

**WSR 16-08-002**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-54—Filed March 23, 2016, 3:25 p.m., effective March 23, 2016,  
 3:25 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-255.

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

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

Reasons for this Finding: This rule conforms to federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and National Marine Fisheries Service. The recreational halibut quota is sufficient to provide for these seasons. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 23, 2016.

Joe Stohr  
 for J. W. Unsworth  
 Director

**NEW SECTION**

**WAC 220-56-25500E Halibut—Seasons—Daily and possession limits.** Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

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

(a) Open May 1, 2016, until further notice, Thursdays through Sundays.

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

**(2) Catch Record Card Area 1 (Nearshore fishery)** Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon).

(a) Open May 2, 2016, until further notice, Mondays through Wednesdays.

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

**(3) Catch Record Card Area 2** - Open May 1, through May 17, 2016, Sundays and Tuesdays only. See (a) and (b) below for additional details.

**(a) Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open May 1, 2016, seven days per week until further notice:

47°31.70N. lat, 124°37.03W. long  
 47°25.67N. lat, 124°34.79W. long  
 47°12.82N. lat, 124°29.12W. long  
 47°58.00N. lat, 124°24.24W. long

(b) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as provided in subsection (2) above.

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

(a) Open May 7, May 12 and May 14, 2016.

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

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

(c) It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour, from May 9, 2016, until further notice, except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

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

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a

line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-56-230.

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

(a) Open May 7, 12, 13, 14 and May 26 through May 29, 2016.

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

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

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

(8) All other permanent rules remain in effect.

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

**WSR 16-08-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-56—Filed March 23, 2016, 5:13 p.m., effective March 27, 2016, 7:30 p.m.]

Effective Date of Rule: March 27, 2016, 7:30 p.m.

Purpose: Amend fishing rules for the Puget Sound commercial crab fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000R, 220-52-04000S, 220-12-02000B, 220-52-04600R and 220-69-24000Q; and amending WAC 220-52-046.

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

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

Reasons for this Finding: This emergency rule closes the commercial crab fishery in Region 1 and continues the closure of the commercial crab fishery in Region 2 West, Region 2 East, Region 3-1, Region 3-2 and Region 3-3. The state has reached the full allocation in all commercial regions. Also ends the provisions for commercial by-catch of Tanner crabs. These provisions are in conformity with agreed management plans with applicable tribes, entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. 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 5.

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 23, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-52-04600S Puget Sound crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 7:30 p.m. March 27, 2016, Crab Management Region 1 is closed. Region 1 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B.

(2) Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

(a) All of Crab Management Region 2 East. Region 2 East includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(b) All of Crab Management Region 2 West. Region 2 West includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D and 26A West.

(c) All of Crab Management Region 3-1. Region 3-1 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B.

(d) All of Crab Management Region 3-2. Region 3-2 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A and 25E.

(e) All of Crab Management Region 3-3. Region 3-3 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23C and 29.

REPEALER

The following sections of the Washington Administrative code are repealed effective 7:30 p.m. March 27, 2016:

WAC 220-52-04000R Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts (16-51)

WAC 220-52-04000S Commercial crab fishery—Unlawful acts. (16-51)

WAC 220-12-02000B Shellfish—Classification. (16-21)

WAC 220-52-04600R Puget Sound crab fishery—Seasons and areas (15-451)

The following section of the Washington Administrative code is repealed effective 11:59 p.m. March 31, 2016:

WAC 220-69-24000Q Duties of commercial purchasers and receivers. (16-21)

**WSR 16-08-004**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Behavioral Health Administration)

[Filed March 24, 2016, 11:30 a.m., effective April 1, 2016]

Effective Date of Rule: April 1, 2016.

Purpose: The department is adopting, amending, and repealing rules to comply with 2SSB 6312, chapter 225, Laws of 2014. 2SSB 6312 requires, in part, the regional support networks (RSN) to be renamed behavioral health organizations (BHO) effective April 1, 2016, and authorizes the department to establish regional service areas within the state with the intended effect of integrating substance use disorder treatment with mental health services. Changes include updating definitions, changing "chemical dependency" to "substance use disorder," clarifying processes, and making editing changes to provide clarification and consistency within the rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-865-0100, 388-865-0105, 388-865-0106, 388-865-0107, 388-865-0110, 388-865-0115, 388-865-0120, 388-865-0150, 388-865-0200, 388-865-0205, 388-865-0210, 388-865-0215, 388-865-0220, 388-865-0221, 388-865-0222, 388-865-0225, 388-865-0229, 388-865-0230, 388-865-0235, 388-865-0240, 388-865-0245, 388-865-0250, 388-865-0265, 388-865-0270, 388-865-0275, 388-865-0280, 388-865-0282, 388-865-0284, 388-865-0286, 388-865-0288, 388-865-0300, 388-865-0305, 388-865-0310, 388-865-0315, 388-865-0320, 388-865-0325, 388-865-0330, 388-865-0335, 388-865-0345, 388-865-0350, 388-865-0355, 388-865-0360, 388-865-0363, 388-865-0365, 388-877A-0400, 388-877A-0410, 388-877A-0420, 388-877A-0430, 388-877A-0440, 388-877A-0450 and 388-877A-0460; and amending WAC 388-875-0070, 388-877-0100, 388-877-0200, 388-877-0300, 388-877-0305, 388-877-0335, 388-877-0365, 388-877-0420, 388-877-0600, 388-877-0605, 388-877-0610, 388-877-0620, 388-877-0640, 388-877A-0200, 388-877A-0270, 388-877A-0340, 388-877B-0100, 388-877B-0110, 388-877B-0120, 388-877B-0130, 388-877B-0200, 388-877B-0210, 388-877B-0220, 388-877B-0230, 388-877B-0240, 388-877B-0250, 388-877B-0260, 388-877B-0270, 388-877B-0280, 388-877B-0300, 388-877B-0310, 388-877B-0320, 388-877B-0330, 388-877B-0340, 388-877B-0350, 388-877B-0360, 388-877B-0370, 388-877B-0400, 388-877B-0405, 388-877B-0410, 388-877B-0420, 388-877B-0430, 388-877B-0440, 388-877B-0450, 388-877B-0500, 388-877B-0510, 388-877B-0530, 388-877B-0540, 388-877B-0550, 388-877B-0600, 388-877B-0610, 388-877B-0630, 388-877B-0640, 388-877B-0650, 388-877B-0660, and 388-877C-0110.

Statutory Authority for Adoption: RCW 70.02.290, 70.96A.040(4), 71.05.560, 71.24.035 (5)(c), 71.34.380.

