

WSR 23-11-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-66—Filed May 5, 2023, 8:33 a.m., effective May 5, 2023, 8:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to allow bottom-fish retention during the southern nearshore halibut fishery when halibut are onboard a vessel.

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

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

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

Reasons for this Finding: This emergency rule is necessary to clarify that bottomfish, otherwise legal to retain, may be retained and landed with halibut onboard a vessel during the southern nearshore fishery except on days the all depth fishery is open.

This rule also brings forward halibut seasons and rules set in WSR 23-08-023, filed March 24, 2023.

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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 5, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000N Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, and 220-314-010, effective immediately, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-030, and 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA),

not addressed herein, remain in effect unless otherwise amended by emergency rule:

(1) Catch Record Card Area 1 All Depth Fishery, including Southern Near Shore Fishery area described in section (2):

Open May 7, 11, 14, 18, 21, 25; June 1, 4, 8, 11, 15, 18, 22, 25, and 29, 2023.

(2) Catch Record Card Area 1 Southern Near Shore Fishery; Those waters shoreward of a lined from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40-fathom depth contour in Oregon):

(a) Open during dates listed for Catch Record Card Area 1 All Depth Fishery in section (1), and open Mondays, Tuesdays, and Wednesdays, each week, beginning May 8, 2023, until further notice.

(b) Bottomfish, otherwise legal to retain, may be retained and landed when a vessel has landed or brought halibut into port on days when only the Southern Near Shore Fishery is open for halibut retention, but not on days when the All Depth halibut fishery is open as listed in section (1).

(3) Catch Record Card Area 2 All Depth Fishery, including Northern Near Shore Fishery area:

Open May 7, 9, 11, 14, 16, 18, 21, 23, 25, and 30; June 15, 18, 22, and 25, 2023.

(4) Card Record Areas 3 and 4:

Open May 6, 11, 13, 18, 20, 26, and 28; June 1, 3, 8, 10, 15, 17, 22, 24, and 29.

(5) Catch Record Card Areas 5 through 10:

Open May 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, and 28; June 1, through June 30, 2023.

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

(7) It is unlawful to fish for, retain, possess, or land halibut into a port located within an area that is closed to halibut fishing, except it is lawful to land halibut into a port with Marine Area 4, that were lawfully retained in Marine Area 5.

(8) Halibut caught in Canadian waters may be landed into a port located within a marine area that is closed to halibut fishing. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

(9) A violation of this section is punishable under RCW 77.15.370 or RCW 77.15.380, depending on the violation.

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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 220-314-03000M Halibut—Seasons—Daily and possession limits. (23-25)

WSR 23-11-015

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed May 5, 2023, 2:40 p.m., effective May 5, 2023, 2:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-840-030 and 246-840-090; amending specific rule language to clarify licensure requirements for registered nursing (RN) and licensed practical nursing (LPN) applicants applying for initial licensure via an out-of-state traditional nursing education program approved by another United States nursing board, and applicants applying via interstate endorsement.

The nursing care quality assurance commission (commission) is establishing emergency rules to clarify licensure requirements for RN and LPN applicants.

The rules as currently written state that a nurse who has graduated from another state's approved nursing program or from a substantially equivalent program may be licensed. The commission became aware that certain nursing programs in Florida and elsewhere had fraudulent programs that were little more than diploma mills. Though those applicants obviously lack a nursing education, the rule is currently being read to mean that because their fraudulent nursing program was approved by another state, the commission must accept it and license these individuals. This cannot stand. The commission must protect the people of Washington by only licensing qualified, properly trained nurses.

These emergency rules clarify that RN and LPN applicants, applying for licensure via interstate endorsement or for initial licensure via an out-of-state traditional nursing education program approved by another United States nursing board, must successfully complete a nursing education program in another United States state which is approved by the nursing board in that state and substantially meets requirements for nursing education approved in Washington state. The amendments also reaffirm that the commission retains the authority to evaluate and determine the sufficiency of academic preparation for all applicants. These amendments are preliminary steps to future permanent rule amendments and clarification identified by the commission's licensing subcommittee.

Citation of Rules Affected by this Order: Amending WAC 246-840-030 and 246-840-090.

Statutory Authority for Adoption: RCW 18.79.110.

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

Reasons for this Finding: Immediate amendment of these rules is necessary for the preservation of the public health, safety, and general welfare and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. Adoption of emergency rules described above is necessary to ensure nurses working in Washington state meet minimum standards for safe practice. This emergency rule will be refiled every 120 days until permanent rule making is completed.

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

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

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

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

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

Date Adopted: May 5, 2023.

Paula R. Meyer, RN, MSN, FRE
Executive Director

OTS-4435.1

AMENDATORY SECTION (Amending WSR 21-04-016, filed 1/22/21, effective 2/22/21)

WAC 246-840-030 Initial licensure for registered nurses and practical nurses—Out-of-state traditional nursing education program approved by another United States nursing board. Registered nursing and practical nursing applicants educated in a traditional nursing education program approved by another United States nursing board and applying for initial licensure must:

(1) Successfully complete a (~~board approved~~) nursing education program in another U.S. state, which:

(a) Is approved by the nursing board in that state; and

(b) Substantially meets requirements for nursing education approved in Washington state. The commission retains authority to evaluate and determine the sufficiency of academic preparation for all applicants.

(2) Applicants from a board approved registered nurse program who are applying for a practical nurse license:

(a) Complete all course work required of board approved practical nurse programs as listed in WAC 246-840-575(2). Required courses not included in the registered nurse program may be accepted if the courses were obtained through a commission approved program.

(b) Be deemed as capable to safely practice within the scope of practice of a practical nurse by the nurse administrator of the applicant's nursing education program.

~~((2))~~ (3) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050.

~~((3))~~ (4) Submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission. The transcript must in-

clude course names and credits accepted from other programs. The transcript must show:

- (i) The applicant has graduated from an approved nursing program or has successfully completed the prelicensure portion of an approved graduate-entry registered nursing program; or
- (ii) That the applicant has completed all course work required in a commission approved practical nurse program as listed in WAC 246-840-575(2).
- (c) Applicants from a board approved registered nurse program who are applying for a practical nurse license must also submit an attestation sent from the nurse administrator of the applicant's nursing education program indicating that the applicant is capable to safely practice within the scope of practice of a practical nurse.

[Statutory Authority: RCW 18.79.110, 18.88A.060 and 2020 c 76. WSR 21-04-016, § 246-840-030, filed 1/22/21, effective 2/22/21. Statutory Authority: RCW 18.79.110. WSR 08-11-019, § 246-840-030, filed 5/12/08, effective 6/12/08. Statutory Authority: Chapter 18.79 RCW. WSR 99-01-098, § 246-840-030, filed 12/17/98, effective 1/17/99. Statutory Authority: RCW 18.79.160. WSR 97-17-015, § 246-840-030, filed 8/8/97, effective 9/8/97.]

AMENDATORY SECTION (Amending WSR 21-04-016, filed 1/22/21, effective 2/22/21)

WAC 246-840-090 Licensure for nurses by interstate endorsement.

Registered nurse and practical nurse applicants for interstate endorsement may be issued a license without examination provided the applicant meets the following requirements:

- (1) The applicant graduated and holds a degree from:
 - (a) A commission or state board approved program preparing candidates for licensure as a nurse, which substantially meets requirements for nursing education approved in Washington state, as determined by the commission; or
 - (b) A nursing program that is equivalent to commission approved nursing education in Washington state at the time of graduation as determined by the commission.
- (2) The applicant holds a current active nursing license in another state or territory, or holds an inactive or expired license in another state or territory and successfully completes a commission-approved refresher course.
 - (a) An applicant whose license was inactive or expired must be issued a limited education authorization by the commission to enroll in the clinical portion of the refresher course.
 - (b) The limited education authorization is valid only while working under the direct supervision of a preceptor and is not valid for employment as a registered nurse.
- (3) The applicant was originally licensed to practice as a nurse in another state or territory after passing the National Council Licensure Examination (NCLEX).
- (4) Applicants graduating from nursing programs outside the U.S. must demonstrate English proficiency by passing a commission approved English proficiency test if the nursing education is not in one of the following countries: Canada (except for Quebec), United Kingdom, Ireland, Australia, New Zealand, American Samoa, Guam, Northern Mariana

Islands, and U.S. Virgin Islands, or complete (~~one thousand~~) 1,000 hours of employment as a licensed nurse in another state, or provide evidence directly from the school of earning a high school diploma or college degree from a United States institution.

The (~~one thousand~~) 1,000 hours of employment must be in the same licensed role as the nurse is applying for licensure in Washington state. Proof of employment must be submitted to the commission.

(5) For RNs: If the applicant is a graduate of a nontraditional nursing education program and:

(a) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit evidence of (~~two hundred~~) 200 hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035, or at least (~~one thousand~~) 1,000 hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(b) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit evidence of at least (~~one thousand~~) 1,000 hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(6) Applicants must submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission if the education cannot be verified from the original board of nursing, or commission-approved evaluation agency.

(i) The transcript must contain adequate documentation demonstrating that the applicant graduated from an approved nursing program or successfully completed the prelicensure portion of an approved graduate-entry registered nursing program.

(ii) The transcripts shall include course names and credits accepted from other programs.

(c) Verification of an original registered or practical nurse license from the state or territory of original licensure. The verification must identify that issuance of the original licensure included passing the NCLEX.

(d) For applicants educated outside the United States and in territories or countries not listed in subsection (4) of this section, successful results of a commission approved English proficiency exam, or, evidence of (~~one thousand~~) 1,000 hours worked as a nurse.

(e) For RNs: If the applicant is a graduate of a nontraditional program in nursing and:

(i) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of (~~two hundred~~) 200 hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035 or at least (~~one thousand~~) 1,000 hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(ii) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of at least (~~one thousand~~) 1,000 hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

[Statutory Authority: RCW 18.79.110, 18.88A.060 and 2020 c 76. WSR 21-04-016, § 246-840-090, filed 1/22/21, effective 2/22/21. Statutory

Authority: RCW 18.79.010, 18.79.110, 18.79.150, 18.79.190, and 18.79.240. WSR 16-17-082, § 246-840-090, filed 8/17/16, effective 9/17/16. Statutory Authority: RCW 18.79.110. WSR 08-11-019, § 246-840-090, filed 5/12/08, effective 6/12/08; WSR 99-13-086, § 246-840-090, filed 6/14/99, effective 7/15/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-840-090, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-090, filed 6/18/97, effective 7/19/97.]

WSR 23-11-016

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed May 5, 2023, 2:47 p.m., effective May 5, 2023, 2:47 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-840-930 and 246-841-405; amending specific training requirements for nursing assistant registered (NARs) and home care aides (HCAs). These rules continue the initial emergency rules filed as WSR 22-07-046 on March 14, 2022, and continued under WSR 22-15-020, 22-19-006, and 23-03-014.

The nursing care quality assurance commission (commission) is re-filing these emergency rules to allow a registered nurse delegator to continue delegating nursing tasks to an NAR or HCA, although the NAR or HCA did not complete required training due to department of social and health services (DSHS) training backlogs. Both emergency rules are amended from the previous filing to delete references to DSHS WAC that specified dates that NARs and HCAs must complete training that have since been extended. Both emergency rules now state that NARs and HCAs must complete required training, "by dates established by the department of social and health services" to avoid future WAC reference changes when re-filing.

NARs and HCAs must complete basic caregiver training as part of their licensure requirements. DSHS [usually] provides this training but was unable to do so because all training and testing sites were closed during the coronavirus disease 2019 (COVID-19) pandemic. DSHS is currently experiencing significant delays due to the backlog of those needing the training. Dates by which training must be completed depending on hire date have been extended through January 2024.

Citation of Rules Affected by this Order: Amending WAC 246-840-930 and 246-841-405.

Statutory Authority for Adoption: RCW 18.88A.060, 18.79.110.

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

Reasons for this Finding: The immediate amendment of existing rules is necessary for the preservation of public health, safety, and general welfare. DSHS is responsible for providing basic caregiver training for NARs and HCAs. Due to impacts on training caused by COVID-19, DSHS was not able to provide basic caregiver training for NARs and HCAs for a period of time. Commission emergency rules starting in April 2020 allowed NARs and HCAs to work without the required training. DSHS has since filed emergency and permanent rules that outline the dates by which HCAs and NARs must complete basic caregiver training dependent on hire and rehire dates.

The commission rules need to align with DSHS rules to assure [ensure] NARs and HCAs can continue to provide necessary health care to patients. This emergency rule will be refiled every 120 days until such time that DSHS can resume its standard training schedule.

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 2, Repealed 0.

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

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

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

Date Adopted: May 5, 2023.

Paula R. Meyer, RN, MSN, FRE
Executive Director

OTS-3966.3

AMENDATORY SECTION (Amending WSR 22-12-026, filed 5/23/22, effective 9/9/22)

WAC 246-840-930 Criteria for delegation. (1) Before delegating a nursing task, the registered nurse delegator decides the task is appropriate to delegate based on the elements of the nursing process: ASSESS, PLAN, IMPLEMENT, EVALUATE.

ASSESS

(2) The setting allows delegation because it is a community-based care setting as defined by RCW 18.79.260 (3) (e) (i) or an in-home care setting as defined by RCW 18.79.260 (3) (e) (ii).

(3) Assess the patient's nursing care needs and determine the patient's condition is stable and predictable. A patient may be stable and predictable with an order for sliding scale insulin or terminal condition.

(4) Determine the task to be delegated is within the delegating nurse's area of responsibility.

(5) Determine the task to be delegated can be properly and safely performed by the nursing assistant or home care aide. The registered nurse delegator assesses the potential risk of harm for the individual patient.

(6) Analyze the complexity of the nursing task and determine the required training or additional training needed by the nursing assistant or home care aide to competently accomplish the task. The registered nurse delegator identifies and facilitates any additional training of the nursing assistant or home care aide needed prior to delegation. The registered nurse delegator ensures the task to be delegated can be properly and safely performed by the nursing assistant or home care aide.

(7) Assess the level of interaction required. Consider language or cultural diversity affecting communication or the ability to accomplish the task and to facilitate the interaction.

(8) Verify that the nursing assistant or home care aide:

(a) Is currently registered or certified as a nursing assistant or home care aide in Washington state without restriction;

(b) Has completed both the basic caregiver training in accordance with dates established by the department of social and health serv-

ices, and core delegation training before performing any delegated task;

(c) Has evidence as required by the department of social and health services of successful completion of nurse delegation core training;

(d) Has evidence as required by the department of social and health services of successful completion of nurse delegation special focus on diabetes training when providing insulin injections to a diabetic client; and

(e) Is willing and able to perform the task in the absence of direct or immediate nurse supervision and accept responsibility for their actions.

(9) Assess the ability of the nursing assistant or home care aide to competently perform the delegated nursing task in the absence of direct or immediate nurse supervision.

(10) If the registered nurse delegator determines delegation is appropriate, the nurse:

(a) Discusses the delegation process with the patient or authorized representative, including the level of training of the nursing assistant or home care aide delivering care.

