

WSR 17-11-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-90—Filed May 10, 2017, 11:57 a.m., effective May 15, 2017]

Effective Date of Rule: May 15, 2017.

Purpose: Amend recreational fishing rules in Icicle River.

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

Statutory Authority for Adoption: RCW 77.12.047 [77.04.012], 77.04.020, 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: Preseason forecasts and current inseason run analysis estimate the number of spring Chinook salmon returning to the Icicle River may not be sufficient to meet broodstock collection goals at the Leavenworth National Fish Hatchery. To avoid a potential broodstock shortage this emergency rule is needed to close the upcoming salmon season at this time. The Washington department of fish and wildlife will continue to monitor spring Chinook salmon returns to the Icicle River and open the season if numbers improve. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 10, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-312-050001 Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050, effective May 15, 2017, until further notice it is unlawful to fish for salmon in the following waters of the Icicle River:

(1) From the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(2) 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 of the Snow Lakes trailhead parking area).

WSR 17-11-038
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 11, 2017, 12:44 p.m., effective May 11, 2017, 12:44 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to align the office of superintendent of public instruction's (OSPI) citizen complaint procedures for federally funded programs under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) in 2016. The procedures are set forth in chapter 392-168 WAC, and are amended as follows: (1) Federal terms and references are updated to be brought in line with ESSA; and (2) a forty-five day timeline is established for OSPI to investigate and resolve citizen complaints regarding equitable services provided to private school students. The emergency rule also includes clarifying nonsubstantive amendments to chapter 392-168 WAC.

Citation of Existing Rules Affected by this Order: Amending chapter 392-168 WAC.

Statutory Authority for Adoption: RCW 28A.300.070, 34.05.220 (1)(a).

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

Reasons for this Finding: Since the passage of ESEA in 1965, school districts have been required to provide equitable services to private school students and teachers, and in some cases, other education personnel and parent[s], under a number of ESEA programs. Private school services must start at the same time as public school services. In 2016, ESSA made changes to ESEA's timelines for filing complaints regarding equitable services. School districts and participating private schools are now required under federal law to conduct consultation for services. This typically occurs in spring and summer before the school year starts. OSPI is filing emergency rules so that the federally required process for citizen complaints regarding programs under ESEA is in place in time for consultation of equitable services in the 2017-18 school year.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 6, 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 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 2, 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 11, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-115 Applicability. This chapter shall apply to federal programs authorized under the Elementary and Secondary Education Act and administered by the superintendent of public instruction, including the following:

(1) Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies;

(2) Title I, Part B(~~(- Subpart 1: Reading First))~~: State Assessment Grants;

(3) ~~((Title I, Part B, Subpart 3: William F. Goodling Even Start Family Literacy Program~~;

(4)) Title I, Part C: Education of Migratory Children;

~~((5))~~ (4) Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;

~~((6) Title I, Part F: Comprehensive School Reform~~;

~~((7))~~ (5) Title II, Part A: ~~((Teacher and Principal Training and Recruiting Fund))~~ Supporting Effective Instruction;

~~((8) Title II, Part D: Enhancing Education Through Technology~~;

~~Title III—Language Instruction for Limited English Proficient and Immigrant Students~~

~~((9))~~ (6) Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement Act;

~~((10) Title IV—21st Century Schools~~;

~~((11))~~ (7) Title IV, Part A(~~(- Subpart 1: Safe and Drug Free Schools and Communities))~~: Student Support and Academic Enrichment Grants;

~~((12))~~ (8) Title IV, Part B: 21st Century Community Learning Centers;

~~((Title V—Promoting Informed Parental Choice and Innovative Programs~~

~~((13))~~ (9) Title IV, Part C: Expanding Opportunity Through Quality Charter Schools;

(10) Title V, Part A: ~~((Innovative Programs))~~ Funding Transferability for State and Local Education Agencies;

~~((Title VI—Flexibility and Accountability~~

~~((14) Title VI, Part A, Subpart 1: Improving Academic Achievement, Accountability, Grants for State Assessments and Enhanced Assessments~~;

~~((15))~~ (11) Title ~~((VI))~~ V, Part B, Subpart 1: Small, Rural School Achievement Program;

~~((16))~~ (12) Title ~~((VI))~~ V, Part B, Subpart 2: Rural and Low-Income Schools;

~~((17))~~ (13) Title ~~((IX))~~ VIII—General Provisions(~~(;~~

~~((18) Title IX, Part E (Section 9532): Unsafe School Choice Option))~~.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-132 Informing citizens about complaint procedures. The superintendent of public instruction shall inform parents and other interested individuals about the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Disseminating copies of the state's procedures to parents, advocacy agencies, professional organizations, and other appropriate entities;

(2) Conducting ~~((inservice))~~ training sessions on the complaint process ~~((through educational service districts; and~~

~~((3) Including information about the system in statewide conferences))~~ for local school districts, educational service districts, or other subgrantees, which may include webinars and screencasts.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-145 Procedure for filing a complaint. The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with the superintendent of public instruction.

(2) The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC 392-168-180.

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days, unless an extension of the time limit is approved by the superintendent of public instruction on the basis of exceptional circumstances with respect to a particular complaint.

(4) Receipt of complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall activate a time limit not to exceed forty-five calendar days.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-155 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee. Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the superintendent of public instruction shall send a copy of the complaint to the educational entity, for investigation of the alleged violations.

(2) The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the superintendent of public instruction shall clearly state either:

(a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) Propose reasonable corrective action(s) deemed necessary to correct the violation.

(4) The superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is in violation of any federal program requirement as authorized under the Elementary and Secondary Education Act as amended by ~~((No Child Left Behind))~~ the Every Student Succeeds Act or this chapter.

(7) The superintendent of public instruction shall issue a written decision to the complainant and public agency that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. ~~((OSPI))~~ The superintendent may provide technical assistance activities or negotiations; and corrective measures necessary to resolve a complaint. All actions shall be instituted, as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) The written decision by the superintendent of public instruction is the final decision in the matter. A complaint is considered resolved when the superintendent has issued a written decision and corrective measures, if warranted, have been completed.

(9) If compliance by a local district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction may initiate fund withholding, fund recovery, or any other sanction(s) deemed appropriate.

~~((10) For complaints arising under 20 U.S.C. § 7883 (participation by private school children), a complainant may appeal the superintendent's resolution to the Secretary of Education (U.S. Department of Education) within thirty days of receiving the written decision from the superintendent of public instruction.))~~

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-168-175 Complaints against the superintendent of public instruction—Designation of responsible employee(s). (1) A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC 392-168-140.

(2) The superintendent of public instruction shall designate at least one office of the agency to monitor and coordinate the agency's compliance with this chapter, which shall include ensuring that investigation of any complaint is conducted expeditiously and thoroughly. Complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall be coordinated by the staff assigned to fulfill the duties of the ombudsman for equitable services as provided in 20 U.S.C. Secs. 6320 and 7881.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-180 Complaints against the superintendent of public instruction—Investigation of and response to complaints. (1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation, no later than sixty calendar days after the receipt of such complaint. For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, investigating staff shall provide the written report to the superintendent no later than thirty-five calendar days after receipt of the complaint.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than ten calendar days after the date of receipt of the written report described in subsection (3) of this section.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: Provided, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-168-190 Appeal to the secretary of education in complaints against the superintendent of public instruction. (1) In the event that a complainant remains aggrieved with the response of the superintendent of public

instruction, the complainant may file an appeal directly with the secretary, department of education.

(2)(a) For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, the superintendent's response may be appealed to the secretary not later than thirty days after the superintendent responds to the complaint.

(b) If the superintendent fails to resolve a complaint concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, within the forty-five-day limit, the complainant may appeal directly to the secretary no later than thirty days after the expiration of the forty-five-day limit.

WSR 17-11-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-89—Filed May 11, 2017, 2:36 p.m., effective June 9, 2017, 6:00 p.m.]

Effective Date of Rule: June 9, 2017, 6:00 p.m.

Purpose: Amend recreational fishing rules for Lake Sylvia.

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

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

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

Reasons for this Finding: This rule is needed to ensure a safe and successful kids-only fishing event. The fish will be planted the evening prior to the event to better acclimate them before the event. 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 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 11, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-02000F Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-312-020, effective 6:00 p.m. June 9 through 6:00 a.m. June 10, 2017, it is unlawful to fish in waters of Lake Sylvia (Grays Harbor Co.).

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 a.m. June 10, 2017:

WAC 220-312-02000F Freshwater exceptions to statewide rules—Coastal.

WSR 17-11-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-91—Filed May 12, 2017, 11:37 a.m., effective May 16, 2017]

Effective Date of Rule: May 16, 2017.

Purpose: Amends freshwater recreational fishing in the Columbia river.

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

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

Reasons for this Finding: There are no allocated spring Chinook impacts available for incidental harvest in a steelhead fishery therefore this emergency rule is needed to delay the recreational steelhead fishery in the Columbia River from Rocky Point upstream to the I-5 Bridge. 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 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, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, effective May 16, 2017, until further notice, it is unlawful to fish for or possess steelhead and Chinook jack salmon in those waters of the Columbia River from Rocky Point upstream to the I-5 Bridge.

WSR 17-11-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-92—Filed May 12, 2017, 1:31 p.m., effective May 12, 2017, 1:31 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the halibut fishery.

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

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational Pacific halibut fishery for another day in Marine Areas 2 through 10 because sufficient quota remains. This rule conforms to federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and National Marine Fisheries Service. 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 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, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-314-03000B Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, 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:

(1) **Catch Record Card Area 1**

(a) Open until further notice, Thursdays through Sundays.

(b) It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish, Pacific Cod, or flat fish species when halibut are on board.

(c) Lingcod can be retained when halibut are on board during the month of May when fishing north of the Washington-Oregon border.

(2) **Catch Record Card Area 1 (Nearshore fishery)**

Those waters shoreward 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 until further notice, Mondays through Wednesdays.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2 - Open May 21, 2017.**

(4) **Card Areas 3 and 4**

(a) Open May 21, 2017.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) In Marine Areas 3 and 4 (west of the Bonille-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
48°23.6'N. lat., 124°44.9'W. long.
48°18.6'N. lat., 124°43.6'W. long.
48°18.6'N. lat., 124°48.2'W. long.
48°10.0'N. lat., 124°48.8'W. long.
48°02.4'N. lat., 124°49.3'W. long.
47°37.6'N. lat., 124°34.3'W. long.
47°31.7'N. lat., 124°32.4'W. long.

(b) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissi-

ble to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-314-010.

(5) **Catch Record Card Area 5 through 10**

(a) Open May 21, 2017.

(b) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Areas 5 and 6.

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

(7) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(8) It is unlawful to land halibut in a port within an area closed to halibut fishing.

(9) All other permanent rules remain in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000A Halibut—Seasons—Daily and possession limits.

**WSR 17-11-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 16-93—Filed May 15, 2017, 2:59 p.m., effective May 31, 2017]

Effective Date of Rule: May 31, 2017.

Purpose: Amend recreational fishing rules for Heart Lake.

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

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

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

Reasons for this Finding: This emergency rule is needed to ensure a safe and successful kids fishing event. The closure is needed before the event as the fish will be planted in the lake two days prior to the event to better acclimate them. On the day of the event only children fourteen years of age or less will be allowed to fish in the lake. 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 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 15, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-312-04000D Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, effective 12:01 a.m. May 31 through 11:59 p.m. June 3, 2017, it is unlawful to fish in those waters of Heart Lake, except open to fishing 7:00 a.m. to 12:00 p.m. June 3, 2016, to anglers participating in the youth fishing event. Juvenile anglers can continue to fish on June 3, 2017, after the youth fishing event closes.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 4, 2017:

WAC 220-312-04000D Exceptions to statewide rules—Heart Lake (Skagit Co.)

**WSR 17-11-056
EMERGENCY RULES
WASHINGTON STATE UNIVERSITY**

[Filed May 16, 2017, 9:03 a.m., effective May 16, 2017, 9:03 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To update and clarify the university's procedural rules, chapter 504-04 WAC, and the standards of conduct for students, chapter 504-26 WAC. The changes include, but are not limited to, procedural rules regarding student conduct adjudications, student conduct hearings, and appeals. Note: This emergency rule-making order was originally filed on January 17, 2017. A proposal for similar permanent rules was filed as WSR 17-08-091, intended for adoption on June 9, 2017.

Citation of Existing Rules Affected by this Order: Amending WAC 504-04-010, 504-04-020, 504-04-110, 504-04-120, 504-04-130, 504-04-140, 504-26-001, 504-26-010, 504-26-401, 504-26-402, 504-26-404, 504-26-406, 504-26-407, and 504-26-601.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Reasons for this Finding: On December 1, 2016, the Washington Court of Appeals, Division III, issued a decision in the case of *Arishi vs. Washington State University*, Case No. 33060. The court held that universities are required to use full adjudications under the Washington Administrative Procedure Act for certain student disciplinary matters. These emergency rules implement changes to WSU's student conduct process to comply with the court's decision. Additionally, the emergency rule in WAC 504-04-110 sets forth areas where WSU's full adjudications will differ from the model rules of procedure in chapter 10-08 WAC. These are based on Title IX of the Civil Rights Act of 1964, its implementing regulations, and guidance from the federal Office for Civil Rights regarding Title IX.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 14, 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 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 1, Amended 14, 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 14, Repealed 0.

Date Adopted: May 16, 2017.

D. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-089, filed 8/6/13, effective 9/6/13)

WAC 504-04-010 Matters subject to brief adjudication. The following proceedings are matters to be treated as brief adjudications pursuant to RCW 34.05.482 through 34.05.491:

(1) Student conduct proceedings. ~~((The procedural rules of chapter 504-26 WAC apply to these proceedings.))~~ Student conduct proceedings under chapter 504-26 WAC are treated as brief adjudications, except for matters involving sanctions of suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a student organization, which shall be referred for a full (formal) adjudication in accordance with this chapter.

(2) Appeals of residency determinations. If a hearing is required by law or constitutional right, appeals of residency determinations under RCW 28B.15.013 are brief adjudicative proceedings conducted by the office of admissions.

(3) Appeals of parking violations. Appeals of parking violations are brief adjudicative proceedings conducted pur-

suant to applicable rules. See WAC 504-13-860, 504-14-860, 504-15-860, and 504-19-860.

(4) Hearings on student records. Hearings pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC.

(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the office of scholarships and financial aid.

