allow for frequent handwashing.

(2) COVID-19 screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases.

(a) The operator must develop and implement a plan to identify and isolate occupants with suspect SARS-CoV-2 and positive SARS-CoV-2, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, fatigue, sore throat, congestion or runny nose, nausea or vomiting, diarrhea, and loss of taste or smell. The operator must ensure that an adequate number of thermometers or "no touch" or "no contact" thermometers are available for occupants to use. All thermometers must be properly sanitized between each use or each day. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

(ii) A "suspect SARS-CoV-2 case" is defined as a person with signs and symptoms compatible with COVID-19 above who has not been tested yet, or refuses testing. Upon identification of any individual known to have or suspected of having SARS-CoV-2 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Identify close contacts in accordance with the Washington state department of health or local health officer close contact definition. Individuals who have been in close contact with the symptomatic suspect SARS-CoV-2 case or person who has tested positive for SARS-CoV-2 with a viral test must follow Washington state department of health or local health officer guidance for close contacts, including quarantine, symptom monitoring, and face covering/masking. Close contacts of a suspect case who is ruled out do not need to continue to be treated as close contacts.

(iv) Any occupant in quarantine, regardless of vaccination status, must continue to be screened for symptoms of COVID-19 as described in (a) (i) of this subsection.



(v) Isolate suspect SARS-CoV-2 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(vi) Individuals who test positive for SARS-CoV-2 with a viral test must be isolated and only housed with other confirmed cases and must have separate bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the confirmed occupant resides in a room with family members, the confirmed occupant will have the option to isolate with the family members.

(vii) The operator must report suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants in isolation to the division of occupational safety and health (DOSH) within 24 hours after placement.

**Note:** This notification can be made by telephone to the department's toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits or assesses symptomatic occupants daily and asymptomatic occupants upon initial placement in isolation and upon request of the asymptomatic occupant or the licensed health care professional, at the employer's expense to perform a health check for each individual in isolation. Evaluations by licensed health care providers may be performed in-person, using audio telemedicine, or video telemedicine. At a minimum, the health care professional must review symptoms; temperature; oxygen saturation via pulse oximetry; and determine if additional medical services are needed, such as an in-person evaluation or treatment. If the licensed health care professional is not already familiar with the occupant's medical history, the licensed health care professional must obtain relevant medical history from the occupant.

(ii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services. If the health care provider has a question about the safety, health, or well-being for the occupant in isolation, they may contact the housing operator for further information.

(iii) For evaluations done by telehealth, the operator must ensure each occupant in isolation has or is provided a working telephone with a clear connection. The operator must also provide the occupant with a U.S. Food and Drug Administration approved pulse oximeter and thermometer with written and verbal instructions on use and interpretation of their results in the occupant's preferred language.

(iv) If an occupant prefers not to self-operate the pulse oximeter, and/or thermometer, the employer must ensure that they have competent assistance.

(v) Interpretation services must be provided when the medical professional is not fluent in the occupant's preferred language.

(vi) For purposes of this subsection, a licensed health care professional means:

(A) An individual licensed under chapter 18.79 RCW as a registered nurse;

(B) An individual licensed under chapter 18.71 RCW as a physician;

- (C) An individual licensed under chapter 18.71A RCW as a physician assistant;
- (D) An individual licensed under chapter 18.57 RCW as an osteopathic physician;
- (E) An individual licensed under chapter 18.57A RCW as an osteopathic physician assistant;
- (F) An individual licensed under chapter 18.79 RCW as an advanced registered nurse practitioner; and
- (G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) if authorized to monitor suspect SARS-CoV-2 cases or SARS-CoV-2 positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.
- (H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner.
- (vii) Facilitate transportation for in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.
- (viii) Guarantee that the occupants have ready access to telephone service to summon emergency care.
- (ix) Provide occupants with information about paid leave and workers compensation.
- (x) Permit access to other medical professionals who offer health care services in addition to the licensed health care professional(s) contracted to provide health checks.
- (xi) The operator must provide food and water.
- (xii) If the operator uses other isolation facilities, such as hotels, the operator must verify that the isolation facility complies with requirements of this section prior to transporting workers to the facility. Isolated workers may also be housed in county or state run isolation centers.
- (3) The operator must revise the facility's written TWH management plan to include implementation of the requirements in this section, as applicable.
- (a) The plan must identify a single point of contact at the TWH for COVID-19 related issues.
- (b) The operator must share the plan with all occupants on the first day the plan is operational or the first day the occupant arrives at the TWH. The operator must designate a person that will ensure all occupants are aware of all aspects of the plan and be available to answer questions.
- (c) If changes are made to the TWH management plan, the operator must submit the revised TWH management plan to the state department of health within 10 calendar days of the effective date of this section.
- (d) Failure to submit a revised plan or properly implement the requirements of this section may result in administrative action, including license suspension or fines.
- (4) Consistent with WAC 296-307-16120(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.
- (5) In the event that any provisions of this section are in conflict with other regulations in this chapter, such other regulation shall be deemed superseded for purposes of this chapter.

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**WSR 22-12-019**  
**EMERGENCY RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed May 23, 2022, 11:18 a.m., effective May 23, 2022, 11:18 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend WAC 363-116-078 Pilot training program, in order to address the Governor's State of Emergency Proclamation 20-05 concerning novel coronavirus/COVID-19.

Citation of Rules Affected by this Order: Amending WAC 363-116-078.

Statutory Authority for Adoption: Chapter 88.16 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: Governor Inslee declared a State of Emergency via Proclamation 20-05 in response to coronavirus/COVID-19. To minimize the risk of introducing vectors of exposure onto a vessel or to pilot trainees, the board may suspend or adjust the pilot training program. Trainees will be allowed to resume regular training at a time determined by the board. Trainees will need to complete at least 13 training program trips to receive maximum stipend during this training program suspension or adjustment. The board may also consider additional training opportunities for pilot trainees, such as distance learning or completion if they are nearing the end of their program, as determined by the trainee evaluation committee.

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

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

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

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

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

Date Adopted: May 19, 2022.

Jaimie C. Bever  
Executive Director

**OTS-2151.3**

AMENDATORY SECTION (Amending WSR 19-03-141, filed 1/22/19, effective 2/22/19)

**WAC 363-116-078 Pilot training program.** After passing the written examination and simulator evaluation, pilot candidates pursuing a pilot license are positioned on a list for the applicable pilotage district(s) and must enter and successfully complete a training program specified by the board before consideration for licensure.

(1) Notification. Pilot candidates on a list as described in subsection (2) of this section, waiting to enter a training program shall provide the board with the best address for notification to enter into a training program. In addition, a pilot candidate shall provide the board with other means of contact such as postal mailing or email address, phone number, and/or fax number. The email address with a read receipt request, however, will be considered the primary means of notification by the board. It will be the responsibility of the pilot candidate to ensure the board has current contact information at all times. If a pilot candidate cannot personally receive postal or electronic mail at the address(es) provided to the board for any period of time, another person may be designated in writing as having power of attorney specifically to act in the pilot candidate's behalf regarding such notice. If notice sent to the email address provided by the pilot candidate is not acknowledged after three attempts or if notice sent via certified mail is returned after three attempts to deliver, that pilot candidate will be skipped and the next pilot candidate on the list will be contacted for entry into a training program. A person so skipped will remain next on the list. A pilot candidate or his/her designated attorney-in-fact shall respond within (~~fifteen~~) 15 calendar days of receipt of notification to accept, refuse, or request a delayed entry into a training program.

(2) Entry. At such time that the board chooses to start a pilot candidate or candidates in a training program for either pilotage district, notification shall be given as provided in subsection (1) of this section. Pilot candidates shall be ranked in accordance with a point system established by the board based on overall performance on the written examination and simulator evaluation. Candidates shall be eligible to enter a training program for a pilotage district in the order of such rankings or as otherwise may be determined by the board. A pilot candidate who refuses entry into a program will be removed from the waiting list with no further obligation by the board to offer a position in that district's training program to such pilot candidate. If the pilot candidate indicated interest in the other pilotage district on the application for the written examination, the candidate shall remain available for that other district's training program in accordance with his/her position on that list.

(a) A pilot candidate who is not able to start a training program within two months of the board's specified entry date may, with written consent of the board, delay entry into that training program. When a pilot candidate delays entry into a training program by more than two months, the board gives notice to the next pilot candidate on the list for that pilotage district to enter a training program. The pilot candidate who delays entry shall remain eligible for the next position in that district provided that the next position becomes available within the earlier of:

(i) Four years from the pilot candidate's taking the written examination; or

(ii) The date scheduled for the next pilotage examination for the district.

(b) A pilot candidate not able to start in a training program within two months of the board's specified entry date and who does not obtain the board's written consent to delay entry into a training program shall no longer be eligible for that district's training program without retaking the examination provided in WAC 363-116-076 and the simulator evaluation provided in WAC 363-116-077.

(3) Training license. Prior to receiving a training license pilot candidates must pass a physical examination by a board-designated physician and in accordance with the requirements of WAC 363-116-120 for initial pilot candidates. A form provided by the board must be completed by the physician and submitted to the board along with a cover letter indicating the physician's findings and recommendations as to the pilot candidate's fitness to pilot. The physical examination must be taken not more than (~~ninety~~) 90 days before issuance of the training license. Holders of a training license will be required to pass a general physical examination annually within (~~ninety~~) 90 days prior to the anniversary date of that training license. Training license physical examinations will be at the expense of the pilot candidate. All training licenses shall be signed by the chairperson or his/her designee and shall have an expiration date. Training licenses shall be surrendered to the board upon completion or termination of the training program.

(4) Development. As soon as practical after receiving notification of eligibility for entry into a training program as set forth in this section, the pilot candidate shall provide a completed experience questionnaire to the trainee evaluation committee (TEC), a committee created per subsection (11) of this section. The training program consists of three phases: Observation trips, training trips, and evaluation trips, and such other forms of learning and instruction that may be designated. The TEC shall recommend a training program for adoption by the board. After adoption by the board, it will be presented to the pilot candidate. If the pilot candidate agrees in writing to the training program, the board shall issue a training license to the pilot candidate, which license shall authorize the pilot candidate to take such actions as are contained in the training program. If the pilot candidate does not agree to the terms of a training program, in writing, within (~~fifteen~~) 15 business days of it being received by certified mail return receipt, or by email read receipt requested, that pilot candidate shall no longer be eligible for entry into that pilotage district's training program and the board may give notice to the next available pilot candidate that he/she is eligible for entry into a training program pursuant to the terms in subsections (1) and (2) of this section.

(5) Initial assigned route.

(a) The TEC shall assign an initial route to each trainee at the beginning of his/her training program between a commonly navigated port or terminal and the seaward boundary of the pilotage district.

(b) Unless an extension of time is granted by the board, within eight months of the beginning of the training program if the trainee is continuously on stipend, plus an additional month for every month a trainee is off stipend (up to a maximum of (~~fifteen~~) 15 months), the trainee must:

(i) Take and pass with a minimum score of (~~eighty~~) 80 percent all conning quizzes provided by the board applicable to the initial assigned route as described in subsection (8) of this section. These

quizzes may be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed within the time period specified in (b) of this subsection; and

(ii) Take and pass with a minimum score of (~~eighty-five~~) 85 percent the local knowledge examination(s) provided by the board applicable to the initial assigned route as described in subsection (8) of this section. These examinations can be repeated as necessary provided that they may not be taken more than once in any seven-day period, and further provided that they must be successfully passed before the expiration date time period specified in (b) of this subsection; and

(iii) Possess a first class pilotage endorsement without tonnage or other restrictions on his/her United States Coast Guard license to pilot on the initial assigned route.

(6) Specification of trips. To the extent possible, a training program shall provide a wide variety of assigned requirements in three phases: Observation, training, and evaluation trips. A training program may contain deadlines for achieving full or partial completion of certain necessary actions. Where relevant, it may specify such factors as route, sequence of trips, weather conditions, day or night, stern or bow first, draft, size of ship and any other relevant factors. The board may designate specific trips or specific numbers of trips that shall be made with training pilots or with the pilot members of the TEC or with pilots designated by the TEC. In the Puget Sound pilotage district, pilot trainees shall complete a minimum of (~~one hundred fifty~~) 150 trips. The board shall set from time to time the minimum number of trips for pilot trainees in the Grays Harbor pilotage district. The total number of trips in a training program shall be established by the board based on the recommendation of the TEC. The board will ensure that during a training program the pilot trainee will get significant review by supervising pilots and the pilot members of the TEC or with pilots designated by the TEC.

(7) Length of training program. For the Puget Sound district the length of the program shall not exceed (~~thirty-six~~) 36 months. For the Grays Harbor district the length of the program will be determined at the time the training program is written.