(b) Obtains written consent. The patient, or authorized representative, must give written, consent to the delegation process under chapter 7.70 RCW. Documented verbal consent of patient or authorized representative may be acceptable if written consent is obtained within 30 days; electronic consent is an acceptable format. Written consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse, nursing assistant, or home care aide will be participating in the process.

PLAN

(11) Document in the patient's record the rationale for delegating or not delegating nursing tasks.

(12) Provide specific, written delegation instructions to the nursing assistant or home care aide with a copy maintained in the patient's record that includes:

(a) The rationale for delegating the nursing task;

(b) The delegated nursing task is specific to one patient and is not transferable to another patient;

(c) The delegated nursing task is specific to one nursing assistant or one home care aide and is not transferable to another nursing assistant or home care aide;

(d) The nature of the condition requiring treatment and purpose of the delegated nursing task;

(e) A clear description of the procedure or steps to follow to perform the task;

(f) The predictable outcomes of the nursing task and how to effectively deal with them;

(g) The risks of the treatment;

(h) The interactions of prescribed medications;

(i) How to observe and report side effects, complications, or unexpected outcomes and appropriate actions to deal with them, including specific parameters for notifying the registered nurse delegator, health care provider, or emergency services;

(j) The action to take in situations where medications and/or treatments and/or procedures are altered by health care provider orders, including:

- (i) How to notify the registered nurse delegator of the change;
 - (ii) The process the registered nurse delegator uses to obtain verification from the health care provider of the change in the medical order; and
 - (iii) The process to notify the nursing assistant or home care aide of whether administration of the medication or performance of the procedure and/or treatment is delegated or not;
 - (k) How to document the task in the patient's record;
 - (l) Document teaching done and a return demonstration, or other method for verification of competency; and
 - (m) Supervision shall occur at least every 90 days. With delegation of insulin injections, the supervision occurs at least weekly for the first four weeks, and may be more frequent.
- (13) The administration of medications may be delegated at the discretion of the registered nurse delegator, including insulin injections. Any other injection (intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) is prohibited. The registered nurse delegator provides to the nursing assistant or home care aide written directions specific to an individual patient.

IMPLEMENT

(14) Delegation requires the registered nurse delegator teach the nursing assistant or home care aide how to perform the task, including return demonstration or other method of verification of competency as determined by the registered nurse delegator.

(15) The registered nurse delegator is accountable and responsible for the delegated nursing task. The registered nurse delegator monitors the performance of the task(s) to assure compliance with established standards of practice, policies and procedures and appropriate documentation of the task(s).

EVALUATE

(16) The registered nurse delegator evaluates the patient's responses to the delegated nursing care and to any modification of the nursing components of the patient's plan of care.

(17) The registered nurse delegator supervises and evaluates the performance of the nursing assistant or home care aide, including direct observation or other method of verification of competency of the nursing assistant or home care aide. The registered nurse delegator reevaluates the patient's condition, the care provided to the patient, the capability of the nursing assistant or home care aide, the outcome of the task, and any problems.

(18) The registered nurse delegator ensures safe and effective services are provided. Reevaluation and documentation occur at least every 90 days. Frequency of supervision is at the discretion of the registered nurse delegator and may be more often based upon nursing assessment.

(19) The registered nurse must supervise and evaluate the performance of the nursing assistant or home care aide with delegated insulin injection authority at least weekly for the first four weeks. After the first four weeks the supervision shall occur at least every 90 days.

[Statutory Authority: RCW 18.79.010, 18.79.110, and 18.79.260. WSR 22-12-026, § 246-840-930, filed 5/23/22, effective 9/9/22. Statutory Authority: RCW 18.79.110, 18.79.260, 2012 c 164, and 2012 c 10. WSR 13-15-063, § 246-840-930, filed 7/15/13, effective 8/15/13. Statutory Authority: RCW 18.79.110, 18.79.260, 18.88A060 [18.88A.060], and

18.88A.210. WSR 09-06-006, § 246-840-930, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 18.79.110, 18.79.260 (3) (f), 18.88A.210, 2003 c 140. WSR 04-14-065, § 246-840-930, filed 7/2/04, effective 7/2/04. Statutory Authority: Chapters 18.79 and 18.88A RCW. WSR 02-02-047, § 246-840-930, filed 12/27/01, effective 1/27/02. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-930, filed 6/18/97, effective 7/19/97; WSR 96-05-060, § 246-840-930, filed 2/19/96, effective 3/21/96.]

OTS-3665.4

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-841-405 Nursing assistant delegation. Provision for delegation of certain tasks.

(1) Nursing assistants perform tasks delegated by a registered nurse for patients in community-based care settings or in-home care settings each as defined in RCW 18.79.260 (3) (e).

(2) Before performing any delegated task:

(a) Nursing assistants-registered must show (~~the certificate of~~) evidence as required by the department of social and health services of successful completion of both the basic caregiver training and the designated nurse delegation core (~~delegation~~) training from the department of social and health services to the registered nurse delegator. Nursing assistants-registered who were working or hired during the COVID-19 public health emergency must complete basic caregiver training by dates established by the department of social and health services.

(b) Nursing assistants-certified must show (~~the certificate of~~) evidence as required by the department of social and health services of successful completion of the core delegation training from the department of social and health services to the registered nurse delegator. Nursing assistants-certified who were working or hired during the COVID-19 public health emergency must complete basic caregiver training by dates established by the department of social and health services.

(c) All nursing assistants must comply with all applicable requirements of the nursing care quality assurance commission in WAC 246-840-910 through 246-840-970.

(d) All nursing assistants, registered and certified, who may be completing insulin injections must (~~give a certificate of completion of diabetic training from the department of social and health services~~) show evidence as required by the department of social and health services of successful completion of nurse delegation special focus on diabetes training to the registered nurse delegator.

(e) All nursing assistants must meet any additional training requirements identified by the nursing care quality assurance commission. Any exceptions to additional training requirements must comply with RCW 18.79.260 (3) (e) (v).

(3) Delegated nursing care tasks described in this section are:

(a) Only for the specific patient receiving delegation;

(b) Only with the patient's consent; and

(c) In compliance with all applicable requirements in WAC 246-840-910 through 246-840-970.

(4) A nursing assistant may consent or refuse to consent to perform a delegated nursing care task. The nursing assistant is responsible for their own actions with the decision to consent or refuse to consent and the performance of the delegated nursing care task.

(5) Nursing assistants shall not accept delegation of, or perform, the following nursing care tasks:

- (a) Administration of medication by injection, with the exception of insulin injections;
- (b) Sterile procedures;
- (c) Central line maintenance;
- (d) Acts that require nursing judgment.

[Statutory Authority: RCW 18.79.110, 18.79.260, 18.88A060 [18.88A.060], and 18.88A.210. WSR 09-06-006, § 246-841-405, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 18.88A.060 and 2003 c 140. WSR 04-14-064, § 246-841-405, filed 7/2/04, effective 7/2/04. Statutory Authority: Chapter 18.88A RCW. WSR 96-06-029, § 246-841-405, filed 2/28/96, effective 3/30/96.]

WSR 23-11-017

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed May 5, 2023, 2:53 p.m., effective May 5, 2023, 2:53 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-841-420, 246-841-470, 246-841-490, 246-841-500, 246-841-510, and 246-841-555. The nursing care quality assurance commission (commission) is amending specific training requirements for nursing assistant certified (NAC) and nursing assistant registered (NAR).

The rules in chapter 246-841 WAC provide regulatory requirements for NACs and NARs. These emergency rules allow additional pathways to complete necessary training to enter the workforce. This is the 10th emergency rule originally adopted as WSR 20-14-066 beginning in June 2020, continuing under WSR 20-22-023, 21-04-004, 21-12-011, 21-19-091, 22-03-055, 22-11-049, 22-19-007, and 23-03-010.

This filing differs from the previous filing. The commission is rescinding part of the emergency rule language to transition back to normal operations. During the coronavirus disease 2019 (COVID-19) pandemic, the emergency rule language listed an alternative to skills lab settings. This was necessary because COVID-19 prevented programs from operating skills labs. The commission has determined that this is no longer necessary and will return to the original requirement of training programs verifying students' competency prior to clinical.

The emergency rule retains the following requirements from the previous emergency rule filed as WSR 23-03-010:

- Allow the commission to conduct online surveys of online classes approved by the commission;
- Provide guidance for documenting and demonstrating NAR competency;
- Allow program directors to award clinical hours for NAR work according to established protocol;
- Address the physical resources required for planned simulation in a skills lab;
- Remove the online website address for the department of health from WAC 246-841-470, 246-841-510, and 246-841-555; and
- Provide instructions for documenting NAR work hours to allow clinical credit.

Transition from emergency to permanent rules was approved by the commission and a notice of intent to begin rule making was filed on February 8, 2021, under WSR 21-05-021. Permanent rule language development is ongoing.

Citation of Rules Affected by this Order: Amending WAC 246-841-420, 246-841-470, 246-841-490, 246-841-500, 246-841-510, and 246-841-555.

Statutory Authority for Adoption: RCW 18.88A.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: The immediate amendment of existing rules is necessary for the preservation of public health, safety, and

general welfare. Continued demand for health care professionals, especially qualified nursing assistants, and barriers to nursing assistant training impacts the inflow of a needed health care workforce. COVID-19 has impacted nursing assistant training by delaying access to clinical training due to restrictions on in-person training opportunities. Emergency amendments allow program directors to award clinical hours for NAR work, NAR volunteer experiences, and planned simulation. Awarding clinical practice hours for these pathways allows additional opportunities for NAC students to complete training and enter the workforce. Emergency amendments to the current language allow the commission to survey online classroom settings, which is essential to ensure that appropriate training is being provided. These emergency amendments assure [ensure] that programs have adequate resources to implement these new allowances and that they document all related activities appropriately. All these actions will result in increasing the quantity of health care professionals able to respond to current demands. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests. The commission is engaged in permanent rule making to consider adopting a number of these emergency amendments as permanent rules. A notice of intent to begin rule making was filed on February 8, 2021, under WSR 21-05-021. The commission recently approved the draft proposed rule language at their March 10, 2023, NCQAC business meeting and is moving forward with filing a CR-102.

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 6, 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 6, Repealed 0.

Date Adopted: May 5, 2023.

Paula R. Meyer, RN, MSN, FRE
Executive Director

OTS-2953.8

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-420 Requirements for approval of nursing assistant-certified training programs. To qualify as a nursing assistant-certified training program, an institution or facility must:

(1) Submit a completed application packet provided by the department of health. The packet will include forms and instructions to submit the following:

- (a) Program objectives.
- (b) Curriculum content outline.

(c) Qualifications of program director and additional instructional staff.

(d) Contractual agreements related to providing this training.

For any program that uses another facility to provide clinical training, this includes an affiliation agreement between the training program and the facility. The affiliation agreement must describe how the program will provide clinical experience in the facility. The agreement must specify the rights and responsibilities of both parties, students and clients or residents.

(e) Sample lesson plan for one unit.

(f) Skills checklist.

(g) Description of classroom facilities.

(h) Declaration of compliance with administrative guidelines signed by the program director.

(i) Verification that the program director has completed a course on adult instruction as required by WAC 246-841-470(3) or has one year of experience in the past three years teaching adults. Acceptable experience does not include in-service education or patient teaching. A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(j) Verification that the nursing assistant-certified training program or school is approved to operate in the state of Washington by:

(i) The state board for community and technical colleges;

(ii) The superintendent of public instruction; or

(iii) The workforce training and education coordinating board.

(2) Agree to on-site survey of the training program(~~(7)~~) or on-line survey of the approved online classes as requested by the commission. This on-site will be coordinated with other on-site review requirements when possible.

(3) Participate in the renewal process every two years. Failure to renew results in automatic withdrawal of approval of the program.

(4) Comply with any changes in training standards and guidelines in order to maintain approved status.

(5) Notify the commission and any other approving agency of any changes in overall curriculum plan or major curriculum content changes prior to implementation.

(6) Notify the commission and any other approving agency of changes in program director or instructors.

[Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-420, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-07-049 (Order 116B), recodified as § 246-841-420, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-230, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-470 Program directors and instructors in approved nursing assistant-certified training programs. (1) The program director must hold a current license in good standing as a registered nurse (RN) in the state of Washington.

(2) The commission may deny or withdraw a program director's approval if there is or has been any action taken against the director's health care license or any license held by the director which allows him or her to work with vulnerable populations.

(3) The program director must complete a training course on adult instruction or have demonstrated that he or she has one year experience teaching adults.

(a) Acceptable experience does not include in-service education or patient teaching.

(b) The training course on adult instruction must provide instruction in:

(i) Understanding the adult learner.

(ii) Techniques for teaching adults.

(iii) Classroom methods for teaching adults.

(iv) Audio visual techniques for teaching adults.

(c) A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(4) The program director will have a minimum of three years of experience as an RN, of which at least one year will be in direct patient care.

(5) The program director must meet the requirements for additional staff under subsection (7)(b) of this section if the program director will also be acting as an instructor.

(6) Program director responsibilities:

(a) Develop and implement a curriculum which meets as a minimum the requirements of WAC 246-841-490. The program director is responsible for all classroom and clinical training content and instruction provided by the training program. The clinical experience may occur in a health care facility or it may occur through planned simulation in the training program's skills lab in accordance with the requirements included in WAC 246-841-490.

(b) Assure compliance with and assume responsibility for meeting the requirements of WAC 246-841-490 through 246-841-510.

(c) Assure that all student clinical experience is directly supervised. Direct supervision means that an approved program director or instructor is observing students performing tasks. As an alternative, the program director may also award clinical hours' credit for nursing assistant-registered (NAR) employment or volunteer experience completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with the commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available by request to the commission. It is the program director's responsibility to verify that each student's employment or volunteer experience meets the qualifying standards included in WAC 246-841-490.

(d) Assure that the clinical instructor has no concurrent duties during the time he or she is instructing students.

(e) Create and maintain an environment conducive to teaching and learning.

(f) Select and supervise all other instructors involved in the course, including clinical instructors and guest lecturers.

(g) Assure that students are not asked to, nor allowed to, perform any clinical skill with patients or clients or in simulation activities until first demonstrating the skill satisfactorily to an instructor in a (~~practice setting~~) skills lab setting.

(h) Assure evaluation of knowledge and skills of students before verifying completion of the course.

(i) Assure that students receive a verification of completion when requirements of the course have been satisfactorily met.

(7) The program director may select instructional staff to assist in the teaching of the course.

(a) Instructional staff must teach in their area of expertise.

(b) Instructional staff must have a minimum of one year experience within the past three years in caring for the elderly or chronically ill of any age or both.

(c) All instructional staff must hold a current Washington state license to practice as a registered or licensed practical nurse. The commission may deny or withdraw an instructor's approval if there is or has been any action taken against a health care license or any license held by the applicant which allows him or her to work with vulnerable populations.

(d) Instructional staff may assist the program director in development of curricula, teaching modalities, and evaluation. The instructor will be under the supervision of the program director at all times.