(6) Emergency withdrawal of students. Proceedings to disenroll students for medical or psychological reasons are brief adjudicative proceedings conducted by the office of student affairs.

(7) Discipline and termination of student employees. When required by law, hearings for the termination or imposition of disciplinary measures on student employees shall be brief adjudicative proceedings.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-020 Appointment of presiding officers for all adjudicative proceedings. The president of Washington State University or his or her designee shall have the power to appoint ~~((committees or))~~ members of the faculty, staff and student body; administrative law judges; members in good standing of the Washington state bar association; the president or his or her designee; a person or entity with whom the university contracts; or any combination of the above to be presiding officers for formal and brief adjudicative proceedings. When more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters. The term "presiding officer" as used in this chapter shall be read in the plural when the context demands.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-110 Adoption of model rules of procedure for formal (full) proceedings—Exceptions. In formal proceedings (also referred to as full adjudications) pursuant to RCW 34.05.413 through 34.05.476, Washington State University follows the Administrative Procedure Act (chapter 34.05 RCW) and hereby adopts the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC, with the following exceptions and modifications:

(1) WAC 10-08-190 Adjudicative proceedings ~~((—cameras recording))~~ —Cameras—Recording devices.

See WAC 504-04-120 which determines the use of cameras and recording devices at adjudicative proceedings.

~~((Other procedural rules adopted in this title and this chapter are supplementary to the model rules.))~~ (2) WAC 10-08-040 Adjudicative proceedings—Notice of hearing. In addition to this model rule regarding notice, the provisions in WAC 504-26-401(5) and 504-26-403 (1) and (2) apply.

(3) The parties in a student conduct matter implicating Title IX of the Civil Rights Act of 1964 (Title IX) shall include the complainant(s), unless the complainant(s) has notified the university she/he does not wish to participate as a party.

(4) WAC 10-08-120 Adjudicative proceedings—Subpoenas. In determining whether to issue, quash, or modify a subpoena to a complainant/witness in a student conduct matter implicating Title IX, the presiding officer shall give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal office for civil rights. In such cases, the party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(5) Cross examination. As required by RCW 34.05.449, cross examination of witnesses shall be permitted to the extent necessary for full disclosure of all relevant facts and issues. However, in a student conduct matter implicating Title IX, the complainant and respondent shall not be permitted to cross examine each other directly. The preferred method of cross examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. The presiding officer may decline to ask cross examination questions that are irrelevant, immaterial, or unduly repetitious. In accordance with evidence rule 412, a complainant's sexual history generally will not be admissible. All questions submitted by the parties will be retained as part of the agency record.

(6) Discovery. Depositions, interrogatories, and medical examinations of parties as part of discovery are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process, in accordance with RCW 34.05.446.

(7) Standard of proof. The standard of proof in student conduct proceedings is preponderance of the evidence.

(8) Administrative review in full adjudications. Within twenty days of service of an initial order resulting from a full adjudication in a student conduct proceeding, or a different time period as specified in the initial order, a student or student organization may appeal the decision to the university president or designee, who reviews the matter in accordance with RCW 34.05.464. Complainants in student conduct matters shall be afforded the same right to appeal as respondents. The university president or designee, of his or her own initiative, may review any initial order resulting from a full adjudication. The decision of the president shall be the final order of the university. If no appeal is initiated, the initial order following a full adjudication becomes the final order of the university after twenty-one days, or the day after the appeal period specified in the initial order, whichever is sooner.

In the case of a conflict between the model rules and procedural rules adopted by Washington State University, the procedural rules adopted by the university shall govern.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-120 Confidentiality of student, faculty and staff formal adjudicative proceedings. In formal adjudicative proceedings, the presiding officer shall have the power to close all or part of the hearing to public observation. The presiding officer shall have the power to impose reasonable conditions upon observation of the proceeding. The presiding officer also shall have the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or medical withdrawal, hearings will normally be closed to public observation. In student conduct matters implicating Title IX, hearings will be closed to public observation.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-130 Advising and representation of parties. Any person whose rights are in issue in a formal adjudicative proceeding shall have the right to have an adviser present during any stage of the proceedings. However, only persons admitted to the practice of law in the state of Washington, including licensed legal interns pursuant to admission to practice rule 9, shall be permitted to act as a representative at the proceedings. The presiding officer shall have the power to impose reasonable conditions upon participation of advisors and representatives.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

WAC 504-04-140 Discovery. Discovery in formal hearings may be permitted at the discretion of the presiding officer, except as provided in WAC 504-04-110(6). In permitting discovery, reference shall be made to the civil rules applicable in court proceedings for guidance.

The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-001 Preamble. Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct. Students are expected to uphold and be accountable for these standards both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the university community.

Accordingly, the conduct process is nonadversarial to the extent possible, confidential except to the extent permitted by law and these standards of conduct (this chapter), and not to be considered analogous to court proceedings. Further, the conduct process is independent of any criminal or civil penalties. WSU permits students to have advisors in certain circumstances in the student conduct process, but the role of

the advisor is very limited, except in full adjudications. Sanctions under these standards of conduct are intended to challenge students' moral and ethical decision making and help them bring their behavior into accord with university community expectations. When students are unable to conform their behavior to community expectations, the student conduct process may determine that they should no longer share in the privilege of participating in the university community.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-010 Definitions. (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "appeals board" means any person or persons authorized by the vice president for student affairs to consider an appeal from a university conduct board's or conduct officer's determination, or a determination after a full adjudication, as to whether a student has violated the standards of conduct for students and any sanctions imposed.

(3) The term "cheating" includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the office of student conduct. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(4) The term "complainant" means any party, including the university, who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university. A person's status in a particular situation is determined by the vice president for student affairs or designee.

(9) The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(10) The term "recognized student organization" means any number of persons who have complied with the formal requirements for university recognition.

(11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

(13) The term "student conduct officer" means a university official authorized by the vice president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

(14) The term "university" means all locations of Washington State University.

(15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a student is found responsible by the board to have violated these standards of conduct.

(16) The term "academic integrity hearing board" means teaching faculty and student representatives who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).

(19) The vice president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

WAC 504-26-401 Complaints and student conduct process. (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students.

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or ~~((as a university conduct board hearing))~~ referred for a full adjudication in accordance with chapter 504-04 WAC.

~~(a) ((When the allegation involves harm or threat of harm to any person or person's property and the accused disputes the facts and/or denies responsibility, the matter may be referred to the university conduct board for resolution.~~

~~(b))~~ If the possible or recommended sanction is suspension for greater than ten instructional days, expulsion ((or suspension)), revocation of degree, or loss of recognition of a

student organization, the matter is referred ((to the university conduct board)) for a full adjudication in accordance with chapter 504-04 WAC.

~~((e))~~ (b) Matters other than those listed in (a) ((and (b))) of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter ((to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision to refer the matter to the university conduct board for hearing is made by the university conduct officer and such decision is not subject to appeal)) for a full adjudication.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the accused student consents to such disclosure.

(5) All notifications and service under this chapter are delivered either by electronic mail or other electronic means, delivered personally, or sent via regular U.S. mail. Notifications sent via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar. The student or recognized student organization is responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in this chapter begin the date the notification is sent via electronic means, personally delivered, or placed in regular U.S. mail.

(6) Throughout the conduct process, the complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Except in full adjudications pursuant to chapter 504-04 WAC, the complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, nor to participate directly in any university conduct board hearing, conduct officer hearing, or other aspect of the conduct process. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay and do not entitle either party to a delay.

~~(7) ((The conduct officer or university conduct board's))~~ Determinations in student conduct matters are made on the

basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(8) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct board or conduct officer proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the university conduct board and/or the conduct officer shall have the discretion to determine admissibility of evidence.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-402 Conduct officer actions. (1) Any student (~~charged~~) alleged by a conduct officer (~~with a violation of~~) to have violated any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the procedures in WAC 504-26-401(5).

Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer or presiding officer, as applicable.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding and enter a finding that the accused student or recognized student organization is not responsible for the alleged conduct violation;

(b) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises;

(c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct; or

(d) Refer the matter (~~to the university conduct board pursuant to WAC 504-26-401(3))~~ for a full adjudication in accordance with chapter 504-04 WAC.

(4) The conduct officer may consider the student's past contacts with the office of student conduct in determining an appropriate sanction and/or deciding whether to refer the case for a (~~university conduct board hearing~~) full adjudication.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

NEW SECTION

WAC 504-26-4031 Procedure for formal (full) adjudicative proceedings. The procedures for formal adjudicative proceedings are contained in chapter 504-04 WAC. The terms "formal" and "full" in reference to adjudications have the same meaning and are used interchangeably.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-404 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor shall assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the office of student conduct in writing, including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor shall make a determination as to whether the student did or did not violate the academic integrity policy. If the instructor finds that the student was in violation, the instructor shall provide the student and the office of student conduct with a written determination, the evidence relied upon, and the sanctions imposed.

(c) The student has twenty-one days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policy, the academic integrity hearing board shall make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Students who appear before the academic integrity hearing board shall have the same rights to notice and to conduct a defense as enumerated in WAC 504-26-403 except:

(i) Notice of hearing and written orders shall be sent to the address provided by the student in the student's request for review (unless an address is not provided therein); and

(ii) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the student's first offense, the office of student conduct ordinarily requires the student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the student's second offense, the student is ordinarily ~~((required to appear before a university conduct board))~~ referred for a full adjudicative hearing in accordance with chapter 504-04 WAC, with a recommendation that the student be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the student's case be ~~((heard by the university conduct board))~~ referred for a full adjudicative hearing, with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings shall be reported to the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-406 Interim suspension. In certain circumstances, the vice president for student affairs, or a designee, may impose an interim suspension prior to the university conduct board hearing or at any time prior to the university's final order.

(1) Interim suspension may be imposed only in situations involving an immediate danger to the health, safety or welfare of:

(a) Any part of the university community or public at large; or

(b) The student's own physical safety and well-being.

(2) Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from members of the university community from completing their duties as employees or students, is conduct harmful to the welfare of members of the university community.

(3) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice president for student affairs or designee may determine to be appropriate.

(4) The vice president for student affairs or designee ordering an interim suspension prepares a brief written decision containing the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct for students), and the policy reasons for the interim suspension. The vice president of student affairs or designee sends copies of the decision by personal delivery, by regular U.S. mail, or by electronic mail to all persons or offices bound by it (including, at a minimum, the suspended student and the office of student conduct).

(5) The interim suspension does not replace the regular hearing process, which shall proceed to a conduct officer hearing or a full adjudicative hearing in accordance with chapter 504-04 WAC, as appropriate, as quickly as feasible(~~;~~

~~ordinarily within five working days of the notice of the interim suspension where the accused student has not consented to a longer time frame)).~~

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-407 Review of decision in brief adjudications. (1) The findings and sanctions rendered by the university conduct board or a conduct officer may be appealed by the complainant and accused student(s) in the manner prescribed in the decision letter containing the findings and sanctions. Such appeal must be made before twenty-one days of the date of the decision letter. The director of student conduct provides a copy of the appeal request by one party to the other party (parties) as appropriate.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board or conduct officer decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and the conduct file for conduct board decisions or the conduct file for conduct officer decisions for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and take one of the following actions:

(a) Affirm, reverse, or modify the conduct board's or conduct officer's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer;

(c) Set aside the findings and sanctions or remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(4) The appeals board's decision shall be personally delivered, sent via regular U.S. mail, or electronically mailed to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s) or electronically mailed to the student's official university electronic mail account. It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeals board's decision letter is the final order and shall advise the student or recognized student organization that judicial review may be available. If the appeals board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed ~~((except in cases involving expulsion or loss of recognition. In cases involving expulsion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university president or designee provides written notice of additional review as provided in subsection (6) of this section.~~

~~(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or recognized student organization no later than ten calendar days from the date the appeals board decision is signed.~~

~~(a) This review is limited to the record and purposes stated in subsection (2) of this section.~~

~~(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).~~

~~(c) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the president or designee, they shall do so in writing.~~

~~(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon as it is signed and includes a notice that judicial review may be available).~~

~~((7)) (6) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the regular U.S. mail, or electronically mailed. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.~~

~~((8)) (7) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.~~

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-601 Interpretations. Except in full adjudications, any question of interpretation or application of the standards of conduct for students is referred to the vice president for student affairs or designee for final determination.

**WSR 17-11-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 17-94—Filed May 16, 2017, 1:19 p.m., effective May 16, 2017, 1:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Snake River.

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

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

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

Reasons for this Finding: This emergency rule is needed to close the spring Chinook fishery in the Snake River which was opened with filing WSR 17-09-049. The spring Chinook run size was downgraded from 160,400 to 83,000, this extreme drop in run size requires us to close this fishery immediately. 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 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 16, 2017.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-312-05000G Freshwater exceptions to statewide rules—Eastside. (17-77)

WSR 17-11-062**EMERGENCY RULES****DEPARTMENT OF REVENUE**

[Filed May 16, 2017, 2:54 p.m., effective May 16, 2017, 2:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-183 (Rule 183) explains the tax reporting instructions for persons who provide amusement, recreation, and physical fitness services. RCW 82.04.050 is the statute that explains the taxability of these same activities and services. The statute was significantly amended in 2015 due to legislation (HB 1550) which changed the taxability of many of these activities and services. The department will begin the standard rule-making process in 2017 to reflect these changes, but until the final rule is adopted the department wants the public to be aware that many of the tax reporting instructions in Rule 183 are only valid through December 31, 2015.

There are no changes from the previous emergency rule filed January 19, 2017, under WSR 17-04-006.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-183 Amusement, recreation, and physical fitness services.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, 82.01.060.

Other Authority: RCW 34.05.350.

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

Reasons for this Finding: Taxpayers providing amusement, recreation, and physical fitness services rely on Rule 183 to assist them in determining their tax reporting requirements. Due to the multiple changes to the statute concerning the taxability of amusement, recreation, and physical fitness services, Rule 183 requires a substantive update using the standard rule-making process. Until the amended rule is adopted, the department wants to ensure the public does not use current Rule 183 to determine their reporting requirements for periods beginning January 1, 2016.

