

WSR 15-06-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-29—Filed February 18, 2015, 12:42 p.m., effective February 23, 2015]

Effective Date of Rule: February 23, 2015.

Purpose: Amends cougar hunting rules described in WAC 232-28-297.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-29700Q; and amending WAC 232-28-297.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.12.150.

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

Reasons for this Finding: This change closes specific cougar hunt areas that have met or exceeded the area harvest guideline. Immediate action is necessary to protect cougars from overharvest in hunt areas that have met or exceeded the area harvest guideline. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: February 18, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 232-28-29700R 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations. Notwithstanding the provisions of WAC 232-28-297, effective February 23, 2015, until further notice:

General cougar seasons in Game Management Units (GMUs) 105, 108, 101, 111, 113, 117, 121, 145, 166, 175, 178, 503, 505, 520, 550, 574, 578 and 667 are closed.

REPEALER

The following section of the Washington Administrative Code is repealed as of February 23, 2015.

WAC 232-28-29700Q 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations.

WSR 15-06-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-30—Filed February 20, 2015, 9:51 a.m., effective February 21, 2015]

Effective Date of Rule: February 21, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500K; and amending WAC 220-310-195.

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: Recent analyses of the ongoing steelhead fisheries in portions of the upper Columbia River has revealed sufficient natural origin steelhead impacts still remain under the NOAA issued ESA section 10 permit. Opening steelhead fishing in an additional section of the Wenatchee River will offer anglers opportunity to harvest hatchery origin fish. This will help to reduce the proportion of hatchery fish on the spawning grounds and further reduce competition between natural origin and hatchery juvenile production. The Methow River closed area will be utilized by Winthrop National Fish Hatchery personnel to capture natural origin steelhead broodstock to meet hatchery production and genetic management goals. 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: February 20, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500L Freshwater exceptions to statewide rules—Wenatchee, Methow Entiat, Okanogan and Similkameen rivers. Notwithstanding the provisions of WAC 220-310-195, effective February 21, 2015, until further notice, the following provisions are in effect. Unless otherwise amended, all permanent rules remain in effect:

(1) It is permissible to fish for steelhead in the following waters:

(a) Wenatchee River from the mouth to 400 feet below Tumwater Dam., including the Icicle River from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(b) Entiat River from the mouth to a 1/2 mile upstream to a point perpendicular with the intersection of the Entiat River Road and Hedding Street.

(c) Methow River from the mouth to the confluence with the Chewuch River in Winthrop. Fishing from a floating device is prohibited from the second powerline crossing (1 mile upstream from the mouth) to the first Hwy 153 Bridge (4 miles upstream from the mouth).

(d) Okanogan River from the mouth upstream to the Highway 97 Bridge in Oroville.

(e) Similkameen River from the mouth upstream to 400 feet below Enloe Dam.

(2) Mandatory retention of adipose fin clipped steelhead, daily limit two (2) hatchery steelhead, 20 inch minimum size. Hatchery steelhead are identified by a missing adipose fin with a healed scar in its location.

(3) Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

(4) Night closure and selective gear rules remain in effect.

(5) Release all steelhead with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin.

(6) Effective March 1, 2015, until further notice, the following areas are closed to steelhead fishing:

(a) Those waters of the Okanogan River From the first power line crossing downstream of the Highway 155 Bridge in Omak (Coulee Dam Credit Union Building) to the mouth of Omak Creek.

(b) Those waters of the Okanogan River from the Tonasket Bridge (4th street) downstream to the Tonasket Lagoons Park boat launch.

(7) Effective one hour after official sunset on March 1, 2015, until further notice, waters of the Methow River from the upstream boundary of Heckendorn Park (across from East 20 Pizza) to the Highway 20 Bridge in Winthrop, WA. are closed to steelhead fishing.

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 February 21, 2015:

WAC 220-310-19500K Freshwater exceptions to statewide rules—Wenatchee, Methow Entiat and Okanogan rivers. (15-23)

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

**WSR 15-06-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-31—Filed February 20, 2015, 3:42 p.m., effective March 1, 2015]

Effective Date of Rule: March 1, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-310-185.

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 pre-season forecast is for a return of one thousand one hundred adult spring Chinook to the Lewis River in 2015. The closure is necessary to provide enough fish to meet the hatchery escapement goal of approximately one thousand three hundred fifty fish. The hatchery escapement goal for late winter run steelhead in the Kalama River is expected to be met and surplus fish are available for harvest providing additional angling opportunity. 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 2, Amended 0, Repealed 0.

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

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

Date Adopted: February 20, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500N Freshwater exceptions to statewide rules—Lewis River. Notwithstanding the provisions of WAC 220-310-185:

(1) Effective March 1, 2015, until further notice, it is unlawful to fish for or possess Chinook salmon in the following waters:

(a) Lewis River - from the mouth upstream to the mouth of the East Fork.

(b) North Fork Lewis River - from the mouth of East Fork upstream to the overhead powerlines below Merwin Dam.

NEW SECTION

WAC 220-310-18500P Freshwater exceptions to statewide rules—Kalama River. Notwithstanding the provisions of WAC 220-310-185, effective March 1, 2015, until further notice, the daily limit is three hatchery steelhead in the waters of the Kalama River from boundary markers at the mouth to 1,000 feet below fishway at the upper salmon hatchery.

**WSR 15-06-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-32—Filed February 20, 2015, 3:42 p.m., effective February 20, 2015, 3:42 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100S and 220-32-05100T; and amending WAC 220-32-051.

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: Opens the treaty winter fishery for commercial sales to Washington wholesale buyers and the public. The Columbia River treaty tribes have delayed the

use of gillnets in SMCRA 1F until February 23, however sales of fish caught with platform/hook and line gear in that area is allowed (as described in section 2c). The Dalles and John Day pool[s] are expected to continue through February 24 based on past catch rates and current catch guidelines. Harvestable sturgeon are available under the current harvest guidelines for each pool. The season is consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on January 28 and February 19, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River 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 the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; 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 2.

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

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

Date Adopted: February 20, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100T Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G and 1H (The Dalles Pool and John Day Pool):

(a) Season: Immediately through 6:00 p.m. February 24, 2015.

(b) Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches in fork length in SMCRA 1G and 1H may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(2) Open Areas: SMCRA 1F (Bonneville Pool):

(a) Season: Immediately through 5:59 a.m. February 23, 2015.

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

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon may not be sold. Sturgeon between 38-54 inches in fork length in SMCRA 1F may only be kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(3) Open Areas: SMCRA 1F (Bonneville Pool):

(a) Season: 6:00 a.m. February 23 through 6:00 p.m. March 21, 2015.

(b) Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in SMCRA 1G and 1H may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required. Fish caught during the open period may be sold after the period concludes.

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100S Columbia River salmon seasons above Bonneville Dam. (15-21)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2015:

WAC 220-32-05100T Columbia River salmon seasons above Bonneville Dam.