(8) Local knowledge conning quizzes and local knowledge exams. A training program shall provide opportunities for the education of pilot trainees and shall provide for testing of pilot trainees on the local knowledge necessary to become a pilot. It shall be the responsibility of the pilot trainee to obtain the local knowledge necessary to be licensed as a pilot in the pilotage district for which he/she is applying. Each conning quiz will be organized by main channel routes, ports, and approaches. A conning quiz is not intended to replace a local knowledge exam as specified in subsection (5)(b)(ii) of this section, but there will be some overlap of subject matter. A pilot trainee shall pass a conning quiz or quizzes related to the route or harbor area to move from the observation phase to the training phase of his/her training program for that route or harbor area. After a trainee has successfully passed a conning quiz on a main channel route or a port and approach, he/she will be eligible to take the conn on that route or approach unless it is a U.S. flag vessel and the required federal pilotage endorsement has not been obtained. The local knowledge exam for the initial route must be completed within eight months of the training start date if the trainee is taking the stipend. For each month the trainee is off stipend, an additional month is added up

to a maximum of (~~fifteen~~) 15 months to successfully pass the appropriate local knowledge exam. The final local knowledge exam must be completed before consideration for licensing and must be successfully passed before the expiration date of the training program. The conning quizzes and local knowledge exams will be administered at the offices of the board of pilotage commissioners. Eighty percent is the passing grade for conning quizzes, and (~~eighty-five~~) 85 percent is required for the local knowledge exams. If a trainee fails a conning quiz or local knowledge exam, it may be retaken after seven days, but must be passed within the timing deadlines discussed above. The local knowledge required of a pilot trainee and the local knowledge examination(s) may include the following subjects as they pertain to the pilotage district for which the pilot trainee seeks a license:

- (a) Area geography;
  - (b) Waterway configurations including channel depths, widths and other characteristics;
  - (c) Hydrology and hydraulics of large ships in shallow water and narrow channels;
  - (d) Tides and currents;
  - (e) Winds and weather;
  - (f) Local aids to navigation;
  - (g) Bottom composition;
  - (h) Local docks, berths and other marine facilities including length, least depths and other characteristics;
  - (i) Mooring line procedures;
  - (j) Local traffic operations e.g., fishing, recreational, dredging, military and regattas;
  - (k) Vessel traffic system;
  - (l) Marine VHF usage and phraseology, including bridge-to-bridge communications regulations;
  - (m) Air draft and keel clearances;
  - (n) Submerged cable and pipeline areas;
  - (o) Overhead cable areas and clearances;
  - (p) Bridge transit knowledge - Signals, channel width, regulations, and closed periods;
  - (q) Lock characteristics, rules and regulations;
  - (r) Commonly used anchorage areas;
  - (s) Danger zone and restricted area regulations;
  - (t) Regulated navigation areas;
  - (u) Naval operation area regulations;
  - (v) Local ship assist and escort tug characteristics;
  - (w) Tanker escort rules - State and federal;
  - (x) Use of anchors and knowledge of ground tackle;
  - (y) Applicable federal and state marine and environmental safety law requirements;
  - (z) Marine security and safety zone concerns;
  - (aa) Harbor safety plan and harbor regulations;
  - (bb) Chapters 88.16 RCW and 363-116 WAC, and other relevant state and federal regulations in effect on the date the examination notice is published pursuant to WAC 363-116-076; and
  - (cc) Courses in degrees true and distances in nautical miles and tenths of miles between points of land, navigational buoys and fixed geographical reference points, and the distance off points of land for such courses as determined by parallel indexing along pilotage routes.
- (9) Rest. It is the responsibility of the pilot trainee to obtain adequate rest. Pilot trainees shall observe the rest rules for pilots in place by federal or state law or regulation and rules established

in the applicable pilotage district in which they will train, or any other rest requirements contained in a training program.

(10) Stipend.

(a) At the initial meeting with the TEC the pilot trainee shall indicate whether he/she wishes to receive a stipend during their training program. In the Puget Sound pilotage district, as a condition of receiving such stipend, pilot trainees will agree to forego during their training program other full- or part-time employment which prevents them from devoting themselves on a full-time basis to the completion of their training program. With the consent of the TEC, pilot trainees may elect to change from a stipend to nonstipend status, and vice versa, during their training program provided that such change request is provided in writing from the trainee. If the trainee intends to be in nonstipend status more than four consecutive months, his/her particular training program may be constructed to provide re-ency and/or a change in seniority placement prior to resuming the training program. In the Puget Sound pilotage district the stipend paid to pilot trainees shall be a maximum of (~~six thousand dollars~~) \$6,000 per month (or such other amount as may be set by the board from time to time), shall be contingent upon the board's setting of a training surcharge in the tariffs levied pursuant to WAC 363-116-300 sufficient to cover the expense of the stipend, and shall be paid from a pilot training account as directed by the board. In the Grays Harbor pilotage district the stipend paid to pilot trainees shall be determined by the board and shall be contingent upon the board's receipt of funds, from any party collecting the tariff or providing funds, sufficient to cover the expense of the stipend and shall be paid from a pilot training account as directed by the board.

Determinations as to stipend entitlement will be made on a full calendar month basis and documentation of trips will be submitted to the board by the third day of the following month. Proration of the stipend shall be allowed at the rate of (~~two hundred dollars~~) \$200 per day (or such other amount as may be set by the board from time to time), under the following circumstances:

(i) For the first and last months of a training program (unless the training program starts on the first or ends on the last day of a month); or

(ii) For a pilot trainee who is deemed unfit for duty by a board-designated physician during a training month.

(b) (i) In the Puget Sound pilotage district a minimum of (~~twelve~~) 12 trips are required each month for eligibility to receive the minimum stipend amount as set by the board, or (~~eighteen~~) 18 trips to receive the maximum stipend amount as set by the board. A trainee may make more than (~~eighteen~~) 18 trips in a calendar month, but no further stipend will be earned for doing so. In the Grays Harbor pilotage district the minimum number of trips each month for eligibility to receive the stipend is (~~seventy~~) 70 percent or such number or percentage of trips that may be set by the board of the total number of vessel movements occurring in this district during that month. Only trips required by the training program can be used to satisfy these minimums. Trips will be documented at the end of each month.

(ii) Whenever the governor issues a proclamation declaring a state of emergency, the board may determine whether there is a threat to trainees, pilots, vessel crews, or members of the public. Notwithstanding the other provisions of this chapter, the board, at its discretion, may suspend or adjust the pilot training program during the



pendency of a state of emergency lawfully declared by the governor. If the board suspends or adjusts the pilot training program, pilot trainees will continue to receive the maximum stipend allowable under this section if a trainee has taken at least 13 trips per month, until the board determines otherwise. The trainee evaluation committee may further consider additional nonshipboard pilot training including, but not limited to, distance learning.

(c) The TEC will define areas that are considered to be hard-to-get, which many differ for trainees depending on their date of entry. It is the pilot trainee's responsibility to make all available hard-to-get trips, as defined and assigned by the TEC. The board may elect not to pay the stipend if the missing trips were available to the pilot trainee but not taken.

(d) The TEC, with approval by the board may allocate, assign or specify training program trips among multiple pilot trainees. Generally, the pilot trainee who entered his/her training program earlier has the right of first refusal of training program trips provided that the TEC may, with approval by the board, allocate or assign training trips differently as follows:

(i) When it is necessary to accommodate any pilot trainee's initial route;

(ii) When it is necessary to spread hard-to-get trips among pilot trainees so that as many as possible complete required trips on time. If a pilot trainee is deprived of a hard-to-get trip by the TEC, that trip will not be considered "available" under (c) of this subsection. However, the pilot trainee will still be required to complete the minimum number of trips for the month in order to receive a stipend, and the minimum number of trips as required to complete his/her training program;

(e) If a pilot trainee elects to engage in any full-or part-time employment, the terms and conditions of such employment must be submitted to the TEC for prior determination by the board of whether such employment complies with the intent of this section prohibiting employment that "prevents (pilot trainees) from devoting themselves on a full-time basis to the completion of the training program."

(f) If a pilot trainee requests to change to a nonstipend status as provided in this section such change shall be effective for a minimum nonstipend period of (~~thirty~~) 30 days beginning at the beginning of a month, provided that before any change takes effect, a request is made to the TEC in writing. The requirement for designated hard-to-get trips is waived during the time the pilot trainee is authorized to be in nonstipend status.

(g) Any approved pilot association or other organization collecting the pilotage tariff levied by WAC 363-116-185 or 363-116-300 shall transfer the pilot training surcharge receipts to the board at least once a month or otherwise dispose of such funds as directed by the board. In the Grays Harbor pilotage district, if there is no separate training surcharge in the tariff, any organization collecting the pilotage tariff levied by WAC 363-116-185 shall transfer sufficient funds to pay the stipend to the board at least once a month or otherwise dispose of such funds as directed by the board. The board may set different training stipends for different pilotage districts. Receipts from the training surcharge shall not belong to the pilot providing the service to the ship that generated the surcharge or to the pilot association or other organization collecting the surcharge receipts, but shall be disposed of as directed by the board. Pilot associations or other organizations collecting surcharge receipts shall provide an

accounting of such funds to the board on a monthly basis or at such other intervals as may be requested by the board. Any audited financial statements filed by pilot associations or other organizations collecting pilotage tariffs shall include an accounting of the collection and disposition of these surcharges. The board shall direct the disposition of all funds in the account.

(11) Trainee evaluation committee. There is hereby created a trainee evaluation committee (TEC) to which members shall be appointed by the board. The TEC shall include at a minimum: Three active licensed Washington state pilots, who, to the extent possible, shall be from the pilotage district in which the pilot trainee seeks a license and at least one of whom shall be a member of the board; one representative of the marine industry (who may be a board member) who holds, or has held, the minimum U.S. Coast Guard license required by RCW 88.16.090; and one other member of the board who is not a pilot. The TEC may include such other persons as may be appointed by the board. The TEC shall be chaired by a pilot member of the board and shall meet as necessary to complete the tasks accorded it. In the event that the TEC cannot reach consensus with regard to any issue it shall report both majority and minority opinions to the board.

(12) Supervising pilots. The board shall designate as supervising pilots those pilots who are willing to undergo such specialized training as the board may require and provide. Supervising pilots shall receive such training from the board to better enable them to give guidance and training to pilot trainees and to properly evaluate the performance of pilot trainees. The board shall keep a list of supervising pilots available for public inspection at all times. All pilot members TEC shall also be supervising pilots.

(13) Training program trip reports. After each training program trip, the licensed or supervising pilot shall complete a training program trip report form (TPTR) provided by the board. Training program trip report forms prepared by licensed pilots who are supervising pilots shall be used by the TEC and the board for assessing a pilot trainee's progress, providing guidance to the pilot trainee and for making alterations to a training program. Licensed pilots who are not supervising pilots may only have trainees on board for observation trips. All trip report forms shall be delivered or mailed by the licensed or supervising pilot to the board. They shall not be given to the pilot trainee. The licensed or supervising pilot may show the contents of the form to the pilot trainee, but the pilot trainee has no right to see the form until it is filed with the board. The TEC shall review these training program trip report forms from time to time and the chairperson of the TEC shall report the progress of all pilot trainees at each meeting of the board. If it deems it necessary, the TEC may recommend, and the board may make, changes from time to time in the training program requirements applicable to a pilot trainee, including the number of trips in a training program.

(14) Termination of and removal from a training program. A pilot trainee's program may be immediately terminated and the trainee removed from a training program by the board if it finds any of the following:

(a) Failure to maintain the minimum federal license required by RCW 88.16.090;

(b) Conviction of an offense involving drugs or involving the personal consumption of alcohol;

(c) Failure to devote full time to training in the Puget Sound pilotage district while receiving a stipend;

- (d) The pilot trainee is not physically fit to pilot;
  - (e) Failure to make satisfactory progress toward timely completion of the program or timely meeting of interim performance requirements in a training program;
  - (f) Inadequate performance on examinations or other actions required by a training program;
  - (g) Failure to complete the initial route requirements specified in subsection (5) of this section within the time periods specified;
  - (h) Inadequate, unsafe, or inconsistent performance in a training program and/or on training program trips as determined by the supervising pilots, the TEC and/or the board; or
  - (i) Violation of a training program requirement, law, regulation or directive of the board.
- (15) Completion of a training program shall include the requirements that the pilot trainee:
- (a) Successfully complete all requirements set forth in the training program including any addendum(s) to the program;
  - (b) Possess a valid first class pilotage endorsement without tonnage or other restrictions on his/her United States government license to pilot in all of the waters of the pilotage district in which the pilot candidate seeks a license; and
  - (c) Complete portable piloting unit (PPU) training as defined by the TEC.

[Statutory Authority: Chapter 88.16 RCW. WSR 19-03-141, § 363-116-078, filed 1/22/19, effective 2/22/19; WSR 13-08-025, § 363-116-078, filed 3/27/13, effective 4/27/13; WSR 12-05-064, § 363-116-078, filed 2/15/12, effective 3/17/12; WSR 10-04-100, § 363-116-078, filed 2/3/10, effective 3/6/10. Statutory Authority: Chapter 88.16 RCW and 2008 c 128. WSR 08-15-119, § 363-116-078, filed 7/21/08, effective 8/21/08. Statutory Authority: RCW 88.16.105. WSR 06-20-107, § 363-116-078, filed 10/4/06, effective 11/4/06. Statutory Authority: Chapter 88.16 RCW and 2005 c 26. WSR 05-18-021, § 363-116-078, filed 8/29/05, effective 10/1/05.]

**WSR 22-12-021**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-79—Filed May 23, 2022, 3:22 p.m., effective May 28, 2022]

Effective Date of Rule: May 28, 2022.

Purpose: The purpose of this emergency rule is to open salmon seasons in Cascade, North Fork Nooksack, and Skagit rivers.

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

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

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

Reasons for this Finding: This rule is necessary to open salmon seasons in the Cascade River, Nooksack River, North Fork, and Skagit River as agreed to with comanagers during the 2022 North of Falcon proceedings. Harvestable numbers of hatchery spring Chinook are forecast to return to the respective hatcheries for these fisheries. 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: May 23, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000B Freshwater exceptions to statewide rules—Puget Sound.** Effective May 28 through July 15, 2022, the following provisions of WAC 220-312-040 regarding salmon seasons for the Cascade River, Nooksack River, North Fork, and Skagit River, shall be modified during the dates and in locations listed and described herein. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended, remain in effect:

(1) **Cascade River** (Skagit Co.): From mouth to Rockport-Cascade Rd. Bridge: Salmon: Effective June 1 through July 15, 2022:

(a) Open Wednesdays through Saturdays only. Closed Sundays through Tuesdays.

(b) Daily limit 4 of which up to 2 adults may be retained. Release all salmon other than hatchery Chinook.

(c) Night closure and Anti-snagging rule in effect.

(2) **Nooksack River, North Fork** (Whatcom Co.): From the Hwy. 9 Bridge to the yellow marker at the upstream side of the Kendall Hatchery: Salmon: Effective May 28 through June 12, 2022:

(a) Daily limit 2. Release all salmon other than hatchery Chinook.

(b) Night closure and Anti-snagging rule in effect.

(3) **Skagit River** (Skagit Co.):

(a) From the Hwy. 536 (Memorial Hwy.) Bridge in Mt. Vernon to Gilligan Creek: Salmon: Effective immediately, through May 31, 2022:

(i) Daily limit 2. Release all salmon other than hatchery Chinook.

(ii) Night Closure in effect.

(b) From Hwy. 530 Bridge at Rockport to Cascade River Rd. (Marblemount Bridge): Salmon: Effective June 1 through July 15, 2022:

(i) Daily limit 4 of which up to 2 adults may be retained. Release all salmon other than hatchery Chinook.

(ii) Night closure and Anti-snagging rule in effect.

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#### REPEALER

The following section of Washington Administrative Code is repealed, effective May 28, 2022:

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

WSR 22-12-022  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 22-68—Filed May 23, 2022, 3:26 p.m., effective May 27, 2022]

Effective Date of Rule: May 27, 2022.