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

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

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

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

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

Date Adopted: May 16, 2017.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-22-100, filed 11/1/95, effective 12/2/95)

WAC 458-20-183 Amusement, recreation, and physical fitness services. (1) Introduction. House Bill 1550 (chapter 169, Laws of 2015) made significant changes to many of the activities addressed in this rule. Readers should not rely on this rule for tax periods beginning January 1, 2016, but instead should refer to RCW 82.04.050 and dor.wa.gov for current tax information. This section provides tax reporting instructions for persons who provide amusement, recreation, and physical fitness services, including persons who receive their income in the form of dues and initiation fees. Section 301, chapter 25, Laws of 1993 sp. sess., amended RCW 82.04.050 to include as a retail sale "physical fitness services." This change became effective July 1, 1993. Physical fitness services were previously taxed under the service and other business activities classification. Amusement and recreation services were retail sales prior to the 1993 law amendment and the tax classification remains unchanged for these activities.

(a) Local governmental agencies that provide amusement, recreation, and physical fitness services should also refer to WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, school districts, and other municipal subdivisions).

(b) Persons engaged in operating coin operated amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(c) Persons engaged in providing camping and outdoor living facilities should refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.).

(2) **Definitions.** The following definitions apply throughout this section:

(a) "Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04.080, respectively. It shall also include income attributable to bona fide "initiation fees" and bona fide "dues."

(b) "Amusement and recreation services" include, but are not limited to: Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, (~~racquet ball~~) racquetball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball

courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

(i) It must cover all costs reasonably related to furnishing the goods or services; or

(ii) It must be comparable with charges made for similar goods or services by other comparable businesses.

(d) "Direct overhead costs" include all items of expense immediately associated with the specific goods or services for which the costs of production method is used. For example, the salary of a swimming pool lifeguard or the salary of a golf club's greenskeeper are both direct overhead costs in providing swimming and golfing respectively.

(e) "Dues" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

(f) "Entry fees" means those amounts paid solely to allow a person the privilege of entering a tournament or other type of competition. The term does not include any amounts charged for the underlying activity.

(g) "Goods or services rendered" shall include those amusement, recreation, and physical fitness services defined to be retail sales in (m) of this subsection. Also see, WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.) and WAC 458-20-244 (Food products). The term shall include the total-ity or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

(h) "Indirect overhead costs" means overhead costs incurred by the service provider that are not immediately associated with the specific goods and services. These costs include a pro rata share of total operating costs, including all executive salaries and employee salaries that are not "direct overhead costs" as that term is defined in (d) of this subsection, as well as a pro rata share of administrative expenses and the cost of depreciable capital assets.

(i) "Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

(k) "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030.

(l) "Physical fitness services" include, but are not limited to: All exercise classes, whether aerobic, dance, water, jazzercise, etc., providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair-masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs). "Physical fitness services" do not include instructional lessons such as those for self-defense, martial arts, yoga, and stress-management. Nor do these services include instructional lessons for activities such as tennis, golf, swimming, etc. "Instructional lessons" can be distinguished from "exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

(m) "Sale at retail" or "retail sale" include the sale or charge made by persons engaged in providing "amusement and recreation services" and "physical fitness services" as those terms are defined in (b) and (l) of this subsection. The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central ticket distribution point and then the customer is subsequently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

(o) "Value of such goods or services" means the market value of similar goods or services or computed value based on costs of production.

(3) Business and occupation tax.

(a) **Retailing classification.** Gross receipts from the kind of amusement, recreation, and physical fitness services defined to be retail sales in subsection (2)(m) of this section are taxable under the retailing classification. Persons engaged in providing these activities are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, articles of clothing, or other property sold by them.

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional lessons, are taxable under the service and other activities classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are

also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

(4) Receiving income in the form of dues and/or initiation fees.

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

(i) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction. Many for-profit or nonprofit entities may receive "amounts derived," as defined in this section, which consist of a mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). To distinguish between these kinds of income, the law requires that tax exemption provisions be strictly construed against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these statutory requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

(ii) The law does not contemplate that the deduction provided for by RCW 82.04.4282 should be granted merely because the payments required to be made by members or customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangible personal property or for providing facilities or services for a specific charge. Neither is it available if dues are in exchange for any significant amounts of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered. Thus, it is only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

(iii) In applying RCW 82.04.4282, no distinction is made between the kinds of clubs, organizations, associations, or other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, limited liability company, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as that term is defined in subsection (2)(a) of this section.

(iv) Nonprofit youth organizations, as defined in subsection (2)(k) of this section, may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recre-

ational facilities, in return for such payments. (See RCW 82.04.4271.)

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

(c) **Alternative methods of reporting.** Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (retailing or service) by use of two alternative allocation methods. The taxpayer may only change its selected allocation method annually and all changes are prospective only. These mutually exclusive methods are:

(i) Actual records of facilities usage.

(A) Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services made by other comparable businesses. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.

(B) The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization.

(C) Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this section, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income

which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or

(ii) **Cost of production method.**

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

(B) No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).

(C) The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the direct and indirect costs associated with providing any specific goods or service, and the denominator of which is the organization's total operating costs. The result is the portion of "amounts derived" that is allocable to the taxable facility (goods or services rendered). If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each facility in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable. The balance of gross amounts derived is deductible as bona fide initiation fees or dues.

(D) Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as unique factors.

(E) Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this section, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.

(5) **Retail sales tax.**

(a) The retail sales tax must be collected upon charges for admissions, the use of facilities, equipment, and exercise classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales in subsection (2)(m) of this section. The retail sales tax must also be collected upon sales of food, drinks and other merchandise by persons engaging in such businesses. See WAC 458-20-244 (Food products). In the case of persons who receive their income in the form of dues and/or initiation fees, the amount of gross receipts determined to be taxable under the retailing business and occupation classification shall be used to determine the person's retail sales tax liability under this subsection.

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made

for both merchandise and admission, unless a proper segregation of such charge is made in the billing to the customer and upon the books of account of the seller.

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

(6) **Transitory provisions for nonprofit youth organizations.** The 1993 amendment of RCW 82.04.050 resulted in "physical fitness services" provided by nonprofit youth organizations being classified as retail sales. However, section 1, chapter 85, Laws of 1994, amended RCW 82.08.0291 and thereby exempted from the definition of retail sale, the sale of such services by a nonprofit youth organization to members of the organization. This change became effective July 1, 1994. Therefore, nonprofit youth organizations are only liable for retail sales tax on the sale or charge made for "physical fitness services" from July 1, 1993, to June 30, 1994. Nonprofit youth organizations were previously exempt from the collection of retail sales tax on "amusement and recreation services" (RCW 82.08.0291) and were previously not subject to retailing business and occupation tax on both the provision of "physical fitness services" and "amusement and recreation services" (RCW 82.04.4271). Nonprofit youth organizations, however, may have tax liabilities for other types of activities, such as retail sales of food, retail sales of tangible personal property, or the license to use real estate, as discussed above.

WSR 17-11-070

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-95—Filed May 17, 2017, 1:33 p.m., effective May 17, 2017, 1:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the halibut fishery.

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

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

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

Reasons for this Finding: This emergency rule is needed to open the recreational Pacific halibut fishery for an additional day in Marine Areas 3 through 10 because sufficient quota remains. This rule conforms to federal action taken by the Pacific Fisheries Management Council, International

Pacific Halibut Commission and National Marine Fisheries Service. 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 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 17, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-314-0300C Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, 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:

(1) **Catch Record Card Area 1**

(a) Open until further notice, Thursdays through Sundays.

(b) It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish, Pacific Cod, or flat fish species when halibut are on board.

(c) Lingcod can be retained when halibut are on board during the month of May when fishing north of the Washington-Oregon border.

(2) **Catch Record Card Area 1 (Nearshore fishery)**

Those waters shoreward 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 until further notice, Mondays through Wednesdays.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2** - Open May 21, 2017.

(4) **Card Areas 3 and 4**

(a) Open May 21 and May 25, 2017.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18'N., 125°18'W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(c) In Marine Areas 3 and 4 (west of the Bonille-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(b) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-314-010.

(5) **Catch Record Card Area 5 through 10**

(a) Open May 21 and May 25, 2017.

(b) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Areas 5 and 6.

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

(7) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(8) It is unlawful to land halibut in a port within an area closed to halibut fishing.

(9) All other permanent rules remain in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000B Halibut—Seasons—Daily and possession limits. (17-92)

WSR 17-11-075

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health Administration)

[Filed May 18, 2017, 9:47 a.m., effective May 18, 2017, 9:47 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is putting certification requirements in rule to create the ability for mental health and substance use disorder service providers to provide supportive housing and supported employment behavioral health services. Programs for supportive housing services and supported employment services are included as part of Washington state's medicaid transformation waiver, which was approved on January 9, 2017. RCW 71.24.385 authorizes a supportive housing services program and a supported employment services program to be developed to serve individuals receiving behavioral health services. These rules will allow the department to certify these services when a licensed behavioral health agency applies and qualifies for certification.

Citation of Existing Rules Affected by this Order: Amending WAC 388-877A-0100, 388-877A-0300, and 388-877A-0330.

Statutory Authority for Adoption: RCW 43.20A.550, 70.02.290, 70.02.340, 71.05.560, 71.24.035, 71.24.037, 71.24.520, 71.34.380, 74.04.050, 74.08.090.

Other Authority: RCW 71.24.385.

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; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The department is enacting these rules using the emergency rule process in order to assist providers toward completing the certification process in time for the federal funding, which is scheduled to be available July 1, 2017. This earlier effective date will allow behavioral health service providers to gain certification sooner so they may deliver these new types of services to some of our most vulnerable members of our communities. The department has begun the permanent rule-making process, filed a CR-101 (WSR 16-24-079) and a CR-102 (WSR 17-11-073), and drafted these rules with the help of stakeholders. The permanent rule, when it becomes effective, will supersede these emergency 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 6, Amended 3, Repealed 0.

Number of Sections Adopted at 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 6, Amended 3, Repealed 0.

Date Adopted: May 16, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-093, filed 3/4/14, effective 4/4/14)

WAC 388-877A-0100 Outpatient mental health services—General. The rules in this section apply to behavioral health agencies that provide outpatient mental health services. The definitions in WAC 388-877-0200 also apply to outpatient mental health services. ~~((The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.))~~

(1) Outpatient mental health services are intended to improve ~~((and/or))~~ or reduce symptoms~~((;))~~ and ~~((resolve))~~ help facilitate resolution of situational disturbances for individuals in the areas of ~~((relational, occupational and/or vocational concerns))~~ relationships, employment, and community integration.

(2) Outpatient mental health services include:

(a) Individual treatment services ~~((see))~~ as described in WAC 388-877A-0138((+));

(b) Brief intervention treatment services ~~((see))~~ as described in WAC 388-877A-0140((+));

(c) Group therapy services ~~((see))~~ as described in WAC 388-877A-0150((+));

(d) Family therapy services ~~((see))~~ as described in WAC 388-877A-0155((+));

(e) Case management services ~~((see))~~ as described in WAC 388-877A-0170((+));

(f) The optional mental health services described in subsection (3) of this ((subsection)) section; and

(g) The recovery support services described in subsection (4) of this ((subsection)) section.

(3) A behavioral health agency that provides certified ~~((for))~~ outpatient mental health services may choose to provide optional outpatient mental health services. Optional outpatient mental health services require additional program-specific certification by the department's division of behavioral health and recovery (DBHR) and include the following:

(a) Psychiatric medication services ~~((see))~~ as described in WAC 388-877A-0180((+));

(b) Day support services ~~((see))~~ as described in WAC 388-877A-0190((+));

(c) Less restrictive alternative (LRA) support services ~~((see))~~ as described in WAC 388-877A-0195((+)); and

(d) Services provided in a residential treatment facility ~~((see))~~ as described in WAC 388-877A-0197((+)).

(4) A behavioral health agency that provides certified ~~((for))~~ outpatient mental health services may also provide recovery support services. Recovery support services require program-specific certification and include the following:

(a) Supported employment services ((see)) as described in WAC 388-877A-0330((+));

(b) Supportive housing services as described in WAC 388-877A-0335;

(c) Peer support services ~~((see))~~ as described in WAC 388-877A-0340(~~());~~);

~~((e))~~ (d) Wraparound facilitation services ~~((see))~~ as described in WAC 388-877A-0350(~~());~~);

~~((d))~~ (e) Medication support services ~~((see))~~ as described in WAC 388-877A-0360(~~());~~); and

~~((e))~~ (f) Applied behavior analysis (ABA) services ~~((see))~~ as described in WAC 388-877A-0370(~~());~~);

(5) An agency ~~((providing))~~ that provides outpatient mental health services to individuals must:

(a) Be licensed by the department as a behavioral health agency(~~());~~);

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC(~~());~~); and

(c) Have policies and procedures ~~((t))~~ that support and implement the:

(i) General requirements in chapter 388-877 WAC;

(ii) Applicable program-specific requirements for each outpatient mental health service provided(~~());~~ and each optional and recovery support service requiring program-specific certification that the agency elects to provide; and

(iii) Department of corrections access to confidential mental health information requirements in WAC 388-865-0600 through 388-865-0640.

(6) At the ~~((verbal))~~ oral or written request of the individual, the behavioral health agency must, if applicable:

(a) Include the individual's family members, significant others, and other relevant treatment providers in the clinical services provided to the individual by the agency; and

(b) Document the request in the individual's clinical record.

(7) If an individual has a crisis plan, the crisis plan must be:

(a) Placed in the individual's clinical record; and

(b) Subject to state and federal confidentiality rules and laws, made available to the following~~((, subject to state and federal confidentiality rules and laws))~~);

(i) Designated mental health professionals;

(ii) Crisis team members; and

(iii) Voluntary and involuntary inpatient evaluation and treatment facilities.

(8) ~~((A))~~ A behavioral health agency that provides services at an established off-site location(s) must:

(a) Maintain a list of each established off-site location where services are provided(~~());~~); and

(b) Include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location.

(9) ~~((A))~~ A behavioral health agency providing in-home services or services in a public setting must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual ~~((and))~~, staff member, and community safety; and

(b) For the purpose of emergency communication(~~());~~ and as required by RCW 71.05.710, provide a wireless tele-

phone(~~());~~ or comparable device(~~());~~ to any mental health professional who makes home visits to individuals.