(e) A guest lecturer, or individual with expertise in a specific course unit may be used in the classroom setting for teaching without commission approval, following the program director's review of the currency of content. The guest lecturer, where applicable, must hold a license, certificate or registration in good standing in their field of expertise.

[Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-470, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-23-077 (Order 214B), § 246-841-470, filed 11/19/91, effective 12/20/91; WSR 91-07-049 (Order 116B), redefined as § 246-841-470, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-260, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 21-04-016, filed 1/22/21, effective 2/22/21)

WAC 246-841-490 Core curriculum in approved nursing assistant-certified training programs. (1) The curriculum must be competency based. It must be composed of learning objectives and activities that will lead to knowledge and skills required for the graduate to demonstrate mastery of the core competencies as provided in WAC 246-841-400.

(2) The program director will determine the amount of time required in the curriculum to achieve the objectives. The time designated may vary with characteristics of the learners and teaching or learning variables. There must be a minimum of eighty-five hours to-

tal, with a minimum of thirty-five hours of classroom training and a minimum of fifty hours of clinical training.

(a) Of the fifty hours of clinical training, at least forty clinical hours must be in the (~~practice setting~~) a health care facility or completed through planned simulation in the training program's skills lab.

(b) Training to orient the student to the health care facility (~~and~~), facility policies and procedures, planned simulation, and simulation policies and procedures are not to be included in the minimum hours above.

(c) Planned simulation as used in this section means a technique to replace or amplify real experiences with guided experiences evoking or replicating substantial aspects of the real world in a fully interactive manner. The requirements for training programs to offer planned simulation include:

(i) Nursing assistant training programs may use planned simulation activities as a substitute for traditional clinical experiences in health care facilities after submitting a request on a form provided by the commission and receiving approval from the commission.

(ii) For the purposes of planned simulation activities, the skills lab of the training program represents a health care facility with students acting in a variety of roles in predeveloped scenarios that provide opportunities for students to demonstrate nursing assistant competencies as they would in a traditional clinical experience in a health care facility. Examples of roles students may play include: The nursing assistant providing care; another member of the health care team; a client or resident; a client's or resident's loved one. Simulated health care facility scenarios include, at a minimum: Policies and procedures for students to follow; a cadre of diverse clients or residents and their care plans; and opportunities to participate in shift reports, respond to and communicate status changes to the nurse, and document appropriately.

(iii) A written plan exists for each planned simulation activity and includes specific nursing assistant competencies identified as objectives. The written plan also includes a summary of the care situation or scenario and the various roles students will play in the scenario; and the time allotted for the planned simulation activity, including time for debriefing.

(iv) Debriefing is a critical component of planned simulation activities that helps students to learn from their clinical experiences. Debriefing is facilitated by the program instructor or director in a way that encourages active discussion and reflective thinking by students and provides relevant instructor and peer feedback regarding simulation events and participants' performance.

(v) Planned simulation activities reflect an array of objectives and care scenarios to support adequate evaluation of each student's competency in the nursing assistant role as reflected in WAC 246-841-400.

(vi) Documentation exists as a record of the evaluation of each student's performance in planned simulation activities.

(vii) The nursing assistant training program shall have adequate human and material resources to implement planned simulation activities, including adequate space, equipment, and supplies.

(viii) An approved program instructor or the program director must supervise and evaluate planned simulation activities. A guest lecturer may not supervise or evaluate planned simulation activities.

(ix) The nursing assistant training program obtains anonymous written student evaluations of the planned simulation activities at the end of each class and demonstrates use of student feedback for on-going quality improvement efforts as needed.

(3) Each unit of the core curriculum will have:

(a) Behavioral objectives, which are statements of specific observable actions and behaviors that the learner is to perform or exhibit.

(b) An outline of information the learner will need to know in order to meet the objectives.

(c) Learning activities such as lecture, discussion, readings, film, or clinical practice designed to enable the student to achieve the stated objectives.

(d) To meet qualifying standards to count as clinical hours' credit, the NAR employment or volunteer experience must:

(i) Be performed under an active NAR credential during enrollment in the class;

(ii) Include a background check prior to contact with clients or residents;

(iii) Occur in a care facility where a licensed nurse is present to supervise throughout the clinical experience and verify competency for tasks assigned;

(iv) Include opportunities for the NAR to successfully demonstrate the competencies of a nursing assistant as identified in WAC 246-841-400;

(v) Be supervised by a licensed nurse who is not a friend or relative;

(vi) Include care of clients or residents who are not friends or relatives; and

(vii) Be verifiable with the care facility.

(4) Clinical teaching in a competency area is closely correlated with classroom teaching to integrate knowledge with manual skills.

(a) Students must wear name tags clearly identifying them as students when interacting with patients, clients or residents, ~~((and))~~ families, and in planned simulation activities.

(b) An identified instructor(s) will supervise clinical teaching or learning at all times. At no time will the ratio of students to instructor exceed ten students to one instructor in the clinical setting whether the clinical setting is a health care facility or represented through planned simulation in the training program's skills lab. As an alternative, the program director may award clinical hours' credit for NAR employment or volunteer experience as described in WAC 246-841-470

(6) (c).

(5) The curriculum must include evaluation processes to assess mastery of competencies. Students cannot perform any clinical skill on clients or residents or in planned simulation activities until first demonstrating the skill satisfactorily to an instructor in ~~((the practice setting))~~ a skills lab setting.

[Statutory Authority: RCW 18.79.110, 18.88A.060 and 2020 c 76. WSR 21-04-016, § 246-841-490, filed 1/22/21, effective 2/22/21. Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-490, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-23-077 (Order 214B), § 246-841-490, filed 11/19/91, effective 12/20/91; WSR 91-07-049 (Order 116B), recodified as § 246-841-490, filed 3/18/91, effective 4/18/91. Statutory Authority:

RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-270, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-500 Physical resources required for approved nursing assistant-certified training programs. (1) Classroom facilities must provide adequate space, lighting, comfort, and privacy for effective teaching and learning.

(2) Adequate classroom resources, such as white board or other writing device, audio visual materials, and written materials must be available.

(3) Appropriate equipment must be provided for teaching and practicing clinical skills and procedures before implementing the skills with clients or residents or in planned simulation in the training program's skills lab.

[Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-500, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-07-049 (Order 116B), recodified as § 246-841-500, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-275, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-510 Administrative procedures for approved nursing assistant-certified training programs. (1) The program must establish and maintain a file for each student enrolled. The file must include:

(a) Dates attended.

(b) Test results.

(c) A skills evaluation checklist with dates of skills testing and signature of instructor. If the program grants clinical hours' credit for students employed or volunteering as nursing assistants-registered in accordance with WAC 246-841-470 (6)(c), the student file must also include a fully completed commission-approved student form to verify student clinical hours and competency "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available by request to the commission.

(d) Documentation of successful completion of the course, or documentation of the course outcome.

(2) Each student file must be maintained by the program for a period of five years, and copies of documents made available to students who request them.

(3) Verification of successful completion of the course of training will be provided to the commission on forms provided by the commission.

(4) For those programs based in a health care facility: Verification of program completion and the application for state testing will not be withheld from a student who has successfully met the require-

ments of the program. Successful completion will be determined by the training program director separately from other employer issues.

[Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-510, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-07-049 (Order 116B), recodified as § 246-841-510, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-280, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 11-16-042, filed 7/27/11, effective 8/27/11)

WAC 246-841-555 Responsibilities of the program director in alternative programs. The program director of an alternative program is responsible for:

- (1) Development and use of a curriculum which:
 - (a) Meets the requirements of WAC 246-841-545; or
 - (b) Meets the requirements of WAC 246-841-550.
- (2) Ensuring compliance with the requirements of WAC 246-841-500 and 246-841-510.
- (3) Verifying home care aides-certified have a valid certification before admission to the alternative program.
- (4) Verifying medical assistants-certified have certification before admission to the alternative program.
- (5) Direct supervision of all students during clinical experience in a health care facility or during planned simulation in the training program's skills lab. Direct supervision means an approved program director or instructor observes students performing tasks. As an alternative, the program director may also award clinical hours' credit for nursing assistant-registered (NAR) employment or volunteer experience completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available by request to the commission. In addition, to meet qualifying standards to count as clinical hours' credit, the NAR employment or volunteer experience must:
 - (a) Be performed under an active NAR credential during enrollment in the class;
 - (b) Include a background check prior to contact with clients or residents;
 - (c) Occur in a care facility where a licensed nurse is present to supervise throughout the clinical experience and verify competency for tasks assigned;
 - (d) Include opportunities for the NAR to successfully demonstrate the competencies of a nursing assistant as identified in WAC 246-841-400;
 - (e) Be supervised by a licensed nurse who is not a friend or relative;
 - (f) Include care of clients or residents who are not friends or relatives; and
 - (g) Be verifiable with the care facility.
- (6) Ensuring the clinical instructor has no concurrent duties during the time he or she is instructing students.

- (7) Maintaining an environment acceptable to teaching and learning.
- (8) Supervising all instructors involved in the course. This includes clinical instructors and guest lecturers.
- (9) Ensuring students are not asked to, or allowed to perform any clinical skill with patients or clients or in planned simulation activities until the students have demonstrated the skill satisfactorily to an instructor in a (~~practice~~) skills lab setting.
- (10) Evaluating knowledge and skills of students before verifying completion of the course.
- (11) Providing students a verification of completion when requirements of the course have been satisfied.
- (12) Providing adequate time for students to complete the objectives of the course. The time may vary with skills of the learners and teaching or learning variables.
- (13) Establishing an evaluation process to assess mastery of competencies.

[Statutory Authority: RCW 18.88A.087 and 18.88A.060. WSR 11-16-042, § 246-841-555, filed 7/27/11, effective 8/27/11.]

**WSR 23-11-024
EMERGENCY RULES****DEPARTMENT OF TRANSPORTATION**

[Filed May 9, 2023, 1:56 p.m., effective May 9, 2023, 1:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of the WAC amendment is to adjust the form of financial data submitted by contractors seeking prequalification for two Washington state department of transportation ferries division (WSF) vessel renovation contracts and one vessel construction contract. The amendment will help maximize competition for the contracts without compromising the department's ability to assess the financial data. In recent years, WSF implemented similar WAC amendments for certain prior vessel construction contracts.

Citation of Rules Affected by this Order: Amending WAC 468-310-020 and 468-310-050.

Statutory Authority for Adoption: RCW 47.60.680 through 47.60.760.

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 existing WAC limits the maximum capacity rating to \$10 million for contractors not submitting audited financial statements for purposes of prequalification. The three WSF vessel contracts include: M.V. Tillikum Drydocking Contract No. 00-9946; Jumbo Mark II Class Ferries Hybrid-Electric Propulsion System Upgrade Contract No. 00-9955; and the upcoming Hybrid-Electric Olympic Class Ferries Contract. Each of the three contracts has an estimated value in excess of \$10 million. Also, the existing WAC restricts some shipyards' ability to submit bids for the contracts because their companies may use reviewed rather than audited financial statements.

The time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest since the first two contracts listed herein are currently on-ad with bids due this spring. There are very few shipyards in Puget Sound and the current WAC is restrictive of competition for the subject vessel contracts. The general welfare is best served when the department can maximize competition for its contracts without compromising the scope of a project, as with this proposed WAC amendment. WSF implemented similar WAC amendments for prior new vessel construction contracts.

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 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 2, 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 5, 2023.

Patty K. Rubstello
Assistant Secretary

OTS-4566.2

AMENDATORY SECTION (Amending WSR 08-19-004, filed 9/4/08, effective 10/5/08)

WAC 468-310-020 Contents of standard prequalification questionnaire and financial statement. The standard prequalification questionnaire and financial statement shall be transmitted to the director of Washington state ferries. The contractor shall provide the following information:

(1) The name, address, phone number, contractor registration number and type of organization (corporation, copartnership, individual, etc.) of the contractor seeking prequalification.

(2) The contract size in dollars and the class or classes of work for which the contractor seeks prequalification (such as vessel dry-docking and hull repairs, vessel electrical repairs, etc.) as enumerated in WAC 468-310-050(6).

(3) Ownership of the contractor and if a corporation, the name of the parent corporation (if any) and any affiliated companies or subsidiaries.

(4) An accurate and complete record of the ((fifteen)) 15 largest contracts in excess of ((ten thousand dollars)) \$10,000 performed by the contractor in whole or in part within the preceding three years both in Washington and elsewhere, including subcontracts, giving the contract amount, the date completed, the class of work, the name, address and phone number of the owner/agency representative, and any liquidated damages assessed against the contractor by an owner arising out of the performance of the contract.

(5) The principal officers and key employees showing the number of years each engaged in the class or classes of work for which the contractor seeks prequalification. The department may require resumes of such personnel as deemed proper for making its determination.

(6) Except as otherwise provided in this section or WAC 468-310-050((+8)), a contractor requesting prequalification certification to perform work in excess of ((ten million dollars)) \$10,000,000 shall submit copies of its audited annual statements for the previous three years as audited by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The financial statement shall not be more than ((twelve)) 12 months old when submitted. Any wholly owned subsidiary corporation may file the latest consolidated financial statement of its parent corporation in lieu of a financial statement prepared solely for such subsidiary providing the financial statement otherwise meets the requirements of the preceding two sentences. If a consolidated financial statement is filed on behalf of a subsidiary corporation, a bid of the subsidiary corporation will be considered only if there is on file with the department a letter from the parent corporation guaranteeing performance

by the subsidiary corporation of its contract with the department of transportation in an amount at least equal to the amount of the bid. A letter of guarantee by a parent corporation may cover a specific contract bid by its subsidiary or all contracts bid by its subsidiary within a stated period of time.

(7) A list of all major items of equipment to be used in those classes of work for which prequalification certification is requested including the original cost, age, location and condition of such equipment. The schedule shall show whether the equipment is owned, leased or rented. All major items of useful equipment should be listed even though fully depreciated but no obsolete or useless equipment should be included. In the event the contractor seeks prequalification certification to perform work on ferry vessels, the schedule shall also describe plant facilities of the contractor including shipyards, dry docks, repair facilities and other plant facilities.

(8) Such other information as may be required by the prequalification questionnaire.

(9) Notwithstanding the provisions of this section, a contractor who wishes to prequalify for the department's procurement of new auto ferries for the Port Townsend/Keystone ferry route, pursuant to the department's 2008 invitation for bids, shall submit a reviewed financial statement for at least one year in the previous three years, plus annual financial statements for two additional years in the previous three years. The reviewed financial statement shall be prepared by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the department's invitation for bids and is subject to modification by addendum during the bid process. This subsection applies in lieu of the form and quantity of audited financial statements specified in subsection (6) of this section for the Port Townsend/Keystone vessel procurement only. It does not replace or modify any other provisions in this chapter or governing prequalification statutes that authorize the department to evaluate a contractor's financial ability to perform the contract.