Purpose: The purpose of this emergency rule is to close recreational spring Chinook harvest in the Snake River.

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

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 in-season creel estimates through May 20, 2022, the Washington department of fish and wildlife projects that based on the preseason forecast, the harvest allocation will be utilized by the end of the day May 27, 2022. Closing this fishery is necessary to avoid going over harvest allocation.

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: May 23, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-05000M Freshwater exceptions to statewide rules—Eastside.** Effective the day of May 27, 2022 only, the following provisions of WAC 220-312-050, regarding salmon seasons in the Snake River shall be open as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

**Snake River (Franklin/Walla Wall Counties): From Texas Rapids boat launch (south side of the river upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam and including the rock and concrete area between the juvenile bypass return pipe and little Goose Dam along the shoreline of the facility:**  
Salmon:

- (a) Open May 27, 2022 only.
- (b) Daily limit 4, of which up to 1 adult may be retained. Release all salmon other than hatchery Chinook.
- (c) Night Closure.
- (d) Barbless hooks required.
- (e) Salmon may not be removed from the water unless retained as part of the daily limit.

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

REPEALER

The following section of Washington Administrative Code is repealed, effective May 26, 2022:

WAC 220-312-05000H Freshwater exceptions to statewide rules—Eastside. (22-56)

**WSR 22-12-024**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed May 23, 2022, 4:37 p.m., effective May 23, 2022, 4:37 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is enacting WAC 388-845-2019 on an emergency basis to make temporary modifications to developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers to control the spread of the COVID-19 virus and to meet immediate health and safety needs. This subsequent emergency filing keeps the rule in place until the permanent [rule] is effective, 31 days after filing.

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

Statutory Authority for Adoption: RCW 34.05.350.

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

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

Reasons for this Finding: Enacting this rule on an emergency basis is necessary to address effects of the COVID-19 pandemic, and it is in the public interest to do so, as following notice and comment requirements in the permanent rule-making process would delay temporary changes aimed to help clients avoid disruptions in service. This emergency filing is necessary to implement temporary changes to the HCBS waivers as approved by the Centers for Medicare and Medicaid Services (CMS) in an Appendix K. Many of the changes approved by CMS in Appendix K are in the process of being added to IFS, Basic Plus, Core, CIIBS, and Community Protection waivers. The CMS approvals should be final in September of 2022, at which point DDA will work on permanently adopting those changes.

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

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

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

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

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



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

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

Date Adopted: May 23, 2022.

Katherine I. Vasquez  
Rules Coordinator

## SHS-4794.8

### NEW SECTION

**WAC 388-845-2019 What modifications to waiver services apply during the COVID-19 outbreak?** (1) Notwithstanding any contrary requirement under this title, changes under this section to DDA's home and community-based waivers are effective immediately and necessary to respond to managing the COVID-19 outbreak. All changes, except the provision of remote waiver services, require prior approval by the DDA director of the division of field services or designee and will be assessed on a case-by-case basis. An allowance in this section is valid as long as it is approved by the Centers for Medicare and Medicaid Services through the medicaid waiver process.

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

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

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

(c) The basic plus, CIIBS, and individual and family services waiver aggregate budgets may be exceeded for COVID-19-related health and safety needs.

(d) Respite provided out-of-state may be provided in excess of 30 days.

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

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

(g) Assistive technology is available on all five waiver programs when a waiver participant requires a technology in order to receive waiver-funded remote supports, to increase, maintain, or improve independence with daily living, to increase safety, or to facilitate social communication. Assistive technology is only available to the participant when access to technologies through other resources is not possible. Assistive technology includes:

(i) The evaluation of the needs of the waiver participant, including a functional evaluation of the participant in the participant's customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

(iii) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for the participant and if appropriate, the participant's family;

(vi) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of individuals with disabilities; and

(vii) Distance-based observation and reporting provided by an assistive technology distance-based observation and reporting specialist.

(h) Assistive technology on the basic plus waiver is included as part of the list of aggregate services.

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

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

(a) Residential habilitation;

(b) Respite care;

(c) Positive behavior support;

(d) Staff and family consultation;

(e) Behavioral health stabilization- positive behavior support;

(f) Behavioral health stabilization- crisis diversion beds;

(g) Nurse delegation; and

(h) Skilled nursing.

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

(a) DDA determines that no other alternatives are available and a nonintegrated setting is the only setting available to meet the client's health and safety needs;

(b) The waiver service provider is not otherwise funded by another resource; and

(c) The waiver services do not duplicate services already available in that setting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**WSR 22-12-027**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-81—Filed May 24, 2022, 10:31 a.m., effective May 24, 2022, 10:31 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: 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:

**WAC 220-340-52000T:**

(1) Clarifies the pot limit for shrimp pot fisheries is specific to each gear type and allows a separate maximum 100 pot limit for spot shrimp pots and nonspot shrimp pots respectively.

(2) Opens spot shrimp quota areas, defines the first spot shrimp catch accounting period as being from May 1, 2022, to August 2, 2022, and allows 4,500 pounds of spot shrimp to be harvested per license for the first catch accounting period.

(3) Opens nonspot shrimp quota areas, defines the nonspot shrimp catch accounting week, sets a weekly per license catch limit of 700 pounds, in Subregions 1A, 1B, and 1C and Region 2E, clarifies there is no weekly harvest limit in Regions 3 or 2W, and sets a 175-ft depth limit in Subregion 1A and Subarea 23A East.

(4) Modifies harvest restrictions for spot and nonspot shrimp fisheries.

**WAC 220-340-54000B:**

Opens Region 3 shrimp trawl fisheries on May 1, 2022. Opens Region 1 trawl fisheries as required by permanent rule.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000S and 220-340-34000A; and amending WAC 220-340-520 and 220-340-540.

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 emergency regulation is necessary to prosecute state commercial shrimp pot and trawl fisheries in Puget Sound. This rule allows harvesters to both respond to dynamic changes in market conditions and promotes full utilization of both the commercial spot and nonspot shares. These rules are in congruence with co-manager agreements. 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: May 24, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-52000T Commercial shrimp pot fishery—Puget Sound.**

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

(1) In all areas fishers are limited to a maximum of 100 spot shrimp pots, as defined in WAC 220-340-520 (5)d, and a maximum of 100 non-spot shrimp pots, as defined in WAC 220-340-520 (5)e.

(2) Spot Shrimp Pot Harvests:

(a) Spot shrimp is harvest is permitted as indicated in the following table starting one hour before official sunset until further notice.

<b>Geographical Management Unit (WAC 220-320-140)</b>	<b>Status</b>	<b>Effective Date</b>
Subregion 1A	Open	immediately
Subregion 1B	Closed	
Subregion 1C	Open	immediately
Region 2E	Closed	
Region 2W	Closed	
Subarea 23A-E	Open	immediately
Subarea 23A-W	Open	immediately
Subarea 23A-C and MSFS Catch Area 23B	Open	immediately
Subarea 23A-S and MSFS Catch Area 23D	Open	immediately
MFSF Catch Area 23C	Open	immediately
MFSF Catch Area 25A, excluding the Discovery Bay Shrimp District	Open	immediately
Discovery Bay Shrimp District	Closed	
MFSF 29 (Straits - Neah Bay)	Open	immediately
Subarea 26B-1 and MFSF Catch Area 26C	Closed	
Subarea 26B-2	Closed	
Region 5	Closed	
MFSF Catch Area 26D	Closed	
MFSF Catch Areas 28A, 28B, 28C, and 28D	Closed	

(b) The first spot shrimp catch accounting period starts one hour before official sunrise on May 1, 2022, through one hour after official sunset on August 2, 2022.

(c) It is unlawful for the total harvest during the first spot shrimp accounting period to exceed 4,500 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(d) It is unlawful to harvest spot shrimp from more than one Geographical Management Unit listed in 2(a) in a single day.

(3) Non-spot shrimp pot harvests:

(a) Non-spot shrimp pot harvest is permitted as indicated in the following table starting one hour before official sunset until further notice.

<b>Geographical Management Unit (WAC 220-320-140)</b>	<b>Status</b>	<b>Effective Date</b>
Subregion 1A	Open	immediately
Subregion 1B	Open	immediately
Subregion 1C	Open	immediately
Region 2E	Open	immediately
Region 2W	Open	immediately
Region 3, not including Discovery Bay Shrimp District	Open	immediately
Region 4	Closed	
Region 5	Closed	
Region 6	Closed	

(b) The non-spot shrimp catch accounting period is weekly from one hour before official sunrise each Wednesday through one hour after official sunset on the subsequent Tuesday, totaling 7 days in length.

(c) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 700 pounds per non-spot shrimp catch accounting week from subregions 1A, 1B, 1C, and Region 2E combined.

(d) There is no weekly harvest limit of non-spot shrimp from Region 2W, Region 3, and Discovery Bay Shrimp District.

(e) Harvest of non-spot shrimp is not permitted deeper than 175 feet in subarea 23A East or subregion 1A.

(f) It is unlawful to harvest non-spot shrimp in more than one Geographical Management unit listed in 3(a) in a single day with the following exceptions:

(i) Non-spot shrimp may be harvested from more than one subregion of Region 1 on the same day.

(ii) Non-spot shrimp may be harvested from Discovery Bay Shrimp District and Region 3 on the same day.

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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.

NEW SECTION

**WAC 220-340-54000B Commercial shrimp trawl fishery—Puget Sound.**

Notwithstanding the provisions of WAC 220-340-540, effective one hour before official sunset on the dates listed in Table 1(a, b), until

further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes using beam trawl gear in Puget Sound except as provided for in this section:

(1) Non-spot shrimp trawl harvest:

(a) Non-spot shrimp beam trawl harvest is permitted as indicated in the following table starting one hour before official sunrise until further notice.

<b>Geographical Area Description (WAC 220-320-140(3))</b>	<b>Status</b>	<b>Effective Date</b>
Catch Area 20A outside of those waters north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light at the Lummi Reservation (48.7868°, -122.7124°)	Open	8/1/2022
Those waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island (48.6097°, -122.6572°) to Carter Point (48.6404°, -122.6088°) on Lummi Island.	Open	7/1/2022
Subarea 23A East and MFSF Catch Areas 23B, 25A	Open	immediately
Subarea 23A West	Open	immediately
MFSF Catch Area 23C	Open	immediately
MFSF Catch Area 29	Open	immediately

(b) Non-spot shrimp beam trawl harvest is permitted starting one hour before official sunrise in the areas detailed below contingent on the harvester bringing an on-board observer on the first trip into the area. If by-catch sampling criteria are not met these areas will open on the later dates described in WAC 220-340-530 (5d, e).

<b>Geographical Area Description (WAC 220-320-140(3))</b>	<b>Status</b>	<b>Effective Date</b>
Those waters of Lopez Sound within subregion 1B that are south of a line projected true east-west from the northern tip of Trump Island (48.5064°, -122.8369°).	Open	immediately
That portion of Catch Area 22A within subregion 1B that are east of a line projected along -122.7833° longitude (east of Blakely Island) and west of a line projected along -122.7167° longitude (west of Cypress Island) in Rosario Strait.	Open	immediately
The remaining portions of Catch Areas 20B and 22A within subregion 1B not described above.	Open	immediately

[]

REPEALER

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

WAC 220-340-52000S Commercial shrimp pot fishery—Puget Sound. (22-64)

WAC 220-340-54000A Commercial shrimp trawl fishery—Puget Sound. (22-64)



**WSR 22-12-032**  
**EMERGENCY RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed May 24, 2022, 2:39 p.m., effective May 24, 2022, 2:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Communities continue to experience a public health crisis related to the outbreak of the novel coronavirus, COVID-19. Educator preparation programs and their candidates face ongoing challenges related to this public health situation. These emergency rule changes would extend existing pandemic supports that address these challenges for educator preparation programs and candidates. The pandemic supports include:

- WAC 181-78A-027 Waiver of clinical practice and coursework by a preparation program provider, this section allows preparation program providers to review a candidate's work and learning experiences, and waive required clinical practice and/or coursework if the program determines the candidate has the knowledge and skills to be otherwise gained from the required clinical practice or coursework.
- WAC 181-79A-228 Emergency teacher certificates, this section allows for emergency certificates for teacher preparation program candidates who have not completed assessment requirements, but have completed all other program completion requirements. These emergency certificates are valid for one year.

Citation of Rules Affected by this Order: Amending WAC 181-78A-027 and 181-79A-228.

Statutory Authority for Adoption: Chapter 28A.410 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: Changes in educational settings due to current public health concerns mean that some educator candidates are unable to complete clinical practice and coursework in traditional settings and may be unable to take required assessments (i.e. basic skills and content knowledge assessments) in a timely manner. WAC 181-78A-027 allows preparation programs to review a candidate's previous field experience and coursework to determine if the candidate has the requisite knowledge and skills. WAC 181-79A-228 would allow emergency certificates for candidates who have not completed assessment requirements. Emergency certificates allow candidates to serve in their educator role while they complete the assessment 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 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: May 24, 2022.

Jisu Ryu  
Rules Coordinator

## OTS-3569.1

AMENDATORY SECTION (Amending WSR 20-16-033, filed 7/25/20, effective 8/25/20)

**WAC 181-78A-027 Waiver of clinical practice and course work by a preparation program provider.** (1) Based on review of current educational settings, and review of a candidate's previous course work, field experiences, work experiences, and alternative learning experiences, an educator preparation program provider may waive or reduce in length the required clinical practice, and/or waive required course work, if based on the review the provider determines that the candidate has the knowledge and skills to be otherwise gained from the required clinical practice or course work.

(2) Under this section, educator preparation program providers may waive or reduce in length the required clinical practice and/or course work through June 30, (~~2021~~) 2023.

[Statutory Authority: Chapter 28A.410 RCW. WSR 20-16-033, § 181-78A-027, filed 7/25/20, effective 8/25/20.]

## OTS-3570.1

AMENDATORY SECTION (Amending WSR 21-08-001, filed 3/24/21, effective 4/24/21)

**WAC 181-79A-228 Emergency teacher certificates.** Emergency teacher certificates, valid for one year, may be issued by the superintendent of public instruction under the following conditions:

(1) A teacher preparation program approved by the professional educator standards board has recommended the candidate as having met all requirements for program completion with the exception of one or more of the following:

- (a) The performance assessment as described in WAC 181-78A-232;
- (b) The content knowledge assessment as described in chapter 181-78A WAC; and
- (c) The basic skills assessment as described in WAC 181-78A-232.