(10) ~~((A))~~ A behavioral health agency must:

(a) Maintain an individual's confidentiality at the off-site location;

(b) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable;

(c) ~~((Be certified to provide))~~ Ensure the type of mental health service offered at each off-site location is certified by DBHR in accordance with chapter 388-877A WAC; and

(d) Ensure the mental health services provided at off-site locations meet the requirements of all applicable local, state, and federal rules and laws.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877A-0300 Recovery support services ~~((requiring))~~ that require program-specific certification—General. The rules in this section apply to behavioral health agencies that provide one or more recovery support services that require program-specific certification by the department's division of behavioral health and recovery. The definitions in WAC 388-877-0200 also apply to these services. ~~((The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.))~~

(1) Recovery support services are intended to promote an individual's socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills.

(2) Recovery support services ~~((requiring))~~ that require program-specific certification include:

(a) Supported employment services ~~((see))~~ as described in WAC 388-877A-0330(~~());~~);

(b) Supportive housing services as described in WAC 388-877A-0335;

(c) Peer support services ~~((see))~~ as described in WAC 388-877A-0340(~~());~~);

~~((e))~~ (d) Wraparound facilitation services ~~((see))~~ as described in WAC 388-877A-0350(~~());~~);

~~((d))~~ (e) Medication support services ~~((see))~~ as described in WAC 388-877A-0360(~~());~~); and

~~((e))~~ (f) Applied behavior analysis (ABA) services ~~((see))~~ as described in WAC 388-877A-0370(~~());~~);

(3) ~~((A))~~ A behavioral health agency ~~((providing))~~ that provides any recovery support service ~~((requiring))~~ that requires program-specific certification must:

(a) Be licensed by the department as a behavioral health agency(~~());~~);

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC(~~());~~); and

(c) Have policies and procedures ~~((t))~~ that support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Applicable program-specific requirements.

(4) An agency that provides any recovery support service ~~((requiring)) that requires~~ program-specific certification may operate through an agreement with a behavioral health agency ~~that provides~~ certified ~~((for an))~~ outpatient mental health ~~((service))~~ services listed in WAC 388-877A-0100(2). The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements.

(5) When providing any recovery support service requiring program-specific certification, ~~((an))~~ a behavioral health agency must:

(a) Have an assessment process to determine the appropriateness of the agency's services, based on the individual's needs and goals((-);

(b) Refer an individual to a more intensive level of care when appropriate((-); and

(c) With the consent of the individual, include the individual's family members, significant others, and other relevant treatment providers((-)) as necessary to provide support to the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877A-0330 Recovery support services ~~((requiring)) that require~~ program-specific certification—Supported employment services. Supported employment services are ~~((a))~~ recovery support ~~((service))~~ services that ~~((requires))~~ require program-specific certification by the department's division of behavioral health and recovery. These services assist in ~~((training,))~~ job search, ~~((and))~~ placement services ~~((in order)), and training~~ to help individuals find competitive jobs in their local communities.

(1) ~~((An))~~ A behavioral health agency ~~((providing)) that provides supported~~ employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department's division of vocational rehabilitation (DVR). DVR provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100;

(b) The department's community services offices;

~~((c))~~ (c) Community, trade, and technical colleges;

~~((d))~~ (d) The business community;

~~((e))~~ (e) WorkSource, Washington state's official site for online employment services;

~~((f))~~ (f) Washington state department of employment security; and

~~((g))~~ (g) Organizations ~~((providing)) that provide~~ job placement within the community.

(2) ~~((An))~~ A behavioral health agency ~~((providing)) that provides supported~~ employment services must:

(a) Ensure all staff members ~~((providing)) who provide~~ direct services for employment are knowledgeable and familiar with services provided by the department's division of vocational rehabilitation((-);

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals((-);

(c) Assist the individual to create an individualized job ~~((and/or)) and~~ career development plan that focuses on the individual's strengths and skills((-);

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests((-);

(e) Provide and document any outreach, job coaching, and support at the individual's worksite((-)) when requested by the individual ~~((and/or)) or~~ the individual's employer((-); and

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990((-)) and ~~((the))~~ Washington state anti-discrimination law.

NEW SECTION

WAC 388-877A-0335 Recovery support services that require program-specific certification—Supportive housing services. Supportive housing services are recovery support services that require program-specific certification by the department's division of behavioral health and recovery. Supportive housing services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city in the behavioral health organization's (BHO) regional service area;

(c) Community action councils that operate in a county or region in the BHO's regional service area;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(2) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state anti-discrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sub-lease.

SECTION SEVEN—SUBSTANCE USE DISORDER RECOVERY SUPPORT SERVICES THAT REQUIRE PROGRAM-SPECIFIC CERTIFICATION

NEW SECTION

WAC 388-877B-0700 Substance use disorder recovery support services that require program-specific certification—General. The rules in WAC 388-877B-0700 through 388-877B-0740 apply to behavioral health agencies that provide substance use disorder recovery support services that require program-specific certification. The definitions in WAC 388-877-0200 also apply to substance use disorder recovery support services.

(1) Recovery support services are considered nontreatment services provided to support an individual who has a need for interventions related to substance use disorders.

(2) Recovery support services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Supported employment services as described in WAC 388-877B-0730; and

(b) Supportive housing services as described in WAC 388-877B-0740.

(3) An agency that provides recovery support services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0700 through 388-877B-0740.

(4) A behavioral health agency that provides recovery support services must maintain and provide a list of resources, including self-help groups and referral options, that can be used by staff members to refer an individual to appropriate services.

NEW SECTION

WAC 388-877B-0710 Substance use disorder recovery support services that require program-specific certification—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing substance use disorder recovery support services that require program-specific certification must ensure:

(1) All substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP) or department of health-credential CDP trainee (CDPT) under the supervision of an approved supervisor.

(2) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision;

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(3) Each chemical dependency professional trainee has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(4) All staff members that provide individual care have a copy of an initial TB screen or test and any subsequent screenings or testing in their personnel files.

(5) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne pathogens and TB, and document the training in their personnel files.

NEW SECTION

WAC 388-877B-0720 Substance use disorder recovery support services that require program-specific certification—Clinical record content and documentation. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing substance use disorder recovery support services that require program-specific certification must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation that the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanctions.

(c) Documentation that the initial individual service plan was completed before treatment services are received.

(d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(e) When an individual is transferring to another service provider, documentation that copies of documents pertinent

to the individual's course of treatment were forwarded to the new service provider to include:

- (i) The individual's demographic information; and
 - (ii) The diagnostic assessment statement and other assessment information to include:
 - (A) Documentation of the HIV/AIDS intervention.
 - (B) Tuberculosis (TB) screen or test result.
 - (C) A record of the individual's detoxification and treatment history.
 - (D) The reason for the individual's transfer.
 - (E) Court mandated, department of correction supervisory status or the agency's recommended follow-up treatment.
 - (F) A discharge summary and continuing care plan.
 - (f) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.
 - (g) Documentation that staff members met with each individual at the time of discharge, unless the individual left without notice, to:
 - (i) Determine the appropriate recommendation for care and finalize a continuing care plan;
 - (ii) Assist the individual in making contact with necessary agencies or services; and
 - (iii) Provide and document the individual was provided with a copy of the plan.
 - (h) Documentation that a discharge summary was completed within seven days of the individual's discharge, including the date of discharge, a summary of the individual's progress towards each individual service plan goal, legal status, and if applicable, current prescribed medication.
- (2) In addition to the requirements in subsection (1) of this section, an agency must ensure each individual service plan:
- (a) Is personalized to the individual's unique treatment needs;
 - (b) Includes individual needs identified in the diagnostic and periodic reviews that address the following:
 - (i) All substance use needing treatment, including tobacco, if necessary;
 - (ii) The individual's bio-psychosocial problems;
 - (iii) Treatment goals;
 - (iv) Estimated dates or conditions for completion of each treatment goal; and
 - (v) Approaches to resolve the problem;
 - (c) Documents approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP;
 - (d) Documents that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual, at least once per month for the first three months, and at least quarterly thereafter; and
 - (e) Documents that the plan has been reviewed with the individual.

NEW SECTION

WAC 388-877B-0730 Substance use disorder recovery support services that require program-specific certification—Supported employment services. Supported

employment services are substance use disorder recovery support services that require program-specific certification by the department's division of behavioral health and recovery. These services assist in job search, placement services, and training to help individuals find competitive jobs in their local communities.

(1) A behavioral health agency that provides supported employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department's division of vocational rehabilitation (DVR), which provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100;

(b) The department's community service offices;

(c) Community, trade, and technical colleges;

(d) The business community;

(e) WorkSource, Washington state's official site for online employment services;

(f) Washington state department of employment security; and

(g) Organizations that provide job placement within the community.

(2) A behavioral health agency that provides supported employment services must:

(a) Ensure all staff members who provide direct services for employment are knowledgeable and familiar with services provided by the department's division of vocational rehabilitation;

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals;

(c) Assist the individual to create an individualized job and career development plan that focuses on the individual's strengths and skills;

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests;

(e) Provide and document any outreach, job coaching, and support at the individual's worksite, when requested by the individual or the individual's employer; and

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990 and Washington state anti-discrimination law.

NEW SECTION

WAC 388-877B-0740 Substance use disorder recovery support services that require program-specific certification—Supportive housing services. Supportive housing services are substance use disorder recovery support services that require program-specific certification by the department's division of behavioral health and recovery. Supportive housing services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) A behavioral health agency that provides supportive housing services must have knowledge of and provide hous-

ing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city in the behavioral health organization's (BHO) regional service area;

(c) Community action councils that operate in a county or region in the BHO's regional service area;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(2) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state anti-discrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sub-lease.

WSR 17-11-077

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 17-96—Filed May 18, 2017, 1:05 p.m., effective May 19, 2017, 7:01 a.m.]

Effective Date of Rule: May 19, 2017, 7:01 a.m.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Closes all SAFE area fisheries in Washington and in concurrent waters. The upriver run size was downgraded by the technical advisory committee and the allocated impacts to ESA listed stocks are not available to conduct fisheries. 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. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, 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 treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

Date Adopted: May 18, 2017.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 a.m. May 19, 2017:

WAC 220-358-03000C Columbia River seasons below Bonneville. (17-75)

WSR 17-11-095
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-98—Filed May 19, 2017, 2:40 p.m., effective May 19, 2017, 2:40 p.m.]

Effective Date of Rule: Immediately upon filing.

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

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

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Closes the Deep River fishery in Washington and in concurrent waters, except Knappa and Blind sloughs. The upriver run size was downgraded by TAC and the allocated impacts to ESA listed stocks are not available to conduct fisheries. 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. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, 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 treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

Number of Sections Adopted at 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, 2017.

J. W. Unsworth
Director

NEW SECTION

WAC 220-358-03000D Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) **Knappa Slough Select Area**

(a) **Dates:** 7:00 PM to 11:00 PM May 22 and 25, 2017.

(b) **Area:** Knappa Slough only. All waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore (fall boundary).

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on headline. Use of additional weights and/or anchors attached directly to the headline is allowed.

(d) **Miscellaneous:** Permanent transportation rules in effect.

(e) **Allowable Possession:** Salmon and shad

(f) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-352-180 (14)(d)). Permanent transportation rules in effect.

(g) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)).

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

(2) **Blind Slough**

(a) **Dates:** 7:00 PM to 7:00 AM Monday and Thursday nights through June 13, 2017.

(b) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on headline. Use of additional weights and/or anchors attached directly to the headline is allowed.

(c) **Miscellaneous:** Permanent transportation rules in effect.

(4) **Allowable Possession:** Salmon and shad

(5) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-352-180 (14)(d)). Permanent transportation rules in effect.

(6) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)).

(7) **Lighted Buoys:** Nets that are fished at any time between official sunset and official sunrise must have lighted

buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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 7:01 a.m. June 13, 2017:

WAC 220-358-03000D Columbia River seasons below Bonneville.

WSR 17-11-111
EMERGENCY RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed May 23, 2017, 9:12 a.m., effective May 23, 2017, 9:12 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 18, 2017 Community Colleges of Spokane filed a CR-103P, WSR 17-11-076, permanent rules for student standard of conduct, chapter 132Q-10 WAC. These emergency rules are being filed to cover the period between when emergency rule filing WSR 17-04-02 [17-04-020] expires, May 23, 2017, and the permanent rules become effective, June 18, 2017. The emergency rules are identical to the permanent rules adopted on May 18, 2017.

Citation of Existing Rules Affected by this Order: Repealing [amending] chapter 132Q-10 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

Other Authority: Chapter 34.05 RCW, Administrative Procedure Act (APA).

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

Reasons for this Finding: On December 1, 2016, the court of appeals of the state of Washington division III filed an opinion regarding full adjudicative proceedings required by the Washington APA, chapter 34.05 RCW, in the *Arishi v. Washington State University* case (No. 33306-0-III). These rules comply with the requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 23, 2017.

John O'Rourke
Grants and Contracts Manager

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-310 Disposition of misconduct complaints by the student conduct officer. If a student conduct officer determines a complaint of general misconduct may have merit, the student conduct officer will schedule an initial meeting with the student to discuss the content of the complaint, the range of potential sanctions, and the applicable CCS code of conduct hearing procedures.

(1) If the student fails to appear for the meeting and the range of sanctions for the alleged general misconduct do not include a suspension in excess of ten instructional days or a dismissal, the matter will be heard as a brief adjudicative proceeding and the student conduct officer may:

(a) Retain the matter for a brief adjudicative proceeding, determination of findings, conclusions, and sanctions; or

(b) Send the matter to the student conduct board for a brief adjudicative proceeding ~~((and))~~ in accordance with the provisions of this code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC) including a determination of findings, conclusions, and sanctions.

(2) If an agreed upon resolution cannot be reached or if the student fails to appear for the meeting and the range of sanctions for the alleged general misconduct include a suspension in excess of ten instructional days or a dismissal, the student conduct officer will send the matter to the student conduct administrative panel for a full adjudicative proceeding in accordance with the provisions of this code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC) including a hearing, determination of findings, conclusions, and sanctions. To the extent there is a conflict between the standards of conduct for students and the model rules, this standards of conduct for students code shall prevail.

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-315 Notice to the accused student of complaint. (1) All general misconduct and sexual misconduct complaints deemed by the chief student service officer/Title IX coordinator or student conduct officer to have merit are presented by the student conduct officer to the accused student in written form, in person, by regular mail or electronic mail. Notice by mail is sent to the student's last known local address. If the student no longer is enrolled at the time notice is sent, the notice is sent to the student's permanent address. The student is responsible for providing and keeping the college updated of his/her current ~~((address))~~ email and mailing addresses.