WSR 15-06-022**EMERGENCY RULES****BUILDING CODE COUNCIL**

[Filed February 24, 2015, 4:17 p.m., effective February 24, 2015, 4:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This change will redefine "portable school classrooms" and add a definition of "clusters" of such classrooms, and will modify the requirements for fire sprinklers in clusters of portable school classrooms below 6,000 sq. ft. for the purpose of improving fire safety and egress for school occupants.

NOTE: This filing is to renew the emergency rule renewed on November 6, 2014, as WSR 14-23-009 (originally filed on March 14, 2014, as WSR 14-07-058). This matter has been filed for permanent rule making under WSR 14-24-090.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54A-0202 and 51-54A-0903.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

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

Reasons for this Finding: The current WAC language has become obsolete, and does not reflect the needs of school districts regarding fire safety in portable school classrooms. The existing rules negatively impact building plans for school districts throughout the state. This modification will provide immediate economic relief to school districts planning to add portable classrooms, and will provide a safer environment for building occupants.

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 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: March 7, 2014.

Dave Kokot
Chair

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

WAC 51-54A-0202 General definitions.

SECTION 202 GENERAL DEFINITIONS

ADULT FAMILY HOME. A dwelling, licensed by Washington state, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

ALERT SIGNAL. A distinctive signal indicating the need for trained personnel and occupants to initiate a specific action, such as shelter-in-place.

ALERT SYSTEM. Approved devices, equipment and systems or combinations of systems used to transmit or broadcast an alert signal.

CHILD CARE. For the purposes of these regulations, child care is the care of children during any period of a 24-hour day.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

CLUSTER. Clusters are multiple portable school classrooms separated by less than the requirements of the building code for separate buildings.

COVERED BOAT MOORAGE. A pier or system of floating or fixed access ways to which vessels on water may be secured and any portion of which are covered by a roof.

ELECTRICAL CODE. The National Electrical Code, promulgated by the National Fire Protection Association, as adopted by rule or local ordinance under the authority of chapter 19.28 RCW.

EMERGENCY DRILL. An exercise performed to train staff and occupants and to evaluate their efficiency and effectiveness in carrying out emergency procedures.

EXISTING. Buildings, facilities or conditions that are already in existence, constructed or officially authorized prior to the adoption of this code.

GRAVITY-OPERATED DROP OUT VENTS. Automatic smoke and heat vents containing heat-sensitive glazing designed to

shrink and drop out of the vent openings when exposed to fire.

HOSPICE CARE CENTER. A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

MOTOR VEHICLE. Includes, but not limited to, a vehicle, machine, tractor, trailer or semitrailer, or any combination thereof, propelled or drawn by mechanical power and designed for use upon the highways in the transportation of passengers or property. It does not include a vehicle, locomotive or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. The term "motor vehicle" also includes freight containers or cargo tanks used, or intended for use, in connection with motor vehicles.

NIGHTCLUB. An A-2 Occupancy use under the 2006 International Building Code in which the aggregate area of concentrated use of unfixated chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

OCCUPANCY CLASSIFICATION. For the purposes of this code, certain occupancies are defined as follows:

Group I-2. This occupancy shall include buildings and structures used for medical care on a 24-hour basis for more than five persons who are incapable of self-preservation. This group shall include, but not be limited to, the following:

- Foster care facilities
- Detoxification facilities
- Hospice care centers
- Hospitals
- Nursing homes
- Psychiatric hospitals

Five or fewer persons receiving care. A facility such as the above with five or fewer persons receiving such care shall be classified as Group R-3 or shall comply with the *International Residential Code* provided an *automatic sprinkler system* is installed in accordance with Section 903.3.1.3 or with Section P2904 of the *International Residential Code*.

Licensed care facility. A facility such as the above providing licensed care to clients in one of the categories listed in Section 310.1 of the International Building Code licensed by Washington state shall be classified as Group R-2.

Family home child care. Family home child care licensed by Washington state for the care of twelve or fewer children shall be classified as Group R-3 or shall comply with the *International Residential Code*.

Adult care facility. A facility that provides accommodations for less than 24 hours for more than five unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

EXCEPTION: Where the occupants are capable of responding to an emergency situation without physical assistance from the staff, the facility shall be classified as Group R-3.

Child care facility. Child care facilities that provide supervision and personal care on a less than 24-hour basis for more than five children 2 1/2 years of age or less shall be classified as Group I-4.

EXCEPTIONS: 1. A child day care facility that provides care for more than five but no more than 100 children 2 1/2 years or less of age, where the rooms in which the children are cared for are located on a level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.
2. Family child care homes licensed by Washington state for the care of 12 or fewer children shall be classified as Group R-3.

Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *International Residential Code*. This group shall include:

R-1 Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

Boarding houses (transient) with more than 10 occupants
Congregate living facilities (transient) with more than 10 occupants

Hotels (transient)

Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

Apartment houses

Assisted living facilities as licensed by Washington state under chapter 388-78A WAC

Boarding houses (nontransient) with more than 16 occupants

Congregate living facilities (nontransient) with more than 16 occupants

Convents

Dormitories

Fraternities and sororities

Hotels (nontransient)

Live/work units

Monasteries

Motels (nontransient)

Residential treatment facilities as licensed by Washington state under chapter 246-337 WAC

Vacation timeshare properties

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, or I, including:

Buildings that do not contain more than two dwelling units.

Boarding houses (nontransient) with 16 or fewer occupants.

Boarding houses (transient) with 10 or fewer occupants.

Care facilities that provide accommodations for five or fewer persons receiving care.

Congregate living facilities (nontransient) with 16 or fewer occupants.

Congregate living facilities (transient) with 10 or fewer occupants.

Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the *International Residential Code* provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or with Section P2904 of the *International Residential Code*.

Adult family homes, family home child care. Adult family homes and family home child care facilities that are within a single-family home are permitted to comply with the *International Residential Code*.

Foster family care homes. Foster family care homes licensed by Washington state are permitted to comply with the *International Residential Code*, as an accessory use to a dwelling, for six or fewer children including those of the resident family.

R-4 Classification is not adopted. Any reference in this code to R-4 does not apply.

PORTABLE SCHOOL CLASSROOM. A prefabricated structure(;) consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in one or more sections, (~~which requires a chassis to be transported,~~) and is designed to be used as an educational space with or without a permanent foundation. The structure shall be (~~trailerable and~~) capable of being demounted and relocated to other locations as needs arise.

RECALL SIGNAL. An electrically or mechanically operated signal used to recall occupants after an emergency drill or to terminate a shelter-in-place event that shall be distinct from any alarm or alert signal used to initiate an emergency plan, or other signals.

SHELTER-IN-PLACE. An emergency response used to minimize exposure of facility occupants to chemical or environmental hazards by taking refuge in predetermined interior rooms or areas where actions are taken to isolate the interior environment from the exterior hazard.