(2) During the validity period of the certificate, preparation program providers are required to inform, advise, and support applicants on assessment requirements as described in WAC 181-78A-231(3).

(3) Teacher preparation programs may recommend candidates for an emergency certificate under this section through ~~((December 31, 2021))~~ June 30, 2023.

(4) One additional one-year emergency certificate may be issued upon recommendation by the preparation program provider. Teacher preparation programs may recommend candidates for this additional one-year emergency certificate through June 30, ~~((2022))~~ 2024.

(5) Candidates recommended for an emergency certificate under this section must apply for that certificate through the office of superintendent of public instruction no later than December 31, ~~((2022))~~ 2024.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-001, § 181-79A-228, filed 3/24/21, effective 4/24/21; WSR 20-16-034, § 181-79A-228, filed 7/25/20, effective 8/25/20.]

**WSR 22-12-034**

**RESCISSION OF EMERGENCY RULES**

**DEPARTMENT OF HEALTH**

[Filed May 24, 2022, 4:11 p.m.]

This memo serves as notice that, effective May 29, 2022, the department of health, pharmacy quality assurance commission (commission) is rescinding the emergency rule (CR-103E) for WAC 246-945-056 Schedule V, which was filed February 25, 2022, and published in WSR 22-06-053. The emergency rule deletes Epidiolex from the list of Schedule V controlled substances in Washington state.

The commission is withdrawing this emergency rule because the permanent rule making amending WAC 246-945-056 Schedule V, which permanently removed Epidiolex from the list of Schedule V controlled substances, becomes effective on May 29, 2022, under WSR 22-10-044.

Individuals requiring information on this rule should contact Joshua Munroe, rules and legislative consultant, at Joshua.Munroe@doh.wa.gov or 360-236-2987.

Tami M. Thompson  
Regulatory Affairs Manager

**WSR 22-12-045**  
**EMERGENCY RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed May 25, 2022, 4:45 p.m., effective May 25, 2022, 4:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Communities continue to experience a public health crisis related to the outbreak of the novel coronavirus [disease], COVID-19. Educators face ongoing challenges related to this public health situation. These emergency rule changes would extend existing pandemic supports that address these challenges for educators. The amendment in WAC 181-79A-231 allows increased time for certificate renewal. With the state moving from pandemic response to recovery, allowing flexibility for educators would acknowledge the difficulties educators have faced during the past several years while still valuing professional learning.

Citation of Rules Affected by this Order: Amending WAC 181-79A-231.

Statutory Authority for Adoption: Chapter 28A.410 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: Changes in educational settings due to current public health concerns mean that some educator candidates are unable to meet the certification renewal requirement in a timely manner. WAC 181-79A-231 changes the scope of the transitional certificate and allows it to be issued for all educator certificates subject to renewal under WAC 181-79A-240. The validity period of the transitional certificate would remain two years from issuance, allowing educators who hold the transitional certificate to continue to practice while obtaining the necessary clock hours for their expired certificate.

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

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

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

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

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

Date Adopted: May 25, 2022.

Jisu Ryu  
Rules Coordinator

**OTS-3791.1**

AMENDATORY SECTION (Amending WSR 21-15-085, filed 7/16/21, effective 8/16/21)

**WAC 181-79A-231 Limited certificates.** All applicants for limited certificates must meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2).

Nothing within chapter 181-79A WAC authorizes practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations adopted by the appropriate licensure board or agency.

(1) **Conditional certificate.**

(a) **Intent.** The intent of the conditional certificate is to assist school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals.

(b) **Roles.**

(i) Teacher roles. The conditional certificate may be issued to teachers in all endorsement areas. Specific minimum requirements defined in this section apply to the following:

- (A) Special education teachers;
- (B) Nonimmigrant exchange teachers;
- (C) Traffic safety education teachers.

(ii) Educational staff associate roles. The conditional certificate may be issued in the following education staff associate roles:

- (A) School counselor;
- (B) School nurse;
- (C) School psychologist;
- (D) School social worker;
- (E) School speech language pathologist or audiologist;
- (F) School behavior analyst;
- (G) School orientation and mobility specialist.

(iii) Administrator role. The conditional certificate may be issued in the following administrator role: Principal.

(c) **Request requirements.**

(i) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that one or more of the following criteria have been met:

(A) The individual has extensive experience, unusual distinction, or exceptional talent in the subject matter to be taught or in the certificate role; or

(B) No person with regular certification in the area is available; or

(C) The individual holds a bachelor's degree or higher from an accredited college or university; or

(D) The individual is enrolled in an educator preparation program specific to the certificate role for which they are applying; or

(E) The individual will serve as a nonimmigrant exchange teacher and meets the specific minimum requirements defined in this section; or

(F) The individual will serve as a traffic safety education teacher and meets the specific minimum requirements defined in this section; or

(G) Circumstances warrant.

(ii) When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that all of the following criteria have been met:

(A) The district, educational service district, or approved private school has determined that the individual is competent for the assignment; and

(B) After specific inclusion on the agenda and a formal vote, the school board or educational service district board has authorized the conditional certificate; and

(C) The individual is being certificated for a specific assignment and responsibility in a specified activity/field; and

(D) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities; and

(E) The individual will not be serving in a paraeducator role; and

(F) The individual will be oriented and prepared for the assignment. In addition, prior to service, the individual will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment; and

(G) The individual will be assigned a mentor within (~~twenty~~) 20 working days from the commencement of the assignment; and

(H) A written plan of support will be developed within (~~twenty~~) 20 working days from the commencement of the assignment.

(d) **Minimum requirements.**

(i) Individuals must complete (~~fifty~~) 50 continuing education credit hours after the issuance of the certificate, and prior to the reissuance of the certificate. Holders of conditional certificates in the role of nonimmigrant exchange teacher are not required to complete (~~fifty~~) 50 continuing education credit hours.

(ii) Special education teacher. The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college or university.

The issuance of a conditional certificate to a special education teacher is contingent upon the individual being enrolled in a state-approved teacher preparation program resulting in a teacher certificate endorsed in special education.

An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(iii) Traffic safety education teacher. The applicant qualifies to instruct in the traffic safety program under WAC 392-153-021. Written plans of support and mentors are not required for holders of conditional certificates in the role of traffic safety education teacher.

(iv) Nonimmigrant exchange. A conditional certificate in the role of teacher may be issued to an individual admitted to the United States for the purpose of serving as an exchange teacher.

The individual must be eligible to serve as a teacher in the elementary or secondary schools in their country of nationality or last residence.

(v) School counselor. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for the role, in accordance with Washington requirements for certification.

(vi) School nurse. The applicant possesses a state of Washington license for a registered nurse. Applicants who meet the requirements for the initial school nurse certificate will not be issued a conditional school nurse certificate.

(vii) School psychologist. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be en-

rolled in a state-approved preparation program for school psychologists, in accordance with Washington requirements for certification.

In addition, the candidate shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(viii) School social worker. The applicant must hold a bachelor's degree or higher from an accredited college or university. The applicant must be enrolled in a master's degree program in social work or social welfare.

(ix) School speech language pathologist or audiologist. The applicant has completed a bachelor's degree or higher from an accredited college or university.

(x) School behavior analyst. Applicants must meet one or more of the following:

(A) Hold a valid Washington state department of health license as an assistant behavior analyst. The district, educational service district, or approved private school must provide a supervisor who meets the department of health requirements for a supervisor of assistant behavior analysts; or

(B) Hold a valid board certified assistant behavior analyst (BCABA) certificate from the behavior analyst certification board (BACB). The district, educational service district, or approved private school must provide a supervisor who meets the behavior analyst certification board (BACB) requirements for a supervisor of board certified assistant behavior analyst (BCABA); or

(C) Hold a bachelor's degree, and, must be enrolled in or have completed the course work requirements for the board certified behavior analyst (BCBA) certificate from the behavior analyst certification board (BACB), as verified by the institution providing the behavior analysis course work.

(xi) School orientation and mobility specialist.

(A) Applicants must have completed all requirements for an approved national certificate with the exception of the internship and the assessment, as verified by the institution providing the course-work for the national certificate. The approved national certificates are the certified orientation and mobility specialist (COMS) certificate from the academy for certification of vision rehabilitation and education professionals (ACVREP), and the national orientation and mobility certification (NOMC) from the national blindness professional certification board (NBPCB).

(B) The school employer must ensure the candidate has access to a mentor who meets the requirements for an intern supervisor set by the academy for certification of vision rehabilitation and education professionals (ACVREP) or the national blindness professional certification board (NBPCB).

(xii) Principal. The applicant holds a bachelor's degree from an accredited college or university.

The candidate for conditional certification as a principal shall be enrolled in a program resulting in the issuance of a residency principal certificate, in accordance with Washington requirements for certification.

(e) **Validity.** The conditional certificate is valid for two years or less, and is only valid for the activity or role specified on the certificate.

The reissuance of the special education conditional certificate will have a validity period of three years or less.

(f) **Reissuance.**



(i) The conditional certificate may be reissued upon request by the employing local school district, approved private school, or educational service district, provided all conditions for the first issuance of the certificate are met.

(ii) The requesting school district, approved private school, or educational service district will verify that the (~~fifty~~) 50 continuing education credit hours earned as a requirement for reissuance of the certificate are designed to support the individual's professional growth, and enhance the individual's knowledge or skills to better assist students in meeting state learning goals.

(iii) Nonimmigrant exchange. The conditional certificate in the role of teacher may be reissued while the individual is being sponsored by a school district in an exchange and visiting teacher program.

(iv) Special education teacher. Conditional certificates in special education may only be reissued once. The reissuance of the special education conditional certificate will have a validity period of three years or less. The special education conditional certificate may only be reissued upon verification by the preparation program provider that the individual is completing satisfactory progress in a state-approved teacher certificate program leading to a special education endorsement.

(v) School speech language pathologist or audiologist. Conditional certificates as a school speech language pathologist or audiologist may be reissued twice.

The conditional certification as a school speech language pathologist or audiologist may be reissued if the candidate is enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification.

The school speech language pathologist or audiologist conditional certificate may be reissued a second time upon verification by the degree provider that the individual is completing satisfactory progress in a master's degree program resulting in issuance of an initial school speech language pathologist or audiologist certificate in accordance with Washington requirements for certification.

(vi) Conditional certificates as a school behavior analyst may be reissued twice.

(vii) Conditional certificates as a school orientation and mobility specialist may be reissued once.

(2) **Transitional certificate.**

(a) **Intent.** The transitional certificate provides flexibility for school districts in employing an individual according to this chapter.

(i) Individuals whose continuing certificate has lapsed or expired.

(ii) Individuals whose certificate has lapsed or expired by June 30, 2022, under WAC 181-79A-240.

(b) **Roles.** The transitional certificate may be issued in roles of teacher, education staff associate, and administrator for continuing certificates or other certificates subject to renewal under WAC 181-79A-240.

(c) **Request requirements.**

(i) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose continuing certificate has lapsed or expired according to this chapter.

(ii) The transitional certificate is issued upon request by a school district, approved private school, or educational service dis-

strict for an individual whose certificate has expired according to this chapter.

(A) Districts may request a transitional certificate for all certificates other than continuing certificates under this section through December 31, 2023.

(B) Educators under this section must apply for the transitional certificate through the office of the superintendent of public instruction no later than June 30, 2024.

(iii) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of support for the holder to complete the necessary certificate renewal requirements under this chapter.

**(d) Minimum requirements.**

(i) The holder of the transitional certificate must complete the requirements for certificate renewal within two years of the date the holder was issued the transitional certificate.

(ii) No individual whose certificate has been suspended, revoked, or surrendered shall be eligible to be employed under this section.

(e) **Validity.** The transitional certificate is valid until two years from the date the holder was issued the certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(f) **Reissuance.** The transitional certificate is not renewable and may not be reissued.

**(3) Emergency substitute certificate.**

(a) **Intent.** The intent of the emergency substitute certificate is to assist school districts, approved private schools, and educational service districts with flexibility in meeting educator workforce needs.

**(b) Roles.**

(i) The emergency substitute certificate may be issued in the role of teacher.

(ii) To ensure that related services personnel deliver special education services in their respective discipline or profession, the emergency substitute certificate may not be issued for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b) (2) (ii).

(iii) Holders of the emergency substitute certificate may serve in the local school district, approved private school, or educational service district which requested the certificate.

(iv) Holders of the emergency substitute certificate may serve as substitutes if the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes under WAC 181-79A-232.

**(c) Request requirements.**

(i) The emergency substitute certificate is issued upon request by a school district, approved private school, or educational service district.

(ii) If the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, emergency substitute certificates may be issued to persons not fully qualified as substitutes under WAC 181-79A-232.

(d) **Validity.** Emergency substitute certificates shall be valid for two years or less.

(e) **Reissuance.** The emergency substitute certificate may be reissued upon request by the employing local school district, approved private school, or educational service district.

(4) **Intern substitute certificate.**

(a) **Intent.** The intent of the intern substitute certificate is to provide the intern the opportunity to serve as a substitute when the cooperating teacher is absent. This provides the intern with experience while allowing for consistency in instruction for the students.

(b) **Roles.** The intern substitute certificate may be issued to student teachers or intern teachers.

(c) **Request requirements.**

(i) School districts, educational service districts, and approved private schools may request intern substitute teacher certificates for individuals enrolled in student teaching and internships to serve as substitute teachers in the absence of the cooperating teacher.

(ii) The supervising preparation program provider must approve the candidate for the intern substitute teacher certificate.

(d) **Minimum requirements.** The holder of the intern substitute certificate may be called at the discretion of the school district, education service district, or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher or intern.

(e) **Validity.** The intern substitute teacher certificate is valid for one year or less.