(10) Notwithstanding the provisions of this section, a contractor who wishes to prequalify for the department's New Hybrid-Electric Olympic Class Ferries Contract(s), the Jumbo Mark II Class Ferries Hybrid-Electric Propulsion System Upgrade Contract No. 00-9955, and/or the M.V. Tillikum Drydocking Contract No. 00-9946, shall submit a reviewed financial statement for at least one year in the previous three years, plus annual financial statements for two additional years in the previous three years. The reviewed financial statement shall be prepared by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto, and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the department's invitation for bids or request for proposals and is subject to modification by addendum during the bid or proposal process. This subsection applies in lieu of the form and quantity of audited financial statements specified in subsection (6) of this section, for the contracts listed in this subsection only. It does not replace or modify any other provisions in this chapter or governing prequalification statutes that authorize the department to evaluate a contractor's financial ability to perform a contract.

[Statutory Authority: RCW 47.56.780, 47.60.680, and 47.60.690. WSR 08-19-004, § 468-310-020, filed 9/4/08, effective 10/5/08. Statutory Authority: RCW 47.60.816. WSR 04-11-004, § 468-310-020, filed 5/5/04, effective 6/5/04. Statutory Authority: RCW 47.60.680 and 47.60.690. WSR 99-03-025 (Order 189), § 468-310-020, filed 1/11/99, effective 2/11/99. Statutory Authority: RCW 47.60.680. WSR 88-19-040 (Order 114), § 468-310-020, filed 9/14/88. Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-020, filed 9/12/83.]

AMENDATORY SECTION (Amending WSR 08-19-004, filed 9/4/08, effective 10/5/08)

WAC 468-310-050 Classification and capacity rating. (1) Except as otherwise specified in this section, each contractor seeking pre-qualification under these rules will be classified for one or more of the classes of work listed in subsection (6)(a) of this section and will be given a maximum capacity rating in accordance with its financial ability, the adequacy of its equipment and plant facilities to perform the class or classes of work for which it has sought prequalification, the extent of the contractor's experience in performing contracts of the class or classes for which prequalification is sought, and the adequacy of the experience and capability of the contractor's officers and key employees in performing contracts of the class or classes for which prequalification is sought. The maximum capacity rating will limit the quantity of uncompleted work which the contractor shall have under contract at any one time either as a prime contractor or a subcontractor.

(2) Except as provided in subsections (7) through ~~((+9))~~ (10) of this section, the maximum capacity rating for a contractor applying for a rating in excess of ~~((fifty thousand dollars))~~ \$50,000 will be ~~((ten))~~ 10 times the contractor's net worth as set forth in the standard prequalification questionnaire and financial statement. A properly executed letter of credit from an acceptable financial institution may be considered as an asset increasing the contractor's maximum capacity rating by the amount of the credit, but without the use of a multiplier. The maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ~~((ten million dollars))~~ \$10,000,000: Provided, That in all cases the contractor's maximum capacity rating may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant, and experience.

(3) Consideration will be given to raising, by an amount not to exceed ~~((fifty))~~ 50 percent, the maximum capacity rating of a contractor who qualifies with respect to actual capacity based upon organization, personnel, equipment and plant facilities, and experience, upon receipt of evidence of a current bonding capacity of such additional amount with a corporate surety. Such evidence shall be in the form of a letter of commitment executed by an officer of the surety who is authorized to bind the surety. Notwithstanding the provisions of this subsection, the maximum capacity rating for a contractor not submitting an audited financial statement as provided in WAC 468-310-020(6) will be ~~((ten million dollars))~~ \$10,000,000.

(4) The certificate of prequalification issued by the department will establish a contractor's maximum capacity rating which will be subject to reduction by the total value of its current uncompleted work regardless of its location and with whom it may be contracted to determine the contractor's bidding capacity at the particular time.

(5) Notwithstanding the provisions of this section, a contractor will be allowed to submit a bid for an amount up to \$50,000 on a class or classes of work for which it is prequalified without regard to any financial maximum capacity rating or financial current capacity rating: Provided, That the contractor's current capacity may be reduced to an amount considered by the department to be within the contractor's actual capacity based upon its organization, personnel, equipment and plant facilities, and experience.

(6) (a) Construction, repair and maintenance work on ferry vessels for which prequalification certification under these rules may be granted are classified as follows:

- Class 81 Vessel construction and renovation;
- Class 82 Dry-docking and hull repairs;
- Class 83 Vessel metal fabrication repairs;
- Class 84 Vessel electrical repairs;
- Class 85 Vessel miscellaneous repairs;

(b) A contractor currently prequalified under RCW 47.28.070 to perform those classes of work required in the construction, improvement and repair of ferry terminal facilities will initially be deemed prequalified under these rules to perform such classes of work with the same capacity rating as approved by the department for highway related work.

(7) Notwithstanding the provisions of this section, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant to the department's 2003 request for proposals, must submit evidence of their ability, if awarded the contract, to obtain contract security in the amount of (~~thirteen million dollars~~) \$13,000,000. The department estimates such amount to be adequate to protect (~~one hundred~~) 100 percent of the department's estimated exposure to loss on the vessel construction contract, as calculated by the department prior to issuance of the request for proposals. Such amount shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. The actual contract security amount for the project construction contract will be a percentage of the successful proposer's total bid price. Such percentage shall be specified in the construction contract within the request for proposals. For the new 130-auto ferries contract, this provision applies in lieu of the maximum capacity rating formula specified in subsection (2) of this section.

(8) Notwithstanding the provisions of this section or WAC 468-310-020, proposers who wish to prequalify for the department's construction of new 130-auto ferries, pursuant to the department's 2003 request for proposals, shall, in addition to the evidence of contract security required in subsection (7) of this section, submit an audited financial statement for at least one year in the previous three years, plus annual financial statements for two additional years in the previous three years. The audited financial statement shall be performed by an independent certified public accountant which shall include comparative balance sheets and income statements, a statement of retained earnings, supporting schedules and notes attached thereto,

and the opinion of the independent auditor. The form and quantity of financial statements shall be specified in the project request for proposals and is subject to modification by addendum during the request for proposals process. For the new 130-auto ferries contract, this provision applies in lieu of the quantity of audited financial statements specified in WAC 468-310-020.

(9) This subsection shall apply to the Port Townsend/Keystone vessel procurement only and shall be used in lieu of the requirements of subsections (1) through (5) of this section. It does not replace or modify any other provisions in this chapter or governing prequalification statutes. The department may prequalify a contractor under a Class 81 classification to bid on the Port Townsend/Keystone vessel procurement pursuant to this section based on the department's evaluation of the following criteria:

(a) Whether the contractor has adequate equipment and plant facilities available to accomplish the work;

(b) Whether the contractor has trained personnel available to perform the work;

(c) Whether the contractor has demonstrated experience in the type of work;

(d) Whether the contractor has an organization and technical staff with the size, training, experience and capability to accomplish the work;

(e) Whether the contractor has adequate financial resources to perform the type and size of work, or the ability to timely secure such resources. In evaluating such financial resources, the department may consider the contractor's overall financial condition including, but not limited to:

(i) Level of capitalization;

(ii) Cash flow;

(iii) Level of business activity;

(iv) Credit history;

(v) Debts;

(vi) Assets; and

(vii) Ability to obtain financing, including but not limited to, irrevocable lines of credit, and parent company guarantees.

A contractor does not have adequate financial resources when, based upon the totality of the circumstances, it lacks the financial resources reasonably expected of a contractor capable of performing the work on time and without interruption.

(10) This subsection shall apply to the New Hybrid-Electric Olympic Class Ferries Contract(s), the Jumbo Mark II Class Ferries Hybrid-Electric Propulsion System Upgrade Contract No. 00-9955, and the M.V. Tillikum Drydocking Contract No. 00-9946 only and shall be used in lieu of the requirements of subsections (1) through (5) of this section. It does not replace or modify any other provisions in this chapter or governing prequalification statutes. The department may prequalify a contractor under applicable classes of work to bid or propose on one or more of the contracts listed in this subsection based on the department's evaluation of the following criteria:

(a) Whether the contractor has adequate equipment and plant facilities available to accomplish the work;

(b) Whether the contractor has trained personnel available to perform the work;

(c) Whether the contractor has demonstrated experience in the type of work;

(d) Whether the contractor has an organization and technical staff with the size, training, experience, and capability to accomplish the work;

(e) Whether the contractor has adequate financial resources to perform the type and size of work, or the ability to timely secure such resources. In evaluating such financial resources, the department may consider the contractor's overall financial condition including, but not limited to:

(i) Level of capitalization;

(ii) Cash flow;

(iii) Level of business activity;

(iv) Credit history;

(v) Debts;

(vi) Assets; and

(vii) Ability to obtain financing including, but not limited to, irrevocable lines of credit, and parent company guarantees.

A contractor does not have adequate financial resources when, based upon the totality of the circumstances, it lacks the financial resources reasonably expected of a contractor capable of performing the work on time and without interruption.

[Statutory Authority: RCW 47.56.780, 47.60.680, and 47.60.690. WSR 08-19-004, § 468-310-050, filed 9/4/08, effective 10/5/08. Statutory Authority: RCW 47.60.816. WSR 04-11-004, § 468-310-050, filed 5/5/04, effective 6/5/04. Statutory Authority: RCW 47.60.680 and 47.60.690. WSR 99-03-025 (Order 189), § 468-310-050, filed 1/11/99, effective 2/11/99. Statutory Authority: RCW 47.60.680. WSR 88-19-040 (Order 114), § 468-310-050, filed 9/14/88. Statutory Authority: 1983 c 133. WSR 83-19-014 (Order 84), § 468-310-050, filed 9/12/83.]

**WSR 23-11-028
RESCISSION OF EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD**

[Filed May 10, 2023, 10:16 a.m.]

The Washington state liquor and cannabis board is withdrawing [rescinding] its emergency rule filed as WSR 23-08-039 on March 29, 2023, regarding a temporary amendment to WAC 314-55-570 (3) (a), (b), and (c) that temporarily extended the social equity application window from 30 to 58 days, or to April 27, 2023, at 5:00 p.m. The application is now closed, and the emergency rule is no longer needed.

Ollie Garrett
Acting Chair

WSR 23-11-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-68—Filed May 10, 2023, 2:48 p.m., effective May 11, 2023]

Effective Date of Rule: May 11, 2023.

Purpose: The purpose of this emergency rule is to close commercial salmon troll seasons in Areas 3 and 4.

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

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, but more than half of the allowable catch for Areas 3 and 4 was landed in the first 10 days of fishing, necessitating temporary closure of those areas. Catch will be assessed, and additional openings planned, based on the amount of quota remaining. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason 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 10, 2023.

Kelly Susewind
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective May 11, 2023, 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 and 2 open: May 11 through June 29, 2023.

(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 11 through June 29, 2023.

(3) In Washington Catch Reporting Areas 1 and 2, landing and possession limits combined across all areas of:

(a) 150 Chinook per vessel per landing per landing week, defined as Thursday through Wednesday, from May 11 through June 21

(b) 150 Chinook per vessel for the landing period June 22 through June 29

(4) In Washington Catch Reporting Area 1, landing and possession limits of:

(a) 60 Chinook per vessel per landing per landing week, defined as Thursday through Wednesday, from May 11 through June 21

(b) 60 Chinook per vessel for the landing period June 22 through June 29

(5) In Washington Catch Reporting Area 2, landing and possession limits of:

(a) 150 Chinook per vessel per landing per landing week, defined as Thursday through Wednesday, from May 11 through June 21

(b) 150 Chinook per vessel for the landing period June 22 through June 29

(6) The Columbia River Control Zone is closed.

(7) 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.

(8) 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.

(9) 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.

(10) 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 Tongue Point, Oregon.

(11) 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 11, 2023:

WAC 220-354-30000P Coastal salmon troll seasons—
Commercial. (23-57)

WSR 23-11-034
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 10, 2023, 4:58 p.m., effective May 10, 2023, 4:58 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This amendment enables the department of children, youth, and families to take enforcement action in the event a licensee doesn't ensure lifesaving medication is available in emergencies. This rule is intended to save lives. Currently, no other rule allows for this critical function. Further, in July 2022, an identical rule was updated in the licensing requirements for child foster homes (WAC 110-148-1565).

Citation of Rules Affected by this Order: Amending WAC 110-145-1850.

Statutory Authority for Adoption: RCW 74.15.030.

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: Due to the rising number of cases of opioid overdoses in our state, including among foster care children and youth, naloxone (Narcan) must be available to swiftly reverse the effects of an overdose. This rule change ensures lifesaving actions can be taken in group care facilities. This emergency rule making extends the original emergency that was filed on January 10, 2023, as WSR 23-03-050. Since the last filing, the rule has been through stakeholder review and is scheduled for a public hearing on May 23, 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 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 10, 2023.

Brenda Villarreal
Rules Coordinator

OTS-4295.1

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

WAC 110-145-1850 What requirements are there for the storage of medications? (1) Prescription and over-the-counter medications must be kept in a locked container in a manner that minimizes the risks for medication errors.

(2) Human medication and animal medication must be kept separate from each other and in locked containers.

(3) Life-saving medications must be accessible in an emergency.

[WSR 18-14-078, recodified as § 110-145-1850, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1850, filed 12/11/14, effective 1/11/15.]

WSR 23-11-035

RESCISSION OF EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed May 11, 2023, 7:36 a.m., effective May 12, 2023]

The health care authority (HCA) requests to rescind the emergency rule-making order filed as WSR 23-06-017 on February 17, 2023, and distributed in the 23-06 State Register. The emergency rule is to **remain in effect through May 11, 2023**. The permanent rule as it existed prior to the emergency rule will again be in effect May 12, 2023.

The agency is taking this action to align the emergency rule's expiration with the end of the federal public health emergency for COVID-19. The federal Department of Health and Human Services announced that the federal public health emergency for COVID-19, declared under Section 319 of the Public Health Service Act, is to expire at the end of the day on May 11, 2023.

Wendy Barcus
Rules Coordinator

WSR 23-11-036
EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed May 11, 2023, 9:34 a.m., effective May 11, 2023, 9:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Effective May 11, 2023, Governor Jay Inslee rescinded Directive #22-13.1, COVID-19 Vaccination Standards for State Employees, which directed a COVID-19 vaccination requirement as a condition of employment for state executive and small cabinet agencies. This rule making will remove provisions in Title 357 WAC which were filed in WSR 22-20-091, specifically removing the following provisions:

1. The requirement for nonrepresented state employees who are employed by general government executive and small cabinet agencies, or an eligible candidate for such position, to be fully vaccinated against COVID-19 as a condition of employment, or granted an exemption and approved for an accommodation due to a disability and/or medical condition or sincerely held religious belief that prevents them from receiving the COVID-19 vaccine;
2. The requirement for employers to separate an employee, or not hire an eligible candidate, if they cannot provide proof they are fully vaccinated and the employer cannot provide an accommodation; and
3. Language that made the above requirements optional for higher education employers, independent agencies, boards, councils, commissions, and separately elected officials.