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

WAC 51-54A-0903 Automatic sprinkler systems.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E occupancies.

EXCEPTIONS: 1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table 1004.1.2, provided that the aggregate area of any cluster of portable classrooms does not exceed ((5,000)) 6,000 square feet ((1465 m²)) (557 m²); and clusters of portable school classrooms shall be separated as required by the building code((-); or

2. Portable school classrooms with an occupant load from 51 through 98, calculated in accordance with Table 1004.1.2, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each classroom shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or

3. Group E occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.2.

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand-held (portable) fire extinguisher is in every Group R fire area.

903.2.11.1.3 Basements. Where any portion of a basement is located more than 75 feet (22,860 mm) from openings required by Section 903.2.11.1, or where new walls, partitions or other similar obstructions are installed that increase the exit access travel distance to more than 75 feet, the basement shall be equipped throughout with an approved automatic sprinkler system.

WSR 15-06-024
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed February 24, 2015, 4:57 p.m., effective February 24, 2015, 4:57 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule change will resolve conflicts in the Washington Residential Code regarding fire sprinkler requirements for townhouse construction. The current language is unclear and leads to misinterpretation of the code requirements for the building industry and code officials.

NOTE: This filing is to renew the emergency rule renewed on November 6, 2014, as WSR 14-23-013 (originally filed on March 17, 2014, as WSR 14-07-080). This matter has been filed for permanent rule making under WSR 14-24-088.

Citation of Existing Rules Affected by this Order: Amending WAC 51-51-0302.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2012 Residential Code does not adequately address fire safety requirements for townhouse construction; an error in the current code creates confusion for builders and code officials regarding fire separation and sprinkler requirements. It is not the intent of the code to allow reduced fire protection in nonsprinklered townhouses. This rule clarifies that a two-hour wall is required for fire separation when sprinklers are not present in townhouses.

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 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: March 7, 2014.

Dave Kokot
Chair

AMENDATORY SECTION (Amending WSR 13-23-084, filed 11/19/13, effective 4/1/14)

WAC 51-51-0302 Section R302—Fire-resistant construction.

R302.1 Exterior walls. Construction, projections, openings and penetrations of exterior walls of dwellings and accessory buildings shall comply with Table R302.1(1); or *dwellings* equipped throughout with an *automatic sprinkler system* installed in accordance with Section P2904 shall comply with Table R302.1(2).

EXCEPTIONS:

1. Walls, projections, openings or penetrations in walls perpendicular to the line used to determine the fire separation distance.
2. Walls of dwellings and accessory structures located on the same lot.
3. Detached tool sheds and storage sheds, playhouses and similar structures exempted from permits are not required to provide protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.
4. Detached garages accessory to a dwelling located within 2 feet (610 mm) of a lot line are permitted to have roof eave projections not exceeding 4 inches (102 mm).
5. Foundation vents installed in compliance with this code are permitted.

TABLE R302.1(1)
EXTERIOR WALLS

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	Fire-resistance rated	1-hour tested in accordance with ASTM E 119 or UL 263 with exposure from both sides	< 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Projections	Fire-resistance rated	1 hour on the underside ^{a, b}	≥ 2 feet to < 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Openings in walls	Not allowed	N/A	< 3 feet
	25% maximum of wall area per story	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 5 feet
		None required	5 feet

For IS: 1 foot = 304.8 mm. N/A = Not Applicable

^a Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave if fire blocking is provided from the wall top plate to the underside of the roof sheathing.

^b Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave provided no gable vent openings are installed.

Table R302.1(2)
Exterior Walls—Dwellings with Fire Sprinklers

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	Fire-resistance rated	1-hour tested in accordance with ASTM E 119 or UL 263 with exposure from the outside	0 feet
	Not fire-resistance rated	0 hours	3 feet ^a
Projections	Fire-resistance rated	1 hour on the underside ^{b, c}	2 feet ^a
	Not fire-resistance rated	0 hours	3 feet
Openings in walls	Not allowed	N/A	< 3 feet
	Unlimited	0 hours	3 feet ^a
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet ^a

For IS: 1 foot = 304.8 mm. N/A = Not Applicable

^a For residential subdivisions where all dwellings are equipped throughout with an automatic sprinkler system installed in accordance with P2904, the fire separation distance for nonrated exterior walls and rated projections shall be permitted to be reduced to 0 feet, and unlimited unprotected openings and penetrations shall be permitted, where the adjoining lot provides an open setback yard that is 6 feet or more in width on the opposite side of the property line.

^b Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave if fire blocking is provided from the wall top plate to the underside of the roof sheathing.

^c Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave provided no gable vent openings are installed.

R302.2 Townhouses. Each *townhouse* shall be considered a separate building and shall be separated by one of the following methods:

1. A common 1-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 and a fire sprinkler system in accordance with Section P2904 in both townhouses shall be provided. The cavity of the common wall shall not contain plumbing or mechanical equipment, ducts or vents. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

2. A common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 shall be provided. The cavity of the common wall shall not contain plumbing or mechanical equipment, ducts or vents. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside

of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

3. Two wall assemblies meeting the requirements of Section R302.1 for exterior walls shall be provided.

R302.2.1 Continuity. The fire-resistance-rated wall or assembly separating townhouses shall be continuous from the foundation to the underside of the roof sheathing, deck or slab. The fire-resistance rating shall extend the full length of the wall or assembly, including wall extensions through and separating attached enclosed accessory structures.

Where a story extends beyond the exterior wall of a story below:

1. The fire-resistance-rated wall or assembly shall extend to the outside edge of the upper story; or
2. The underside of the exposed floor-ceiling assembly shall be protected as required for projections in Section R302.

R302.2.4 Structural independence. Each individual townhouse shall be structurally independent.

- EXCEPTIONS:
1. Foundation supporting exterior walls or common walls.
 2. Structural roof and wall sheathing from each unit may be fastened to the common wall framing.
 3. Nonstructural wall and roof coverings.
 4. Flashing at termination of roof covering over common wall.
 5. Townhouses separated by a common ((1-hour fire-resistance-rated)) wall as provided in Section R302.2, Item 1 or 2.
 6. Floor sheathing may fasten to the floor framing of both units.

R302.3.1 Supporting construction. When floor assemblies are required to be fire-resistance rated by Section R302.3, the supporting construction of such assemblies shall have an equal or greater fire-resistance rating.

- EXCEPTION:
- The supporting construction is not required to be fire-resistance rated where:
1. Automatic fire sprinklers are installed in accordance with appendix R in both dwelling units;
 - or
 2. All required smoke alarms in both dwelling units are interconnected in such a manner that the actuation of one alarm will activate all alarms in both dwelling units.