(f) **Reissuance.** The intern substitute certificate may be reissued upon request by the local school district, approved private school, or educational service district, and approved by the educator preparation program provider.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-15-085, § 181-79A-231, filed 7/16/21, effective 8/16/21; WSR 21-08-024, § 181-79A-231, filed 3/29/21, effective 4/29/21. Statutory Authority: Chapters 28A.410 and 28A.413 RCW. WSR 19-15-110, § 181-79A-231, filed 7/22/19, effective 8/22/19. Statutory Authority: RCW 28A.410.220. WSR 18-21-072, § 181-79A-231, filed 10/11/18, effective 11/11/18; WSR 17-23-176, § 181-79A-231, filed 11/21/17, effective 12/22/17. Statutory Authority: RCW 28A.410.210. WSR 17-08-037, § 181-79A-231, filed 3/29/17, effective 4/29/17; WSR 16-16-044, § 181-79A-231, filed 7/26/16, effective 8/26/16; WSR 15-20-058, § 181-79A-231, filed 10/1/15, effective 11/1/15; WSR 10-16-124, § 181-79A-231, filed 8/3/10, effective 9/3/10; WSR 07-04-003, § 181-79A-231, filed 1/24/07, effective 2/24/07; WSR 06-14-010, § 181-79A-231, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-79A-231, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.410.010. WSR 04-20-090, § 180-79A-231, filed 10/5/04, effective 11/5/04; WSR 03-14-115, § 180-79A-231, filed 6/30/03, effective 7/31/03; WSR 03-12-035, § 180-79A-231, filed 5/30/03, effective 6/30/03. Statutory Authority: RCW 28A.410.010 and 28A.305.130. WSR 02-13-027, § 180-79A-231, filed 6/12/02, effective 7/13/02. Statutory Authority: RCW 28A.410.010. WSR 00-13-063, § 180-79A-231, filed 6/16/00, effective 7/17/00. Statutory Authority: RCW 28A.410.010 and 28A.305.130 (1) and (2). WSR 99-23-023, § 180-79A-231, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-01-174, § 180-79A-231, filed 12/23/98, effective 1/23/99.]

**WSR 22-12-047**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-83—Filed May 25, 2022, 9:04 p.m., effective May 26, 2022]

Effective Date of Rule: May 26, 2022.

Purpose: The purpose of this emergency rule is to adjust coastal salmon troll landing limits.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000C; and amending WAC 220-352-300.

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: A harvestable quota of salmon is available for the troll fleet. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. The North of Falcon troll fishery is approaching its quota for the May-June season, and a coastwide landing limit is needed to both extend the season length and to ensure the quota is not exceeded. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with pre-season fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. 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: May 25, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-354-30000D Coastal salmon troll seasons—Commercial.**

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective May 26, 2022, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken

with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open: May 19 through June 29, 2022.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18" N. lat., 124°07'01" W. long.); thence to Buoy #2 (46°52'42" N. lat., 124°12'42" W. long.); thence to Buoy #3 (46°55'00" N. lat., 124°14'48" W. long.); thence to the Grays Harbor north jetty (46°55'36" N. lat., 124°10'51" W. long.), open: May 19 through June 29, 2022.

(3) For Washington Catch Reporting Areas 1, 2, 3 and 4, landing and possession limits per vessel per landing week, defined as Thursday through Wednesday:

(a) From May 26 through June 8, 2022, 40 Chinook per vessel combined across all areas per landing week

(b) From June 9 through June 29, 2022, 20 Chinook per vessel combined across all areas per landing week

(4) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

(5) Minimum size for Chinook salmon is 27 inches in length (20 1/2 inches frozen dressed). No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(6) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(7) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

(8) During any single trip, only one side of the Leadbetter Point line (46°38'10" N. lat.) may be fished.

(a) Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area south of Leadbetter Point.

(b) For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery.

(c) Vessels may not land fish east of the Megler-Astoria bridge.

(9) Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license.

(a) Vessels in possession of salmon south of the Queets River may not cross the Queets River line (47°31'42" N. lat.) without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(b) Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(c) Vessels may not land fish east of the Sekiu River.

[]

REPEALER

The following section of Washington Administrative Code is repealed, effective May 26, 2022:

WAC 220-354-30000C Coastal salmon troll seasons—  
Commercial. (22-75)

**WSR 22-12-048**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-82—Filed May 26, 2022, 8:01 a.m., effective June 1, 2022]

Effective Date of Rule: June 1, 2022.

Purpose: The purpose of this emergency rule is to open salmon seasons in Catch Record Card Area 11.

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 modify salmon seasons in Marine Area 11 to conform to seasons agreed to with comanagers during the 2022 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 1, Amended 0, Repealed 0.

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

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

Date Adopted: May 25, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000V Puget Sound salmon—Saltwater seasons and daily limits.** Effective June 1, 2022, until further notice, the following provisions of WAC 220-313-060 regarding salmon seasons in Catch Record Card Area 11 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 11:** Salmon:

- (a) Daily limit 2, of which up to 1 may be a Chinook.
- (b) Release chum and wild Chinook.

[ ]

**WSR 22-12-058**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-85—Filed May 26, 2022, 2:33 p.m., effective May 27, 2022]

Effective Date of Rule: May 27, 2022.

Purpose: The purpose of this emergency rule is to open salmon seasons in the Tulalip terminal area of Catch Record Card Area 8-2.

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 modify salmon seasons in Marine Area 8-2 to conform to seasons agreed to with comanagers during the 2022 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 1, Amended 0, Repealed 0.

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

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

Date Adopted: May 26, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000W Puget Sound salmon—Saltwater seasons and daily limits.** 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 modified during the dates and 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) Effective May 27 through September 5, 2022: Salmon: Open from 12:00 a.m. Friday through 11:59 p.m. Monday of each week, only; except closed the day of June 11, 2021. Daily limit 2.

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**WSR 22-12-059**

**RESCISSION OF EMERGENCY RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed May 26, 2022, 3:07 p.m., effective June 7, 2022]

CORRECTED - Rescission of emergency rules filed as WSR 22-11-088.

The aging and long-term support administration (AL TSA) requests the rescission of emergency rules from WAC 388-97-1740 Disaster and emergency preparedness, and 388-97-2400 Resident rooms, filed under WSR 22-11-088, filed on May 18, 2022. The rescission of WSR 22-11-088 is necessary to reinstate the waived requirements consistent with the rescission of the related CMS 1135 federal waivers that are set to expire on June 7, 2022. AL TSA requests that this rescission take effect June 7, 2022.

Katherine I. Vasquez  
Rules Coordinator

**WSR 22-12-061**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-84—Filed May 26, 2022, 4:07 p.m., effective May 27, 2022]

Effective Date of Rule: May 27, 2022.

Purpose: The purpose of this emergency rule is to open salmon seasons in the Columbia River from Megler-Astoria Bridge to Priest Rapids Dam.

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

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

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

Reasons for this Finding: This action applies summer fishery regulations developed through the 2022 North of Falcon season setting process, and is consistent with comanager agreements. The Endangered Species Act (ESA) and wild fish impacts are available to recreational fisheries in order to access salmon and steelhead. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of May 11 and 18, 2022. The general public welfare is protected with the immediate and limited duration opening of recreational salmon fishing. This limited harvest allows for public use of the resource as well as the maintenance of a sustainable fish population.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife

convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate 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: May 26, 2022.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-312-06000S Freshwater exceptions to statewide rules—Columbia River.** Effective May 27 through July 31, 2022, the provisions of WAC 220-312-060 regarding recreational salmon and steelhead seasons from the Megler-Astoria Bridge to Priest Rapids 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:

**(1) From the Megler-Astoria Bridge upstream to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line):** Salmon and steelhead:

(a) Effective June 16 through June 22, 2022: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

(b) Effective June 23 through July 31, 2022: Daily limit 6, no more than 1 steelhead may be retained. Release all salmon and steelhead other than hatchery jack Chinook and hatchery steelhead.

**(2) From a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon bank (Rocky Point/Tongue Point line) upstream to a deadline marker on the Washington bank at Beacon Rock:** Salmon and steelhead:

(a) Effective May 27 through June 15, 2022: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a Chinook. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

(b) Effective June 16 through June 22, 2022: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

(c) Effective June 23 through July 31, 2022: Daily limit 6, no more than 1 steelhead may be retained. Release all salmon and steelhead other than hatchery jack Chinook and hatchery steelhead.

**(3) From a deadline marker on the Washington bank at Beacon Rock upstream to Bonneville Dam:** Salmon and steelhead:

(a) Effective May 27 through June 15, 2022: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a Chinook. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead. Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Effective June 16 through June 22, 2022: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

(c) Effective June 23 through July 31, 2022: Daily limit 6, no more than 1 steelhead may be retained. Release all salmon and steelhead other than hatchery jack Chinook and hatchery steelhead.

**(4) From Bonneville Dam upstream to The Dalles Dam:** Salmon and steelhead:

(a) Effective May 28, 2022 only: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be an adult Chinook. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

(b) Effective June 16 through July 31, 2022: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

**(5) From The Dalles Dam upstream to a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington southern shore located approximately 200' above the fish ladder exit:** Salmon and steelhead:

Effective June 16, 2022, until further notice: Closed to fishing for and retention of salmon and steelhead.

**(6) From a line starting from a fishing boundary sign on the Washington north shore located approximately 1300' upstream of The Dalles Dam and Lock boat ramp projected easterly across the Columbia River to a boundary sign on the Washington south shore located approximately 200' above the fish ladder exit upstream to Hwy. 730 at the Washington/Oregon border:** Salmon and steelhead:

(a) Effective May 28, 2022 only: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be an adult Chinook. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

(b) Effective June 16 through July 31, 2022: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

**(7) From Hwy. 730 at the Washington/Oregon border upstream to Hwy. 395 Bridge at Pasco:** Salmon and steelhead:

Effective June 16 through July 31, 2022: Daily limit 6, no more than 2 adults may be retained of which up to 1 may be a steelhead. Release all salmon and steelhead other than hatchery Chinook and hatchery steelhead.

**(8) From Columbia Point (approximately 1/4 mile downstream of I-182 Bridge) upstream to I-182 Bridge:** Salmon:

(a) Effective June 16 through July 15, 2022: Closed to angling from a floating device or by any method except hand-cast lines from the west shore (Richland side of the river).

(b) Effective June 16 through July 15, 2022: Daily limit 6, no more than 2 adult salmon may be retained. Release all salmon and steelhead other than hatchery Chinook and sockeye.

**(9) From I-182 Bridge upstream to Priest Rapids Dam: Salmon:**

Effective June 16 through July 31, 2022: Daily limit 6, no more than 2 adult salmon may be retained. Release all salmon and steelhead other than hatchery Chinook and sockeye.

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REPEALER

The following section of Washington Administrative Code is repealed, effective May 27, 2022:

WAC 220-312-06000R Freshwater exceptions to statewide rules—Columbia. (22-77)

**WSR 22-12-063**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-86—Filed May 27, 2022, 8:09 a.m., effective May 28, 2022]

Effective Date of Rule: May 28, 2022.

Purpose: The purpose of this emergency rule is to open salmon seasons in the Cowlitz River and maintain rules set in WSR 22-06-029 for the Kalama River.

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

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

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

Reasons for this Finding: Salmon retention on the Cowlitz River was closed at the beginning of May to help ensure the spring Chinook broodstock collection goal was achieved. Adult broodstock collection is currently on track and goals are expected to be met. Additionally, upstream transport of hatchery adults in excess of weekly broodstock collections targets is occurring for reintroduction purposes. Returns are sufficient to allow for limited salmon retention.

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: May 26, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-03000L Freshwater exceptions to statewide rules—Southwest.** Effective May 28, 2022, until further notice, the provisions of WAC 220-312-030 regarding salmon seasons for Cowlitz River and Kalama River, shall be modified during the dates and in areas as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

**(1) Cowlitz River (Cowlitz/Lewis Co.); from the mouth to posted markers below the Barrier Dam: Salmon:**

Effective May 28, through July 31, 2022: Daily limit 6, of which up to 1 may be an adult. Release all salmon other than hatchery Chinook and hatchery coho.

**(2) Kalama River (Cowlitz Co.); from the mouth to 1000 feet below the fishway at the upper salmon hatchery (Kalama Falls Hatchery): Salmon:**

Effective immediately, until further notice: Daily limit 6, of which up to 1 may be an adult. Release all salmon other than hatchery Chinook and hatchery coho.

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REPEALER

The following section of Washington Administrative Code is repealed, effective May 28, 2022:

WAC 220-312-03000F Freshwater exceptions to statewide rules—Southwest. (22-26)



## WSR 22-12-066

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed May 27, 2022, 10:33 a.m., effective May 27, 2022, 10:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-945-171 Retired active pharmacist license status, establishing a new section of rule. This adopted emergency rule will extend WSR 22-04-062 filed on January 28, 2022, without change. On March 26, 2020, Governor Inslee signed Proclamation 20-32 to help increase the number of health care workers available to meet the needs of patients during the coronavirus disease 2019 (COVID-19) pandemic. This proclamation included a provision that allows a pharmacist with a retired active pharmacist license status to practice pharmacy. Specifically, the proclamation amended WAC 246-863-080(2), which was effective at that time, to allow holders of a retired active pharmacist license status to practice pharmacy while the proclamation remains in effect.

The pharmacy quality assurance commission (commission) updated and consolidated all rules under its authority into one new chapter (chapter 246-945 WAC), effective July 1, 2020. In this rewrite process, the requirements from WAC 246-863-080 and the retired active pharmacist license status were repealed. Beginning July 1, 2020, chapter 246-945 WAC took effect and the commission no longer enforces WAC 246-863-080. In order to allow retired pharmacists to assist with the COVID[-19] response with pharmacy services such as vaccine administration, the commission is reinstating the retired active pharmacist license in rule. The adopted rule will reinstate the retired active pharmacist credential and allow a pharmacist to apply for a retired active pharmacist license status. The holder of a retired active pharmacist license is allowed to practice during emergent or intermittent circumstances and assist with the COVID-19 response. This emergency rule also establishes the criteria for returning to active status.

Citation of Rules Affected by this Order: New WAC 246-945-171.

Statutory Authority for Adoption: RCW 18.64.005, 18.64.205.

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

Reasons for this Finding: The immediate adoption of WAC 246-945-171 is necessary for the preservation of public health, safety, and general welfare. This rule allows retired pharmacists to assist in the response during public health emergencies such as the COVID-19 pandemic. This emergency rule allows retired pharmacists to help meet the needs of patients during the COVID-19 pandemic through performing pharmacy services such as vaccine administration. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

The commission authorized permanent rules and the CR-101 (WSR 21-09-063) was filed April 19, 2021, but will not be completed by the time the current emergency rules expire. Proposed rule language for a permanent rule was recently approved by the commission and the CR-102 will be filed soon.

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

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

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

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

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

Date Adopted: May 24, 2022.