Other Authority: 2SSB 6312 (chapter 225, Laws of 2014).

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

Reasons for this Finding: This rule supports the requirements in 2SSB 6312, chapter 225, Laws of 2014, which requires the renaming of RSN to BHO effective April 1, 2016. The intent of the rule is to ensure BHOs provide or contract with behavioral health agencies to provide both substance use disorder treatment services and mental health services to individuals who need these services. An RSN currently provides only mental health services. The immediate adoption of this rule assures the preservation of the public health, safety, and welfare for those individuals needing both substance use disorder treatment services and mental health services from a BHO on April 1, 2016, and after. The department anticipates a May 24, 2016, public hearing date for the proposed permanent rule.

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 27, Amended 56, Repealed 51.

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 27, Amended 56, Repealed 51.

Date Adopted: March 21, 2016.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-10 issue of the Register.

**WSR 16-08-006**  
**RECISSION OF EMERGENCY RULES**  
**UNIVERSITY OF WASHINGTON**

[Filed March 24, 2016, 2:20 p.m.]

Effective midnight on Sunday, March 27, 2016, the University of Washington rescinds the emergency rules of WAC 478-120-137 Supplementary provisions regarding sexual misconduct, filed as WSR 16-06-032 on February 23, 2016. Emergency rules in WAC 478-120-137 were originally filed and effective on June 30, 2015, as WSR 15-14-095, and again

on October 26, 2015, as WSR 15-22-020, and again as noted above, while the permanent rule-making process was ongoing.

Permanent rules, including WAC 478-120-137, filed as WSR 16-05-097 on February 17, 2016, that vary from the emergency rules, are effective Monday, March 28, 2016.

Rebecca Goodwin Dearthoff  
Director of Rules Coordination

**WSR 16-08-019**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-57—Filed March 29, 2016, 8:41 a.m., effective March 29, 2016, 12:00 p.m.]

Effective Date of Rule: March 29, 2016, 12:00 p.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000E; and amending WAC 220-33-010.

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: Sets the first 2016 mainstem commercial winter salmon season. The commercial mainstem fishery was allocated 1,222 upriver spring Chinook mortalities. Winter and spring select area commercial seasons also remain in place. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 27 and March 28, 2016. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of

the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-13-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 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: March 29, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-33-01000F Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

**1. Mainstem Columbia River**

a) **Dates:** 12:00 p.m. (noon) to 9:00 p.m. Tuesday March 29, 2016.

b) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

c) **Sanctuaries:** Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers.

d) **Allowable Possession:** Adipose fin-clipped Chinook salmon and shad

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

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

**f) Miscellaneous Regulations:**

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

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

(iii) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box

and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

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

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

All sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

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

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

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

**(2) Deep River Select Area**

a) **Dates:** Winter Season: 7 PM March 28, 2016 to 7 AM March 29, 2016. Spring Season: Open hours are 7 PM to 7 AM Tuesday and Thursday nights from April 19 through April 29, 2016, and Monday and Thursday nights from May 2, 2016 until further notice.

b) **Area:** From USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1). It shall be unlawful in any

area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17).

d) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catch. After sampling, fishers will be issued a transportation permit by WDFW staff. **During the winter season, fishers are required to call 360-795-0319** to confirm the place and time of sampling. In the spring season, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

### (3) Tongue Point/South Channel

a) **Dates:** Spring Season: Open Thursday night April 21 from 7 PM to 11 PM. Open 7 PM to 7 AM on: Tuesday night April 26 and Thursday night April 28, then Monday and Thursday nights from May 2, 2016 until further notice.

b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

c) **Gear:** Gillnets. Spring season: 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

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

### (4) Blind Slough/Knappa Slough Select Area

a) **Dates:** Winter Season: 7 PM March 28, 2016 to 7 AM March 29, 2016. Spring Season: Open hours are 7 PM to 7 AM. Open Tuesday and Thursday nights from April 21 through April 29, 2016 and Monday and Thursday nights from May 2, 2016 until further notice.

b) **Area:** Winter season: Open area Blind Slough. Spring season: Blind Slough and Knappa Slough areas are both open. From May 2, 2016 until further notice, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed.

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

(5) **Allowable Possession For Select Area Sites:** Salmon and shad. Effective from noon until midnight Tuesday March 29, 2016: the retention and sale of non-adipose fin clipped Chinook is prohibited from the Deep River and Blind Slough Select Area commercial fisheries.

(6) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240(14)(d)). Permanent transportation rules in effect.

(7) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

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

**Reviser's note:** The 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.

**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 12:00 p.m. March 29, 2016:

WAC 220-33-01000E Columbia River seasons below Bon-neville. (16-16)

## WSR 16-08-023 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 16-58—Filed March 29, 2016, 2:19 p.m., effective April 1, 2016]

Effective Date of Rule: April 1, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-310-19500W and 220-310-20000F.

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

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

Reasons for this Finding: This emergency rule is needed to close the upper Columbia River and tributaries to mini-

mize impacts to spawning steelhead. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 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 29, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective April 1, 2016:

WAC 220-310-19500W Freshwater exceptions to statewide rules—Eastside. (16-42)

WAC 220-310-20000F Freshwater exceptions to statewide rules—Columbia River (16-42)

#### **WSR 16-08-031**

##### **EMERGENCY RULES**

#### **HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed March 30, 2016, 8:49 a.m., effective April 1, 2016]

Effective Date of Rule: April 1, 2016.

Purpose: The agency is revising this section to include standard resolution of appeals for noncrisis services provided by the behavioral health administrative services organization (BH-ASO) and to more fully describe the timing for both expedited and standard resolution notices.

Citation of Existing Rules Affected by this Order: Amending WAC 182-538C-110.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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 agency must revise WAC 182-538C-110 by April 1, 2016, when the permanent rules for chapter 182-538C WAC go into effect, to include rules

for standard resolution of appeals for noncrisis services provided by the BH-ASO and to more fully describe the timing for both expedited and standard resolution notices.

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

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

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

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

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

Date Adopted: March 30, 2016.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-051, filed 2/11/16, effective 4/1/16)

**WAC 182-538C-110 Grievance system for behavioral health administrative services organizations (BH-ASOs).** (1) This section applies to the behavioral health administrative service organization (BH-ASO) grievance system for individuals within fully integrated managed care (FIMC) regional service areas.

(a) The BH-ASO must have a grievance system to allow an individual to file a grievance and seek review of a BH-ASO action as defined in this chapter.

(b) The agency's hearing rules in chapter 182-526 WAC apply to administrative hearings requested by an individual to review resolution of an appeal of a BH-ASO action.