Citation of Rules Affected by this Order: Repealing WAC 357-01-1745, 357-04-125, 357-16-197 and 357-19-413; and amending WAC 357-46-165, 357-46-195, and 357-58-190.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

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 World Health Organization ended the global emergency status for COVID-19 on May 5, 2023. The Biden Administration is ending the national COVID-19 public health emergency on May 11, 2023. To align Washington state policy with the ending of the national public health emergency, Governor Jay Inslee is rescinding Directive 22-13.1, effective May 11, 2023, which directed a requirement that employees of executive and small cabinet state agencies be fully vaccinated against COVID-19 as a condition of employment. Immediate repeal of the rules implementing Directive 22-13.1 is necessary to ensure that the civil service rules also align with the current public health policies of the World Health Organization, federal government, and state of Washington.

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 3, Repealed 4.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 4.

Date Adopted: May 11, 2023.

Nathan Sherrard
Assistant Legal Affairs Counsel

OTS-4587.1

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

WAC 357-46-165 When may an employer separate an employee in accordance with WAC 357-46-160? An employer may separate an employee due to disability when any of the following circumstances exist:

(1) The employer is unable to reasonably accommodate the employee.

(2) The employer has medical documentation of the employee's inability to work in any capacity.

(3) The employee requests separation due to disability and the employer has medical information which documents that the employee cannot perform the essential functions of the employee's position or class.

~~((4) The employer must separate an employee from employment for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125 where an exemption was approved due to a disability and/or medical condition and the employer is unable to reasonably accommodate the employee.))~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-46-165, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-165, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

WAC 357-46-195 May an employer separate an employee for nondisciplinary reasons? An employer may separate a permanent employee from a position or from employment for nondisciplinary reasons such as failure to comply with the conditions of employment which may or may not have existed at the time of initial appointment or failure to authorize or to pass a background check required by the position.

The employer may consider other employment options such as transfer or voluntary demotion in lieu of separation.

~~((The employer must separate an employee from employment for non-disciplinary reasons for failure to comply with the COVID-19 vaccination requirements set forth in WAC 357-04-125.))~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-46-195, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 04-18-114, § 357-46-195, filed 9/1/04, effective 7/1/05.]

OTS-4588.1

AMENDATORY SECTION (Amending WSR 22-20-091, filed 10/4/22, effective 11/4/22)

WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure? An agency's WMS recruitment and selection policy and/or procedure must:

- (1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;
- (2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;
- (3) Support workforce diversity and affirmative action goals;
- (4) Consider the career development of the agency's employees and other state employees;
- (5) Consider making appointments from a veterans placement program;
- (6) Ensure that hiring decisions are not based on patronage or political affiliation;
- (7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;
- (8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency; and
- (9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220 (~~and~~
- ~~(10) Ensure compliance with the COVID-19 vaccination requirements in accordance with WAC 357-04-125 and 357-16-197).~~

[Statutory Authority: RCW 41.06.133 and 41.06.150. WSR 22-20-091, § 357-58-190, filed 10/4/22, effective 11/4/22. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-074, § 357-58-190, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]

OTS-4583.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-01-1745 Fully vaccinated.

OTS-4584.1REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-04-125 Must an employee provide proof of being fully vaccinated as a condition of employment?

OTS-4585.1REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-16-197 Must an employer require an eligible candidate to provide proof of being fully vaccinated?

OTS-4586.1REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-19-413 What are the requirements for a nonpermanent employee to be fully vaccinated or for an employer to require an eligible candidate to provide proof of being fully vaccinated?

WSR 23-11-045

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed May 11, 2023, 2:00 p.m.]

This memo serves as notice that the department of health (department) is rescinding the emergency rule for the medical test site program, WAC 246-338-020 and 246-338-026, that mandated reporting of test results intended to detect SARS-CoV-2 or diagnose a possible case of coronavirus disease 2019 (COVID-19). The emergency rule was filed on January 27, 2023, as WSR 23-04-050.

The department is rescinding this emergency rule because the amendments to 85 F.R. 54820 that required reporting of test results intended to detect SARS-CoV-2 or diagnose a possible case of COVID-19 expire today, May 11, 2023, as part of the expiration of the Department of Health and Human Services' public health emergency.

Individuals requiring information on this rule should contact Jessica Holloway at 360-236-2927.

Tami M. Thompson
Regulatory Affairs Manager

WSR 23-11-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-67—Filed May 12, 2023, 10:35 a.m., effective May 27, 2023]

Effective Date of Rule: May 27, 2023.

Purpose: The purpose of this emergency rule is to close recreational fisheries in some waters of the Snohomish River system.

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

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

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

Reasons for this Finding: Limited allowable take of wild Chinook in the Snohomish system necessitates strict controls to conserve impacts for pink and coho fisheries this fall. The Snohomish wild Chinook population saw a record low return of 1,023 in 2019, the year when dominant age class four-year-old Chinook returning in 2023 would have been hatched. There is now significant concern for a poor return of wild Chinook to the Snohomish [River] and its tributaries this year.

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 12, 2023.

Kelly Susewind
Director

[NEW SECTION]

WAC 220-312-04000F Freshwater exceptions to statewide rules—Puget Sound. Effective May 27, 2023, until further notice, provisions of WAC 220-312-040 regarding recreational fishing seasons for the Snohomish River system shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

(1) Effective May 27, 2023, until further notice, the following waters are closed to all fishing:

- (a) **Cherry Creek**
- (b) **Raging River**
- (c) **Skykomish River, North Fork**
- (d) **Skykomish River, South Fork**, from mouth to 600' downstream of Sunset Falls fishway
- (e) **Snohomish River**, from mouth to confluence of Skykomish and Snoqualmie rivers
- (f) **Snoqualmie River**, from mouth to Snoqualmie Falls
- (g) **Sultan River**
- (h) **Tolt River**, from mouth to confluence of North and South forks
- (i) **Wallace River**, from mouth to 200' upstream of water intake of salmon hatchery

(2) Effective May 30, 2023, until further notice the following waters are closed to all fishing: **Skykomish River**, from mouth to U.S. Hwy. 2 Bridge (near Gold Bar)

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Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 23-11-053

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed May 12, 2023, 10:53 a.m., effective May 12, 2023, 10:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Home care aide and nursing assistant-certified alternate certification time frames. The department of health (department) is establishing alternate certification time frames for individuals working toward certification as a home care aide or nursing assistant-certified (NA-C). This includes amending WAC 246-980-025, 246-980-030, 246-980-040, and 246-980-065 and adopting new WAC 246-980-011. Due to impacts from the coronavirus disease 2019 (COVID-19) pandemic, many long-term care workers are still unable to obtain training and certification as home care aides and NA-Cs within statutory time frames. By continuing alternate time frames established under ESHB 1120 (chapter 203, Laws of 2021), the department will allow workers impacted by the pandemic more time to complete requirements while training and testing capacity issues are being resolved.

These emergency rules continue emergency rules filed January 12, 2023 under WSR 23-03-066. These rules established alternate certification time frames for two different groups of long-term care workers: Individuals working toward certification as home care aides and individuals working toward certification as NA-Cs. This extension is the same as the original filing, except that the dates of the alternate time frames have been updated to reflect ongoing training, testing, and certification challenges. Rules impacting home care aides were developed in collaboration with the department of social and health services (DSHS), while rules impacting NA-Cs were developed in collaboration with DSHS and the nursing care quality assurance commission (NCQAC).

New WAC 246-980-011 establishes alternate time frames for long-term care workers seeking certification as home care aides or NA-Cs.

Amendments to WAC 246-980-025, 246-980-030, 246-980-040, and 246-980-065 create cross-references to WAC 246-980-011 and, where applicable, to DSHS rules that establish alternate time frames for training and testing.

Citation of Rules Affected by this Order: New WAC 246-980-011; and amending WAC 246-980-025, 246-980-030, 246-980-040, and 246-980-065.

Statutory Authority for Adoption: RCW 18.88B.021; ESHB 1120 (chapter 203, Laws of 2021).

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

Reasons for this Finding: This emergency rule is necessary to avoid a critical shortage of long-term care workers as a result of the COVID-19 pandemic.

During the COVID-19 pandemic, both training and testing were unavailable for several months in 2020 before resuming at limited capacity. This created a large backlog of long-term care workers unable to become certified as home care aides or NA-Cs within statutory time frames. During the COVID-19 declared emergency, thousands of workers seeking certification were allowed to continue working under Gover-

nor's Proclamations 20-52 and 20-65 (waivers), which waived credentialing requirements. However, now that the waivers have been rescinded, uncertified workers will no longer be able to work and will still be unable to readily access the training and testing necessary for certification. Losing these workers would exacerbate the existing workforce shortage, forcing more medically vulnerable patients to rely on other care options, such as higher-level residential care settings.

ESHB 1120, passed in 2021, gives the department authority to allow long-term care workers additional time to become certified if a pandemic or other declared state of emergency impacts their ability to complete certification timely. Pursuant to ESHB 1120, the department collaborated with DSHS and NCQAC to develop alternate, extended time frames for long-term care workers seeking certification as a home care aide or NA-C. These alternate time frames create a path to certification for uncertified home care aides and NA-Cs and allow workers to continue caring for clients while the testing and training backlog is being resolved.

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 4, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 0.

Date Adopted: May 12, 2023.

Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-3558.8

NEW SECTION

WAC 246-980-011 Long-term care workers working or hired during the COVID-19 public health emergency. (1) Unless exempt from certification as described in WAC 246-980-025, a long-term care worker affected by the coronavirus disease 2019 (COVID-19) public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Hired or rehired during the time frame of:	Shall be certified no later than:
August 17, 2019, to September 30, 2020	August 31, 2023

Hired or rehired during the time frame of:	Shall be certified no later than:
October 1, 2020, to April 30, 2021	November 27, 2023
May 1, 2021, to March 31, 2022	November 27, 2023
April 1, 2022, to September 30, 2022	February 27, 2024
October 1, 2022, to June 30, 2023	March 28, 2024
Beginning July 1, 2023	Standard training

The above chart provides additional time for a long-term care worker to be certified, as either a home care aide or nursing assistant.

(2) "Hired" and "rehired" as used in this section mean the date of hire as defined in WAC 246-980-010. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in subsection (1) of this section.

(3) If a long-term care worker or home care aide is limited-English proficient, the worker may request an additional 60 days to obtain certification under WAC 246-980-065.

(4) Nothing in this section prevents a long-term care worker hired between August 17, 2019, and September 30, 2022, from completing training or obtaining certification in advance of the deadlines stipulated in subsection (1) of this section.

[]

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

WAC 246-980-025 Individuals exempt from obtaining a home care aide certification. (1) The following individuals are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the entry level training required by RCW 74.39A.074 and meet the requirements of WAC 246-980-040 (1)(b) and (c).

(a) An individual provider caring only for a biological, step, or adoptive child or parent.

(b) An individual provider who provides (~~(twenty)~~) 20 hours or less of care for one person in any calendar month.

(c) An individual employed by a community residential service business.

(d) An individual employed by a residential habilitation center licensed under chapter 71A.20 RCW or a facility certified under 42 C.F.R. Part 483.

(e) A direct care worker who is not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(f) A person working as an individual provider who only provides respite services and works less than (~~(three hundred)~~) 300 hours in any calendar year.

(g) Any direct care worker exempt under RCW 18.88B.041(1).

(2) The following long-term care workers are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must meet the requirements of WAC 246-980-040 (1)(b) and (c). The training requirements under RCW 74.39A.074(1) are not required.

(a) An individual who holds an active credential by the department as a:

(i) Registered nurse, a licensed practical nurse, or advanced registered nurse practitioner under chapter 18.79 RCW; or

(ii) Nursing assistant-certified under chapter 18.88A RCW.

(b) A home health aide who was employed by a medicare certified home health agency within the year before being hired as a long-term care worker and has met the requirements of 42 C.F.R. Part 484.36.

(c) A person who is in an approved training program for certified nursing assistant under chapter 18.88A RCW, provided that the training program is completed within (~~one hundred twenty~~) 120 calendar days of the date of hire and that the nursing assistant-certified credential has been issued within (~~two hundred~~) 200 calendar days of the date of hire, or that the training and certification are completed in compliance with the deadlines in WAC 246-980-011.

(d) An individual with special education training and an endorsement granted by the superintendent of public instruction under RCW 28A.300.010 and is approved by the secretary.

(e) An individual employed as a long-term care worker on January 6, 2012, or who was employed as a long-term care worker between January 1, 2011, and January 6, 2012, and who completed all of the training requirements in effect as of the date of hire. This exemption expires if the long-term care worker has not provided care for three consecutive years.

(i) The department may require the exempt long-term care worker who was employed as a long-term care worker between January 1, 2011, and January 6, 2012, to provide proof of that employment. Proof may include a letter or similar documentation from the employer that hired the long-term care worker between January 1, 2011, and January 6, 2012, indicating the first and last day of employment, the job title, a job description, and proof of completing training requirements. Proof of training will also be accepted directly from the approved instructor or training program, if applicable.

(ii) For an individual provider reimbursed by the department of social and health services, the department will accept verification from the department of social and health services or the training partnership.

[Statutory Authority: RCW 18.88B.021. WSR 18-20-072, § 246-980-025, filed 9/28/18, effective 10/29/18.]

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

WAC 246-980-030 Working while obtaining certification as a home care aide. (1) A long-term care worker may provide care before receiving certification as a home care aide if all the following conditions are met:

(a) Before providing care, the long-term care worker must complete the training required by RCW 74.39A.074 (1)(d)(i)(A) and (B).

(b) The long-term care worker must submit an application for home care aide certification to the department within ~~((fourteen))~~ 14 calendar days of hire. An application is considered to be submitted on the date it is post-marked or, for applications submitted in person or online, the date it is accepted by the department.

(2) Except as provided in WAC 246-980-011, a long-term care worker is no longer eligible to provide care without a credential under the following circumstances:

(a) The long-term care worker does not successfully complete all of the training required by RCW 74.39A.074(1) within ~~((one hundred twenty calendar days from their date of hire))~~ the timelines in WAC 388-71-0876 or 388-112A-0081;

(b) The long-term care worker has not obtained their certification within ~~((two hundred))~~ 200 calendar days from their date of hire, or ~~((two hundred sixty))~~ 260 calendar days if granted a provisional certificate under RCW 18.88B.041.

(3) This section does not apply to long-term care workers exempt from certification under WAC 246-980-025.

[Statutory Authority: RCW 18.88B.021. WSR 18-20-072, § 246-980-030, filed 9/28/18, effective 10/29/18. Statutory Authority: Chapters 18.88B and 18.130 RCW, 2012 c 164, and 2013 c 259. WSR 13-19-087, § 246-980-030, filed 9/18/13, effective 10/19/13. Statutory Authority: Chapters 18.88B and 74.39A RCW. WSR 10-15-103, § 246-980-030, filed 7/20/10, effective 1/1/11.]

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

WAC 246-980-040 Certification requirements. (1) To qualify for certification as a home care aide, except as provided in WAC 246-980-011, the applicant must:

(a) Successfully complete all training required by RCW 74.39A.074(1) within ~~((one hundred twenty calendar days of the date of hire as a long-term care worker))~~ the timelines in WAC 388-71-0876 or 388-112A-0081;

(b) Successfully pass the home care aide certification examination, after completing training; and

(c) Become certified within ~~((two hundred))~~ 200 days of date of hire, or ~~((two hundred sixty))~~ 260 days if granted a provisional certificate under RCW 18.88B.041.