WSR 15-06-026

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed February 25, 2015, 9:36 a.m., effective February 25, 2015, 9:36 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule-making order repeals chapter 16-810 WAC adopted on February 2, 2015, to establish a quarantine zone in Okanogan county to protect the commercial poultry industry, small poultry farms and poultry fanciers in Washington state from highly pathogenic avian influenza (HPAI).

Citation of Existing Rules Affected by this Order: Repealing WAC 16-810-005, 16-810-010, 16-810-015, 16-810-016, 16-810-020, 16-810-025, 16-810-030, 16-810-035, 16-810-040, and 16-810-045.

Statutory Authority for Adoption: RCW 16.36.040.

Other Authority: Chapter 34.05 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: HPAI was found in domestic poultry in Okanogan County in January 2015. HPAI is an extremely infectious and fatal form of avian influenza that affects many species of birds and is of particular concern when it affects poultry. It has been determined that the quarantine in Okanogan County was successful in the containment and eradication of HPAI in the designated zone. Immediate repeal of the movement restrictions on poultry and poultry products in the designated zone is necessary to protect Washington's poultry industry from long-term disruption.

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 10.

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: February 25, 2015.

Mark Streuli
Deputy Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|--|
| WAC 16-810-005 | Definitions. |
| WAC 16-810-010 | Necessity of establishing a quarantine zone for notifiable avian influenza (NAI)—Purpose. |
| WAC 16-810-015 | Zone 1 under quarantine for NAI. |
| WAC 16-810-016 | Zone 2 under quarantine for NAI. |
| WAC 16-810-020 | Prohibition on moving poultry, eggs, and poultry products, and specified farm products within or from the quarantine zone established for NAI. |

WAC 16-810-025	Restrictions on vehicles, poultry equipment, wood crates and poultry products leaving from any premises in the quarantine zone established for NAI.
WAC 16-810-030	Testing live poultry within the quarantine zone.
WAC 16-810-035	Destruction of poultry testing positive or exposed to birds testing positive for NAI.
WAC 16-810-040	Disposal of dead poultry originating within the quarantine zone.
WAC 16-810-045	Special permits—Quarantine zone.

WSR 15-06-029**EMERGENCY RULES****LIQUOR CONTROL BOARD**

[Filed February 25, 2015, 10:59 a.m., effective February 25, 2015, 10:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Emergency rules are needed to provide additional clarity to the marijuana rules. These emergency rules were originally adopted by the board on October 22, 2014, and expired February 19, 2015, and cover the amount of plant canopy allowed for marijuana production; what marijuana-infused products are prohibited for sale at a marijuana retail location; additional security requirements at a marijuana premises; good laboratory practice checklist for use by laboratories conducting marijuana testing; and extraction equipment certification requirements. Rules need to be in place while permanent rules are being developed for the preservation of the public health, welfare and safety.

Citation of Existing Rules Affected by this Order: Amending WAC 314-55-075, 314-55-079, 314-55-083, and 314-55-104.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

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

Reasons for this Finding: Immediate adoption of these rules is necessary for the preservation of the public health and safety. Retail marijuana stores need to be clear on what they are prohibited from selling to protect public health and safety. Security and surveillance systems at a marijuana licensed premises must ensure that all parts of the premises are covered by security at all times to protect public safety. Labs must be properly accredited to perform quality assurance testing of marijuana that the public will consume to protect public health and safety. Extraction equipment must be certified to be professional grade to protect public safety.

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 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 4, 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: February 25, 2015.

Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell marijuana plants, seed, and plant tissue culture to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production is initially limited to two million square feet, to be increased based on marketplace demand, but not to exceed eight and one-half million square feet without board approval. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 - Less than two thousand square feet;

(b) Tier 2 - Two thousand square feet to ten thousand square feet; and

(c) Tier 3 - Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum of two million square feet the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds two million square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or

(b) Indoor grows - Six months of their annual harvest.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older. Marijuana-infused products listed in WAC 314-55-077(6) are prohibited for sale by a marijuana retail licensee.

(2) Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.

(3) Internet sales and delivery of product to customers is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below their acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(8) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in the transportation rules in WAC 314-55-085.

(9) A marijuana retailer may not accept a return of product that has been opened.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-104 Marijuana processor license extraction requirements. (1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(3) Processors may use a professional grade closed loop CO₂ gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch. The CO₂ must be of at least ninety-nine percent purity.

(4) Certification must be provided to the liquor control board for professional grade closed loop systems used by processors ((must be)) to certify that the system was commercially manufactured and built to codes of recognized and generally accepted good engineering practices, such as:

(a) The American Society of Mechanical Engineers (ASME);

(b) American National Standards Institute (ANSI);

(c) Underwriters Laboratories (UL); or

(d) The American Society for Testing and Materials (ASTM).

(5) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a) Title 296 WAC;

(b) National Fire Protection Association (NFPA) standards;

(c) International Building Code (IBC);

(d) International Fire Code (IFC); and

(e) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

(6) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts. Under WAC 314-55-077, infused dairy butter and oils or fats derived from natural sources may be used to prepare infused edible products, but they may not be prepared as stand-alone edible products for sale.

(7) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

(8) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

(9) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50.348.

AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises. All non-employee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises. A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit. All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the liquor control board or law enforcement officer upon request.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance with minimum camera resolution of 640x470 pixels and cameras must be internet protocol (IP) compatible ~~((and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and moni-~~

~~toring hardware and support systems)). All cameras must be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility shall be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously twenty-four hours per day and at a minimum of ten frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the liquor control board or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.~~

~~(a) ((All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.~~

~~(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.~~

~~(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured on-site in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.~~

~~(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.~~

~~(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.~~

~~(f)) Controlled areas include:~~

~~(i) Any area within an indoor, greenhouse or outdoor room or area where marijuana is grown, or marijuana or marijuana waste is being moved within, processed, stored, or destroyed. Booms or areas where marijuana or marijuana waste is never present are not considered control areas and do not require camera coverage.~~

~~(ii) All point-of-sale (POS) areas.~~

(iii) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.

(iv) Any room or area storing a surveillance system storage device.

(b) All marijuana or marijuana-infused products that are intended to be removed or transported (~~from marijuana producer to marijuana processor and/or marijuana processor to marijuana retailer~~) between two licensed premises shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

~~((g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.))~~

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts, marijuana-infused products, samples, and marijuana waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste is to be destroyed;

(d) When usable marijuana or marijuana-infused products are transported;

(e) Any theft of usable marijuana, marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed, a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before a lot of marijuana is transported from a producer to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before usable marijuana, or marijuana-infused products are transported from a processor to a retailer;

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happen when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana, seeds, plant tissue, seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract, marijuana-infused products, and marijuana waste;

(k) All point of sale records;

(l) Marijuana excise tax records;

(m) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

(n) All free samples provided to another licensee for purposes of negotiating a sale;

(o) All samples used for testing for quality by the producer or processor;

(p) Samples containing usable marijuana provided to retailers;

(q) Samples provided to the board or their designee for quality assurance compliance checks; and

(r) Other information specified by the board.