(2) The written notice shall include:

(a) The official name and reference number of the proceeding and notice that the hearing is to be held pursuant to these standards of conduct for students under the jurisdiction provided by WAC 132Q-10-120.

(b) The factual details of the complaint, the policy, procedure, rule or standard of conduct allegedly violated.

~~((b))~~ (c) The approximate time and place of the alleged act.

~~((e))~~ (d) The range of possible sanctions for the alleged act.

~~((e))~~ (e) The date, time, and place of the proceeding. A time for the disciplinary proceeding is set seven to ~~((ten instructional))~~ fourteen calendar days after the student has been notified unless waived by all parties. If the chair of the student conduct board, the chair of the student administrative panel or the accused student wish to alter the notice requirements, he/she must submit a written request to the student conduct officer. Time limits for notice may be shortened by the student conduct officer if the parties to the proceeding agree and also may be continued to a later time for good cause.

~~((e))~~ (f) Notification as to whether the student conduct officer, the student conduct board or the student administrative panel was assigned the case and the names, mailing address, and phone number of the designated presiding officer(s).

(g) Notification as to the mailing address and phone number of the office intended to represent the college in the proceeding.

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-318 Student conduct officer disciplinary proceedings. Brief adjudicative disciplinary proceedings with the student conduct officer are conducted as follows:

(1) Meetings will not be conducted in public.

(2) Admission of any other person to the hearing is at the discretion of the student conduct officer.

(3) Respondents have the right to be assisted by an advisor they choose, at their own expense. The respondents are responsible for presenting their own information. Advisors are not permitted to address the student conduct officer or participate directly in the meeting. An advisor may communicate only with the person they are advising. The student conduct officer may call recesses to facilitate this communication. A respondent should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing. Delays are not normally allowed due to the scheduling conflicts of an advisor.

(4) The respondent may provide sworn written statements from witnesses and other documents or information that he/she believes is relevant to the case. Forms for the written statements are available from the student conduct officer or online.

(5) The student conduct officer determines which records, exhibits and written statements may be accepted as information for consideration.

(6) There is a single verbatim record, such as a recording or transcript, of the information gathering portion of hearings. The record is the property of the college.

(7) If the student does not appear for the hearing after proper notice has been provided, the student conduct officer will consider the complaint, absent the student, and enter a decision regarding the complaint including appropriate disciplinary sanctions.

(8) The student conduct officer will notify the student in writing, in person, by mail or electronic mail of his or her decision. Notice of the decision is sent within ten (~~instructional~~) calendar days from the hearing date. If the college is not in session, this period may be reasonably extended.

(9) The written notice of the decision will include the reasons for the decision, the sanctions, and information about the appeal process. The student conduct officer may notify the student prior to receipt of the formal written notice. The notice is sent to the student's last known mailing address or email address.

(10) The burden of proof that guides the student conduct officer's decision is a preponderance of evidence, which is whether it is more likely than not the accused student violated the standards of conduct for students. The student conduct officer includes in his/her written notice of the decision the findings and conclusions of all material issues of law, including which, if any, provision of the standards of conduct for students were violated. Findings based substantially on the credibility of evidence shall be so identified.

(11) The student conduct officer may take any of the following actions:

- (a) Terminate the proceeding, exonerating the student;
- (b) Dismiss the case after providing appropriate counseling and admonishment to the student. Such action is final and is not subject to review on appeal;
- (c) Issue a verbal warning to the student directly. Such action is final and is not subject to review on appeal;
- (d) Impose sanctions provided for in WAC 132Q-10-400 such as probation, loss of privileges, restitution or compensation, fines, college suspension of ten instructional days or less, and revocation of admission. Such actions are subject to review on appeal as provided in this chapter;
- (e) Refer the matter directly to the student conduct board or the student conduct administrative panel for such action as the panel deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct board or the chair of the student conduct administrative panel, with a copy served on the accused student.

(12) A referral to the student conduct board may be used in instances where the alleged misconduct is novel or controversial and the student conduct officer believes input from the larger campus community would be beneficial. A referral to the student administrative panel should be used in instances where new evidence comes forth suggesting that discipline of more than ten instructional days or dismissal/expulsion is appropriate or new evidence comes forth suggesting evidence of sexual misconduct. It may also be warranted when the immediate alleged misconduct, by itself, is not severe enough to warrant an expulsion or suspension in excess of ten instructional days, but may trigger a deferred

suspension or expulsion that was imposed during an earlier disciplinary proceeding.

(13) The written decision is the college's initial order. Appeals are governed by WAC 132Q-10-335. A referral of a matter directly to the student conduct board or to the administrative panel does not constitute a written decision.

(14) If the respondent does not appeal the student conduct officer's decision within twenty calendar days from the date of the decision, it becomes the college's final order after twenty-one calendar days.

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-320 Interim suspension and other ~~(sanctions)~~ restrictions. (1) In certain circumstances, the chief student services officer/Title IX coordinator, or his/her designee may impose an interim suspension from college or other (~~sanctions~~) restrictions prior to the proceedings (~~with the student conduct officer~~) being conducted pursuant to WAC 132Q-10-310 or being conducted pursuant to WAC 132Q-10-502. Interim suspension or other (~~sanctions~~) restrictions may be imposed only if there is reasonable cause to believe that the accused student:

- (a) Has violated a provision of the standards of conduct for students;
- (b) In situations involving an immediate danger to the health, safety, or welfare of members of CCS or the public at large;
- (c) To ensure the student's own physical safety and well-being; or
- (d) If the student poses an ongoing threat of disruption to, or interference with, the operations of the college.

(2) During the interim period, a student may be denied access to classes, activities and privileges, as the student conduct officer determines while an investigation and/or formal disciplinary procedures are pending.

(3) Notice.

(a) Any student who has been suspended on an interim basis based on general misconduct or sexual misconduct under these standards of conduct for students shall be served with written notice or oral notice of the (~~summary~~) interim suspension by the chief student services officer/Title IX coordinator, or his/her designee. If oral notice is given, a written notification shall be provided to the student within two business days of the oral notice in person, by regular mail or electronic mail. Written notice by mail is sent to the student's last known address. (~~If the student no longer is enrolled at the time notice is sent, the notice is sent to the student's permanent address.~~) The student is responsible for providing the college the current address.

(b) The notice shall be entitled "Notice of (~~Summary~~) Interim Suspension" and shall include the reasons for imposing the interim suspension, including reference to the provisions of the standards of conduct for students that have been allegedly violated, the date, time and location where student must appear for a hearing on the interim suspension; and the conditions, if any, under which the student may physically access the campus or communicate with members of the campus community.

(4) The student conduct officer shall conduct a hearing on the ~~((summary))~~ interim suspension as soon as practicable after imposition of the ~~((summary))~~ interim suspension. If the student has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the accused student shall be considered trespassing and subject to arrest for criminal trespass if the accused student enters the college campus other than to meet with the student conduct officer, or to attend a disciplinary hearing. The interim suspension shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim suspension. A full hearing before the student conduct officer, the student conduct board or the student conduct administrative panel may be convened in a timely manner which may negate the need for an interim suspension hearing.

~~((4))~~ (5) In the event the alleged misconduct which is the basis for interim suspension involves claims of sexually violent conduct, both the accused student and the complainant shall be notified of the interim suspension. Please refer to WAC 132Q-10-501 and 132Q-10-502 which outline additional and supplemental procedural requirements for sexually violent conduct allegations and matters. In no event shall mediation be used to resolve complaints involving allegation of sexual violence.

(6) The issue before the student conduct officer during the interim suspension hearing is whether there is probable cause to believe that interim suspension is necessary and/or whether other less ~~((restrictive))~~ severe interim ~~((disciplinary action is))~~ restrictions are appropriate. For the purpose of this section, probable cause means sufficient facts to lead a reasonable person to believe that the elements necessary for imposing ~~((a summary))~~ an interim suspension have been satisfied. The student shall be given an opportunity to explain why ~~((summary))~~ interim suspension is or is not necessary either through oral ~~((testimony))~~ or written statement or a combination of oral and written statements.

~~((5))~~ (7) If the notice of ~~((summary))~~ interim suspension proceedings has been served upon the accused student in accordance with these rules and the student fails to appear at the designated hearing time, the student conduct officer may order that the ~~((summary))~~ interim suspension remain in place pending imposition of final disciplinary action.

~~((6))~~ (8) The student conduct officer shall issue a written order within two instructional days of the hearing, which shall include a brief statement of findings of fact and conclusions ~~((of law))~~, the policy reasons justifying imposition of the ~~((summary))~~ interim suspension, and setting forth the student conduct officer's decision in the matter. If the ~~((summary))~~ interim suspension is upheld and/or other ~~((discipline))~~ restrictions are imposed, the order shall inform the student of the duration of the ~~((summary))~~ interim suspension or the nature of the ~~((disciplinary action(s)))~~ restrictions, conditions under which the ~~((summary))~~ interim suspension may be terminated or modified, and procedures by which the order may be appealed.

~~((7))~~ (9) To the extent permissible under law, the student conduct officer shall provide a copy of the order to all

persons or offices that may be bound or protected by it including the complainant.

~~((8) The interim suspension shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim suspension. If a full hearing before the student conduct officer, the student conduct board or the student conduct administrative panel can be convened in a timely manner, the hearing on the interim suspension can be consolidated with the hearing on the merits.)~~

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-325 Student conduct board proceedings. In cases in which the student conduct officer determines to refer a matter directly to the student conduct board for a hearing, the following procedures apply:

(1) The student conduct officer shall serve all parties, and student conduct board members with written notice of the hearing seven to ten calendar days prior to the hearing date, time and location, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The student conduct officer may shorten this notice period if all parties agree, and also may continue the hearing to a later time for good cause.

(2) The student conduct officer is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and forms of any discovery, issuance of protective orders, and similar procedural matters.

(3) The student conduct officer shall provide assistance to parties, upon request, in obtaining relevant and admissible evidence that is within the college's control.

(4) The student conduct officer may provide to the board members in advance of the hearing copies of: (a) The student conduct officer's notice of complaint and referral; and (b) any documents provided in response by the accused student. If doing so, however, the student conduct officer should remind the committee members that these documents are not evidence of any facts they may allege.

(5) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(6) Hearings are ordinarily closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(7) The complainant, the accused student, and their respective advisors may attend the portion of the hearing at which information is received, but may not attend the board's deliberations. Admission of any other person to the hearing is at the discretion of the student conduct board chair.

(8) In circumstances involving more than one accused student, the student conduct officer may permit joint or separate hearings.

(9) The accused student has the right to be assisted by an advisor they choose, at their own expense. The accused student is responsible for presenting his/her own information. Advisors are not permitted to address the board or participate directly in the hearing. An advisor may communicate only with the person they are advising. The board chair may call recesses to facilitate this communication. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing. Delays are not normally allowed due to the scheduling conflicts of an advisor.

(10) The accused student, the student conduct officer, and the board chair may arrange for witnesses to present pertinent information to the student conduct board. Witnesses may provide written statements in lieu of their attendance at the hearing. The accused student is responsible for informing his/her witnesses of the time and place of the hearing. Witnesses provide information to, and answer questions from, the student conduct board. To preserve the educational tone of the hearing and to avoid an adversarial environment, questions are directed to the chair, rather than to the witness directly. Questions concerning whether potential information may be received are resolved by the chair. The record will reflect the questions that were submitted and the rationale for disallowing any questions. All testimony and written statements shall be given under oath or affirmation.

(11) The board chair determines which records, exhibits and written statements may be accepted as information for consideration by the board, except as overridden by majority vote of the board.

(12) Formal rules of process, procedure and technical rules of evidence, such as are applied in criminal or civil court, are not used in board proceedings.

(13) Questions related to the order of the proceedings are determined by the board chair.

(14) If an accused student, with notice, does not appear before a student conduct board hearing, the information in support of the complaint is presented and considered in the absence of the accused student.

(15) The board chair shall cause the hearing to be recorded by a method that he/she selects in accordance with RCW 34.05.449. Board deliberations are not recorded. The record or transcript is the property of the college. That recording, transcript or a copy, shall be made available to the parties upon request. The board chair shall ensure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by the respondent. Other recording shall also be permitted in accordance with WAC 10-08-190.

(16) The board chair may accommodate concerns for the personal safety, well-being or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means.

(17) The student conduct officer (unless represented by an assistant attorney general) shall present the case for disciplinary action. The facts justifying any such action must be established by a preponderance of the evidence.

(18) At the conclusion of the hearing, the board shall permit the parties to make closing arguments in whatever form it wishes to receive them. The board may also permit each party to propose findings, conclusions, and/or an order for its consideration.

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-330 Student conduct board decision and notification. Procedures for student conduct board proceedings:

(1) At the conclusion of the hearings on conduct matters, including closing arguments and deliberations, the student conduct board determines by majority vote whether the accused student has violated the standards of conduct for students. If so, the board determines and imposes the appropriate sanctions from WAC 132Q-10-400.

(2) The burden of proof that guides the board's decision is the preponderance of evidence, whether it is more likely than not that the accused student violated the standards of conduct for students.

(3) The student conduct officer notifies the parties, in writing, in person, by mail or electronic mail of the board's decision. Written notice is sent within ten (~~(instructional)~~) calendar days from the hearing date. If the college is not in session, this period may be reasonably extended. The student conduct board includes in the written notice of the decision the findings and conclusions on all material issues of law, including which, if any, provisions of the (~~(student conduct code)~~) standards of conduct for students were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified, the disciplinary sanctions, and information about the appeal process. The board's initial order shall also include a determination on appropriate discipline, if any. The student conduct officer may notify the student prior to receipt of the formal written notice. The notice, if sent by mail, is sent to the student's last known address.

(4) The written decision is the college's initial order. Appeals are governed by WAC 132Q-10-335.

(5) If the student does not appeal the board's decision within twenty calendar days from the date of the decision, it becomes the college's final order after twenty-one calendar days.

(6) The committee chair shall promptly transmit a copy of the order and the record of the board's proceedings to the appeals board.

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-332 Student conduct administrative panel proceedings. (~~In cases in which the student conduct officer refers a matter to the student conduct administrative panel for a hearing,)~~ The student conduct administrative panel will conduct full adjudicative proceeding in accordance with the provisions of this standards of conduct for students code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC) including a hearing, determination of findings, con-

clusions, and sanctions. To the extent there is a conflict between the standards of conduct for students and the model rules, this standards of conduct for students code shall prevail. The following procedures apply:

(1) The student conduct officer shall serve all parties, and student conduct administrative panel members with written notice of the hearing not less than seven calendar days or more than ten calendar days prior to the hearing date, time and location, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The student conduct officer may shorten this notice period if all parties agree, and also may continue the hearing to a later time for good cause.