(c) If a conflict exists between the requirements of this chapter and other rules, the requirements of this chapter take precedence.

(d) The BH-ASO must maintain records of grievances and appeals.

(2) The BH-ASO grievance system. The BH-ASO grievance system includes:

(a) A process for addressing a complaint about any matter that is not an action, which is called a grievance;

(b) An appeals process to address an individual's request for review of a BH-ASO action as defined in this chapter; and

(c) Access to the agency's administrative hearing process for an individual to seek review of a BH-ASO's resolution of an appeal.

(3) The BH-ASO grievance process.

(a) An individual or an individual's authorized representative may file a complaint with a BH-ASO. A provider may not file a complaint on behalf of an individual without written consent.

(b) There is no right to an administrative hearing in regards to the disposition of a complaint.

(c) The BH-ASO must notify individuals of the disposition of grievances within five business days of determination.

(4) The BH-ASO appeals process.

(a) An individual, the individual's authorized representative, or the provider acting with the individual's written consent may appeal a BH-ASO action.

(b) A BH-ASO must treat oral inquiries about appealing an action as an appeal to establish the earliest possible filing date for the appeal. The oral appeal must be confirmed in writing by the BH-ASO.

(c) The individual or provider acting on behalf of the individual must file an appeal, either orally or in writing, within ninety calendar days of the date on the BH-ASO's notice of action.

(d)(i) The BH-ASO must acknowledge receipt of each appeal to both the individual and the provider requesting the service within three calendar days. The appeal acknowledgment letter sent by the BH-ASO serves as written confirmation of an appeal filed orally by an individual.

((d) An appeal of a BH-ASO action must be filed within ninety calendar days of the date of the notice of action.))

(ii) If the individual requests an expedited appeal for a crisis-related service, the BH-ASO must make a decision on the individual's request for expedited appeal and provide written notice as expeditiously as the individual's health condition requires, within three calendar days after the BH-ASO receives the appeal. The BH-ASO must make reasonable efforts to provide oral notice.

(e) The BH-ASO will not be obligated to continue services pending the results of an appeal or subsequent administrative hearing.

(f) The BH-ASO appeals process:

(i) Provides the individual a reasonable opportunity to present evidence and allegations of fact or law, both in person and in writing. The BH-ASO must inform the individual of the limited time available for this in the case of expedited resolution;

(ii) Provides the individual and the individual's authorized representative opportunity before and during the appeals process to examine the individual's case file, including medical records and any other documents and records considered during the appeals process; and

(iii) Includes as parties to the appeal:

(A) The individual;

(B) The individual's legal representative; or

(C) The authorized representative of the deceased individual's estate.

(g) The BH-ASO ensures the individuals making decisions on appeals:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are health care professionals with appropriate clinical expertise in treating the individual's condition or disease if deciding any of the following:

(A) An appeal of an action; or

(B) A grievance or appeal that involves any clinical issues.

(h) Time frames for resolution of appeals.

(i) ((A BH-ASO resolves each appeal and provides notice as expeditiously as the individual's health condition

requires and no longer than three calendar days after the BH-ASO receives the appeal.

((ii)) For standard resolution of appeals and for appeals for termination, suspension, or reduction of previously authorized noncrisis services, a decision must be made within fourteen calendar days after receipt of the appeal.

(ii) If a standard resolution of an appeal cannot be made within fourteen calendar days after receipt of the appeal, the BH-ASO must notify the individual that an extension is necessary to complete the appeal.

(i) For any extension not requested by the individual, including expedited appeals, the BH-ASO must give the individual written notice of the reason for the delay.

(i) The extension cannot delay the decision beyond twenty-eight calendar days of the request for appeal, without the informed written consent of the individual.

(ii) In all circumstances, the appeal determination must not be extended beyond forty-five calendar days from the day the BH-ASO receives the appeal request.

(ii) For expedited resolution of crisis-related appeals or appeals of behavioral health drug authorization decisions, including notice to the affected parties, the BH-ASO shall resolve and provide notice no longer than three calendar days after the BH-ASO receives the appeal.

(iv) The BH-ASO may extend the time frame by fourteen additional calendar days if:

(A) The individual requests the extension; or

(B) The BH-ASO determines additional information is needed and the delay is in the interests of the individual.

((+)) (C) If the BH-ASO denies a request for expedited resolution of a noncrisis related service appeal, it must transfer the appeal to the time frame for standard resolution and make reasonable efforts to give the individual prompt oral notice of the denial, and follow-up within two calendar days with a written notice of denial.

(j) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the individual and the provider requesting the services;

(ii) Include the results of the resolution process and the date it was completed; and

(iii) Include notice of the right to request an administrative hearing and how to do so as provided in the agency hearing rules in chapter 182-526 WAC, if the appeal is not resolved wholly in favor of the individual.

(5) Administrative hearings.

(a) Only an individual or an individual's authorized representative may request an administrative hearing. A provider may not request a hearing on behalf of an individual.

(b) If an individual does not agree with the BH-ASO's resolution of an appeal, the individual may file a request for an agency administrative hearing based on this section and the agency hearing rules in chapter 182-526 WAC.

(c) The BH-ASO is an independent party and responsible for its own representation in any administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(d) An individual must exhaust the appeals process within the BH-ASO's grievance system before requesting an administrative hearing with the agency.



(6) Effect of reversed resolutions of appeals. If the BH-ASO's decision not to provide services is reversed by the BH-ASO on appeal or through a final order from the administrative hearing process, the BH-ASO must authorize or provide the disputed services promptly and as expeditiously as the individual's health condition requires.

(7) Grievance system termination. When available resources are exhausted, any appeals or administrative hearing process related to a request for authorization of a noncrisis service will be terminated, since noncrisis services cannot be authorized without funding regardless of medical necessity.

**WSR 16-08-037**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-53—Filed March 30, 2016, 12:25 p.m., effective April 16, 2016]

Effective Date of Rule: April 16, 2016.

Purpose: Amend recreational fishing rules for Tanwax Lake.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000X; and amending WAC 220-310-190.

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: Tanwax Lake is being opened for one day of fishing to provide angling opportunity for Heros [Heroes] on the Waters [Water] NW Chapter fishing event. Preregistered veterans only will be permitted to fish throughout the lake. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 30, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

NEW SECTION

**WAC 220-310-19000X Freshwater exceptions to statewide rules—Tanwax Lake.** Notwithstanding the provisions of WAC 220-310-190, effective one hour before official sunrise to one hour after official sunset on April 16, 2016, it is permissible for anglers participating in the project Hero on the Waters NW Chapter fishing event to fish in the waters of Tanwax Lake. Unless otherwise amended, all permanent rules remain in effect.