(5) **Start-up inventory for marijuana producers.**

Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants physically on the licensed premises. The producer must, within twenty-four hours, record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors, or used for product quality testing, as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana-infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(e) Samples are limited to one-half gram and a processor may not provide any one licensed retailer more than one gram of marijuana-infused extract meant for inhalation per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(f) Producers may sample one gram of usable marijuana per strain, per month for quality sampling. Sampling for quality may not take place at a licensed premises. Only the producer or employees of the licensee may sample the usable marijuana for quality. The producer must record the amount

of each sample and the employee(s) conducting the sampling in the traceability system.

(g) Processors may sample one unit, per batch of a new edible marijuana-infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana-infused product. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(h) Processors may sample up to one quarter gram, per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana-infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(i) The limits described in subsection (3) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(8).

(j) Retailers may not provide free samples to customers.

NEW SECTION

WAC 314-55-103 Good laboratory practice checklist. A third-party testing lab must be certified by the WSLCB or its vendor as meeting the board's accreditation and other requirements prior to conducting required quality assurance tests. The following checklist will be used by the board or its vendor to certify third-party testing labs:

ORGANIZATION	Document Reference	Y	N	NA	Comments
1. The laboratory or the organization of which it is part shall be an entity that can be held legally responsible.					
2. The laboratory conducting third-party testing shall have no financial interest in a licensed producer or processor for which testing is being conducted.					
a. If the laboratory is part of an organization performing activities other than testing and/or calibration, the responsibilities of key personnel in the organization that have an involvement or influence on the testing and/or calibration activities of the laboratory shall be defined in order to identify potential conflicts of interest.					
3. The laboratory shall have policies and procedures to ensure the protection of its client's confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results.					
4. The laboratory is responsible for all costs of initial certification and ongoing site assessments.					
5. The laboratory must agree to site assessments every two years to maintain certification.					
6. The laboratory must allow WSLCB staff or their representative to conduct physical visits and check I-502 related laboratory activities at any time.					

ORGANIZATION	Document Reference	Y	N	NA	Comments
7. The laboratory must report all test results directly into WSLCB's traceability system within twenty-four hours of completion. Labs must also record in the traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the customer.					
HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
8. Job descriptions for owners and all employees: Key staff.					
9. Qualifications of owners and staff: CVs for staff on file.					
a. Have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations.					
b. Documentation that the scientific director meets the requirements of WSLCB rules.					
c. Chain of command, personnel organization/flow chart, dated and signed by the laboratory director.					
d. Written documentation of delegation of responsibilities (assigned under chapter 314-55 WAC as related to quality assurance testing) to qualified personnel, signed and dated by the laboratory director.					
e. Documentation of employee competency: Prior to independently analyzing samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). Dated and signed by the laboratory director.					
f. Designate a quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources.					
10. Written and documented system detailing the qualifications of each member of the staff.					
a. The need to require formal qualification or certification of personnel performing certain specialized activities shall be evaluated and implemented where necessary.					

HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
11. Standard operating procedure manual that details records of internal training provided by facility for staff. Laboratory director must approve, sign and date each procedure.					
a. Instructions on regulatory inspection and preparedness.					
b. Instruction on law enforcement interactions.					
c. Information on U.S. federal laws, regulations, and policies relating to individuals employed in these operations, and the implications of these for such employees.					
d. Written and documented system of employee training on hazards (physical and health) of chemicals in the workplace, including prominent location of MSDS sheets and the use of appropriate PPE.					
e. Written and documented system on the competency of personnel on how to handle chemical spills and appropriate action; spill kit on-site and well-labeled, all personnel know the location and procedure.					
f. Information on how employees can access medical attention for chemical or other exposures, including follow-up examinations without cost or loss of pay.					
g. Biosafety and sterile technique training.					

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
12. As appropriate, laboratory operations covered by procedures shall include but not be limited to the following: <ul style="list-style-type: none"> a. Environmental, safety and health activities; b. Sample shipping and receipt; c. Laboratory sample chain of custody and material control; d. Notebooks/logbooks; e. Sample storage; f. Sample preparation; g. Sample analysis; h. Standard preparation and handling; i. Post-analysis sample handling; j. Control of standards, reagents and water quality; k. Cleaning of glassware; l. Waste minimization and disposition. 					
13. The following information is required for procedures as appropriate to the scope and complexity of the procedures or work requested:					

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
a. Scope (e.g., parameters measured, range, matrix, expected precision, and accuracy); b. Unique terminology used; c. Summary of method; d. Interferences/limitations; e. Approaches to address background corrections; f. Apparatus and instrumentation; g. Reagents and materials; h. Hazards and precautions; i. Sample preparation; j. Apparatus and instrumentation setup; k. Data acquisition system operation; l. Calibration and standardization; m. Procedural steps; n. QC parameters and criteria; o. Statistical methods used; p. Calculations; q. Assignment of uncertainty; r. Forms used in the context of the procedure.					
FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
14. Allocation of space: Adequate for number of personnel and appropriate separation of work areas.					
15. Arrangement of space.					
a. Allows for appropriate work flow, sampling, lab space separate from office and break areas.					
b. Employee bathroom is separate from any laboratory area.					
16. Adequate eyewash/safety showers/sink.					
17. Procurement controls.					
a. The laboratory shall have procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, receipt and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.					
b. The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned.					
c. Prospective suppliers shall be evaluated and selected on the basis of specified criteria.					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
d. Processes to ensure that approved suppliers continue to provide acceptable items and services shall be established and implemented.					
e. When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to appropriate management for action.					
18. Utilities.					
a. Electrical: i. Outlets: Adequate, unobstructed, single use, no multi-plug adaptors; ii. No extension cords; iii. Ground fault circuit interrupters near wet areas.					
b. Plumbing: i. Appropriateness of sink usage: Separate for work/personal use; ii. Adequate drainage from sinks or floor drains; iii. Hot and cold running water.					
c. Ventilation: i. Areas around solvent use or storage of waste solvent; ii. Vented hood for any microbiological analysis - Class II Type A biosafety cabinet.					
d. Vacuum: i. Appropriate utilities/traps for prevention of contamination.					
e. Shut-off controls: Located outside of the laboratory.					
19. Waste disposal: Appropriate for the type of waste and compliant with WAC 314-55-097, Marijuana waste disposal—Liquids and solids.					
20. Equipment list.					
a. Equipment and/or systems requiring periodic maintenance shall be identified and records of major equipment shall include: i. Name; ii. Serial number or unique identification; iii. Date received and placed in service; iv. Current location; v. Condition at receipt; vi. Manufacturer's instructions; vii. Date of calibration or date of next calibration; viii. Maintenance; ix. History of malfunction.					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
21. Maintenance.					
a. Regular preventive maintenance of equipment demonstration in logbook including, but not limited to: Thermometer calibration, pipette calibrations, analytical balances, and analytical equipment. Documentation of a schedule and reviewed by the laboratory director.					
b. Documentation of curative maintenance in logbook, signed and dated by laboratory director.					
c. Temperature maintenance log book for refrigerators.					
d. Decontamination and cleaning procedures for: i. Instruments; ii. Bench space; iii. Ventilation hood.					
e. Documentation of adequacy of training of personnel and responsibility for each maintenance task.					
f. The organization shall describe or reference how periodic preventive and corrective maintenance of measurement or test equipment shall be performed to ensure availability and satisfactory performance of the systems.					
22. Computer systems.					
a. Adequate for sample tracking.					
b. Adequate for analytical equipment software.					
c. Software control requirements applicable to both commercial and laboratory developed software shall be developed, documented, and implemented.					
d. In addition, procedures for software control shall address the security systems for the protection of applicable software.					
e. For laboratory-developed software, a copy of the original program code shall be: i. Maintained; ii. All changes shall include a description of the change, authorization for the change; iii. Test data that validates the change.					
f. Software shall be acceptance tested when installed, after changes, and periodically during use, as appropriate.					
g. Testing may consist of performing manual calculations or checking against another software product that has been previously tested, or by analysis of standards.					
h. The version and manufacturer of the software shall be documented.					