Teri Ferreira, RPh  
Pharmacy Quality Assurance Chair

## OTS-2798.2

### NEW SECTION

**WAC 246-945-171 Retired active pharmacist license status.** (1) A pharmacist may apply for a retired active pharmacist license status if they:

(a) Hold an active pharmacist license issued by the commission under chapter 18.64 RCW that is in good standing;

(b) Submit an application on a form provided by the commission; and

(c) Pay the retired credential application fee as specified in WAC 246-907-030.

(2) A pharmacist with a retired active pharmacist license status shall practice only in emergent or intermittent circumstances.

(a) "Emergent" includes, but is not limited to, earthquakes, floods, times of declared war or other states of emergency.

(b) "Intermittent" means no more than a total of ninety days each year in Washington state.

(3) A pharmacist with a retired active pharmacist license status must renew every year, comply with WAC 246-12-130 and pay the retired credential renewal fee in WAC 246-907-030.

(4) To return to active status, a retired active pharmacist must comply with WAC 246-12-140 and pay the pharmacist license renewal fee in WAC 246-907-030.

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**WSR 22-12-089**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 22-88—Filed June 1, 2022, 8:25 a.m., effective June 1, 2022, 8:25 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open an additional date for spot shrimp in Marine Areas 9 and 11, as well as the nonspot shrimp fishery in Marine Area 13, with a maximum fishing depth of 200 feet.

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

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

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

Reasons for this Finding: This rule is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and meet conservation objectives. Harvestable amounts of spot shrimp are available, but recreational shares will only support a limited number of open days in the marine areas listed in this section. In addition, this emergency rule maintains shrimp seasons previously set on April 13, 2022, in WSR 22-09-035 (Order 22-54).

Marine Area 10 Elliott Bay will remain closed for spot shrimp this year due to recreational harvest overages in 2021. Marine Area 13 will also remain closed to spot shrimp harvest for conservation reasons.

There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at the Request of a 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: June 1, 2022.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-330-07000L Shrimp—Areas and seasons.** Notwithstanding the provisions of WAC 220-330-070, effective immediately, until fur-

ther notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, 13 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line) and 5: Open each day, from 1 hour before official sunrise to 1 hour after official sunset, until further notice for all shrimp species.

(2) Marine Area 6 (excluding the Discovery Bay Shrimp District): Open from 1 hour before official sunrise to 1 hour after official sunset on June 9 through 11, June 23 through 25, July 7 through 9, and July 21 through 23 for all shrimp species.

(3) Marine Areas 7 South and 7 East: Open from 1 hour before official sunrise to 1 hour after official sunset on June 9 through 11 for all shrimp species.

(4) Marine Area 7 West: Open from 1 hour before official sunrise to 1 hour after official sunset on June 9 through 11, June 23 through 25, and July 7 through 9 for all shrimp species.

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

(a) June 9 from 8:00 a.m. through noon for all shrimp species.

(b) Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on June 9 in Marine Area 8-2.

(6) Marine Area 9: Open June 9 from 8:00 a.m. through noon for all shrimp species.

(7) Marine Area 11: Open June 9 from 8:00 a.m. through noon for all shrimp species.

(8) Marine Area 12: Open June 9, and June 23 from 9:00 a.m. through 1:00 p.m. for all shrimp species.

(9) Marine Area 13: Open immediately, until further notice, for shrimp species other than spot shrimp with a 200-foot maximum fishing depth restriction. During this time it is unlawful to set or pull shrimp gear in waters greater than 200 feet deep. All spot shrimp caught must be immediately returned to the water unharmed.

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#### REPEALER

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

WAC 220-330-07000K Shrimp—Areas and seasons. (22-54)

**WSR 22-12-094**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed June 1, 2022, 11:05 a.m., effective June 15, 2022]

Effective Date of Rule: June 15, 2022.

Purpose: The department of labor and industries (L&I) is adopting a second set of emergency rules regarding wildfire smoke under chapter 296-62 WAC, General occupational health standards. L&I filed the initial emergency rules on July 16, 2021, WSR 21-15-067. These rules expired on November 13, 2021. 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.

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.

Except as described below, this emergency rule continues the requirements under the previous emergency rules, including:

- 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 training both supervisors and line staff who may be exposed to  $PM_{2.5}$  levels of  $20.5 \mu\text{g}/\text{m}^3$  (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.

Changes to this emergency rule include:

- Requirements for hazard communication to notify employees when:
  - At least two consecutive  $PM_{2.5}$  readings are  $20.5 \mu\text{g}/\text{m}^3$  (AQI 69) or more
  - The  $PM_{2.5}$  is  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101) or more
  - The  $PM_{2.5}$  is  $250.5 \mu\text{g}/\text{m}^3$  (AQI 301) or more
  - The  $PM_{2.5}$  is  $555 \mu\text{g}/\text{m}^3$  (beyond the AQI) or more
- Requirements for implementation of engineering and administrative controls whenever  $PM_{2.5}$  reaches  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101) and such controls are feasible.
- Requirements for supplying respiratory protection for employees use on a voluntary basis whenever  $PM_{2.5}$  reaches  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101).
- Where the  $PM_{2.5}$  is  $555 \mu\text{g}/\text{m}^3$  or more, employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC. At this level, employees must be provided

one of the following types of respiratory protection: A loose-fitting powered air purifying respirator (PAPR), full-facepiece PAPR, full-facepiece air purifying respirator, or another respirator that is at least as effective.

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, under 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. L&I 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 and those who work outdoors, are part of the workforce.

The United States Environmental Protection Agency's (EPA) air quality index (AQI) is an informational tool for reporting air quality and is based, in part, on particulate matter (PM<sub>2.5</sub>) measurements. Under the Clean Air Act, the EPA sets and reviews national air quality standards for several air pollutants, including PM<sub>2.5</sub>. AQI is a level of one 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 EPA categorizes the AQI level of 101 as "unhealthy for sensitive groups" and corresponds to PM<sub>2.5</sub> concentrations of 35.5 µg/m<sup>3</sup>.

California and Oregon are currently the only other states with rules for occupational exposure to wildfire smoke. California's rule requires employers take preventative measures at a PM<sub>2.5</sub> of 55.5 µg/m<sup>3</sup> (AQI 151), and Oregon requires preventative measures at a PM<sub>2.5</sub> of 35.5 µg/m<sup>3</sup> (AQI 101). California's rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a PM<sub>2.5</sub> of 55.5 µg/m<sup>3</sup> (AQI 151). Mandatory respi-

rator use is required when the  $PM_{2.5}$  is  $500.4 \mu\text{g}/\text{m}^3$  (AQI 501) or greater with an assigned protection factor (APF) such that the  $PM_{2.5}$  levels inside the respirator are less than  $55.5 \mu\text{g}/\text{m}^3$  which would require respirators that are more protective than N95s at  $555 \mu\text{g}/\text{m}^3$  (beyond the AQI). When respirators are required, compliance with California's respiratory program rules, including fit testing and medical evaluations, are also required. Oregon's rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a  $PM_{2.5}$  of  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101). Oregon's rule also requires N95 use at  $200.9 \mu\text{g}/\text{m}^3$  (AQI 251) without fit-testing or medical evaluations, and when the  $PM_{2.5}$  is  $500.4 \mu\text{g}/\text{m}^3$  (AQI 501) or greater, a full respiratory protection program is required, including fit testing and medical evaluations.

For the past several summers, L&I's division of occupational safety and health (DOSH) received inquiries about wildfire smoke hazards, especially for outdoor workers. DOSH has put out guidance and information on best practices but recognizes there has been a gap under previous 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, L&I reviewed the need for rules and received a petition requesting rule making. L&I determined that rule making was needed to address the hazard and initiated permanent rule making on October 20, 2020, WSR 20-21-093. L&I held five virtual stakeholder meetings from January - June 2021 to discuss development of a permanent rule and emergency rules. L&I filed the initial emergency rules on July 16, 2021, WSR 21-15-067. These rules expired on November 13, 2021.

Additionally, L&I held two virtual stakeholder meetings from January - April 2022 to discuss the second set of emergency rules and to gather feedback on the draft permanent rule.

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 wildfire smoke. 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. While L&I 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. Therefore, 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 Washington Industrial Safety and Health Act (WISHA), L&I 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  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101 which is unhealthy under the AQI level), but encourages employers to take these actions at a  $PM_{2.5}$  concentration [concentration] of 20.5 (AQI 69 which is unhealthy for sensitive groups). Under this approach, enforcement levels are set at the

same as Oregon, which has been a feasible approach. Additionally, at 555  $\mu\text{g}/\text{m}^3$  (beyond the AQI), use of more protective respirators is required such as loose-fitting powered air purifying respirators (PAPR), full-facepiece respirators, or tight-fitting PAPRs. The permanent rule process will continue to examine the hazards of  $\text{PM}_{2.5}$  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: June 1, 2022.

Joel Sacks  
Director

OTS-3201.5

### PART I-3—WILDFIRE SMOKE

#### NEW SECTION

#### **WAC 296-62-085 Wildfire smoke.**

[ ]

#### 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 a  $\text{PM}_{2.5}$  concentration of 20.5  $\mu\text{g}/\text{m}^3$  (Air Quality Index 69) or more for wildfire smoke.

(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 briefly open doors to enter and exit.

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

(c) Employees exposed to a PM<sub>2.5</sub> concentration of 20.5 µg/m<sup>3</sup> (Air Quality Index 69) or more for a total of one hour or less during a 24-hour period.

(d) Work within the scope of chapter 296-305 WAC, Safety standards for firefighters.

**Notes:**

- Buses, light rail, and other enclosed vehicles used for transit systems where doors are frequently opened to board and deboard passengers are not included under the exemption in WAC 296-62-08510 (2)(b).
- Employers are not responsible for tracking employee exposures outside of working hours.

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## NEW SECTION

**WAC 296-62-08520 Definitions. Air Quality Index (AQI).** A unitless index used by the U.S. Environmental Protection Agency (EPA) to communicate air quality for several pollutants, including PM<sub>2.5</sub>. References to the AQI used throughout this chapter means "AQI for PM<sub>2.5</sub>".

**Current PM<sub>2.5</sub>.** The concentration of PM<sub>2.5</sub> for the most current hour available, calculated using an hourly average of PM<sub>2.5</sub> data.

**Note:** The NowCast as provided by the Washington state department of ecology, local clean air agency, or U.S. EPA is also acceptable to approximate current PM<sub>2.5</sub>.

**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.** The method used by the U.S. Environmental Protection Agency (EPA), and the Washington state department of ecology to approximate the air quality for the most current hour available by using a calculation that involves multiple hours of past data. 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<sub>2.5</sub>.** 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/m<sup>3</sup>).

**Wildfire smoke.** Emissions from fires in wildlands or in adjacent developed areas. Wildfire smoke contains a complex mixture of gasses and particulates. Fine particulates such as PM<sub>2.5</sub> are the primary pollutant in wildfire smoke.

**Wildlands.** Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

[]

NEW SECTION

**WAC 296-62-08530 Identification of harmful exposures.** The employer must determine employee exposure to PM<sub>2.5</sub> for worksites covered by this section before each shift and periodically thereafter, as needed, by any of the following methods:

- (1) Check PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> from any of the following:
  - (a) Washington department of ecology website;
  - (b) Air Quality WA mobile app;
  - (c) Washington Smoke Information website;
  - (d) U.S. EPA AirNow website;
  - (e) U.S. EPA AirNow mobile app;
  - (f) U.S. Forest Service AirFire website;
  - (g) Local Clean Air Agency website; or
- (2) Obtain PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> directly from the department of ecology, local clean air agency, U.S. EPA, U.S. EPA EnviroFlash.info, or local clean air agency by telephone, email, text, or other effective method; or
- (3) Measure current PM<sub>2.5</sub> levels at the work location in accordance with Appendix A of this part.

**Note:** Employers must check the current PM<sub>2.5</sub> in a manner that they are able to comply with the requirements in WAC 296-62-085. The current PM<sub>2.5</sub> is updated hourly.

If an index such as the AQI is relied upon, use the following table to find the equivalent PM<sub>2.5</sub>.

PM <sub>2.5</sub> in Micrograms per Cubic Meter (µg/m <sup>3</sup> )	Air Quality Index for PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	69
35.5 µg/m <sup>3</sup>	101
555 µg/m <sup>3</sup>	Beyond the AQI

**Note:** The employer does not have to determine employee exposure as required by this subsection if the employer assumes the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (AQI 101) or more, and uses that assumption to comply with the requirements in WAC 296-62-08540 (1)(b), 296-62-08570(2), and 296-62-08580(2).

[ ]

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 at least two consecutive current PM<sub>2.5</sub> readings as identified in WAC 296-62-08530 are 20.5 µg/m<sup>3</sup> (AQI 69) or more; and
  - (b) When the current PM<sub>2.5</sub> as identified in WAC 296-62-08530 is 35.5 µg/m<sup>3</sup> (AQI 101) or more; and

- (c) When the current PM<sub>2.5</sub> as identified in WAC 296-62-08530 is 555 µg/m<sup>3</sup> (beyond the AQI) or more; and
- (d) Protective measures available to employees to reduce their wildfire smoke exposures.
- (2) Enabling and encouraging employees to inform the employer of:
- (a) Worsening air quality; and
- (b) Availability issues of appropriate exposure control measures and respiratory protection required by this standard; and
- (c) Any adverse symptoms that may be the result of wildfire smoke exposure such as, but not limited to, asthma attacks, difficulty breathing, and chest pain.
- (3) A wildfire smoke response plan must be included in the written accident prevention program. The wildfire smoke response plan must be tailored to the workplace and include at least the following elements:
- (a) Information on the health effects of wildfire smoke;
- (b) Information on employee rights to obtain medical treatment without fear of reprisal;
- (c) How employees can obtain the current PM<sub>2.5</sub>;
- (d) The requirements of WAC 296-62-085 Wildfire smoke;
- (e) The employer's response plan for wildfire smoke including the employer's methods to protect employees from wildfire smoke;
- (f) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke;
- (g) How to properly put on, use, and maintain the respirators provided by the employer.