**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 one hour after official sunset on April 16, 2016:

WAC 220-310-19000X Freshwater exceptions to statewide rules—Tanwax Lake.

**WSR 16-08-046**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-59—Filed March 30, 2016, 2:42 p.m., effective April 11, 2016]

Effective Date of Rule: April 11, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500Y; 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: For safety of the general public and equipment operators an emergency rule is needed to close Rainbow Lake for five days as large equipment will be utilized around Rainbow Lake to dig test pits and take core samples for planned construction of the lake as part of the W. T. Wooten Floodplain Management Plan. 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: March 30, 2016.

James B. Scott, Jr.  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-19500Y Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, effective April 11 through April 15, 2016, it is unlawful to fish in waters of Rainbow Lake.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective April 16, 2016:

WAC 220-310-19500Y Freshwater exceptions to statewide rules—Eastside.

**WSR 16-08-047**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-60—Filed March 30, 2016, 4:14 p.m., effective April 7, 2016]

Effective Date of Rule: April 7, 2016.

Purpose: Amend recreational fishing rules for Kline Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500H; and 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: This emergency rule is necessary to ensure a safe and successful fishing event for juvenile anglers. Fish will be planted in Kline Pond one day prior to the Kline Kids Fishing Event to better acclimate them before the event. Fish will be placed into netted areas along

the shoreline of the pond. On the days of the fishing event, preregistered kids will be allowed to fish within these netted areas. 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: March 30, 2016.

James B. Scott, Jr.  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-310-18500H Exceptions to statewide rules—Kline Pond (Clark Co.)** Notwithstanding the provisions of WAC 220-310-185, effective 12:01 a.m. April 7 through April 9, 2016, it is unlawful to fish in those waters of Kline Pond, except as provided in this section:

(1) Open to fishing 8:00 a.m. to 4:00 p.m. April 8 and 9, 2016, in the netted area, to juvenile anglers participating in the Kline Kids Fishing Event.

(2) Daily limit of two fish.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective April 10, 2016:

WAC 220-310-18500H Exceptions to statewide rules—Kline Pond (Clark Co.)

**WSR 16-08-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-62—Filed April 1, 2016, 1:11 p.m., effective April 1, 2016, 1:11 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000N; 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 clams are available for harvest in Razor Clam Areas 1, 4 and 5. Washington department of health has certified clams from this beach to be 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: April 1, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 220-56-3600N 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, 2, 3, 4, 5, 6 or 7 except as provided for in this section:

(1) Effective 12:01 p.m. April 3 through 11:59 p.m. April 6, 2016, 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 a.m. April 7 through 11:59 a.m. April 12, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(3) Effective 12:01 a.m. April 7 through 11:59 a.m. April 9, 2016, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 a.m. April 7 through 11:59 a.m. April 8, 2016, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(5) Effective 12:01 a.m. April 10 through 11:59 a.m. April 10, 2016, razor clam digging is permissible in Razor

Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 12, 2016:

WAC 220-56-3600N Razor clams—Areas and seasons.

#### **WSR 16-08-055**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF FISH AND WILDLIFE**

[Order 16-63—Filed April 1, 2016, 1:14 p.m., effective April 4, 2016]

Effective Date of Rule: April 4, 2016.

Purpose: Amend recreational fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100A; and amending WAC 232-28-621.

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

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

Reasons for this Finding: An emergency rule is needed as preliminary estimates indicate that encounters of Chinook in Area 8-1 and 8-2 have exceeded preseason expectations. This emergency rule modifies Area 8-1 and 8-2 fisheries to ensure compliance with conservation objectives and agreed-to management plans. 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: April 1, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

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: April 1, 2016.

Joe Stohr  
for J. W. Unsworth  
Director

#### NEW SECTION

**WAC 232-28-62100A Puget Sound salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-621, effective April 4 through April 30, 2016, it is unlawful to fish for salmon in Marine Areas 8-1 and 8-2.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2016:

WAC 232-28-62100A Puget Sound salmon—Saltwater seasons and daily limits.

#### NEW SECTION

**WAC 220-310-19000Y Freshwater exceptions to statewide rules—Langlois Lake.** Notwithstanding the provisions of WAC 220-310-190, effective one hour before official sunrise to one hour after official sunset on April 16, 2016, it is permissible for anglers participating in the Project Healing Waters fishing event to fish in the waters of Langlois Lake. Statewide size and daily limits apply.

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

#### REPEALER

The following section of the Washington Administrative Code is repealed one hour after official sunset on April 16, 2016:

WAC 220-310-19000Y Freshwater exceptions to statewide rules—Langlois Lake.

**WSR 16-08-056**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-61—Filed April 1, 2016, 2:45 p.m., effective April 16, 2016]

Effective Date of Rule: April 16, 2016.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19000Y; and amending WAC 220-310-190.

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: Langlois Lake is being opened for one day of fishing to provide angling opportunity for Project Healing Waters which is dedicated to the physical and emotional rehabilitation of disabled active military service personnel and disabled veterans through fishing. 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.

**WSR 16-08-061**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 4, 2016, 11:01 a.m., effective April 4, 2016, 11:01 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These new rules, codified at chapter 392-900 WAC, will implement sections 5026 and 5028, chapter 3, Laws of 2015, which create two pilot school construction grant programs for class size reduction and STEM facilities. The rules define the procedures that school districts must follow to receive funding under these new pilot programs.

Statutory Authority for Adoption: RCW 28A.525.020.

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: Legislation enacted in 2015 (sections 5026 and 5028, chapter 3, Laws of 2015), requires the office of superintendent of public instruction (OSPI) to implement two pilot school construction grant programs during the 2015-17 biennium. OSPI's current school construction rules do not provide a process that would allow OSPI to timely or effectively award these grant funds during

the biennium. New grant funding procedures are necessary to preserve the general welfare by allowing OSPI to proceed with the grants and distribution of funding to school districts in accordance with the legislature's intent. OSPI filed a CR-101 for this rule making on December 2, 2015 (WSR 15-24-138), and is continuing to engage in the rule-making process.

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

Number of Sections Adopted at 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: April 4, 2016.

Randy Dorn  
Superintendent of  
Public Instruction

## Chapter 392-900 WAC

### PILOT GRANT PROGRAMS

#### STEM AND K-3 CLASS SIZE REDUCTION PILOT GRANT PROGRAMS ESTABLISHED IN THE 2015-17 WASHINGTON STATE CAPITAL BUDGET 2EHB 115.SL.