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
i. Commercially-available software may be accepted as supplied by the vendor. For vendor supplied instrument control/data analysis software, acceptance testing may be performed by the laboratory.					
23. Security.					
a. Written facility security procedures during operating and nonworking hours.					
b. Roles of personnel in security.					
c. SOP for controlled access areas and personnel who can access.					
d. Secured areas for log-in of sample, and for short and long-term storage of samples.					
24. Storage.					
a. Appropriate and adequate for sample storage over time. The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned.					
b. Adequate storage of chemical reference standards.					
c. Appropriate storage of any reagents: Fireproof cabinet, separate cabinet for storage of any acids.					
d. Appropriate safe and secure storage of documents etc., archiving, retrieval of, maintenance of and security of data for a period of three years.					
QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
25. Sampling/sample protocols: Written and approved by the laboratory director.					
a. Demonstrate adequacy of the chain-of-custody tracking upon receipt of sample including all personnel handling the sample.					
b. Sampling method (representative of an entire batch) including, but not limited to, homogenization, weighing, labeling, sample identifier (source, lot), date and tracking.					
c. Condition of the sample: Macroscopic and foreign matter inspection - Fit for purpose test. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.					
d. Failed inspection of product: Tracking and reporting.					
e. Return of failed product documentation and tracking.					

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
f. Disposal of used/unused samples documentation.					
g. Sample preparation, extraction and dilution SOP.					
h. Demonstration of recovery for samples in various matrices (SOPs): i. Plant material - Flower; ii. Edibles (solid and liquid meant to be consumed orally); iii. Topical; iv. Concentrates.					
26. Data protocols.					
a. Calculations for quantification of cannabinoid content in various matrices - SOPs.					
b. Determination of the range for reporting the quantity (LOD/LOQ) data review or generation.					
c. Reporting of data: Certificates of analysis (CA) - Clear and standardized format for consumer reporting.					
d. Documentation that the value reported in the CA is within the range and limitations of the analytical method.					
e. Documentation that qualitative results (those below the LOQ but above the LOD) are reported as "trace," or with a nonspecific (numerical) designation.					
f. Documentation that the methodology has the specificity for the degree of quantitation reported. Final reports are not quantitative to any tenths or hundredths of a percent.					
g. Use of appropriate "controls": Documentation of daily use of positive and negative controls that challenge the linearity of the curve; and/or an appropriate "matrix blank" and control with documentation of the performance for each calibration run.					
27. Chemical assay procedure/methodology.					
28. Proficiency:					
a. Documentation of use of an appropriate internal standard for any quantitative measurements as applicable to the method.					
b. Appropriate reference standards for quantification of analytes, performing and documenting a calibration curve with each analysis.					
c. Demonstration of calibration curve r^2 value of no less than 0.995 with a minimum of four points within the range.					

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
d. Documentation of any proficiency testing as it becomes available. Laboratory director must review, evaluate and report to the WSLCB any result that is outside the stated acceptable margin of error.					
29. Method validation: Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation; or					
30. Level II validation of methodology used for quantification of THC, THCA and CBD for total cannabinoid content (if reporting other cannabinoids, the method must also be validated for those compounds):					
a. Single lab validation parameters are demonstrated for GC, HPLC data review: <ul style="list-style-type: none"> i. Linearity of reference standards; ii. Use of daily standard curve; iii. Accuracy; iv. Precision; v. Recovery (5 determinations not less than 90%); vi. Reproducibility over time within a relative standard deviation of 5%. 					
b. Dynamic range of the instrumentation: Limits of quantification (LOQ) and limits of detection (LOD).					
c. Matrix extensions for each type of product tested, data review of recovery for: <ul style="list-style-type: none"> i. Solvent-based extract; ii. CO₂ extraction or other "hash oil"; iii. Extract made with food grade ethanol; iv. Extract made with food grade glycerin or propylene glycol; v. Infused liquids; vi. Infused solids; vii. Infused topical preparations; viii. Other oils, butter or fats. 					
d. Presence of QC samples and recording of daily testing.					
e. Appropriate use of an internal reference standard.					
f. Daily monitoring of the response of the instrument detection system.					
31. Other methods.					
a. Microbiological methods fit for purpose.					
b. Microbial contaminants within limits of those listed in the most recent AHP monograph and otherwise directed by WSLCB.					

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
c. Moisture content testing fit for purpose. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.					
d. Solvent residuals testing fit for purpose; solvent extracted products made with class 3 or other solvents used are not to exceed 0.5% residual solvent by weight or 500 parts per million (PPM) per one gram of solvent based product and are to be tested.					
e. Any other QA/QC methods is proven to be fit for purpose.					
32. Laboratory notebooks.					
a. Legible and in ink (or computerized system).					
b. Signed and dated.					
c. Changes initialed and dated.					
d. Periodically reviewed and signed by a management representative.					
33. Preventive/corrective action.					
a. The laboratory shall have a process in place to document quality affecting preventive/corrective actions through resolution.					
34. Periodic management review.					
a. Laboratory management shall periodically review its quality system and associated procedures to evaluate continued adequacy. This review shall be documented.					

**WSR 15-06-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-34—Filed February 25, 2015, 2:15 p.m., effective March 2, 2015, 12:01 p.m.]

Effective Date of Rule: March 2, 2015, 12:01 p.m.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000Z; and amending WAC 220-56-360.