(2) An applicant for certification as a home care aide must submit to the department:

(a) A completed application for both certification and the examination on forms provided by the department;

(b) The exam fee set by the examination vendor and required fees under WAC 246-980-990; and

(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.074. The certificate of completion or other official verification may also be submitted directly from the approved instructor or training program.

(3) An applicant must submit to a state and federal background check as required by RCW 74.39A.056.

(4) An applicant exempt from certification under WAC 246-980-025(2) who voluntarily chooses to be certified must provide documentation of qualification for the exemption. The applicant is not required to take the training required in subsection (1)(a) of this section or provide proof of training completion to the department.

[Statutory Authority: RCW 18.19.050, 18.29.130, 18.29.210, 18.34.120, 18.46.060, 18.55.095, 18.84.040, 18.88B.060, 18.89.050, 18.130.050, 18.138.070, 18.155.040, 18.200.050, 18.205.060, 18.215.040, 18.230.040, 18.240.050, 18.250.020, 18.290.020, 18.360.030, 18.360.070, 70.41.030, 70.230.020, 71.12.670, and 18.108.085. WSR 21-02-002, § 246-980-040, filed 12/23/20, effective 1/23/21. Statutory Authority: RCW 18.88B.021. WSR 18-20-072, § 246-980-040, filed 9/28/18, effective 10/29/18. Statutory Authority: Chapters 18.88B and 18.130 RCW, 2012 c 164, and 2013 c 259. WSR 13-19-087, § 246-980-040, filed 9/18/13, effective 10/19/13. Statutory Authority: 2012 c 1 (Initiative 1163) and chapter 18.88B RCW. WSR 12-08-043, § 246-980-040, filed 3/30/12, effective 4/4/12. Statutory Authority: Chapters 18.88B and 74.39A RCW. WSR 10-15-103, § 246-980-040, filed 7/20/10, effective 1/1/11.]

AMENDATORY SECTION (Amending WSR 16-09-004, filed 4/7/16, effective 5/8/16)

WAC 246-980-065 Home care aide provisional certification. (1)

The department may issue a provisional certification to a long-term care worker who is limited-English proficient and submits:

- (a) A request for a provisional certification; and
- (b) Verification of his or her date of hire as a long-term care worker, as follows:
 - (i) For individual providers, verification of the applicant's date of hire submitted directly by the department of social and health services; or
 - (ii) For all other applicants, a form supplied by the department and completed by the employer who hired the applicant as a long-term care worker, verifying the applicant's date of hire.
- (2) A provisional certification will be issued only once.
- (3) Except as provided in WAC 246-980-011, a provisional certification will take effect ((two hundred)) 200 days from the applicant's date of hire as a long-term care worker, as defined in WAC 246-980-010(2).
- (4) Except as provided in WAC 246-980-011, a provisional certification will expire ((two hundred sixty)) 260 days from the applicant's date of hire as a long-term care worker. The applicant must stop working on the ((two hundred sixtieth)) 260th day of employment if the certification has not been granted for any reason.
- (5) A request for provisional certification may be denied pursuant to chapter 18.130 RCW, the Uniform Disciplinary Act, or based on RCW 18.88B.080.
- (6) For the purposes of this section, "limited-English proficient" means that an individual is limited in his or her ability to read, write, or speak English.

[Statutory Authority: RCW 18.88B.060. WSR 16-09-004, § 246-980-065, filed 4/7/16, effective 5/8/16. Statutory Authority: 2013 c 259 and

RCW 18.88B.035. WSR 14-09-002, § 246-980-065, filed 4/3/14, effective 5/4/14.]

WSR 23-11-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-69—Filed May 12, 2023, 11:41 a.m., effective May 13, 2023]

Effective Date of Rule: May 13, 2023.

Purpose: The purpose of this emergency rule is to close Snake River salmon seasons.

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

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: Current spring Chinook allocation for the Snake [River] is based on the preseason forecast, as there has not been a run size update yet. Fish passage appears to be delayed throughout the system based on water conditions (temperature and flow). The fishery is closing in order to allow for staff to assess catch information and determine the remaining allocation for this fishery.

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 12, 2023.

Kelly Susewind
Director

REPEALER

The following section of Washington Administrative Code is repealed, effective May 13, 2023:

WAC 220-312-05000Y Freshwater exceptions to statewide rules—Eastside. (23-59)

WSR 23-11-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-70—Filed May 12, 2023, 2:20 p.m., effective May 16, 2023]

Effective Date of Rule: May 16, 2023.

Purpose: The purpose of this emergency rule is to open hatchery Chinook seasons in the Icicle River.

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

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

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

Reasons for this Finding: This rule is needed to open hatchery Chinook retention in the Icicle River. A large return of spring Chinook is forecasted to return to the Icicle River this spring. Fish in excess of broodstock needs at Leavenworth National Fish Hatchery will be available for sport angler harvest. Returns of Icicle River hatchery spring Chinook salmon are sufficient to meet broodstock needs and to provide for sport angler harvest. 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 12, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000B Freshwater exceptions to statewide rules—Eastside. Effective 1 hour before official sunrise May 16 through 1 hour after official sunset June 30, 2023, provisions of WAC 220-312-050 regarding salmon seasons for the Icicle River shall be as described below. All other provisions of WAC 220-312-050 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

Icicle River:

(a) From the closure signs located 800 feet upstream of the mouth of the river to 500 feet downstream from the Leavenworth National Fish Hatchery Barrier Dam: Salmon:

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

(ii) Anglers must retain first 2 hatchery Chinook over 12 inches in length.

(iii) Night closure in effect.

(b) From the shoreline markers where Cyo Road intersects the Icicle River at the Sleeping Lady Resort to the Icicle Peshastin Irrigation Footbridge (approximately 750 feet upstream from the Snow Lakes trailhead parking area): Salmon:

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

(ii) Anglers must retain first 2 hatchery Chinook over 12 inches in length.

(iii) Night closure in effect.

[]

WSR 23-11-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-71—Filed May 12, 2023, 3:15 p.m., effective May 12, 2023, 3:15 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule: (1) Opens Region 3 shrimp trawl fisheries effective immediately; (2) clarifies observing requirement for areas that open based on bycatch sampling criteria; and (3) opens Region 1 trawl fisheries as required by permanent rule.

Citation of Rules Affected by this Order: Repealing WAC 220-340-54000F; and amending WAC 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: 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 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 comanager 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 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 12, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-54000G Commercial shrimp trawl fishery—Puget Sound. Notwithstanding the provisions of WAC 220-340-540, 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 beam trawl

gear in Puget Sound except as provided for in Tables (a), (b), and (c) of this section:

(a) Non-spot shrimp beam trawl harvest is permitted starting one hour before official sunrise on the hard season opening dates listed for each of the areas detailed below.

Geographic Area Description (WAC 220-320-140(3); WAC 220-320-120)	Open period
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°)	August 1, 2023
Those waters within the Lummi-Sinclair Triangle.	July 1, 2023
Those waters of South Lopez Sound.	July 10, 2023
All waters within subregion 1B, excluding those waters of South Lopez Sound and the Lummi-Sinclair Triangle.	June 16, 2023
Subarea 23A East, MFSF Catch Areas 23B, and MFSF Catch Area 25A outside of the Discovery Bay Shrimp District.	Open immediately, until further notice.
Subarea 23A West	Open immediately, until further notice.
MFSF Catch Area 23C	Open immediately, until further notice.
MFSF Catch Area 29	Open immediately, until further notice.

(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 of 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).

Geographic Area Description (WAC 220-320-140(3); WAC 220-320-120)	Open period
Those waters within the Rosario Box.	May 1, 2023
Those waters of Catch Area 22A within subregion 1B, excluding the Rosario Box and South Lopez Sound.	May 16, 2023
Those waters of Catch Area 20B within subregion 1B.	May 16, 2023

(c) Non-spot shrimp beam trawl harvest is not permitted in the areas of Shrimp Management Regions 1 and 3 detailed below.

Geographic Area Description (WAC 220-320-140(3); WAC 220-320-120)
Discovery Bay Shrimp District
Sequim Bay CSMA
MFSF Catch Area 23D
Subregion 1A

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-54000F Commercial shrimp trawl fishery—Puget
Sound (23-62).

WSR 23-11-064

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed May 15, 2023, 8:38 a.m.]

This memo serves as notice that effective April 9, 2023, the pharmacy quality assurance commission (commission) is rescinding the CR-103E for WAC 246-945-171 Retired active pharmacist license status, which was filed January 20, 2023, and published under WSR 23-04-019.

The commission is rescinding this emergency rule because permanent rule making for this rule is complete. The CR-103P for WAC 246-945-171 was filed March 9, 2023, under WSR 23-07-058.

Individuals requiring information on this rule should contact Joshua Munroe, rules and legislative consultant, at Joshua.Munroe@doh.wa.gov or 360-502-5058.

Tami M. Thompson
Regulatory Affairs Manager

WSR 23-11-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-76—Filed May 16, 2023, 4:35 p.m., effective May 18, 2023]

Effective Date of Rule: May 18, 2023.

Purpose: The purpose of this emergency rule is to open coastal commercial salmon Areas 3 and 4 with a reduced trip limit.

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

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, including in Areas 3 and 4, although a landing and possession limit in Areas 3 and 4 that is reduced from the previous opening is needed to ensure quota is not exceeded. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason 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 16, 2023.

Kelly Susewind
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective May 18, 2023, 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 18 through June 29, 2023.

(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 18 through June 29, 2023.

(3) In Washington Catch Reporting Areas 1, 2, 3 and 4, landing and possession limits combined across all areas of:

(a) 150 Chinook per vessel per landing per landing week, defined as Thursday through Wednesday, from May 18 through June 21

(b) 150 Chinook per vessel for the landing period June 22 through June 29

(4) In Washington Catch Reporting Area 1, landing and possession limits of:

(a) 60 Chinook per vessel per landing per landing week, defined as Thursday through Wednesday, from May 18 through June 21

(b) 60 Chinook per vessel for the landing period June 22 through June 29

(5) In Washington Catch Reporting Area 2, landing and possession limits of:

(a) 150 Chinook per vessel per landing per landing week, defined as Thursday through Wednesday, from May 18 through June 21

(b) 150 Chinook per vessel for the landing period June 22 through June 29

(6) In Washington Catch Reporting Areas 3 and 4, landing and possession limits of:

(a) 35 Chinook per vessel per landing per landing week, defined as Thursday through Wednesday, from May 18 through June 21

(b) 35 Chinook per vessel for the landing period June 22 through June 29

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

(8) 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.

(9) 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.

(10) 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.

(11) 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 Tongue Point, Oregon.

(12) 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.

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REPEALER

The following section of Washington Administrative Code is repealed, effective May 18, 2023:

WAC 220-354-30000Q Coastal salmon troll seasons—
Commercial. (23-68)

WSR 23-11-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-72—Filed May 16, 2023, 4:39 p.m., effective May 26, 2023]

Effective Date of Rule: May 26, 2023.

Purpose: The purpose of this emergency rule is to open salmon seasons in Catch Record Card Areas 8-2 and 10.

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 set salmon seasons in Catch Record Card Areas 8-2 and 10, agreed to with comanagers during the 2023 North of Falcon season setting process and as listed in the 2023 list of agreed 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 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 16, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000Q Puget Sound salmon—Saltwater seasons and daily limits. Effective May 26 through September 4, 2023, the following provisions of WAC 220-313-060 regarding salmon seasons for the area of Catch Record Card Area 8-2 known as the Tulalip Terminal Area (defined herein); and effective June 1 through July 12, 2023, the following provisions of WAC 220-313-060 regarding salmon seasons for the section of Catch Record Card Area 10, shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

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

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

(b) Salmon: Effective May 26 through September 4, 2023:

(i) Open from 12:00 a.m. Friday through 11:59 a.m. Monday each week, except closed June 10:

Daily limit 2. Release Chinook and chum.

(ii) Closed from 12:00 p.m. Monday through 11:59 p.m. Thursday each week.

(2) Catch Record Card Area 10, except waters of Elliott Bay east of a line from West Point to Alki Point, waters of Shilshole Bay southeast of a line from Meadow Point to West Point, Bremerton Boardwalk, Illahee State Park Pier, Seacrest Pier, and Waterman Pier:

Salmon: Effective June 1 through July 12, 2023: Daily limit 2. Release Chinook and chum.

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WSR 23-11-074

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed May 17, 2023, 7:29 a.m., effective May 17, 2023, 7:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan. *Vibrio parahaemolyticus* (Vp) is a naturally occurring bacteria found in marine waters. Molluscan bivalve shellfish acquire Vp through filter feeding. Humans who consume raw or undercooked shellfish containing Vp can develop an intestinal disease called vibriosis.

Chapter 246-282 WAC establishes the minimum performance standards for growing, harvesting, processing, packing, storage, transporting, and selling of shellfish for human consumption. These rules do not apply to persons who conduct activities limited to retail food service, personal use, and transporting as a common carrier of freight.

WAC 246-282-006 establishes the control plan for May 1 through September 30 and are an extension of the NSSP Model Ordinance (United States Food and Drug Administration National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish).

Due to current early season high temperatures, this emergency rule making is necessary to protect public health by modifying the existing strictest harvest control requirements, which currently start July 1, by setting even more protective measures immediately.

The state board of health (board) filed a preproposal statement of inquiry (CR-101) on February 23, 2022, WSR 22-06-034, regarding permanent amendments to the existing rules to address harvest control measures and may also include updating definitions, seed size, and other technical and editorial changes as needed.

Until permanent rule making can be completed, the board has delegated emergency rule-making authority to the department of health if heat wave conditions occur prior to July 1.

Citation of Rules Affected by this Order: Amending WAC 246-282-006.

Statutory Authority for Adoption: RCW 69.30.030 and 43.20.050.

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

Reasons for this Finding: To reduce the threat to public health, amending the "time of harvest to cooling requirements" to a more protective control season immediately is necessary. The current Vp control plan, last revised in 2015, establishes a control season between May 1 and September 30 and authorizes enforcement of the rule's strictest time-to-cooling requirements for harvested oysters starting July 1 of the Vp control season. However, recent events demonstrate the need for more flexible rules. From June 26 to July 2, 2021, the National Weather Service in Seattle reported a long-duration, unprecedented heat wave throughout the Pacific Northwest. Shellfish-related Vp illnesses increased sharply. Therefore, due to current early season temperatures and midday low tides, this emergency rule is necessary to protect public health.

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 17, 2023.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4606.1

AMENDATORY SECTION (Amending WSR 15-08-083, filed 3/31/15, effective 5/1/15)

WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan. (1) This section establishes the Washington state *Vibrio parahaemolyticus* control plan (control plan) for the months of May 1st through September 30th (control months). The requirements of this section are an extension of the NSSP Model Ordinance.