#### NEW SECTION

**WAC 392-900-010 Authority.** This chapter is adopted pursuant to RCW 28A.525.020, which authorizes the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of state funding assistance to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provisions of chapter 28A.525 RCW currently applicable to state funding assistance for school facilities are RCW 28A.525.030, 28A.525.040, 28A.525.050, 28A.525.162 through 28A.525.178.

#### NEW SECTION

**WAC 392-900-020 Purpose.** The purpose of this chapter is to set forth provisions applicable to approval of STEM pilot project grants and K-3 class size reduction grants as provided for in sections 5026 and 5028, chapter 3, Laws of 2015 3rd sp. sess. (2EHB 1115 (2015)).

#### NEW SECTION

**WAC 392-900-030 Eligibility.** Eligibility for school construction assistance program funding through the STEM grant program will be based on a school district's ability to demonstrate a lack of sufficient space for science classrooms and labs to enable students to meet Washington state graduation requirements. The STEM grant award will constitute the district's local funding for purposes of eligibility for the school construction assistance program under RCW 28A.525.166.

Eligibility for the K-3 class size reduction grant program will be based on a school district's ability to demonstrate a need for additional K-3 classrooms as outlined in chapter 41, Laws of 2015, 3rd sp. sess. (2ESSB 6080 (2015)), regardless of any available eligibility for school construction assistance program funding. The K-3 class size reduction grant award may not constitute local funding in the school construction assistance program under RCW 28A.525.166.

#### NEW SECTION

**WAC 392-900-040 Funding assistance percentage.** (1) The state funding assistance percentage for the STEM pilot program is the computed state ratio defined in RCW 28A.525.166 plus twenty percent of the percent of district head count eligible and enrolled in the district's free and reduced school lunch program, plus the following additional percentage points:

- (a) Ten for second class school districts;
  - (b) Ten for school districts with funding assistance percentages of more than fifty percent.
- (2) The enhanced funding assistance percentage for the K-3 class size reduction grant program is the computed state ratio defined in RCW 28A.525.166 plus twenty percent of the percent of district head count eligible and enrolled in the free and reduced school lunch program.

#### NEW SECTION

**WAC 392-900-050 Construction cost allocation (CCA).** The eligible construction cost in the STEM grant program shall be calculated by multiplying the approved square foot area of the projects as set forth in WAC 392-900-040 by the construction cost allocation as set forth in WAC 392-343-060.

#### NEW SECTION

**WAC 392-900-060 Eligible square footage.** (1) Eligible area for STEM pilot projects is one thousand four hundred forty square feet per science lab or classroom combination, or both; and one thousand forty square feet per science classroom. The total eligible area per STEM project must not exceed fifteen thousand eight hundred forty.

(2) Additional square footage funded through the STEM grant program will be excluded from the school district's inventory of instructional space as defined in WAC 392-343-019 for determining eligibility for state assistance until the date of the final review of the latest study and survey of the affected school district following acceptance of the project by

the school district board of directors, or for a period of five years, whichever is earliest.

(3) Additional square footage funded through the K-3 class size reduction grant program becomes part of a school district's inventory of instructional space for determining eligibility as defined in WAC 392-343-019 and shall be ineligible for state funding assistance for modernization for thirty years as described in WAC 392-347-015(4).

(4) Districts receiving funding through the STEM and class size reduction grants may modernize facilities that were previously closed pursuant to WAC 392-347-042.

#### NEW SECTION

**WAC 392-900-070 Process requirements.** (1) The following documents and information will be required to be submitted to the office of the superintendent of public instruction before STEM grant awards are finalized:

- (a) New-in-lieu resolution (if applicable);
- (b) Intent to construct board resolution;
- (c) Five-year use/thirty-year life board resolution; and
- (d) Certification letter from school district that any excess costs above STEM grant award and enhanced state assistance funding will be covered with local funding.

(2) Upon completion of all STEM projects, the following shall be submitted to the office of the superintendent of public instruction:

- (a) Certified letter from architect verifying final square footage of project; and
- (b) Final acceptance of completion board resolution.

(3) The following documents and information will be required to be submitted to the superintendent of public instruction before K-3 class size reduction grants awards are finalized:

- (a) Five-year use/thirty-year life board resolution;
- (b) Project assurances board resolution;
- (c) Certification that the school district has authorized local funds to complete the project(s);
- (d) Certification that the school district has an available site(s) for the project(s);
- (e) Certification that additional classrooms will achieve progress towards the average class size objectives for the 2017-18 school year enumerated in RCW 28A.150.260 in effect as of October 31, 2014, and all-day kindergarten as funded pursuant to RCW 28A.150.315.

(4) Upon completion of all K-3 class size reduction grant projects, the following shall be submitted to the superintendent of public instruction:

- (a) Name of school facility;
- (b) Number of classrooms added, renovated or modernized;
- (c) Gross square footage added, renovated or modernized;
- (d) Total project budget amount (construction and soft costs);
- (e) Final construction contract amount;
- (f) Site plan;
- (g) Floor plan(s);
- (h) Area analysis;

(i) If applicable, high-performance scorecard and credit cost analysis (chapter 39.35D RCW);

(j) If applicable, high-performance ELCCA executive summary (chapter 39.35D RCW);

(k) If applicable, apprenticeship reporting documentation (RCW 39.04.320); and

(l) Final acceptance of completion board resolution.

#### NEW SECTION

**WAC 392-900-080 State funded combination projects.** Eligible STEM grant projects that are undertaken in conjunction with another school construction assistance program project must follow all applicable requirements defined in chapters 392-342 through 392-347 WAC. State construction assistance funding and STEM grant awards for eligible area within the STEM grant project will be calculated separately in accordance with this chapter.

#### NEW SECTION

**WAC 392-900-090 Waiver of rules to facilitate pilot grant programs.** Subject to factual determinations by the superintendent of public instruction, the provisions of chapters 392-341 through 392-347 WAC which supplement statutory requirements are hereby deemed waived to the extent any provision would prevent or delay the implementation of legislative allocations, grant programs or pilot grant programs.

### **WSR 16-08-094**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 16-64—Filed April 5, 2016, 9:58 a.m., effective April 5, 2016, 10:00 a.m.]

Effective Date of Rule: April 5, 2016, 10:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000F; and amending WAC 220-33-010.

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: Sets the second 2016 mainstem commercial winter salmon season. The commercial mainstem fishery was allocated 1,222 upriver spring Chinook mortalities. Spring season select area commercial seasons also remain in place. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 27 and April 4, 2016. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 1; Federal Rules or Standards: New 1, Amended 0, Repealed 1; or Recently Enacted State Statutes: New 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: April 5, 2016.