(2) The student conduct administrative panel chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(3) Upon written request filed at least five calendar days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third calendar day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(4) The student conduct officer may provide to the panel members in advance of the hearing copies of: (a) The student conduct officers' notice of complaint and referral; and (b) documents provided by the accused student in response to the complaint. If doing so, however, the chair should remind the panel members that these documents are not evidence of any facts they may allege.

~~((3))~~ (5) Communications between panel members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

~~((4))~~ (6) An accused student may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with both the panel chair with a copy to the student conduct officer. The panel may be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

~~((5))~~ (7) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the panel chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the panel chair may exclude that person from the hearing room.

~~((6))~~ (8) In circumstances involving more than one accused student, the student conduct officer may permit joint or separate hearings.

~~((7))~~ (9) The president of the college or his/her designee, the chair of the student conduct administrative panel, the

administrators assigned to the student conduct administrative panel, deans, and/or the student conduct officer have the authority to issue subpoenas.

(10) The accused student and the student conduct officer may arrange for witnesses to present pertinent information to the student conduct administrative panel. The accused student is responsible for informing his/her witnesses of the time and place of the hearing. ~~(Questions concerning whether potential information may be received are resolved by the panel chair. All testimony and written statements shall be given under oath or affirmation).~~

~~((8))~~ (11) The student conduct officer, upon written request, will provide reasonable assistance to the accused student in obtaining relevant and admissible evidence that is within the college's control.

(12) All testimony and written statements shall be given under oath or affirmation.

(13) The panel chair determines which records, exhibits and written statements may be accepted as information for consideration by the panel consistent with RCW 34.05.452. Evidence, including hearsay evidence, is admissible if it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in the conduct of their affairs. Evidence is not admissible if it is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The panel chair may exclude evidence that is irrelevant, immaterial or unduly repetitious. The panel chair will ensure that the hearing record reflects the basis for exclusion of any evidence.

(14) The chair of the student conduct administrative panel shall decide all procedural questions and make rulings on the admissibility of evidence, motions, objections, and on challenges to the impartiality of board members, unless a hearing examiner is appointed as provided below. The Washington rules of evidence shall serve as guidelines for those rulings on the admissibility of evidence.

~~((9))~~ (15) Questions related to the order of the proceedings are also determined by the student conduct administrative panel chair.

~~((10))~~ (16) If an accused student, with notice, does not appear before a student conduct administrative panel hearing, the information in support of the complaint is presented and considered in the absence of the accused student.

~~((11))~~ (17) The panel chair may accommodate concerns for the personal safety, well-being or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means. In making such accommodations, the rights of the other parties must not be prejudiced and must have the opportunity to participate effectively in, to hear, and, if technically economically feasible, to see the entire proceeding while it is taking place.

~~((12))~~ (18) The panel chair shall cause the hearing to be recorded by a method that he/she selects in accordance with RCW 34.05.449. Panel deliberations are not recorded. The record or transcript is the property of the college. That recording, transcript or a copy, shall be made available to the parties upon request. The panel chair shall ensure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request

for inspection and copying by the respondent. Other recording shall also be permitted in accordance with WAC 10-08-190.

~~((13))~~ (19) The student conduct officer (unless represented by an assistant attorney general) shall present the case for disciplinary action. The facts justifying any such action must be established by a preponderance of the evidence.

~~((14))~~ (20) At the conclusion of the hearing, the panel shall permit the parties to make closing arguments in whatever form it wishes to receive them. The panel may also permit each party to propose findings, conclusions, and/or an order for its consideration.

~~((15))~~ (21) Conduct matters that involve allegations of sexually violent conduct as defined in WAC 132Q-10-105(18) and further detailed in WAC 132Q-10-244 shall also utilize the supplemental hearing procedures of WAC 132Q-10-501 through 132Q-10-503. The terms of the supplemental procedures will prevail in the event of any discrepancy between this provision and the provisions of the supplemental procedures.

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-501 Additional procedural requirements for sexually violent conduct matters. In the event the alleged misconduct involves claims of sexually violent conduct, additional procedures are required by federal law. Both the accused student and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the interim suspension process and disciplinary proceeding process and to appeal the chief student services officer's or student conduct administrative panel's disciplinary order.

Application of the supplemental procedures for allegations of sexually violent conduct is limited to student conduct code proceedings involving allegations of sexually violent conduct. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132Q-10-305 through ~~((132Q-10-335))~~ 132Q-10-318 and 132Q-10-325 through 132Q-10-500. In the event of conflict between the supplemental sexually violent conduct procedures, interim suspension and other restrictions procedures and the student disciplinary procedures, the sexually violent conduct procedures shall prevail.

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-502 Supplemental procedures for allegations of sexually violent conduct. (1) ~~((Complaints))~~ Reports of alleged sexually violent conduct by a student submitted pursuant to WAC 132Q-10-305(2) shall be referred to the Title IX coordinator for an initial assessment. If an investigation is deemed warranted it shall be completed in a timely manner as defined by administrative procedure 3.30.01.

(a) If after a review, the Title IX coordinator determines that the facts as alleged would not constitute a violation of Title IX, the Title IX coordinator may close the file.

(b) If after an initial review, the Title IX coordinator determines that the facts as alleged may constitute a violation of Title IX, the coordinator or his or her designee will ~~((conduct))~~ order an investigation.

(c) If after an initial review, the Title IX coordinator determines that the facts as alleged would not constitute a violation of Title IX, but may constitute a violation of other provisions of the standards of conduct for students ~~((conduct code))~~, the coordinator may refer the matter to the student conduct officer to review and process.

(d) If the Title IX coordinator determines an investigation is not warranted on a sexually violent conduct report, the student conduct officer will make reasonable efforts to meet with the complainant and accused student individually to discuss the outcome.

(e) If an investigation is conducted based on a sexually violent conduct ~~((complaint))~~ report, the Title IX coordinator will make a reasonable effort to meet with the complainant and accused student separately to discuss the results of the investigation and possible protective ~~((sanctions))~~ restrictions or conditions that may be imposed on the accused student. Please refer to WAC 132Q-10-503 for the appeal rights of both parties.

(2) Respondents may have interim restrictions placed on them as outlined in WAC 132Q-10-320.

(3) If the Title IX coordinator or his/her designee determines that the investigative report contains facts that demonstrate a violation of the standards of conduct for students, but not a violation of the sexually violent conduct provisions, then he/she will refer the matter to the appropriate student conduct officer for disciplinary proceedings under these regulations.

~~((3))~~ (4) Informal dispute resolution shall not be used to resolve sexual misconduct complaints ~~((without written permission from both the complainant and the accused student. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence))~~.

~~((4))~~ (5) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or its legal duty to investigate and process sexual harassment and sexual violence complaints.

~~((5) Accused student and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process.)~~ (6) The complainant and respondent have the same rights regarding advisors and witnesses as set forth in WAC 132Q-10-332. The complainant and respondent may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair and copy the chief student services officer. The chief student services officer will provide a copy of the notice ~~((to the accused student))~~ of hearing to the complainant.

~~((6))~~ (7) The complainant may arrange for witnesses to present pertinent information to the student conduct adminis-

trative panel. The complainant is responsible for informing his/her witnesses of the time and place of the hearing.

(8) The student conduct officer, upon request, shall provide reasonable assistance to the complainant in obtaining relevant and admissible evidence that is within the college's control.

(9) During the proceedings, complainant and accused student shall not directly question or cross examine one another. All questions shall be directed to the chair, who will act as an intermediary and pose questions on the parties' behalf. The student conduct administrative panel chair may overrule certain questions on the basis that they are irrelevant, immaterial or unduly repetitious; seek information that is protected on constitutional or statutory grounds or seek information that is subject to evidentiary privilege as recognized in the courts of this state. The record will reflect the questions that were submitted and the rationale for disallowing any questions.

~~((7))~~ (10) Hearings involving sexual misconduct allegations shall be closed to the public, unless accused student and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, accused student and their respective attorney representatives may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct administrative panel.

~~((8))~~ (11) The chair of the student conduct administrative panel will coordinate with the chief student services officer/Title IX coordinator or his/her designee to serve complainant a written notice indicating that the complaint has been resolved on the same date that the discipline order is served upon the accused student. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any ~~((sanctions))~~ restrictions and/or conditions imposed upon the accused student for the complainant's protection, including suspension or dismissal of the accused student. The notice shall also provide directions on how the complainant can appeal the decision.

(12) The complainant has the right to appeal an order of the student conduct administrative panel consistent with WAC 132Q-10-335. In the event of an appeal by the accused student or complainant, the chief student services officer shall provide a copy of the appeal to the nonappealing party. The complainant and accused student have the right to be assisted by an advisor of their choosing during the appeal process at their own expense.

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-503 Supplemental appeal rights for alleged sexually violent conduct. (1) The following actions by the chief student services officer/Title IX coordinator and the student conduct administrative panel may be appealed by the complainant:

(a) The dismissal of a sexually violent misconduct complaint; or

(b) The disciplinary sanction(s) and conditions imposed against an accused student for a sexually violent misconduct violation.

(2) Appeals:

(a) A discipline order which includes findings of sexually violent misconduct may be appealed by filing a written notice of appeal with the chief student services officer within twenty calendar days of receiving notice of the discipline order. The notice of appeal (~~((may))~~ **must** include a written statement setting forth the grounds of appeal **and why the appeal should be granted.**

(b) The dismissal of a sexually violent misconduct complaint by the Title IX coordinator may be appealed by filing a notice of appeal with the college president within twenty calendar days of receiving notice of the complaint dismissal. The notice of appeal must include a brief written statement explaining why the complainant **or respondent** is seeking review of the dismissal and why the appeal should be granted.

(3) Notice of appeal:

(a) If an order imposing discipline for a sexual misconduct violation is appealed, the college shall notify the nonappealing complainant/respondent of the appeal. The nonappealing complainant/respondent will be provided the option to be named as a party to the appeal.

(b) If the dismissal of a sexually violent misconduct complaint by the Title IX coordinator is appealed, the college shall notify the nonappealing complainant/respondent of the appeal. The nonappealing complainant/respondent will be provided the option to be named as a party to the appeal.

(4) A complainant/respondent who chooses to appeal a discipline order or who chooses to appear as a party to the appeal of a discipline order or the dismissal of a complaint shall be afforded the same procedural rights as are afforded to the other party.

(5) Review of appeals:

(a) Appeals of orders imposing discipline for a sexual misconduct violation shall be reviewed by the appeals board consistent with WAC 132Q-10-335 (5) through (6).

(b) Appeals of dismissal of complaints of sexual misconduct violation shall be reviewed by a college president. If the college president's decision is to affirm the dismissal of the original complaint that serves as the college's final order regarding the original complaint dismissal. If the college president determines that the dismissal should be reversed, the matter shall be investigated pursuant to WAC 132Q-10-502. If the matter involves sexually violent misconduct, it will be investigated pursuant to WAC 132Q-10-502 and processed consistent with this chapter applicable to sexually violent misconduct. If the matter involves misconduct that does not include sexually violent misconduct, it will be processed consistent with the provisions of this chapter applicable to general misconduct.

(6) The chief student services officer/Title IX coordinator will serve complainant a written notice indicating that the appeal has been resolved on the same date that the final order is served upon the accused student. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any sanctions and/or conditions imposed upon the accused student for the complainant's protection, including suspension or dismissal of the accused student.

WSR 17-11-113
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 17-88—Filed May 23, 2017, 9:42 a.m., effective May 27, 2017]

Effective Date of Rule: May 27, 2017.

Purpose: Amend Columbia River recreational fishing rules for sturgeon.

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

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

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

Reasons for this Finding: This emergency rule is needed to allow sturgeon harvest because hatchery-origin white sturgeon residing in Wanapum and Priest Rapids reservoirs since the early 2000s are abundant and have grown to a harvestable size. Removal of these hatchery-origin fish is consistent with ongoing actions to rebuild depressed populations of wild-origin white sturgeon in Wanapum and Priest Rapids reservoirs. 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; and Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: May 23, 2017.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-312-06000E Freshwater exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060 and WAC 220-316-010, effective May 27 through September 17, 2017, until further notice, it is permissible to fish for and possess white sturgeon in waters of Priest Rapids Reservoir (from Priest Rapids Dam to Wanapum Dam) and Wanapum Reservoir (from Wanapum Dam to Rock Island Dam). Unless otherwise amended all permanent rules remain in effect.

(1) Daily limit of two sturgeon between 38 and 72 inches fork length may be harvested from Wanapum and Priest Rapids reservoirs only.

(2) No annual harvest limit of two sturgeon between 38 and 72 inches fork length from Wanapum and Priest Rapids reservoirs only.

(3) Anglers are not required to record sturgeon harvested from Wanapum and Priest Rapids reservoirs on a Catch Record Card.

(4) Catch-and-release fishing is allowed in Wanapum and Priest Rapids reservoirs after the daily limit is harvested. Any sturgeon not to be harvested must be released immediately. Oversized sturgeon cannot be removed totally or in part from the water.

(5) Only one single-point barbless hook and bait is allowed while fishing for sturgeon. Night closure is in effect for sturgeon only.

(6) Anglers may fish with two poles with the purchase of a Two-Pole Endorsement license.

(7) In the field, anglers must retain eggs with intact carcass of fish from which they came.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 18, 2017:

WAC 220-312-06000E Freshwater exceptions to statewide rules—Eastside.

WSR 17-11-116
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-99—Filed May 23, 2017, 11:04 a.m., effective May 27, 2017]

Effective Date of Rule: May 27, 2017.

Purpose: Amend recreational fishing rules in Lake Roosevelt.