(2) All harvesters and shellfish dealers harvesting or delivering oysters to a certified shucker packer for shucking or postharvest processing (PHP) during the control months must label the oysters with a harvest tag stating "For shucking by a certified dealer" or "For PHP by a certified dealer." Oysters harvested and tagged in compliance with this subsection are exempt from subsections (3) through (20) of this section.

(3) The following definitions apply throughout this section:

(a) "Single-source *Vibrio parahaemolyticus* case" or "case" means a laboratory-confirmed *Vibrio parahaemolyticus*-associated illness or illnesses with a common exposure that are reported to the department. The case must:

- (i) Be associated with commercially harvested shellstock;
- (ii) Not involve documented postharvest abuse; and
- (iii) Be traced back to a single growing area.

(b) "Control months" means May 1st through September 30th.

(c) "Cool" or "cooling" means to:

- (i) Adequately ice or place in a controlled environment with a temperature of 45°F (7.2°C) or less; and
- (ii) Reach and maintain an internal oyster tissue temperature of 50°F (10°C) or less.

(d) "Harvest temperature" means the water temperature or internal oyster tissue temperature at the time of harvest. The harvester or shellfish dealer shall state whether they use water temperature or in-

ternal oyster tissue temperature for harvest temperature in their harvest plan.

(4) All harvesters and shellfish dealers harvesting oysters during the control months shall report the volume of oysters harvested. This information must be reported by month, oyster species, size class, and growing area for all control months. This information must be reported by December 31st each year. Harvesters and shellfish dealers that do not submit this information to the department may not harvest oysters during the control months during the next calendar year.

(5) Harvesters and shellfish dealers harvesting oysters during the control months shall complete, submit to the department, and keep on file a current *Vibrio parahaemolyticus* harvest plan. In order for the department to review the harvest plan prior to May 1st, the harvest plan must be submitted by March 1st each year unless no changes have been made to the existing harvest plan. Harvesters and shellfish dealers shall sign and date their harvest plan each year and make it available to the department upon request.

(6) The harvest plan must:

(a) Describe the harvest, temperature collection, cooling, and conveyance methods.

(b) Include an example of the harvest temperature record designed to meet the requirements in subsection (11) of this section.

(c) Identify if water temperature or internal oyster tissue temperature is used to meet the requirements in subsection (11) of this section and specifically how this measurement will be taken.

(7) The department shall review and either approve or deny the harvest plan within (~~thirty~~) 30 days of receipt. If the department denies approval of the harvest plan, the department shall notify the applicant of the decision in writing stating the reasons for the denial and providing the opportunity to correct the deficiencies. Harvesters and shellfish dealers may not harvest oysters during the control months unless the department has approved the plan.

(8) Time of harvest to cooling requirements and harvest controls are based on a risk categorization of each growing area. The department shall assign each growing area a category of 1, 2, or 3 (where 1 corresponds to the least stringent and 3 the most stringent controls) based on the number of cases that occurred during the previous consecutive five-year period within the control months and were attributed to that growing area.

(9) The department shall categorize coastal growing areas in Willapa Bay and Grays Harbor as Category 1 for the first year of implementation attributing no illnesses to these areas for the years 2010 to 2014. For subsequent years, the department shall categorize coastal growing areas based on the criteria in subsection (8) of this section.

(10) The department shall complete risk categorization and publish a list of all growing areas by risk category no later than February 1st annually. The department shall use a rolling five-year average number of cases to calculate risk categories as follows:

(a) Category 1: An average of 0.2 or fewer cases attributed to the growing area over a five-year period.

(b) Category 2: An average of more than 0.2, but less than 1.0 cases attributed to the growing area over a five-year period.

(c) Category 3: An average of 1.0 or more cases attributed to the growing area over a five-year period.

(11) Time of harvest begins after the first oysters to be harvested are exposed to the air. Time of harvest to cooling requirements and harvest controls are as follows:

(a) Category 1:

Requirements:	Time to Cooling:
Except as noted below, the time of harvest to cooling requirement from ((June)) May 1st through September 30th is:	9 hours
When ambient air temperature at harvest is greater than 90°F, the time of harvest to cooling requirement is:	7 hours
When harvest temperature is between 68°F and 70°F from ((July 1st)) May 17th through ((August 31st)) September 14th, the time of harvest to cooling requirement is:	5 hours
Harvest Control: From ((July 1st)) May 17th through ((August 31st)) September 14th, harvest is not allowed for twenty-four hours when harvest temperature is above 70°F.	

(b) Category 2:

Requirements:	Time to Cooling:
Except as noted below, the time of harvest to cooling requirement from May 1st through September 30th is:	7 hours
When ambient air temperature at harvest is greater than 85°F, the time of harvest to cooling requirement is:	5 hours
When harvest temperature is between 66°F and 68°F from ((July 1st)) May 17th through ((August 31st)) September 14th, the time of harvest to cooling requirement is:	3 hours
Harvest Control: From ((July 1st)) May 17th through ((August 31st)) September 14th, harvest is not allowed for twenty-four hours when harvest temperature is above 68°F.	

(c) Category 3:

Requirements:	Time to Cooling:
Except as noted below, time of harvest to cooling requirement from May 1st through September 30th is:	5 hours
When ambient air temperature at harvest is greater than 80°F, the time of harvest to cooling requirement is:	3 hours
When harvest temperature is between 64°F and 66°F from ((July 1st)) May 17th through ((August 31st)) September 14th, the time of harvest to cooling requirement is:	1 hour

Requirements:	Time to Cooling:
Harvest Control: From ((July 1st)) <u>May 17th</u> through ((August 31st)) <u>September 14th</u> , harvest is not allowed for twenty-four hours when harvest temperature is above 66°F.	

(d) When a harvester or shellfish dealer places oysters in a container or conveyance, but does not remove them from the tide flat as part of their harvest and the harvest exceeds the time to cooling requirements in subsection (11) of this section, then the oysters in the container or conveyance must be covered by the tide for a minimum of four hours before harvest can be completed.

(12) Harvesters and shellfish dealers shall take the following measurements at the times specified below and record this information in a harvest temperature record for each harvest site for all harvests occurring within the control months. Harvesters and shellfish dealers shall take these measurements with a thermometer that is verified weekly using manufacturer specifications or with a method approved in a harvest plan. Thermometer verification must be documented and maintained with operational records. Harvesters and shellfish dealers shall record the following measurements and the date and time they were taken in the record, maintain the record for three years, and make the record available to the department upon request:

(a) Air temperature at time and location of harvest; and

(b) Harvest temperature at time and location of harvest. Harvesters and shellfish dealers using water temperature for harvest temperature shall take water temperature at depth of oysters unless another method is documented in their harvest plan.

(13) Harvesters and shellfish dealers shall initiate cooling as soon as practical from the time of harvest and within the time of harvest to cooling requirements for the growing area where the oysters were harvested to ensure that the maximum number of hours is not exceeded.

(14) If the required time of harvest to cooling requirements are not met after removal from the tide flat, the harvester or shellfish dealer shall dispose of the oysters using one of the methods below and record the disposition on the harvest record:

(a) Destroy the oysters;

(b) Place the oysters within the original growing area or another approved growing area and allow a minimum of ~~((fourteen))~~ 14 days before reharvesting; or

(c) Deliver the oysters to a certified shucker packer for shucking or PHP and attach a harvest tag meeting the requirements in subsection (2) of this section.

(15) If ownership of oysters is transferred prior to the oysters being cooled in accordance with the time of harvest to cooling requirements, the harvester shall include in the harvest record required under WAC 246-282-080 the:

(a) Temperatures recorded under subsection (12) of this section;

(b) Date, time, and person or entity to whom the oysters were transferred; and

(c) Growing area risk category for the harvested product.

(d) The receiving shellfish dealer shall meet the time of harvest to cooling requirements for the original harvest time.

(16) *Vibrio parahaemolyticus* training requirements are as follows:

(a) Harvesters and shellfish dealers shall complete an initial department-approved training specific to the requirements of this section prior to harvesting or shipping oysters during the control months.

(b) Harvesters and shellfish dealers shall complete department-approved refresher training within one year following any revision of this rule considered significant under RCW 34.05.328 or at least every five years.

(c) Those responsible for the on-site management of harvest activities must be trained by either:

(i) Harvesters and shellfish dealers at their operation who completed the department-approved training; or

(ii) The department.

(d) Harvesters and shellfish dealers shall record those trained in their operational records.

(17) A harvester or shellfish dealer may request a waiver from specific requirements of this section. The request must:

(a) Be in writing;

(b) Identify the requirement requested to be waived;

(c) State the reason for the waiver; and

(d) Provide supporting information.

(18) The department may grant a waiver request if it:

(a) Is consistent with the applicable standards and the intent of this section; and

(b) Provides a comparable level of public health protection to the requirement being waived.

(19) If the department approves a waiver request, the department shall notify the requestor of the decision in writing.

(20) If the department denies a waiver request, the department shall notify the requestor of the decision in writing stating the reasons for the denial. The requestor shall comply with the provision that was the subject of the waiver request.

(21) The department shall review this section to evaluate the effectiveness of the rules and determine areas where revisions may be necessary by November 2017.

[Statutory Authority: Chapter 69.30 RCW. WSR 15-08-083, § 246-282-006, filed 3/31/15, effective 5/1/15. Statutory Authority: RCW 60.30.030 [69.30.030]. WSR 14-09-003, § 246-282-006, filed 4/3/14, effective 5/4/14; WSR 09-08-122, § 246-282-006, filed 4/1/09, effective 5/2/09. Statutory Authority: Chapter 69.30 RCW. WSR 08-11-051, § 246-282-006, filed 5/15/08, effective 5/19/08.]

WSR 23-11-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-79—Filed May 18, 2023, 8:34 a.m., effective May 18, 2023, 8:34 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open salmon seasons in Catch Record Card Areas 8.2 and 10. Also corrects an error in filing of WSR 23-11-072.

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

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

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

Reasons for this Finding: This emergency rule is necessary to correct an error of filing WSR 23-11-072 filed on May 16, 2023. Release of Chinook has been deleted. 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 18, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000R Puget Sound salmon—Saltwater seasons and daily limits. Effective May 26 through September 4, 2023, the following provisions of WAC 220-313-060 regarding salmon seasons for the area of Catch Record Card Area 8-2 known as the Tulalip Terminal Area (defined herein); and effective June 1 through July 12, 2023, the following provisions of WAC 220-313-060 regarding salmon seasons for the section of Catch Record Card Area 10, shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

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

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

(b) Salmon: Effective May 26 through September 4, 2023:

(i) Open from 12:00 a.m. Friday through 11:59 a.m. Monday each week, except closed June 10. Closed from 12:00 p.m. Monday through 11:59 p.m. Thursday each week.

(ii) Daily limit 2. Chinook min. size 22". Other salmon species, no min. size. Two-pole fishing allowed with Two-pole endorsement. Release Chum.

(2) Catch Record Card Area 10, except waters of Elliott Bay east of a line from West Point to Alki Point, waters of Shilshole Bay southeast of a line from Meadow Point to West Point, Bremerton Boardwalk, Illahee State Park Pier, Seacrest Pier, and Waterman Pier:

Salmon: Effective June 1 through July 12, 2023: Daily limit 2. Release Chinook and chum.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-313-06000Q Puget Sound salmon—Saltwater seasons and daily limits. (23-72)

WSR 23-11-091
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-80—Filed May 18, 2023, 9:02 a.m., effective May 19, 2023]

Effective Date of Rule: May 19, 2023.

Purpose: The purpose of this emergency rule is to reopen spring Chinook fishing on the Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000L and 220-312-03000Y; and amending WAC 220-312-060 and 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: On May 15, 2023, the *U.S. v. Oregon* technical advisory committee (TAC) updated the Columbia River upriver spring Chinook return and provided a minimum return expectation of 139,000 compared to the preseason forecast of 198,600. The preseason buffer has been removed and when combined with preupdate catches, sufficient recreational allocation of upriver spring Chinook Endangered Species Act (ESA) impacts remain available from Rocky Point/Tongue Point upstream to Highway 730 at the Washington/Oregon border.

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. The regulation is consistent with the compact actions of February 22, April 4, and May 17, 2023. 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 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 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 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 18, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000M Freshwater exceptions to statewide rules—Columbia. Effective May 19 through May 24, 2023, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the Rocky Point/Tongue Point line upstream to Hwy. 730 at the Washington/Oregon border shall be modified as described below, except in areas closed to fishing for salmon and steelhead year-round in WAC 220-312-060. 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) upstream to 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.

(a) Salmon and steelhead: Effective May 19 through May 24, 2023: 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 other than hatchery Chinook.

(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: Salmon and steelhead:

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

(b) Effective May 19 through May 24, 2023: 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 other than hatchery Chinook.

(3) From Bonneville Dam to Tower Island power lines (approximately 6 miles below The Dalles Dam): Salmon and steelhead:

(a) Effective May 19 through May 24, 2023: Closed to angling from a floating device or by any method except hand-cast lines from shore.

(b) Effective May 19 through May 24, 2023: 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 other than hatchery Chinook.

(4) From Tower Island power lines to The Dalles Dam: Salmon and steelhead:

(a) Effective May 19 through May 24, 2023: 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 other than hatchery Chinook.

(5) From The Dalles Dam to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

(a) Effective May 19 through May 24, 2023: 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 other than hatchery Chinook.

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NEW SECTION

WAC 220-312-03000A Freshwater exceptions to statewide rules—Southwest. Effective May 19 through May 24, 2023, the provisions of WAC 220-312-030 regarding Deep River salmon and steelhead seasons shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

Deep River (Wahkiakum Co.): Salmon and steelhead:

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 other than hatchery Chinook.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-312-06000L Freshwater exceptions to statewide rules—Columbia River. (23-50)

WAC 220-312-03000Y Freshwater exceptions to statewide rules—Southwest. (23-50)

WSR 23-11-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-77—Filed May 19, 2023, 8:36 a.m., effective May 23, 2023]

Effective Date of Rule: May 23, 2023.

Purpose: The purpose of this emergency rule is to open hatchery spring Chinook seasons in the Snake River.

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

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

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

Reasons for this Finding: Increased fish passage at Bonneville Dam has given certainty to managers that there are greater numbers of hatchery spring Chinook available to harvest and allow for four days of fishing on the Snake River. WDFW Commission Policy C-3630 provides structure for Snake River Spring Chinook Fishery and the *U.S. v. Oregon* (2018-2027) Management Agreement provides Endangered Species Act (ESA) coverage for this fishery.

The Washington department of fish and wildlife will monitor spring Chinook returns throughout the season and may close the fishery at any time due to harvest levels, ESA impacts, in-season run adjustments, or a combination thereof.

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, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000Z Freshwater exceptions to statewide rules—Eastside. Effective May 23, through May 26, 2023, the following provisions of WAC 220-312-050, regarding salmon seasons in the Snake Riv-

er shall be open as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

(1) 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 23 and May 26, 2023, 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.

(2) Snake River (Franklin/Walla Wall Counties): the South Bound Highway 12 Bridge near Pasco upstream about 7 miles to the fishing restriction boundary below Ice Harbor Dam: Salmon:

- (a) Open May 24 and May 25, 2023, 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.