J. W. Unsworth  
Director

## NEW SECTION

**WAC 220-33-01000G Columbia River seasons below Bonneville.** Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

### **1. Mainstem Columbia River**

a) **Dates:** 10:00 a.m. to 8:00 p.m. Tuesday April 5, 2016.

b) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

c) **Sanctuaries:** Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers.

d) **Allowable Possession:** Adipose fin-clipped Chinook salmon and shad. Landing limits in place: A maximum of 4 adult adipose fin clipped Chinook may be possessed or sold by each participating vessel. The first 4 adult hatchery fish must be retained and no additional drifts may be conducted once the Chinook limit has been retained. Jacks (Chinook less than 24-inches in total length) do not count against the adult landing limit.

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

**Net length** may be increased from 150 to 175 fathoms for nets constructed with a steelhead excluder panel, weedlines, or droppers. An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4" maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline

and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of five feet above the 4 1/4" maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks as required under subsection (1)(f)(ii) of this section.

**f) Miscellaneous Regulations:**

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

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

(iii) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked; pumps must continue to run until the net is fully retrieved and completely on board the vessel. Pumps shall continue to run whenever a fish is in the recovery box. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measurement must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

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

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

All sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

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

(iv) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate

with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during the fishery. In addition, cooperation with department personnel prior to a fishing period is expected.

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

**(2) Deep River Select Area**

a) **Dates:** Open hours are 7 PM to 7 AM Tuesday and Thursday nights from April 19 through April 29, 2016, and Monday and Thursday nights from May 2, 2016 until further notice.

b) **Area:** From USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights and/or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17).

d) **Allowable Possession:** Chinook salmon and shad

e) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catch. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

**(3) Tongue Point/South Channel**

a) **Dates:** Open Thursday night April 21 from 7 PM to 11 PM. Open 7 PM to 7 AM on: Tuesday night April 26 and Thursday night April 28, then Monday and Thursday nights from May 2, 2016 until further notice.

b) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island; a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a



marker on Burnside Island defining the upstream terminus of South Channel.

c) **Gear:** Gillnets. Spring season: 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

d) **Allowable Possession:** Chinook salmon and shad

e) **Miscellaneous:** Permanent transportation rules in effect.

**(4) Blind Slough/Knappa Slough Select Area**

a) **Dates:** Open hours are 7 PM to 7 AM. Open Tuesday and Thursday nights from April 21 through April 29, 2016 and Monday and Thursday nights from May 2, 2016 until further notice.

b) **Area:** Blind Slough and Knappa Slough areas are both open. From May 2, 2016 until further notice, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

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

d) **Allowable Possession:** Chinook salmon and shad

e) **Miscellaneous:** Permanent transportation rules in effect.

**(5) 24-hour quick reporting** is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

**(6) Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

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

**Reviser's note:** The 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.

**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 10:00 a.m. April 5, 2016:

WAC 220-33-01000F Columbia River seasons below Bon-neville. (16-57)

**WSR 16-08-113**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 16-65—Filed April 5, 2016, 3:04 p.m., effective April 7, 2016]

Effective Date of Rule: April 7, 2016.

Purpose: Amend recreational fishing rules.

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

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

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 Yakima/Klickitat fisheries project managers (Yakama Nation and the Washington department of fish and wildlife) are using the two main gravel pit ponds at Easton to acclimate and release hatchery-reared coho smolts this spring. The temporary closure of the hatchery rainbow trout fishery and delay of stocking is necessary during the smolt acclimation period. Both ponds will be stocked with catchable trout after the majority of the coho salmon have migrated. 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: April 5, 2016.

J. W. Unsworth  
Director

**NEW SECTION**

**WAC 220-310-19500Z Freshwater exceptions to statewide rules—Eastside.** Notwithstanding the provisions of WAC 220-310-195, effective April 7 through April 27, 2016, it is unlawful to fish in the waters of Easton Ponds 1 and 2 (Kittitas Co.).

REPEALER

The following section of the Washington Administrative Code is repealed effective April 28, 2016:

WAC 220-310-19500Z Freshwater exceptions to statewide rules—Eastside.

**WSR 16-08-114**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 16-66—Filed April 5, 2016, 3:12 p.m., effective May 1, 2016]

Effective Date of Rule: May 1, 2016.

Purpose: Amend rules in the recreational spot shrimp fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500X; and amending WAC 220-56-325.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available, but only enough recreational shares exist for a limited number of open days in the marine areas listed in this section. In addition, this emergency regulation opens the Marine Area 4, 5, 6 and 7 seasons one hour before sunrise (at 4:45 a.m.), which is the default daily start time for those areas the remainder of the season. There is insufficient time to adopt permanent rules.

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

Number of Sections Adopted at 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: April 5, 2016.

J. W. Unsworth  
Director

NEW SECTION

**WAC 220-56-32500X Shrimp—Areas and seasons.** Notwithstanding the provisions of WAC 220-56-325, effective 12:01 a.m. May 1 through May 31, 2016, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5 and 6 (excluding the Discovery Bay Shrimp District): Open 4:45 a.m. May 14 through May 31.

(2) The portion of Marine Area 7 south of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then west of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, then west of a line projected true north and south from the western tip of Crane Island, then west of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary: Open 4:45 a.m. May 14 through May 31.

(3) The portion of Marine Area 7 north of a line from the Biz Point on Fidalgo Island to Cape Saint Mary on Lopez Island, then east of a line projected from the number 2 buoy at the entrance to Fisherman Bay to the southern tip of Shaw Island, then east of a line projected true north and south from the western tip of Crane Island, then east of a line from Point Doughty on Orcas Island to the bell buoy at the international boundary:

(a) Open 4:45 a.m. May 14 through May 15; and

(b) Open May 18 through May 21;

(c) Open May 25 through May 28.

(4) Marine Areas 8-1, 8-2 and 9:

(a) Open May 14 and May 18 from 7:00 a.m. through 3:00 p.m.

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

(5) Marine Area 10 and 11: Open May 14 from 7:00 a.m. through 3:00 p.m.

(6) Marine Area 12: Open May 14, 18, 28 and 30 from 9:00 a.m. through 1:00 p.m.

(7) Marine Area 13: Open May 14, 18, 21 and 31 from 7:00 a.m. through 3:00 p.m.

(8) Discovery Bay Shrimp District: Open May 14, 18, 28 and 30 from 7:00 a.m. through 3:00 p.m.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective June 1, 2016:

WAC 220-56-32500X Shrimp—Areas and seasons.