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

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

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

Reasons for this Finding: The white sturgeon population in the Upper Columbia Transboundary Reach (Grand Coulee Dam, Washington to Hugh Keenleyside Dam, British Columbia (BC)) has experienced consistent juvenile year-class production failure for more than thirty years. In response to production failure, the Upper Columbia White Sturgeon Recovery Initiative (UCWSRI) was formed in 2000. The UCWSRI produced a recovery plan (finalized in 2002) with the goal, "To ensure the persistence and viability of naturally-repro-

ducing populations of white sturgeon in the Upper Columbia River and restore opportunities for beneficial use, if feasible." A white sturgeon hatchery program began in 2001 (2002 releases) in BC and 2004 (with brood year 2003 fish from BC) in Washington using conventional broodstock and hatchery rearing methods. Stocking ranged from 2,000-12,000 juvenile sturgeon per year from 2001 to 2010 (including both Washington and BC releases). Survival of hatchery-produced juvenile sturgeon was much higher than anticipated. As a result, there is a surplus of approximately 20,500 sturgeon that are available for harvest from Lake Roosevelt over the next decade. 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: May 23, 2017.

J.W. Unsworth
Director

NEW SECTION

WAC 220-312-05000J Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-050:

(1) Effective May 27 through September 17, 2017, it is permissible to fish for sturgeon in waters of Lake Roosevelt from Grand Coulee Dam to China Bend Boat Ramp (including the Spokane River from Highway 25 Bridge upstream to 400' below Little Falls Dam, Colville River upstream to Meyers Falls and the Kettle River upstream to Barstow Bridge).

(2) Effective August 1 through September 17, 2017, it is permissible to fish for sturgeon in waters of Lake Roosevelt (white sturgeon spawning sanctuary): from China Bend Boat Ramp upstream to the Canadian Border.

(3) The following rules apply to sections (1) and (2):

(a) Daily limit of one sturgeon between 38 and 63 inches fork length. Annual limit of two sturgeon.

(b) Anglers are required to record harvested on a Catch Record Card.

(c) Anglers may fish with two poles with the purchase of a Two-Pole Endorsement license.

(d) Night closure is in effect. All other statewide rules for white sturgeon apply.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective September 18, 2017:

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

WSR 17-11-126 EMERGENCY RULES BUILDING CODE COUNCIL

[Filed May 23, 2017, 2:36 p.m., effective May 23, 2017, 2:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this action is to amend the provisions of an emergency rule filed on February 14, 2017, as WSR 17-05-093. This action will amend currently adopted language in Section 907 Fire Alarm and Detection Systems. The state building code council convened a technical advisory group to develop this amendment to provide options for compliance with current codes and safe school law.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-0907.

Statutory Authority for Adoption: Chapter 19.27 RCW.

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

Reasons for this Finding: The 2016 legislature took action to modify the requirements of this section under ESHB 2380.SL/New Section 6012. A new section is added to 2015 3rd sp.s. c 3 (uncodified) to read as follows: To avoid unnecessary duplication of infrastructure installation and reduce school construction costs funded through the school construction assistance program in this budget, the building code council adopted emergency amendments as directed by the legislature to provide that buildings classed as E occupancies, as defined in the state building code, are not required to install an emergency voice alarm system as defined in the 2012 International Building Code and International Fire Code section 907.2.3. The school district must comply with RCW 28A.320.126 by working collaboratively with local law enforcement agencies to develop an emergency response system using evolving technologies and the school district must adopt a safe school plan under RCW 28A.320.125. The state building code council technical advisory group worked with stakeholders to develop amendatory language for emergency and permanent rule making.

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

Number of Sections Adopted at 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 12, 2017.

Steve Simpson
Chair

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0907 Section 907—Fire alarm and detection systems.

~~[F] 907.2.3 Group E. ((A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.~~

((EXCEPTIONS: 1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
3.1 Interior corridors are protected by smoke detectors.
3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
4. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.))

Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or

2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:

2.1 The ability to broadcast voice messages or customized announcements;

2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;

2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;

2.4 The ability for two-way communications;

2.5 The ability for individual room calling;

2.6 The ability for a manual override;

2.7 Installation in accordance with NFPA 72;

2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and

2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

EXCEPTIONS: 1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:

3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or

3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).

4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

4.1 Interior corridors are protected by smoke detectors.

4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.

4.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:

5.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.

5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.

5.3 Manual activation is provided from a normally occupied location.

[F] 907.2.3.1 Sprinkler systems or detection. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

[F] 907.2.6 Group I. A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

EXCEPTIONS:

1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

[F] 907.2.6.1 Group I-1. An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and kitchens. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS:

1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
2. Smoke detection is not required for exterior balconies.

[F] 907.2.6.4 Group I-4 occupancies. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS:

1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.
2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

[F] 907.5.2.1.2 Maximum sound pressure. The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

[F] 907.10 NICET: National Institute for Certification in Engineering Technologies.

907.10.1 Scope. This section shall apply to new and existing fire alarm systems.

907.10.2 Design review. All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction. (Effective July 1, (~~2017~~) 2018.)

907.10.3 Testing/maintenance. All inspection, testing, maintenance and programming not defined as "electrical construction trade" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms. (Effective July 1, (~~2017~~) 2018.)

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.

**WSR 17-11-138
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed May 24, 2017, 10:13 a.m., effective May 27, 2017]

Effective Date of Rule: May 27, 2017.

Purpose: Align chapters 170-295 and 170-296A WAC with new chapter 170-300 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 170-295-0060, 170-295-0150, 170-295-7031, 170-296A-1250, 170-296A-1275, 170-296A-1400, 170-296A-2000, 170-296A-2750, 170-296A-2800 and 170-296A-4000; and amending WAC 170-295-0030, 170-295-0090, 170-295-1010, 170-295-7010, 170-295-7030, 170-295-7080, 170-296A-0010, 170-296A-1100, 170-296A-1375, 170-296A-1430, 170-296A-1475, 170-296A-5775, 170-296A-5825, 170-296A-8000, 170-296A-8010, 170-296A-8025, 170-296A-8050, 170-296A-8060, and 170-296A-8150.

Statutory Authority for Adoption: RCW 43.215.020, 43.215.060, 43.215.070, and 43.215.201.

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: Alignment is necessary in order to ensure that licensed family home and child care center providers have clarity as to requirements and the rules they are subject to are consistent.

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 19, Repealed 10.

Number of Sections Adopted at 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 19, Repealed 10.

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

Date Adopted: May 24, 2017.

Ross Hunter
Director

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-295-0030 Eligibility to receive state child care subsidies. To be eligible to receive state child care subsidies for children in their care, individuals, entities and agencies must:

- (1) Be licensed or certified;
- (2) Be a seasonal camp that has a contract with DEL and is certified by the American Camping Association;
- (3) Follow billing policies and procedure in *Child Care Subsidies: A Booklet for Licensed and Certified Child Care Providers*, revised 2012;
- (4) Bill at the individual's, entity's, or agency's customary rate or the state rate, whichever is less; and
- (5) Keep attendance records as described in WAC 170-295-7030 and invoices for state-paid children on-site for at least five years as provided in WAC ((~~170-295-703+~~) 170-300-0465).

AMENDATORY SECTION (Amending WSR 12-09-060, filed 4/17/12, effective 5/18/12)

WAC 170-295-0090 Initial and nonexpiring full licenses—Licensing fees. The department may issue an initial license to centers that have not yet begun providing care, but are accepting applications for potential clients.

- (1) The department may issue an initial license when an applicant can show that he or she is following the rules regarding the child's health and safety.
- (2) The department may issue an initial license if an applicant has not yet opened for business, and so is not yet able to show that he or she is complying with the rules pertaining to:
 - (a) Staff to child interactions;
 - (b) Group size and staff to child ratios;
 - (c) Behavior management and discipline;
 - (d) Activity programs;
 - (e) Child records and information; and
 - (f) Other rules that require us to observe the facility's ability to comply with rules.

(3) Applicants must provide the department with a plan to comply with the rules listed in subsection (2)(a) through (f) of this section. The department must approve of that plan.

(4) The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(5) When a licensee has an initial license the department evaluates the licensee's ability to comply with all rules contained in this chapter and chapter 170-300 WAC prior to issuing a nonexpiring full license under WAC 170-295-0095.

(6) The department may issue a nonexpiring full license to a licensee operating under an initial license who:

- (a) Demonstrates full compliance with the health and safety requirements of this chapter and chapter 170-300 WAC at any time during the period of initial licensure;
- (b) Demonstrates substantial compliance with the other requirements of this chapter and chapter 170-300 WAC at any time during the period of initial licensure; and
- (c) Meets the requirements for a nonexpiring full license as provided in WAC 170-295-0095.

(7) The department must deny a nonexpiring full license to a licensee operating under an initial license who does not demonstrate the ability to comply with all rules contained in this chapter and chapter 170-300 WAC during the period of initial licensure.

(8) Fees are due with applications for initial licenses or continuations of a nonexpiring full license.

(9) The department does not process an application or continuation until the applicant or licensee, as applicable, has paid the required fee.

(10) Applicants or licensees can pay licensing fees for:

- (a) A minimum of one year; or
- (b) Multiple years.

(11) Applicants and licensees pay their fees by mailing a check or money order for the required amount to the department.

(12) If there is a change in a facility that places the facility in a different fee category, the department prorates the additional fee amount over the remainder of the license period.

(13) If an applicant or licensee withdraws an application before the department denies or issues a license, the fee shall not be refunded.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-295-7010 Information to be kept in the child's individual file. (1) Licensees must keep current organized confidential records and information about each child in care on the premises as provided in WAC ((~~170-295-703+~~) 170-300-0465), and must make sure that each child's record contains, at a minimum:

- (a) Completed enrollment application signed by the parent;
- (b) Name, birth date, dates of enrollment and termination, and other identifying information;
- (c) Name, address, and home and business telephone number of the parent and other person to be contacted in case of an emergency;

(d) Health history;

(e) Individual plan of care when needed for chronic health conditions and life threatening medical conditions;

(f) Written consent from the parent for the licensee to seek and approve medical care in an emergency situation, a court order waiving the right of informed consent, or the parent's alternate plans for emergency medical and surgical care if the parent can not be reached;

(g) Information on how to contact the parents, especially in emergencies;

(h) Instructions from the parent or health care providers related to medications, specific food or feeding requirements, allergies, treatments, and special equipment or health care needs if necessary;

(i) Written records of any illness or injury that occurs during child care hours and the treatment provided; and

(j) Written records of any medications given while the child is at child care.

(2) Licensees must include the following authorizations in each child's record:

(a) Name, address, and telephone number of the person authorized to remove the child from the center;

(b) Written parental consent for transportation to and from school; and

(c) Written parental consent for transportation provided by the center to and from field trips, including field trip location, date of trip, departure and arrival times and any other additional information on which the parent may need to be advised.

(3) Licensees may use any health history form that the licensee chooses as long as it includes:

(a) The date of the child's last physical exam or the date the child was last seen by a health care provider for reasons other than immunizations;

(b) Allergies, expected symptoms, and method of treatment if necessary;

(c) Health and developmental concerns or issues;

(d) Any life threatening medical condition that requires an individual health plan;

(e) A list of current medications used by the child;

(f) Name, address, and phone number of the child's health care provider; and

(g) Name, address, and phone number of the child's dentist, if the child has a dentist.

(4) The individual records, including the certificate of immunization status, must be kept on the premises:

(a) For each child currently in care; and

(b) For five years after the child leaves enrollment in the licensee's care.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-295-7030 Attendance records. Licensees must keep daily attendance records.

(1) The parent or other person authorized by the parent to take the child to or from the center must:

(a) Sign in the child on arrival and sign out the child at departure, using their full signature and writing the time of arrival and departure; or

(b) Record the child's attendance using an electronic system if used by the licensee under WAC 170-295-7032;

(2) When the child leaves the center to attend school or participate in (~~off-site~~) off-site activities as authorized by the parent, the licensee or staff must sign out the child, and sign in the child on return to the center; and

(3) Paper and electronic attendance records and invoices for state subsidized children must be kept on the premises for at least five years after the child leaves the licensee's care as provided in WAC (~~170-295-7031~~) 170-300-0465.

AMENDATORY SECTION (Amending WSR 12-09-060, filed 4/17/12, effective 5/18/12)

WAC 170-295-7080 Materials that must be posted.

Licensees must post the following items so that they are clearly visible to the parent and staff:

(1) The center's child care license issued under this chapter and chapter 170-300 WAC;

(2) A schedule of regular duty hours with the names of staff;

(3) A typical activity schedule, including operating hours and scheduled mealtimes;

(4) Meal and snack menus for the month;

(5) Fire safety record and evacuation plans and procedures, including a diagram of exiting routes;

(6) Emergency telephone numbers near the telephone;

(7) Nondiscrimination poster;

(8) For the staff, the licensee must post:

(a) Dietary restrictions and nutrition requirements for particular children;

(b) Handwashing practices;

(c) Diaper changing procedures, if applicable;

(d) Disaster preparedness plan; and

(e) Center policies and procedures.

(9) The licensee must post a notification advising parents that the licensee is required to keep a file on-site for their review containing copies of the most recent child care center monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 170-295-0060 What are the requirements for applying for a license to operate a child care center?

WAC 170-295-0150 Where can I locate my child care center or facility?

WAC 170-295-7031 Recordkeeping—Records available to the department.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-1010 Who can be the director of a child care center? If you apply for a license to operate a child care center, you may be the director yourself, or you can

hire a director. The director is responsible for the overall management of the center's facility and operation and ensures that the center follows the minimum licensing requirements. The director must:

- (1) Be at least (~~twenty-one~~) eighteen years of age or older;
- (2) Have knowledge of child development as evidenced by professional reference, education, experience, and on-the-job performance;
- (3) Have written proof of education including:
 - (a) A current child development associate certificate (CDA); or
 - (b) The following minimum number of college quarter* credits or combination of college quarter credits and department-approved clock hours (ten clock hours equals one college credit) in early childhood education or child development:

If your center is licensed for this number of children:	Then the director must have completed at least this number of college quarter credits in early childhood education:	Of the total credits required, the minimum number that must be college quarter credits is:	And of the total credits required, the maximum number that can be department-approved clock hours is:
(i) Twelve or less	10	7	30 (replacing 3 college quarter hours)
(ii) Thirteen through 24	25	17	80 (replacing 8 college quarter hours)
(iii) Twenty-five or more	45	30	150 (replacing 15 college quarter hours)

*Note: One college semester credit equals one and one half (1.5) college quarter hours.

- (4) Have at least two years experience working with children the same age level as the center serves;
- (5) Not let the provision of child care interfere with management or supervisory responsibilities;
- (6) Be on the premises for the majority of the hours that care is provided and designate a person to be in charge that meets the qualifications of a lead teacher when not present; and
- (7) Meet the STARS requirement and be listed in the state training and registry system (STARS).