[]

#### NEW SECTION

**WAC 296-62-08550 Information and training.** The employer must provide all workers with effective information and training regarding wildfire smoke before work that exposes the worker to a PM<sub>2.5</sub> concentration of 20.5 µg/m<sup>3</sup> (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 Appendix B:
- (a) The health effects of wildfire smoke; and
- (b) The right to obtain medical treatment without fear of reprisal; and
- (c) How employees can obtain the current PM<sub>2.5</sub>; and
- (d) The requirements of WAC 296-62-085 Wildfire smoke; and
- (e) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke; and
- (f) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke; and
- (g) How to properly put on, use, and maintain the respirators provided by the employer.
- (3) Supervisor training. Prior to supervising employees performing work that exposes the worker to PM<sub>2.5</sub> levels that are 20.5 µg/m<sup>3</sup>

(AQI 69) or more, supervisors must have training on the information in Appendix B, and the following topics:

(a) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-62-085 wildfire smoke; and

(b) The 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.

[]

#### NEW SECTION

**WAC 296-62-08560 Exposure symptom response.** (1) The employer must monitor employees displaying adverse symptoms of wildfire smoke exposure 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 current PM<sub>2.5</sub> is 20.5 µg/m<sup>3</sup> (AQI 69) or more, the employer is encouraged to implement exposure controls.

(2) Where the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (AQI 101) or more, the employer must implement effective exposure controls whenever feasible.

(3) Such controls include, but are not limited to:

(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<sub>2.5</sub>;

(d) Changing work schedules to a time with a lower ambient air concentration of PM<sub>2.5</sub>;

(e) Reducing work intensity;

(f) Providing additional rest periods.

**EXCEPTION:** In emergencies, exposure controls in WAC 296-62-08570 are not required. Emergencies include rescue, evacuation, utilities, communications, and medical operations; when such operations are directly aiding firefighting; or emergency response; or actively protecting, restoring, or maintaining the safe and reliable operation of critical infrastructure at risk.

[]

NEW SECTION

**WAC 296-62-08580 Respiratory protection.** (1) Where the current  $PM_{2.5}$  is  $20.5 \mu\text{g}/\text{m}^3$  (AQI 69) or more, the employer is encouraged to provide respirators at no cost to employees upon request. Employees may provide and wear their own respiratory protection as long as voluntary use of these protective devices and equipment does not introduce hazards to the work environment.

(2) Where the current  $PM_{2.5}$  is  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101) or more, the employer must provide respirators at no cost to all exposed employees, and must encourage employees to use respirators.

(a) Employers must provide respirators by either of the following methods:

(i) Distribute directly to each exposed employee; or

(ii) Maintain a sufficient supply for all exposed employees at each work location where exposure occurs. Such respirator supply availability and locations must be made known, and be readily accessible, to all exposed employees in a manner that does not restrict or hinder employee access to obtain and replace respirators when needed.

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

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

(4) Respirators must be cleaned, stored, maintained, and replaced so that they are in good working order, and do not present a health hazard to users. Replace any respirator that is not functioning properly, and do not permit their use.

(5) Where the current  $PM_{2.5}$  is  $555 \mu\text{g}/\text{m}^3$  or more, employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC. The employer must provide and require to be worn one of the following respirators equipped with high efficiency particulate air filters:

(a) Loose-fitting powered air purifying respirator; or

(b) Full-facepiece air purifying respirator; or

(c) Full-facepiece powered air purifying respirator; or

(d) Other respirators that are at least as effective.

**Notes:**

- 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.
- For voluntary or required use of loose-fitting powered air purifying respirators, some of the requirements of chapter 296-842 WAC, Safety Standards for Respirators, do not apply, such as fit testing and requiring workers to be clean shaven.
- During emergency response, rescue, evacuation, and medical operations, required use of respirators must be implemented to the extent feasible.

[ ]

NEW SECTION

**WAC 296-62-08585 Appendix A: Measuring  $PM_{2.5}$  levels at the work-site (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<sub>2.5</sub> to ensure that employee exposure levels are not underestimated.

(2) The monitor's field R-squared (R<sup>2</sup>) value must be greater than 0.7 when measuring PM<sub>2.5</sub> as defined by the South Coast Air Quality Management District's air quality sensor performance evaluation center (AQ-SPEC) [www.aqmd.gov/aq-spec](http://www.aqmd.gov/aq-spec).

(3) The monitor must 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 ( $\leq 0.3 \mu\text{m}$  to  $2.5 \mu\text{m}$ ). The employer may use a monitor that measures a particle size range beyond these limits, if the employer treats the results as the PM<sub>2.5</sub> levels.

(4) The employer must 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<sub>2.5</sub> concentrations.

(5) The person supervising, directing, or evaluating workplace monitoring for PM<sub>2.5</sub> must 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.

[ ]

#### 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.

Sensitive groups. People who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke include those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers. Although everyone is impacted by wildfire smoke exposure, sensitive groups 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 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;
- People with other medical or health conditions that can be exacerbated by exposure to wildfire smoke as determined by a physician;
- Outdoor workers.

The Washington state department of health classifies<sup>1</sup> outdoor workers as a sensitive group with increased risk, as well as:

- People with health conditions:
  - Lung diseases, such as asthma and COPD;
  - Heart diseases;
  - Respiratory diseases;
  - Diabetes.
- People 18 and younger, or older than 65;
- Pregnant people;
- People of color;
- Tribal and indigenous people;
- People with low income.

(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 current PM<sub>2.5</sub> in the air.

Various government agencies monitor the air at locations throughout Washington and report the current PM<sub>2.5</sub> for those places. The Air Quality Index (AQI) uses the air quality data from these regulatory monitors.

Although the government monitoring stations may measure several pollutants, this chapter only uses PM<sub>2.5</sub>. The easiest way to find the current and forecasted PM<sub>2.5</sub> is to go to [enviwa.ecology.wa.gov](http://enviwa.ecology.wa.gov) and find the nearest sensor on the map, or [www.AirNow.gov](http://www.AirNow.gov) and enter the zip code of the location where you will be working. The current PM<sub>2.5</sub> is also available from the U.S. Forest Service at [tools.airfire.org](http://tools.airfire.org). Employees who do not have access to the internet can contact their employer for the current PM<sub>2.5</sub>. The U.S. EPA website [www.enviroflash.info](http://www.enviroflash.info) can transmit daily and forecasted air quality by text or email for particular cities or zip codes.

If you choose to use an index such as the AQI, use the following table to find the equivalent AQI for PM<sub>2.5</sub>.

PM <sub>2.5</sub> in Micrograms per Cubic Meter (µg/m <sup>3</sup> )	Air Quality Index for PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	69
35.5 µg/m <sup>3</sup>	101
555 µg/m <sup>3</sup>	Beyond the AQI

(4) The requirements of WAC 296-62-085, wildfire smoke rule.

If employees may be exposed to wildfire smoke, then the employer is required to do all of the following:

- (a) Check the current  $PM_{2.5}$  before and periodically during each shift.
- (b) Provide training to employees.
- (c) Implement a two-way communication system.
- (d) Provide engineering and administrative controls when the current  $PM_{2.5}$  is  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101) or more if feasible.
- (e) Provide respirators and encourage their use when the current  $PM_{2.5}$  is  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101) or more.
- (f) Provide more protective respirators such as powered air purifying respirators, and require their use when the current  $PM_{2.5}$  is  $555 \mu\text{g}/\text{m}^3$  or more.

Employers must alert employees when at least two consecutive current  $PM_{2.5}$  readings are  $20.5 \mu\text{g}/\text{m}^3$  (AQI 69) or more, when the current  $PM_{2.5}$  is  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101) or more, and when the current  $PM_{2.5}$  is  $555 \mu\text{g}/\text{m}^3$  or more, and what protective measures are available to employees.

Employers must 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: \_\_\_\_\_

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

Employers must take action to protect employees from wildfire smoke when the current  $PM_{2.5}$  is  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101) or more. 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: \_\_\_\_\_

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(5) The importance, limitations, and benefits of using a properly fitted 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 less than  $20.5 \mu\text{g}/\text{m}^3$ , to provide additional protection.

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

When the current  $PM_{2.5}$  is  $35.5 \mu\text{g}/\text{m}^3$  (AQI 101) or more, your employer must make proper respirators available to workers who may choose to use them voluntarily.



When the current PM<sub>2.5</sub> is 555 µg/m<sup>3</sup> or more (beyond the AQI), respirators that are more protective than N95s are required. Your employer must provide and require you to wear one of the following respirators equipped with high efficiency particulate air filters:

- (a) Loose-fitting powered air purifying respirator; or
- (b) Full-facepiece air purifying respirator; or
- (c) Full-facepiece powered air purifying respirator; or
- (d) Other respirators that are at least as effective.

These respirators are more protective than N95s. You will need to have a fit test, medical evaluation, and must be clean shaven to use these respirators, except for loose-fitting powered air purifying respirators (PAPR), which can be worn without a fit test, and can be used with facial hair.

A respirator needs to be used properly and kept clean.

The following precautions must be taken:

(a) Employers must 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 respirator packaging. It will list what the respirator is designed for (particulates, for example).

Surgical masks or items worn over the nose and mouth such as scarves, T-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH approved 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.

(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 you against gases or vapors, and it will not supply oxygen.

(d) You should keep track of your respirator so you do not mistakenly use someone else's respirator.

(e) Particularly if you have a heart or lung problem, or if you have other medical problems and have questions about whether it is safe for you to wear a respirator, you should talk to your doctor.

(6) 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 that is made of filter material:

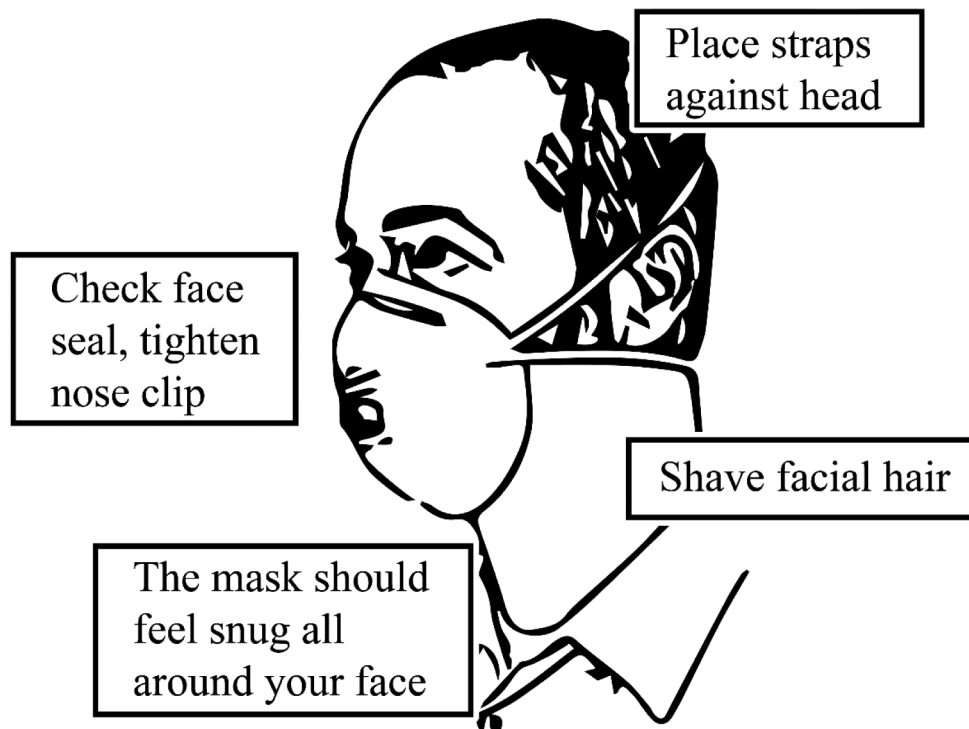
(a) Place the mask over the nose and under the chin, with one strap placed below the ears and one strap above.

(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, adjust 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, adjust 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.

<sup>1</sup> [https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic\\_English.pdf](https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf)

[ ]

NEW SECTION

**WAC 296-62-08595 Appendix C: Calculating the air quality index for PM<sub>2.5</sub> (nonmandatory).** The air quality index (AQI) for PM<sub>2.5</sub> is calculated as follows:

$$IPM_{2.5} = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} (C_p - BP_{Lo}) + I_{Lo}$$

Where:

- $IPM_{2.5}$  is the air quality index value for PM<sub>2.5</sub>
- $C_p$  is the concentration of PM<sub>2.5</sub> in µg/m<sup>3</sup> truncated to 1 decimal place
- $BP_{Hi}$  is the concentration breakpoint that is greater than or equal to  $C_p$
- $BP_{Lo}$  is the concentration breakpoint that is less than or equal to  $C_p$
- $I_{Hi}$  is the AQI value corresponding to  $BP_{Hi}$
- $I_{Lo}$  is the AQI value corresponding to  $BP_{Lo}$

PM <sub>2.5</sub> Breakpoints <sup>1</sup>	AQI equivalent <sup>1</sup>	AQI category <sup>1</sup>	WA DOH Health Messaging <sup>2</sup>
0.0-12.0	0-50	Good	It is a great day to be active outside and a good time to make a plan if worse air quality is in the forecast.
12.1-35.4	51-100	Moderate	Some people are especially sensitive to lower levels of particle pollution and should reduce exposure. For example, limit time outside and avoid strenuous outdoor activity. All sensitive groups should watch for symptoms.
35.5-55.4	101-150	Unhealthy for sensitive groups	Sensitive groups should take steps to reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air. Everyone should watch for symptoms as a sign to reduce exposure.
55.5-150.4	151-200	Unhealthy	Everyone should reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air.
150.5-250.4	201-300	Very unhealthy	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
250.5-350.4	301-400	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
350.5-500.4	401-500	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
> 500.4	Beyond the AQI	Hazardous (beyond the AQI)	

<sup>1</sup> U.S. EPA. September 2018. *Technical Assistance Document for the Reporting of Daily Air Quality – The Air Quality Index (AQI)*. EPA 454/B-18-007. Research Triangle Park, North Carolina.

<sup>2</sup> [https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic\\_English.pdf](https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf)

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**WSR 22-12-095**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed June 1, 2022, 11:06 a.m., effective June 15, 2022]

Effective Date of Rule: June 15, 2022.

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 protect outdoor workers from heat-related illnesses due to outdoor heat exposure.

When the temperatures are at or exceed one of the three trigger temperatures in the rule, 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 so they can sit in a normal posture fully in the shade. The shade shall be located as close as practicable to the areas where employees are working and not adjoining a radiant heat source. 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.

When the temperatures are at or exceed 89°F, employers must:

- Ensure that employees take mandatory cool-down rest periods of at least 10 minutes every two hours. The mandatory cool-down rest period may be provided concurrently with any other meal or rest period.
- Ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if reception in the area is reliable.
- Closely observe employees for signs and symptoms of heat-related illness by: Regular communication with employees such as by radio or cellular phone; a mandatory buddy system; or other effective means of observation.