**WSR 16-08-123**  
**EMERGENCY RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed April 6, 2016, 10:28 a.m., effective April 6, 2016, 10:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Legislation passed in the 2015 legislative session directs the Washington state liquor and cannabis board to regulate the medical marijuana market. Emergency rules are needed to provide clarity to the marijuana licensees and potential marijuana license applicants regarding the application process and requirements for medical marijuana. Licenses will need to be issued to ensure that medical marijuana will be available to patients by the date that collective gardens are mandated to be closed, July 1, 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 314-55-010, 314-55-020, 314-55-050, 314-55-075, 314-55-077 and 314-55-081; and new WAC 314-55-080.

Statutory Authority for Adoption: RCW 69.50.342 and 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, safety, and welfare. Legislation passed in the 2015 legislative session mandates collective gardens be closed by July 1, 2016. Medical marijuana patients need a smooth transition to obtaining their medication from an alternative source, the legal marijuana market. Licenses will need to be issued to ensure that medical marijuana will be available to patients by the date that collective gardens are mandated to be closed, July 1, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 6, 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: April 6, 2016.

Jane Rushford  
Chairman

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-010 Definitions.** Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035. However, for purposes only of determining an application's priority under RCW 69.50.331 (1)(a), only the person or business entity (sole proprietorship, partnership of any type, limited liability company, privately or publicly held corporation, or nonprofit corporation) that is applying for the license will be considered the applicant.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A consultant who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

(6) "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(7) "Employee" means any person performing services on a licensed premises for the benefit of the licensee.

(8) "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

(9) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

(10) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana concentrate or marijuana-infused product that must be further processed prior to retail sale.

(11) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

(12) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or

entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(13) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(14) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(15) "Medical marijuana" is defined by rule of the department of health.

(16) "Member" means a principal or governing person of a given entity(;) including, but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

~~((16))~~ (17) "Paraphernalia" means items used for the storage or use of usable marijuana, marijuana concentrates, or marijuana-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bong, and storage containers. Items for growing, cultivating, and processing marijuana, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

~~((17))~~ (18) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

~~((18))~~ (19) "Perimeter" means a property line that encloses an area.

~~((19))~~ (20) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

~~((20))~~ (21) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

~~((21))~~ (22) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

~~((22))~~ (23) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal

government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

~~((23))~~ (24) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable non-profit organization, city, county, state, or federal government.

~~((24))~~ (25) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((25))~~ (26) "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

~~((26))~~ (27) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the board. For purposes of this subsection:

(a) "Product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products; and

(b) "True value" means market value based on sales at comparable locations in the state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. In the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributed to the product.

~~((27))~~ (28) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-020 Marijuana license qualifications and application process.** Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) Applicants for a new marijuana producer, processor, or retailer license and those who apply to change their location must display a sign provided by the WSLCB on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. Posting notices must occur within seven days of sub-

mitting the location confirmation form for new licenses or the change of location application for existing licensees. The WSLCB may check for compliance with these requirements at its discretion. The sign must:

(a) Not be altered. The licensee must post the sign sent by the WSLCB without changing, adding, or subtracting from the text;

(b) Be conspicuously displayed on, or immediately adjacent to, the premises subject to the application and in the location that is most likely to be seen by the public;

(c) Be of a size sufficient to ensure that it will be readily seen by the public, at a minimum these signs must be eight and one-half by eleven inches;

(d) Be posted within seven business days of the date the notice is sent to the applicant by the WSLCB;

(e) Be posted for fourteen consecutive days.

(3) The WSLCB will use a priority system to determine the order that marijuana retailers are licensed. Within priority categories, applications will not be ranked and will be processed in order of submission.

**(a) First priority is given to applicants who:**

(i) Applied to the WSLCB for a marijuana retail license prior to July 1, 2014. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services showing the applicant applied for a retail marijuana license prior to July 1, 2014;

(ii) Operated or were employed by a collective garden before January 1, 2013. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services showing the applicant owned a collective garden prior to January 1, 2013, or a pay stub or tax information indicating that the applicant was employed by a collective garden prior to January 1, 2013;

(iii) Have maintained a state business license and municipal business license, as applicable in the relevant jurisdiction. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services and copies of municipal business licenses from January 1, 2013, through the date of application; and

(iv) Have had a history of paying all applicable state taxes and fees. To meet this qualification, the applicant must provide the WSLCB evidence from the department of revenue that the entity is up to date on all applicable state taxes since January 1, 2013, and that they have paid all applicable fees to the WSLCB for all businesses they are engaged in since January 1, 2013.

**(b) Second priority is given to applicants who:**

(i) Operated or were employed by a collective garden before January 1, 2013. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services showing the applicant owned a collective garden prior to January 1, 2013, or a pay stub or tax information indicating that the applicant was employed by a collective garden prior to January 1, 2013;

(ii) Have maintained a state business license and municipal business license, as applicable in the relevant jurisdiction.

tion. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing services and copies of municipal business licenses from January 1, 2013, through the date of application; and

(ii) Have had a history of paying all applicable state taxes and fees. To meet this qualification, the applicant must provide the WSLCB evidence from the department of revenue that the entity is up to date on all applicable state taxes since January 1, 2013, and that they have paid all applicable fees to the WSLCB for all businesses they are engaged in since January 1, 2013, for all businesses they are engaged in since January 1, 2013.

**(c) Third priority is given to all other applicants who do not meet the qualifications and experience identified for priority one or two.**

(4) All marijuana retail applicants must meet the qualifications required by the WSLCB before they will be granted a license regardless of priority.

(5) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

~~((3))~~ (6) The board will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the board and submission of fingerprints to a vendor approved by the board. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. Financiers must meet the three month residency requirement.

~~((4))~~ (7) The board will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

~~((5))~~ (8) The board may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

~~((6))~~ (9) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

~~((7))~~ (10) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least ~~((three))~~ six months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the ~~((three))~~ six month residency requirement. Managers or agents who manage a licensee's place of

business must also meet the ~~((three))~~ six month residency requirement.

~~((8))~~ (11) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

~~((9))~~ (12) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	Processor	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	Transportation of product
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation including growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment to include all marijuana-infused edible processing facility equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

~~((10))~~ (13) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue and other state agencies, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

~~((11))~~ (14) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

~~((12))~~ (15) Upon failure to respond to the board licensing and regulation division's requests for information within

the timeline provided, the application may be administratively closed or denial of the application will be sought.

AMENDATORY SECTION (Amending WSR 14-06-108, filed 3/5/14, effective 4/5/14)

**WAC 314-55-050 Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license.** Following is a list of reasons the board may deny, suspend, or cancel a marijuana license application or license. Per RCW 69.50.331, the board has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

- (1) Failure to meet qualifications or requirements for the specific marijuana producer, processor, or retail license, as outlined in this chapter and chapter 69.50 RCW.
- (2) Failure or refusal to submit information or documentation requested by the board during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the board during the application process or any subsequent investigation after a license has been issued.