AMENDATORY SECTION (Amending WSR 14-13-056, filed 6/12/14, effective 7/13/14)

WAC 170-296A-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise. Certain definitions appear in the section the term is used if the definition applies only to a specific section or sections:

- "**Accessible to children**" means areas of the facility and materials that the children can easily get to on their own.
- "**Agency**" as used in this chapter, has the same meaning as in RCW 43.215.010 (1)(c).

"**Available**" means accessible and ready for use or service.

"**Bathroom**" means any room containing a built-in flush-type toilet.

"**Capacity**" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"**Child**" means an individual who is younger than age thirteen, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"**Child abuse or neglect**" has the same meaning as "abuse or neglect" under RCW 26.44.020 and chapter 388-15 WAC.

"**Child care**" means the developmentally appropriate care, protection, and supervision of children that is designed to promote positive growth and educational experiences for children outside the child's home for periods of less than twenty-four hours a day.

"**Clean**" or "**cleaning**" means to remove dirt and debris (such as soil, food, blood, urine, or feces) by scrubbing and washing with a soap or detergent solution and rinsing with water. Cleaning is the first step in the process of sanitizing or disinfecting a surface or item.

"**Confidential**" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"**Denial of a license**" means an action by the department to not issue a child care license to an applicant for an initial license, or to a licensee operating under an initial license seeking a nonexpiring full license, based on the applicant's or initial licensee's inability or failure to meet the requirements of chapter 43.215 RCW or requirements adopted by the department pursuant to chapter 43.215 RCW.

"**Department**" or "**DEL**" means the Washington state department of early learning.

"**Developmentally appropriate**" means curriculum, materials or activities provided at a level that is consistent with the abilities or learning skills of the child.

"**Discipline**" means a method used to redirect a child in order to achieve a desired behavior.

"**Disinfect**" or "**disinfecting**" means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

- (a) A chlorine bleach and water solution of one tablespoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or
- (b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

"**DOH**" means the Washington state department of health.

"**DSHS**" means the Washington state department of social and health services.

"**Enforcement action**" means a department issued:

- (a) Denial, suspension, revocation or modification of a license;

- (b) Probationary license;
- (c) Civil monetary penalty (fine); or
- (d) Disqualification from having unsupervised access to children in care.

"Family home child care" means a facility licensed by the department where child care is provided for twelve or fewer children in the family living quarters where the licensee resides as provided in RCW 43.215.010 (1)(c).

"Family living quarters" means a licensee's or license applicant's residence and other spaces or buildings on the premises that meet the facility requirements of this chapter and are approved by the department for child care.

"Fine" has the same meaning as "civil monetary penalty," "civil fines," or "monetary penalty" under chapter 43.215 RCW.

"Inaccessible to children" means an effective method or barrier that reasonably prevents a child's ability to reach, enter, or use items or areas.

"Infant" means a child age birth through eleven months of age.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" for the purposes of this chapter, means the individual listed on a family home child care license issued by the department of early learning authorizing that individual to provide child care under the requirements of this chapter and chapters 170-300 WAC and ((chapter)) 43.215 RCW.

"Licensor" means an individual employed by the department and designated by the director to inspect and monitor an agency or other child care facility for compliance with the requirements of this chapter and chapter 43.215 RCW.

"MERIT" means the managed education registry information tool used to track professional development for early learning professionals. See also "STARS."

"Modification of a license" means department action to change the conditions identified on a current license.

"Nonexpiring full license" or **"nonexpiring license"** means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-296A-1450.

"Nonprescription medication" means any of the following:

- (a) Nonaspirin fever reducers or pain relievers;
- (b) Nonnarcotic cough suppressants;
- (c) Cold or flu medications;
- (d) Antihistamines or decongestants;
- (e) Vitamins;
- (f) Ointments or lotions specially intended to relieve itching;
- (g) Diaper ointments and talc free powders specially used in the diaper area of children;
- (h) Sun screen;
- (i) Hand sanitizer gels; or
- (j) Hand wipes with alcohol.

"One year of experience" means at least twelve months of early learning experience as demonstrated by a resume and references:

(a) In a supervisory role in a child care setting where the individual was responsible for supervising staff and complying with licensing standards; or

(b) As a Washington state:

(i) Child care center or school age center director, program supervisor, or lead teacher as defined in chapters 170-151 and 170-295 WAC; or

(ii) Family home child care licensee or qualified primary staff person.

"Overnight care" means child care provided for a child anytime between the hours of eight o'clock at night and six o'clock in the morning that includes a sleep period for the child.

"Personal needs" means an individual's hygiene, toileting, medication, cleansing, eating or clothing needs. "Personal needs" does not mean smoking or use of tobacco products, illegal drug use or misuse of prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Physical restraint" means the practice of rendering a child helpless or keeping a child in captivity.

"Poison" for the purposes of this chapter includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items, that even in small quantities are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed or unlicensed space at the licensed address including, but not limited to, buildings, land and residences.

"Preschool age child" means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

"Primary staff person" means a staff person other than the licensee who has been authorized by the department to care for and have unsupervised access to children in care.

"RCW" means Revised Code of Washington.

"Revocation" or **"revoke"** means the formal action by the department to close a child care business and take the license due to the licensee's failure to comply with chapter 43.215 RCW or requirements adopted pursuant to chapter 43.215 RCW.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of three-quarters teaspoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

"**School age child**" means a child not less than five years of age through twelve years of age who is attending kindergarten or school.

"**Screen time**" means watching, using or playing television, computers, video games, video or DVD players, mobile communication devices, and similar devices.

"**Sleeping equipment**" includes a bed, cot, mattress, mat, crib, bassinet, play yard or "pack and play." "Sleeping equipment" does not include any car seat or infant swing.

"**Staff**" unless referring specifically to a "primary staff person," means any primary staff person, assistant, or volunteer helping to provide child care, or a household member acting in the capacity of a primary staff person, assistant or volunteer, whether compensated or not compensated.

"**STARS**" means the state training and registry system.

"**Suspension of a license**" means a formal department action to stop a license pending a department decision regarding further enforcement action.

"**Toddler**" means a child age twelve months through twenty-nine months of age.

"**Unlicensed space**" means the indoor and outdoor areas of the premises, not approved as licensed space by DEL, that the licensee must make inaccessible to the children during child care hours.

"**Unsupervised access**" has the same meaning as "unsupervised access" in WAC 170-06-0020.

"**WAC**" means the Washington Administrative Code.

"**Weapons**" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-1100 Tribal or military regulated or operated child care—Certification for payment. (1) A family home child care that is regulated by an Indian tribe or the federal Department of Defense is exempt from licensing.

(2) A tribe or a child care regulated by the federal Department of Defense may request certification:

(a) For subsidy payment only; or

(b) As meeting licensing standards of this chapter and chapter 170-300 WAC.

(3) A child care seeking certification under this section must be located on the premises over which the tribe or federal Department of Defense has jurisdiction.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-1375 Private septic system—Inspection and maintenance. (1) If the licensed premises is served by a private septic system (not connected to a sewer system) the septic system must be maintained in a manner acceptable to the local health jurisdiction.

(2) The licensee must follow the local health jurisdiction's requirements for periodic septic system inspection and maintenance.

(3) If there are no local health jurisdiction's requirements for periodic septic system inspections the licensee must:

(a) Have the system inspected by a septic system inspector certified by the local health jurisdiction:

(i) Within six months prior to submitting a license application under WAC 170-296A-1250; and

(ii) Every three years after an initial license is issued to the license applicant under this chapter and chapter 170-300 WAC.

(b) Maintain the septic system as required by the inspection report.

(4) Septic system inspection and maintenance records must be kept on the premises and made available to the department upon request.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-1430 Initial license. An applicant who demonstrates compliance with health and safety requirements of this chapter and chapter 170-300 WAC, but may not be in full compliance with all requirements, may be issued an initial license.

(1) An initial license is valid for six months from the date issued.

(2) At the department's discretion, an initial license may be extended for up to three additional six-month periods not to exceed a total of two years.

(3) The department may limit the number of children or ages of children that the licensee may care for (capacity) under an initial license based on the licensee's child care experience.

(4) The department must evaluate the licensee's ability to follow all of the rules contained in this chapter and chapter 170-300 WAC during the initial license period.

(5) The department may issue a nonexpiring full license to a licensee operating under an initial license who:

(a) Demonstrates full compliance with the health and safety requirements of this chapter and chapter 170-300 WAC at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with other requirements of this chapter and chapter 170-300 WAC at any time; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-296A-1450(1).

(6) The department must deny a nonexpiring full license to a licensee operating under an initial license who does not demonstrate the ability to comply with all the rules contained in this chapter and chapter 170-300 WAC during the period of initial licensure.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-1475 Moves. If the licensee moves the child care to a different residence than currently licensed, even if located on the same premises, the department must inspect the new location and must approve that it meets the requirements of this chapter and chapter 170-300 WAC.

(1) The licensee must:

(a) Notify the department of a proposed move and the date the licensee plans to move;

(b) Submit an application before the move, as soon as the licensee plans to move and has an identified address, but not more than ninety days before moving; and

(c) Not operate more than two weeks following the move as provided by statute without a department inspection of the new location.

(2) If the licensee moves and does not notify the department, or submits an application after a move, the license becomes invalid and is closed by the department effective on the date of the move. If the license is closed, the licensee must submit a new application for licensure under WAC (~~(170-296A-1250)~~) 170-300-0400 to reinstate the license.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-5775 Licensee absence. (1) The licensee must have a written policy and procedure for staff to follow any time the licensee is absent from the child care. The policy and procedure must include, but is not limited to:

(a) A staffing plan to include:

(i) That a qualified primary staff person will be present and in charge at all times during the licensee's absence;

(ii) Staff roles and responsibilities;

(iii) How staff-to-child ratios will be met; and

(iv) How staff will meet the individual needs of children in care;

(b) How parents will be notified in writing of the licensee's absence described in WAC 170-296A-5810(1), closures, or staffing changes;

(c) Responsibility for meeting the requirements of this chapter and chapters 170-300 WAC and (~~chapter~~) 43.215 RCW;

(d) Emergency contact information for the licensee; and

(e) Licensee's expected outside work schedule if applicable.

(2) Prior to engaging in outside employment or ongoing activities outside the child care during operating hours, the licensee must inform the department in writing.

(3) The department must approve the licensee's policy and procedure for licensee absence. The department may require modifications to the proposed policy and procedure if it does not meet licensing requirements.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-5825 Licensee absence—Retraining for staff if standards are violated. (1) The licensee must provide an orientation to all staff on licensing standards in this chapter and chapter 170-300 WAC, including the licensee's policies and procedures, and document when the training occurred and identify staff that received the training.

(2) If the department issues a facility license compliance agreement as a result of staff not following the licensing standards of this chapter in the licensee's absence, the licensee must:

(a) Retrain the staff on the licensing standards in this chapter and chapter 170-300 WAC; and

(b) Document that the retraining occurred.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-8000 Facility licensing compliance agreements. At the department's discretion, when a licensee is in violation of this chapter, chapter 170-300 WAC, or (~~chapter~~) 43.215 RCW, a facility licensing compliance agreement may be issued in lieu of the department taking enforcement action.

(1) The facility licensing compliance agreement contains:

(a) A description of the violation and the rule or law that was violated;

(b) A statement from the licensee regarding the proposed plan to comply with the rule or law;

(c) The date the violation must be corrected;

(d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date; and

(e) Signature of the licensor and licensee.

(2) The licensee must return a copy of the completed facility license compliance agreement to the department by the date indicated when corrective action has been completed.

(3) The licensee may request a supervisory review regarding the violation of rules or laws identified on the facility license compliance agreement.

(4) A facility license compliance agreement is not subject to appeal under chapter 170-03 WAC.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-8010 Nonreferral status. In addition to or in lieu of an enforcement action under this chapter and chapter 170-300 WAC, the department may place a family home child care on nonreferral status as provided in RCW 43.215.300(4).

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-8025 Time period for correcting a violation. The length of time the licensee has to make the corrections depends on:

(1) The seriousness of the violation;

(2) The potential threat to the health, safety and well-being of the children in care; and

(3) The number of times the licensee has violated rules in this chapter, chapter 170-300 WAC, or requirements under chapter 43.215 RCW.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-8050 Civil monetary penalties (fines). A civil monetary penalty (fine) may be imposed

when the licensee violates a rule in this chapter, chapter 170-300 WAC, or a requirement in chapter 43.215 RCW.

(1) A fine of one hundred fifty dollars per day may be imposed for each violation.

(2) The fine may be assessed and collected with interest for each day a violation occurs.

(3) A fine may be imposed in addition to other action taken against the license including probation, suspension, revocation or denial of a license renewal.

(4) At the department's discretion, a fine may be withdrawn or reduced if the licensee comes into compliance during the notification period in WAC 170-296A-8075.

(5) When a fine is assessed the licensee has the right to a hearing under chapter 170-03 WAC. The fine notice will include information about the licensee's hearing rights and how to request a hearing.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-8060 When fines are levied. The department may base a fine for violation of a rule under this chapter, chapter 170-300 WAC, or a requirement in chapter 43.215 RCW, according to whether the licensee:

(1) Has allowed the existence of any condition that creates a serious safety and health risk;

(2) Or any staff person or household member uses corporal punishment or humiliating methods of control or discipline;

(3) Or any staff person fails to provide the required supervision;

(4) Fails to provide required light, ventilation, sanitation, food, water, or heating;

(5) Provides care for more than the highest number of children permitted by the license; or

(6) Repeatedly fails to follow the rules in this chapter, chapter 170-300 WAC, or the requirements in chapter 43.215 RCW. As used in this section, "repeatedly" means a violation that has been the subject of a facility license compliance agreement that occurs more than once in a twelve-month time period.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-8150 Denial, suspension, revocation, modification, or noncontinuation of a license. A license may be denied, suspended, modified, revoked, or not continued when the licensee fails to comply with the requirements in this chapter, chapter 170-300 WAC, or any provisions of chapter 43.215 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 170-296A-1250 Initial license application packet—
Contents.

WAC 170-296A-1275 Initial license application processing.

WAC 170-296A-1400 Private well and water system.

WAC 170-296A-2000 Recordkeeping—Records available to the department.

WAC 170-296A-2750 House numbers.

WAC 170-296A-2800 Access for emergency vehicles.

WAC 170-296A-4000 Lead, asbestos, arsenic and other hazards.