WSR 23-11-099
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-81—Filed May 19, 2023, 9:08 a.m., effective June 1, 2023]

Effective Date of Rule: June 1, 2023.

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 open salmon fishing in Marine Area 11 beginning June 1, 2023, as agreed upon with comanagers during the 2023 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 19, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000S Puget Sound salmon—Saltwater seasons and daily limits. Effective June 1, 2023 until further notice the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 11 shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 11: Salmon:

- (a) Open Thursday through Sunday only each week.
- (b) Daily limit 2. Up to 1 Chinook may be retained. Chinook min. size 22".
- (c) All other salmon species, no min. size. Release chum and wild Chinook.

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WSR 23-11-102
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-78—Filed May 19, 2023, 10:58 a.m., effective May 19, 2023, 10:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The legislature adopted ESSB 5371 in April of 2023. This bill changes the fees for licensing of commercial whale watching and sea paddle tour businesses, operators, and guides. These fees go into effect for 2023; yet, many businesses, operators, and guides have already purchased 2023 licenses. Most of the remaining businesses, operators, or guides will purchase licenses in the coming months, between now and when the bill goes into effect July 23, 2023. This will create a substantial administrative burden requiring agency staff to process a large volume of reimbursements all at once and requiring avoidable reimbursements for those who purchase licenses between now and July 23, 2023. In sum, this creates a situation that will require more people to pay higher fees and wait for reimbursements, and require the many individuals and small businesses who already purchased licenses to wait longer for their reimbursement, potentially contributing to financial strain.

The purpose of this emergency rule is to proactively adopt the updated commercial whale watching and sea paddle tour fees in ESSB 5371 so that the Washington department of fish and wildlife (WDFW) can begin charging the reduced 2023 fees and begin refunding businesses and individuals and correcting the licenses for those who bought licenses under the outgoing fee structure. In addition, this emergency rule defines how the department will interpret chapter 220-460 WAC in relation to ESSB 5371 and clarifies commercial whale watching and sea paddle tour business, operator, and guide license documentation requirements for calendar year 2023 in recognition of the transition to implement the bill.

Citation of Rules Affected by this Order: New WAC 220-460-170.

Statutory Authority for Adoption: RCW 77.65.620.

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: Immediate adoption supports the general welfare of affected individuals while reducing the immediate administrative burden and cost that would be borne by continuing to charge outdated fees between the bill signing and effective date. Beginning to use the new fees sooner, and beginning to issue refunds to those who already purchased more expensive licenses, will alleviate administrative and financial burden on affected individuals and small businesses. This emergency action is necessary to protect the public's interest in efficient implementation of state licensing programs.

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

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

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

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

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

Date Adopted: May 19, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-460-17000A Transitional measures to implement ESSB 5371

(1) A commercial whale watching business license is required for commercial whale watching businesses. The annual fee for a commercial whale watching business license is \$200 in addition to the annual application fee of \$70.

(2) The annual application for a commercial whale watching business license as described in subsection (1) of this section must list each motorized or sailing vessel to be covered under the business license.

(3) The holder of a commercial whale watching business license for motorized or sailing vessels required under subsection (2) of this section may designate an additional vessel on the license if the license holder submits to the department an application that identifies the vessel proposed to be designated and any other information required by the department

(4) A commercial whale watching operator license is required for commercial whale watching operators. A person may operate a motorized or sailing commercial whale watching vessel designated on a commercial whale watching business license only if:

(a) The person holds a commercial whale watching operator license issued by the director; and

(b) The person is designated as an operator on the underlying commercial whale watching business license.

(5) No individual may hold more than one commercial whale watching operator license. An individual who holds an operator license may be designated as an operator on an unlimited number of commercial whale watching business licenses.

(6) The annual application fee for a commercial whale watching operator license is \$25.

(7) A paddle tour business license is required for businesses conducting paddle tours. The annual fee for a paddle tour business license is \$200 in addition to the annual application fee of \$70.

(8) A person may conduct guided paddle tours only if:

(a) The person holds a paddle guide license issued by the director; and

(b) The person is designated as a guide on the underlying paddle tour business license.

(9) No individual may hold more than one paddle guide license. An individual who holds a paddle guide license may be designated on an unlimited number of paddle tour business licenses.

(10) The annual application fee for a paddle guide license is \$25.

(11) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Commercial whale watching" means the act of taking, or offering to take, passengers aboard a motorized or sailing vessel to view marine mammals in their natural habitat for a fee.

(b) "Commercial whale watching business" means a business that engages in the activity of commercial whale watching.

(c) "Commercial whale watching business license" means a department-issued license to operate a commercial whale watching business.

(d) "Commercial whale watching license" means a commercial whale watching business license or a commercial whale watching operator license as defined in this section.

(e) "Commercial whale watching operator" means a person who operates a motorized or sailing vessel engaged in the business of whale watching.

(f) "Commercial whale watching operator license" means a department-issued license to operate a commercial motorized or sailing vessel on behalf of a commercial whale watching business.

(g) "Commercial whale watching vessel" means any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

(h) "Paddle guide" means a person who conducts guided tours on behalf of a paddle tour business.

(i) "Paddle guide license" means a department-issued license to conduct commercial guided paddle tours on behalf of a paddle tour business.

(j) "Paddle tour business" means a business that conducts paddle tours.

(k) "Paddle tour" means the act of guiding or offering to take people aboard nonmotorized or human-powered vessels, such as kayaks or paddle boards, on a trip, tour, or guided lesson that involves viewing marine mammals in their natural habitat for a fee.

(12) The residency and business requirements of RCW 77.65.040 (2) and (3) do not apply to Canadian individuals or corporations applying for and holding Washington commercial whale watching licenses defined in this section.

(13) The license and application fees in this section may be waived for organizations whose relevant commercial whale watching or marine paddle tour activities are solely for bona fide nonprofit educational purposes.

(14) In order to implement these changes to the licensing program, the department may:

(a) use the definitions and charge the license fees described in this section in lieu of the previous, outgoing fee structure described in RCW 77.15.615 [2021 c 284 § 1];

(b) as appropriate, issue partial refunds equaling the difference in cost to licensees who purchased 2023 commercial whale watching business, operator, or guide licenses under the previous fee structure;

(c) convert 2023 kayak guide licenses to 2023 paddle guide licenses, and honor existing 2023 kayak guide license cards as 2023 paddle guide license cards; and

(d) as appropriate, convert existing 2023 commercial whale watching business licenses to a paddle tour business license, a commercial

whale watching business license, or one of each, and provide paper documentation in lieu of issuing a new hard card.

(15) The department may reasonably interpret and reconcile the definitions in WAC Chapter 220-460-010 with the definitions in subsection 11 above, including but not limited to:

(a) references to "kayak" in WAC 220-460 as "paddle";

(b) references to "business" in WAC 220-460 to refer to paddle tour businesses and licenses and/or commercial whale watching businesses and licenses;

(c) references to "commercial whale watching license" to refer to a paddle tour business license, commercial whale watching business license, paddle guide license, and/or operator license; and

(d) references to "commercial whale watching" to refer to both paddle tour activities and motorized commercial whale watching, unless "motorized" or "nonmotorized" is specified.

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

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.

WSR 23-11-104
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-82—Filed May 19, 2023, 1:08 p.m., effective May 19, 2023, 9:45 p.m.]

Effective Date of Rule: May 19, 2023, 9:45 p.m.

Purpose: This emergency WAC 220-340-52000G closes Subregion 1C to commercial spot shrimp harvest on May 19, 2023, due to quota attainment.

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

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

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

Reasons for this Finding: 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 is necessary to prosecute state commercial shrimp pot and trawl fisheries in Puget Sound. This rule allows harvesters to 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 comanager 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 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, 2023.

Kelly Susewind
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-340-520, effective immediately until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes 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 Harvest:

(a) Spot shrimp harvest is permitted as indicated in the following table opening one hour before official rise until further notice. Any closures take effect one hour after official sunset.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Open until further notice
Subregion 1B	Closed
Subregion 1C	Closes 9:45 p.m. May 19, 2023
Region 2E	Closed
Region 2W	Closed
Subarea 23A-E	Open until further notice
Subarea 23A-W	Open until further notice
Subarea 23A-C and MSFS Catch Area 23B	Open until further notice
Subarea 23A-S and MSFS Catch Area 23D	Open until further notice
MFSF Catch Area 23C	Open until further notice
MFSF Catch Area 25A, excluding the Discovery Bay Shrimp District	Open until further notice
Discovery Bay Shrimp District	Closed
MFSF 29 (Straits - Neah Bay)	Open until further notice
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 started one hour before official sunrise on May 8, 2023, through one hour after official sunset on August 1, 2023.

(c) It is unlawful for the total harvest during the first spot shrimp accounting period to have exceeded 5,000 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 with the following exceptions:

i. Spot shrimp may be harvested from subregion 1A and subregion 1C on the same day.

ii. Spot shrimp may be harvested from subarea 23A-E, and either 23A-W, 23A-C or MFSF Catch Area 23B on the same day.

(e) It is lawful to have deactivated non-spot shrimp pots on-board of a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for spot shrimp.

A deactivated pot is un-baited, has the draw string or door fastened open, and/or is unable to be readily fished.

(3) Non-spot shrimp pot harvests:

(a) The non-spot shrimp species complex is defined as the following species of pandalid shrimp classified in WAC 220-320-010: Dock shrimp (*Pandalus danae*), Coonstripe shrimp (*Pandalus hypsinotus*), Humpty shrimp (*Pandalus goniurus*), Ocean pink shrimp (*Pandalis jordani*), pink shrimp (*Pandalus eous*), Side stripe shrimp (*Pandalus dispar*).

(b) Non-spot shrimp pot harvest is permitted as indicated in the following table opening one hour before official rise until further notice. Any closures take effect one hour after official sunset.

Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)	Open Period
Subregion 1A	Open until further notice
Subregion 1B	Open until further notice
Subregion 1C	Open until further notice
Region 2E	Open until further notice
Region 2W	Open until further notice
Region 3, not including Discovery Bay Shrimp District	Open until further notice
Discovery Bay Shrimp District	Open until further notice
Region 4	Closed
Region 5	Closed
Region 6	Closed

(c) The non-spot shrimp catch accounting periods begin one hour before official sunrise and end one hour after official sunset on the date listed in the following table:

Period Number	Start Date	End Date
1	5/1/2023	5/16/2023
2	5/17/2023	5/30/2023
3	5/31/2023	6/13/2023
4	6/14/2023	6/27/2023
5	6/28/2023	7/11/2023
6	7/12/2023	7/25/2023
7	7/26/2023	8/8/2023
8	8/9/2023	8/22/2023
9	8/23/2023	9/5/2023
10	9/6/2023	9/19/2023
11	9/20/2023	10/3/2023
12	10/4/2023	10/15/2023

(d) It is unlawful for the total harvest of non-spot shrimp per license to exceed 1,500 pounds during non-spot shrimp catch accounting period number 1 from subregions 1A, 1B, 1C, and Region 2E combined.

(e) It is unlawful for total harvest of non-spot shrimp to exceed 1,200 pounds per non-spot shrimp catch accounting period from subregions 1A, 1B, 1C, and Region 2E combined during catch accounting periods 2 through 12.

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

(g) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Catch Area 23A and all of its subareas (23AE, 23AW, 23AC, 23AS).

(h) Harvest of non-spot shrimp is not permitted deeper than 175 feet in subregion 1A.

(i) It is unlawful to harvest non-spot shrimp in more than one geographical management unit listed in subsection 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.

(j) It is lawful to have deactivated spot shrimp pots on-board of a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for non-spot shrimp.

A deactivated pot is un-baited, has the draw string or door fastened open, and/or is unable to be readily fished.

[]

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:45 p.m. May 19, 2023:

WAC 220-340-52000F Commercial shrimp pot fishery—Puget Sound. (23-62)

WSR 23-11-139

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 23, 2023, 3:55 p.m., effective May 23, 2023, 3:55 p.m.]

The aging and long-term support administration (ALTSA) requests the immediate rescission of emergency rules WAC 388-97-0120 Individual transfer and discharge rights and procedures and 388-97-0140 Transfer and discharge appeals for resident in medicare or medicaid certified facilities, filed under WSR 23-07-108 on March 20, 2023. The rescission of WSR 23-07-108 is necessary because the Department of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) announced the end of the public health emergency for COVID-19 on May 11, 2023. This means many CMS 1135 waivers and flexibilities are no longer available beginning May 12, 2023.

Katherine I. Vasquez
Rules Coordinator

WSR 23-11-148

EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed May 24, 2023, 9:26 a.m., effective May 24, 2023, 9:26 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add a new standard in WAC 51-54A-8000 and provide additional guidance on the installation of energy storage systems by adding a new amendment to WAC 51-54A-1201.

Citation of Rules Affected by this Order: New WAC 51-54A-1201; and amending WAC 51-54A-8000.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

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: Energy storage systems is an industry that is emerging very quickly and there are many associated life and safety hazards to the installation of these systems. The 2018 International Fire Code (IFC) does not have enough language to address these hazards. This proposal permits the authority-having jurisdictions to use NFPA 855 as a referenced document, per Section 102.7. The standard will be part of the IFC as a state amendment until the appropriate code sections are updated in future editions. The council is currently in the process of adopting the permanent rules for these systems, with public hearings tentatively set for late June/early July.

Date Adopted: May 24, 2023.

Tony Doan
Council Chair

OTS-3419.4NEW SECTION

WAC 51-54A-1201 General. 1201.1 Scope. The provisions of this chapter shall apply to the installation, operation, and maintenance of energy systems used for generating or storing energy. It shall not apply to equipment associated with the generation, control, transformation, transmission, or distribution of energy installations that is under the exclusive control of an electric utility or lawfully designated agency. Energy storage systems regulated by Section 1206 shall comply with this chapter as applicable and NFPA 855.

[]

AMENDATORY SECTION (Amending WSR 19-02-086, filed 1/2/19, effective 7/1/19)

WAC 51-54A-8000 Referenced standards.

The following standards are added:

NFPA 96-07 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations 609.3

NFPA 720-15 Standard for the Installation of Carbon Monoxide (CO) Warning Equipment in Dwelling Units 1103.9

NFPA 130-17 Standard for Fixed Guideway Transit and Passenger Rail Systems 3901.1

NFPA 855-23 Standard for the Installation of Stationary Energy Storage Systems 1201.1

[Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-8000, filed 1/2/19, effective 7/1/19. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-8000, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-8000, filed 2/1/13, effective 7/1/13.]

WSR 23-11-167

RESCISSION OF EMERGENCY RULES

BUILDING CODE COUNCIL

[Filed May 24, 2023, 11:32 a.m., effective July 1, 2023]

The Washington state building code council has filed an emergency rule pertaining to energy storage systems regulated under WAC 51-54A-1201 and 51-54A-8000 in WSR 23-11-148. This emergency rule is in effect from May 24 through June 30, 2023, and will be rescinded as of July 1, 2023. A new emergency rule is expected to go into effect on July 1, 2023, with language developed to conform to the 2021 International Fire Code.

Tony Doan
Chair