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: Survey results show that adequate razor clams are available for recreational harvest in Razor Clam Areas 1 and 3. Washington department of health

has certified clams from these beaches are safe for human consumption. 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: February 25, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000Z Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

(1) Effective 12:01 p.m. March 2, 2015 through 11:59 p.m. March 5, 2015, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. March 2, 2015 through 11:59 p.m. March 5, 2015, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) It is unlawful to dig for razor clams at any time in Long Beach or Twin Harbors Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 6, 2015:

WAC 220-56-36000Z Razor clams—Areas and seasons.

WSR 15-06-038
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 26, 2015, 12:39 p.m., effective February 26, 2015, 12:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Immediate rule adoption is required to allow students that are enrolled in a jobs for Washington's graduates program to also be enroll[ed] in an open doors [1418] program. The proposed WAC change would allow for this concurrent enrollment.

Further changes are needed to address district's requirement to award credit received through an open doors [1418] program and to further clarify the program's requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 392-700-015, 392-700-035, 392-700-137, and 392-700-160.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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 change is required to allow open doors [1418] programs to claim students who are concurrently enrolled in a jobs for Washington's graduate program. Also, this change requires districts to reward the credits earned in the open doors program.

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 4, 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 0, Amended 0, Repealed 0.

Date Adopted: February 26, 2015.

Randy Dorn
State Superintendent

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

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total ((~~student~~)) monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

(5) **"College"** means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

(6) **"Consortium"** means a regional group of organizations that will consist of districts, and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts and reduce the administrative burden on districts.

(7) **"Consortium agreement"** means the agreement that is signed by the authorized consortium lead and all district superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts.

(8) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

(9) "**Count day**" is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.

(10) "**Credential**" is identified as one of the following:

- (a) High school equivalency certificate;
- (b) High school diploma;
- (c) College certificate received after completion of a college program requiring at least forty hours of instruction;
- (d) College degree; or
- (e) Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.

(11) "**Enrolled student**" is an eligible student whose enrollment and attendance meets the criteria (~~adopted by the office of superintendent of public instruction (OSPI) specifically for the program and~~) outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding.

(12) "**ERDC**" refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(13) "**Full-time equivalent (FTE)**" is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

(14) "**Indicator of academic progress**" means standard academic benchmarks that (~~are measures of~~) demonstrates academic performance (~~which are~~) attained by reengagement students. These indicators will be tracked and reported by the program and district for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

- (a) Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;
- (b) Earns high school credit or college credit;
- (c) Makes a significant gain in math and/or reading skills level based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);
- (d) Completes approved college readiness course work with documentation of competency attainment;
- (e) Completes job search and job retention course work with documentation of competency attainment;
- (f) Successfully completes a paid or unpaid work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);
- (g) Enrolls in a college level class other than adult basic education (ABE), high school equivalency certificate, or English as a second language (ESL) class; or
- (h) Transitions from an ESL class to ABE or high school equivalency certificate class;
- (i) Transitions from ABE or high school equivalency certificate class to a below one hundred level math or English class;

(j) Transitions from a below one hundred level math or English class to the next below one hundred level math or English class or from a below one hundred level math or English class to college level math or English class; and

(k) Transitions from ABE or high school equivalency certificate class to a college level class (other than English or math).

(15) "**Instructional staff**" means the following:

(a) For programs operated by a district, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205;

(b) For programs operated by a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college; and

(c) For programs operated by an agency, the instructional staff is one who is employed or appointed by the agency whose required credentials are established by the agency.

(16) "**Letter of intent**" means the document signed by the district, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, college, or agency agree to implement.

(17) "**Noninstructional staff**" is any person employed in a position that is not an instructional staff as defined under subsection (13) of this section.

(18) "**OSPI**" means the office of superintendent of public instruction.

(19) "**Program**" means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

(20) (~~"School week" means any seven-day calendar period starting with Sunday and continuing through Saturday.~~)

~~(21))~~ "**School year**" is the twelve-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

~~((22))~~ (21) "**Scope of work**" means the document signed by district superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district agree to implement.

~~((23))~~ (22) "**Weekly status check**" means individual communication from a designated program staff to a student. Weekly status check:

- (a) Can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication;
- (b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;
- (c) Must be documented; and
- (d) Must occur at least once (~~during a school week~~) every week that has at least three days of instruction.

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-035 Student eligibility. (1) Students are eligible to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age, but at least sixteen years of age, as of September 1st;

(b) Have not yet met the high school graduation requirements of either the district, or the college under RCW 28B.50.535; and

(c) Are significantly behind in credit as outlined below:

(i) Students who, based on their expected graduation date, participated or could have participated in up to two full years of high school must have an earned to attempted credit ratio that is sixty-five percent or less; or

(ii) Students who, based on their expected graduation date, participated or could have participated in more than two full years of high school must have an earned to attempted ratio that is seventy-five percent or less.

(2) If not credit deficient as outlined in subsection (1)(c) of this section, have been:

(a) Recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, district approved school personnel, or staff from community agencies which provide educational advocacy services;

(b) Are not currently enrolled in any high school or other educational program, excluding an approved skill center program, a jobs for Washington's graduate program, or running start program, receiving state basic education funding; and

(c) Released from their district of residence and accepted by the serving district, if the program is operated by a different district.

(3) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree;

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(4) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-137 Award of credit. (1) For programs operated by districts and agencies, high school credit will be awarded for all course work in which students are enrolled, including high school equivalency certificate preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

(i) September through November;

(ii) December through February;

(iii) March through May; and

(iv) June through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month of the quarter:

(i) A maximum of 0.5 high school elective credits will be awarded when a student passes one or more standardized high school equivalency certificate pretests during the quarter and the instructional staff has assessed student learning and determined that a course of study has been successfully completed.

(ii) A 0.5 high school elective credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The instructional staff has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) High school elective credit ranging from at least 0.1 credits to no more than 0.25 credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies. The district and the agency will determine the amount of credit to be awarded for each course of study based on the competencies to be attained.

(iv) For students taking part in district approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the district.

(v) The district (~~may elect to~~) must award credit for (~~other~~) course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's instructional staff's recommendation and on a district review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The instructional staff has assessed student learning and determined that the course of study has been successfully completed.

(2) For programs operated by colleges, high school credit will be awarded for course work in which students are enrolled, in accordance with the following:

(a) The district and the college will determine whether the high school diploma will be awarded by the district or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college but has been determined by the college to be at the ninth grade level

or higher. The college will determine the type of credit. College based high school equivalency certificate and adult basic education (ABE) classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level that does not generate high school credit will be counted as part of the program's instructional programming for the purposes of calculating FTE.

(c) If the district is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The district will determine the type of credit;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college but has been determined by the district to be at the ninth grade level or higher. The district will determine the type and amount of credit for each class. College based high school equivalency certificate and ABE classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE.