In addition, the emergency rules:

- Specify that employees must be 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 rest periods and mandatory cool-down rest periods under the high temperature procedures.
- Define the term "shade."
- Further define the term "acclimatization" and encourage acclimatization procedures for all employees.
- Clarify that environmental factors for heat-related illness include clothing worn by employees.
- Clarify that drinking water be suitably cool in temperature.

- Clarify that time during preventative cool-down rest and mandatory cool-down rest periods must be paid unless taken during an unpaid meal break

Citation of Rules Affected by this Order: New WAC 296-62-09535, 296-62-09545, 296-62-09555, 296-307-09735, 296-307-09745 and 296-307-09755; and amending WAC 296-62-09510, 296-62-09520, 296-62-09530, 296-62-09540, 296-62-09560, 296-307-09710, 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 "provide 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), rhabdomyolysis (breakdown of damaged muscles which can cause kidney damage) 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.

During the significant and unprecedented 2021 heatwave, L&I received a petition requesting the department adopt emergency rules to address preventative measures when there is extreme high heat. The heat-wave highlighted the dangers of extreme heat, and made it clear that this was an urgent issue as the current rules only require employers to respond once a worker shows symptoms of heat-related illness, but do not affirmatively address preventative measures to avoid overheating other than access to drinking water. The hazards of heat are well documented, as is the increase in risk associated with the increase in temperature. L&I accepted the petition for emergency rules to address requirements for employers to engage in key preventative steps when the temperature increases to higher levels of risk. Emergency rules were adopted on July 9, 2021 (WSR 21-15-017), with the primary focus on extreme high heat exposures at or above 100° [F]. In August 2021 (WSR 21-17-135), L&I initiated the permanent rule-making process in recognition of the need to reexamine the current rules, especially in light of information suggesting the occurrence of heat illnesses below the current trigger temperatures and the increasing temperatures experienced in our state since the rule was first established.

As part of the permanent rule development, L&I reviewed peer reviewed research to understand the current best evidence on heat exposures and hazard, as well as information on heat-related illness, including Washington workers' compensation claims. Since the initial adoption of the outdoor heat exposure rules in 2008, research has

evaluated the relationship between occupational heat exposure and: Traumatic injuries (example: Fall from ladder); acute kidney injury; absorption of chemicals; pregnancy/birth outcomes; and mental health outcomes. Review of research on workers' compensation claims showed 918 confirmed claims between 2006 and 2017, with 654 claims accepted. From 2018 through 2021, there were 203 accepted claims, with a spike in claims associated with the 2021 heat dome. Over half of the accepted workers' compensation accepted claims occurred at temperatures at or above 89°F, with a spike following the 2021 heatwave. The workers' compensation data also shows that years with higher temperatures compared to the historical norms tend to have greater number of claims.

Given the research on underreporting of claims, the burden of heat exposure is likely higher. Underreporting of heat-related illness claims is also impacted due to high percentages of vulnerable workers in industries with occupational heat exposure such as agriculture and construction. Vulnerable work characteristics such as race, ethnicity, immigration status, language, class, or contingent work or other insecure or precarious employment, can lead to underreporting by workers due to a lack of understanding of their rights and fear of retaliation and discrimination.

While work on the development of the permanent rules is still ongoing, L&I determined emergency rules are needed to ensure adequate protections are in place to address gaps in the current rules to more adequately prevent heat-related illness. In addition, L&I was again petitioned to adopt emergency rules for 2022 while the permanent rule-making was ongoing to include more preventative requirements to reduce the risk of heat-related illness.

The current rules, in effect annually from May 1 through September, apply when the temperature is at or above 89°F with lower temperature thresholds for work in double-layer clothes or nonbreathing clothes. 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 current rules, in effect annually from May 1 through September, apply when the temperature is at or above 89°F with lower temperature thresholds for work in double-layer clothes or nonbreathing clothes. 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. L&I advises that sufficient means to reduce body temperature includes shade, misting stations, or temperature controlled environments such as air-conditioned trailers. However, there are not specific requirements as to how much shade or other cooling methods are required.

The emergency rules now require access to shade or the other cooling methods sufficient to accommodate all workers on a meal or rest break at any of the three trigger temperatures under the rule. At any trigger temperature, employees must be 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. At the trigger temperature of 89°F, the emergency rules include requirements for: Paid mandatory cool-down rest periods of at least 10 minutes every two hours and effective communication by voice, observation, or electronic

means. The emergency rules also require employers closely observe employees for signs and symptoms of heat-related illness. The current rules require employers respond to workers showing signs and symptoms of heat-related illness and this requirement provides clarity on the expectation that employers affirmatively monitor employees to identify those showing signs and symptoms. These provisions aimed at preventing overheating will help to prevent heat-related illness.

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.

As such, L&I has determined the requirements of the emergency rules are both feasible and necessary to protect workers. Given the heatwave and increase temperatures in the summer of 2021 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. Efforts to develop the permanent rules will continue in order to provide permanent rules by the summer of 2023.

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 6, Amended 10, 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: June 1, 2022.

Joel Sacks  
Director

### OTS-3780.3

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

**WAC 296-62-09510 Scope and purpose.** (1) WAC 296-62-095 through 296-62-09560 applies to all employers with employees performing work in an outdoor environment.

(2) The requirements of WAC 296-62-095 through 296-62-09560 apply to outdoor work environments from May 1 through September 30, annually, only when employees are exposed to outdoor heat at or above an applicable temperature listed in Table 1.

**Table 1**

To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

Outdoor Temperature Action Levels

<del>((All other clothing</del>	89°)
<u>Nonbreathable clothes including vapor barrier clothing or PPE such as chemical resistant suits</u>	52°F
Double-layer woven clothes including coveralls, jackets and sweatshirts	77°F
<del>((Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits</del>	52°)
<u>All other clothing</u>	89°F

**Note:** There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(3) WAC 296-62-095 through 296-62-09560 does not apply to incidental exposure which exists when an employee is not required to perform a work activity outdoors for more than ~~((fifteen))~~ 15 minutes in any ~~((sixty-minute))~~ 60-minute period. This exception may be applied every hour during the work shift.

(4) WAC 296-62-095 through 296-62-09560 supplement all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer must comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for firefighters and chapter 296-307 WAC, Safety standards for agriculture.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 19-01-094, § 296-62-09510, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09510, filed 6/4/08, effective 7/5/08.]

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

**WAC 296-62-09520 Definitions. Acclimatization.** The body's gradual temporary adaptation to work in heat that occurs as a person is exposed to it over ~~((time))~~ a period of seven to 14 days with a substantial amount of adaptation occurring in the first four to five days. Acclimatization is lost after a week away from working in the heat.

**Buddy system.** A system where individuals are paired or teamed up into work groups so each employee can be observed by at least one other member of the group to monitor and report signs and symptoms of heat-related illness.

**Double-layer woven clothing.** Clothing worn in two layers allowing air to reach the skin. For example, woven 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))~~ light, moderate, or heavy) and duration, and personal protective equipment and clothing 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))~~ nonbreathable 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; and

(c) Encourage and allow employees to take a preventative cool-down rest period when they feel the need to do so to protect themselves from overheating using sufficient means to reduce body temperature such as shade or other equally or more effective means. The pre-

ventative cool-down rest period must be paid unless taken during a meal period. If an employee is showing signs or symptoms of heat-related illness during the cool-down rest period, the employer must comply with requirements under WAC 296-62-09550.

**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>.

(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.

[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.]

#### NEW SECTION

**WAC 296-62-09535 Access to shade.** (1) The employer must provide 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 shade must be located as close as practicable to the areas where employees are working.

(2) The employer must ensure the amount of shade present is at least enough to accommodate the number of employees on a meal or rest period, so that they can sit in a normal posture fully in the shade.

(3) In lieu of shade, employers may use other means to reduce body temperature if they can demonstrate such means are equally or more effective than shade.

**Note:** Some alternatives to shade may include the provision of misting stations, cooling vests, and air-conditioned areas.

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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 296-62-09545 Acclimatization.** Employers are encouraged to closely observe new employees and employees returning to work in hot conditions after a prolonged absence for signs and symptoms of heat-related illness for 14 days by implementing one or more of the monitoring options under WAC 296-62-09555(3). Close observation of employees is also encouraged during a sudden temperature increase relative to temperatures on previous days.

**Note:** Employers may also consider additional acclimatization procedures recommended by NIOSH:  
- NIOSH Heat Stress: Acclimatization. <https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-124.pdf>  
- NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

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NEW SECTION

**WAC 296-62-09555 Additional requirements when outdoor temperatures meet or exceed 89 degrees Fahrenheit.** (1) The employer must ensure that employees take mandatory cool-down rest periods of at least 10 minutes every two hours. The mandatory cool-down rest period 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.

(2) Ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(3) Effectively observe employees for signs and symptoms of heat-related illness by implementing one or more of the following:

- (a) Regular communication with employees working alone such as by radio or cellular phone; or
- (b) A mandatory buddy system; or
- (c) Other effective means of observation.

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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 importance of removing heat-retaining personal protective equipment and clothing such as nonbreathable chemical resistant clothing during all breaks;

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

(e) The importance of acclimatization;

(f) The importance of taking preventative cool-down rest periods when employees feel the need to do so in order to protect themselves from overheating;

(g) The mandatory cool-down rest periods under WAC 296-62-09555 when the outdoor temperature reaches or exceeds 89 degrees Fahrenheit;

(h) The employer's procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

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

~~(g))~~ (j) 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; and

(k) The employer's procedures for ensuring effective observation and communication with employees for signs and symptoms of heat-related illness.

(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-3779.3**

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

**WAC 296-307-09710 Scope and purpose.** (1) WAC 296-307-097 through 296-307-09760 applies to all employers with employees performing work in an outdoor environment.

(2) The requirements of WAC 296-307-097 through 296-307-09760 apply to outdoor work environments from May 1 through September 30, annually, only when employees are exposed to outdoor heat at or above an applicable temperature listed in Table 1.

**Table 1**

To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

Outdoor Temperature Action Levels

<del>((All other clothing</del>	<del>89°))</del>
<u>Nonbreathable clothes including vapor barrier clothing or PPE such as chemical resistant suits</u>	<u>52°F</u>
Double-layer woven clothes including coveralls, jackets and sweatshirts	77°F
<del>((Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits</del>	<del>52°))</del>
<u>All other clothing</u>	<u>89°F</u>

**Note:** There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(3) WAC 296-307-097 through 296-307-09760 does not apply to incidental exposure which exists when an employee is not required to perform a work activity outdoors for more than ~~((fifteen))~~ 15 minutes in any ~~((sixty-minute))~~ 60-minute period. This exception may be applied every hour during the work shift.

(4) WAC 296-307-097 through 296-307-09760 supplement all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer must comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for firefighters and chapter 296-307 WAC, Safety standards for agriculture.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-09710, filed 10/20/20, effective 11/20/20; WSR 09-07-098, § 296-307-09710, filed 3/18/09, effective 5/1/09.]

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

**WAC 296-307-09720 Definitions. Acclimatization.** The body's gradual temporary adaptation to work in heat that occurs as a person is exposed to it over ~~((time))~~ a period of seven to 14 days with a substantial amount of adaptation occurring in the first four to five days. Acclimatization is lost after a week away from working in the heat.

**Buddy system.** A system where individuals are paired or teamed up into work groups so each employee can be observed by at least one other member of the group to monitor and report signs and symptoms of heat-related illness.

**Double-layer woven clothing.** Clothing worn in two layers allowing air to reach the skin. For example, woven 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~~) light, moderate, or heavy) and duration, and personal protective equipment and clothing 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 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~~) nonbreathable 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; and

(c) Encourage and allow employees to take a preventative cool-down rest period when they feel the need to do so to protect themselves from overheating using sufficient means to reduce body temperature such as shade or other equally or more effective means. The preventative cool-down rest period must be paid unless taken during a meal period. If an employee is showing signs or symptoms of heat-related illness during the cool-down rest period, the employer must comply with requirements under WAC 296-307-09750.

**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>.

(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.

[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.]

NEW SECTION

**WAC 296-307-09735 Access to shade.** (1) The employer must provide 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 shade must be located as close as practicable to the areas where employees are working.

(2) The employer must ensure the amount of shade present is at least enough to accommodate the number of employees on a meal or rest period, so that they can sit in a normal posture fully in the shade.

(3) In lieu of shade, employers may use other means to reduce body temperature if they can demonstrate such means are equally or more effective than shade.

**Note:** Some alternatives to shade may include the provision of misting stations, cooling vests, and air-conditioned areas.

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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 296-307-09745 Acclimatization.** Employers are encouraged to closely observe new employees and employees returning to work in hot conditions after a prolonged absence for signs and symptoms of heat-related illness for 14 days by implementing one or more of the monitoring options under WAC 296-307-09755(3). Close observation of employees is also encouraged during a sudden temperature increase relative to temperatures on previous days.

**Note:** Employers may also consider additional acclimatization procedures recommended by NIOSH:  
 - NIOSH Heat Stress: Acclimatization. <https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-124.pdf>  
 - NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

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#### NEW SECTION

**WAC 296-307-09755 Additional requirements when outdoor temperatures meet or exceed 89 degrees Fahrenheit.** (1) The employer must ensure that employees take mandatory cool-down rest periods of at least 10 minutes every two hours. The mandatory cool-down rest period 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.

(2) Ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if the reception in the area is reliable.

(3) Effectively observe employees for signs and symptoms of heat-related illness by implementing one or more of the following:

(a) Regular communication with employees working alone such as by radio or cellular phone; or

(b) A mandatory buddy system; or



(c) Other effective means of observation.

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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 importance of removing heat-retaining personal protective equipment and clothing such as nonbreathable chemical resistant clothing during all breaks;

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

(e) The importance of acclimatization;

(f) The importance of taking preventative cool-down rest periods when employees feel the need to do so in order to protect themselves from overheating;

(g) The mandatory cool-down rest periods under WAC 296-307-09755 when the outdoor temperature reaches or exceeds 89 degrees Fahrenheit;

(h) The employer's procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

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

~~(g))~~ (j) 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; and

(k) The employer's procedures for ensuring effective observation and communication with employees for signs and symptoms of heat-related illness.

(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.]