(3) The district is responsible for reporting all high school credits earned by students in accordance with OSPI regulations. College transcripts and other student records requested by the district will be provided by the college or agency as needed to facilitate this process.

(4) The district will ensure that the process for awarding high school credits under this scope of work is implemented as part of the district's policy regarding award of credits per WAC 180-51-050 (5) and (6).

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-160 Reporting of student enrollment.

(1) For all programs, the following will apply when reporting student enrollment for each monthly count day:

(a) Met all eligibility criteria pursuant to WAC 392-700-035;

(b) Been accepted for enrollment by the reporting district or the direct funded technical college;

(c) Enrolled in an approved program pursuant to WAC 392-700-042;

(d) Met the attendance period requirement pursuant to WAC 392-700-015(3);

(e) Met the weekly status check requirement pursuant to WAC 392-700-015(~~(23)~~) (22);

(f) Has not withdrawn or been dropped prior to the monthly count day;

(g) Is not enrolled in course work that has been reported by a college for postsecondary funding;

(h) Is not (~~enrolled at~~) eligible to be counted by a state institution (on count day and reported by a state institution for funding) pursuant to WAC 392-122-221.

(i) Is not enrolled in a high school program, including alternative learning experience (~~(or)~~) college in the high school, or another reengagement program, excluding jobs for Washington's graduate program.

(j) If concurrently enrolled in a skills center program or running start program, does not exceed the FTE limitation pursuant to WAC 392-121-136;

(k) A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE). If concurrently enrolled in a jobs for Washington's graduates program, the combined FTE does not exceed 1.0 FTE in any month.

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2). If concurrently enrolled in a jobs for Washington's graduates program, the combined AAFTE does not exceed 1.0 AAFTE for the school year.

(2) For all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress during any three month period that a student is reported as 1.0 FTE.

(a) Satisfactory progress is defined as the documented attainment of at least one credential identified in WAC 392-700-015(10) and/or of at least one indicator of academic progress identified in WAC 392-700-015(14).

(b) A student who after any three month period of being counted for a 1.0 FTE has not attained a credential or an indicator of academic progress cannot be counted until a credential or an indicator of academic progress is earned.

(i) During this reporting exclusion period, the program may elect to permit the student to continue to attend;

(ii) When the student achieves a credential or an indicator of academic progress, the student (~~enrollment may resume to be reported~~) may be claimed for funding for the following month. A new three month period for attaining a credential or an indicator of academic progress begins; and

(iii) Rules governing the calculation of the three month period are:

(A) The three month period may occur in two different school years, if the student is enrolled in consecutive school years; and

(B) The three month period is not limited to consecutive months, if there is a break in the student's enrollment.

(3) For below one hundred level classes, student enrollment will be reported as follows:

(a) When the program's total planned hours of instruction pursuant to WAC 392-700-155 for the school year equals or exceeds nine hundred hours:

(i) The program is considered a full-time program; and

(ii) An enrolled student is a full-time student and is reported as 1.0 FTE on each monthly count day.

(b) Enrollment in below one hundred level classes is limited to nonvocational funding and the FTE cannot be claimed as vocational.

(4) For college level classes, student enrollment will be reported as follows:

(a) The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;

(ii) A student enrolled in more than fifteen college credits is limited to be reported as 1.0 FTE for that month; and

(iii) If a student is enrolled for less than fifteen college credits, the FTE is calculated by dividing the enrolled college credits by fifteen.

(b) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.

WSR 15-06-042

EMERGENCY RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 27, 2015, 9:09 a.m., effective February 27, 2015, 9:09 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amended rule assigns to the office of administrative hearings (OAH) the authority to hear appeals of enforcement actions withholding or recovering federal funds.

Citation of Existing Rules Affected by this Order: Amending WAC 392-101-010.

Statutory Authority for Adoption: RCW 34.05.220.

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: A federal regulation, 34 C.F.R. § 80.43(b), requires state education agencies that award federal funds to subgrantees to provide subgrantees an opportunity for a hearing, appeal, or other administrative proceeding to which the subgrantee is entitled under the law. This proposed change to WAC 392-101-010 will assign to the OAH the authority to hear cases and issue final decisions on behalf of the office of superintendent of public instruction (OSPI) related to the withholding or recovering of federal funds as a result of school consolidated program reviews of school district programs conducted in accordance with 34 C.F.R. § 80.40. Assigning these appeals to OAH will protect school districts' right to challenge OSPI's determinations, and will help ensure school district and OSPI compliance with federal law.

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 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: February 26, 2015.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-18-077, filed 9/3/13, effective 10/4/13)

WAC 392-101-010 Conduct of administrative hearings. The superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the authority to render the final decision by the superintendent of public instruction:

(1) Nonresident transfer appeals pursuant to WAC 392-137-055(2).

(2) Special education hearings pursuant to chapter 392-172A WAC or as amended.

(3) Equal educational opportunity complaints pursuant to WAC 392-190-075.

(4) Professional certification appeals pursuant to WAC 181-86-150.

(5) National school lunch program, special milk program for children, school breakfast program, summer food service program, and child and adult care food program appeals pursuant to 7 C.F.R. Parts 210, 215, 220, 225 and 226.

(6) Traffic safety education appeals pursuant to WAC 392-153-001 through 392-153-070.

(7) Bus driver authorization appeals pursuant to chapter 392-144 WAC.

(8) Audit resolution appeals of agency management decisions regarding resolution of state and federal audit findings pursuant to chapter 392-115 WAC.

(9) Appeals of enforcement actions withholding or recovering funds, in whole or in part, taken as a result of consolidated program reviews of federal programs conducted in accordance with 34 C.F.R. Sections 80.40 and 80.43.

WSR 15-06-060

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-36—Filed March 3, 2015, 4:31 p.m., effective March 3, 2015, 4:31 p.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100T and 220-32-05100U; and amending WAC 220-32-051.

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: Updates the action taken by the Columbia River compact to specifically state that standard dam and river mouth sanctuaries are in place, and apply to all species. Continues to allow commercial sales from the treaty winter fishery to Washington wholesale buyers and the public. Harvestable sturgeon continue to be available under the current harvest guidelines for Bonneville Pool. The season is consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on February 19, 2015. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River 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 the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court

order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; 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 2.

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

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

Date Adopted: March 3, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100U Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Season: Immediately through 6:00 p.m. March 21, 2015.

(2) Area: SMCRA 1F (Bonneville Pool).

(3) Sanctuaries: Standard river mouth and dam sanctuaries are in effect, and apply to all species.

(4) Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

(5) Allowable Sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required. Fish caught during the open period may be sold after the period concludes.

(6) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100T Columbia River salmon seasons
above Bonneville Dam. (15-32)

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. March 21, 2015:

WAC 220-32-05100U Columbia River salmon seasons
above Bonneville Dam.