(4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the board to be gained in a manner which is in violation by law.

(7) Denies the board or its authorized representative access to any place where a licensed activity takes place or fails to produce any book, record or document required by law or board rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (9).

(10) The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured as the shortest straight line distance from the property line of the proposed building/business location to the property line of the entities listed below:

- (a) Elementary or secondary school;
- (b) Playground;
- (c) Recreation center or facility;
- (d) Child care center;
- (e) Public park;
- (f) Public transit center;
- (g) Library; or
- (h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11)(a) A city or county may by local ordinance permit the licensing of marijuana businesses within one thousand feet but not less than one hundred feet of the facilities listed in subsection (10) of this section except elementary and secondary schools, and playgrounds.

(b) If a licensee applies for a marijuana license at a location less than one thousand feet of a recreation center or facility, child care center, public park, public transit center, library, or game arcade, the licensee must provide the WSLCB with a copy of the local ordinance that describes the distance required by the city or county where the facility will be located.

(12) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.

~~((12))~~ (13) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

~~((13))~~ (14) Has been denied a liquor license or had a liquor license suspended or revoked in this or any other state.

~~((14))~~ (15) The operating plan does not demonstrate, to the satisfaction of the board, the applicant is qualified for a license.

~~((15))~~ (16) Failure to operate in accordance with the board approved operating plan.

~~((16))~~ (17) The board determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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))~~ will be imposed at a later date. 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)~~) the maximum 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 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?** (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) A marijuana processor is allowed to blend tested usable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) A marijuana processor licensee must obtain approval from the liquor control board for all marijuana-infused products, labeling, and packaging prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the liquor control board for approval.

If the liquor control board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing per chapter 34.05 RCW, Administrative Procedure Act.

(4) Marijuana-infused edible products in solid form must meet the following requirements:

- (a) If there is more than one serving in the package, each serving must be packaged individually in childproof packaging (see WAC 314-55-105(7)) and placed in the outer package.
- (b) The label must prominently display the number of servings in the package.

(c) Marijuana-infused solid edible products must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(d) All marijuana-infused solid edibles must prominently display on the label "This product contains marijuana."

(5) Marijuana-infused edible products in liquid form must meet the following requirements:

(a) If there is more than one serving in the package, a measuring device must be included in the package with the product.

(b) The label must prominently display the number of servings in the package and the amount of product per serving.

(c) Marijuana-infused liquid edibles must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(d) All marijuana-infused liquid edibles must prominently display on the label "This product contains marijuana."

(6) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana. Marijuana-infused products that are especially appealing to children are prohibited. Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.

(a) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(b) Other food items that may not be infused with marijuana to be sold in a retail store are:

- (i) Any food that has to be acidified to make it shelf stable;
- (ii) Food items made shelf stable by canning or retorting;
- (iii) Fruit or vegetable juices (this does not include shelf stable concentrates);
- (iv) Fruit or vegetable butters;
- (v) Pumpkin pies, custard pies, or any pies that contain egg;
- (vi) Dairy products of any kind such as butter, cheese, ice cream, or milk; and
- (vii) Dried or cured meats.

(c) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(d) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(e) Per WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.



(f) The liquor control board may designate other food items that may not be infused with marijuana.

(7) The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the liquor control board or its designee.

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

(9) The annual fee for issuance and renewal of a marijuana processor 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.

(10) A marijuana processor producing a marijuana-infused solid or liquid product meant to be ingested orally in a processing facility as required in WAC 314-55-015(10) must pass a processing facility inspection. Ongoing annual processing facility compliance inspections may be required. The liquor control board will contract with the department of agriculture to conduct required processing facility inspections. All costs of inspections are borne by the licensee and the hourly rate for inspection is sixty dollars. A licensee must allow the liquor control board or their designee to conduct physical visits and inspect the processing facility, recipes and required records per WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice. Failure to pay for the processing facility inspection or to follow the processing facility requirements outlined in this section and WAC 314-55-015 will be sufficient grounds for the board to suspend or revoke a marijuana license.

(11) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor 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 processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

(12) A currently licensed marijuana producer may submit an application to add a marijuana processor license at the location of their producer license providing they do not already hold three processor licenses.

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

~~((13))~~ (14) Marijuana processor licensees are allowed to have a maximum of six months of their average usable marijuana and six months average of their total production on their licensed premises at any time.

~~((14))~~ (15) A marijuana processor must accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

## NEW SECTION

### **WAC 314-55-080 Medical marijuana endorsement.**

Existing retail license holders and applicants for an initial retail license may apply for a medical endorsement.

(1) A medical marijuana endorsement added to a marijuana retail license allows the marijuana retail licensee to:

(a) Sell marijuana for medical use to qualifying patients and designated providers; and

(b) Provide marijuana at no charge, at their discretion, to qualifying patients and designated providers.

**(2) To maintain a medical marijuana endorsement in good standing, a marijuana retailer must:**

(a) Follow all rules adopted by the department of health regarding marijuana in chapters 246-70, 246-71, and 246-72 WAC;

(b) Have at least one medical marijuana consultant certificate holder on staff with an active credential issued by the department of health under chapter 246-72 WAC;

(c) Prohibit the use of marijuana by anyone, including qualifying patients, at the retail outlet at all times;

(d) Maintain at all times a representative assortment of marijuana products necessary to meet the needs of qualified patients and designated providers. Beginning with the second renewal cycle, not less than twenty-five percent of a marijuana retail outlet's inventory, excluding paraphernalia, must consist of products meeting the requirements of chapter 246-70 WAC. Failure to maintain adequate inventory of such products may result in revocation of the medical marijuana endorsement;

(e) Not market marijuana concentrates, usable marijuana, or marijuana-infused products in a way that make them especially attractive to minors;

(f) Demonstrate the ability to enter qualifying patients and designated providers in the medical marijuana authorization data base established by the department of health;

(g) Agree to enter qualifying patients and designated providers into the data base and issue recognition cards in compliance with the department of health rules found in chapter 246-71 WAC;

(h) Keep copies of the qualifying patient's or designated provider's recognition card or equivalent records to document the validity of tax exempt sales;

**(i) Train employees on the following:**

(i) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical marijuana authorization data base;

(ii) Identification of valid recognition cards; and

(iii) Recognition of strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of marijuana concentrates, usable marijuana, and marijuana-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

**(3) A marijuana retailer holding a medical marijuana endorsement may sell products with a THC concentration of 0.3 percent or less.** The licensee may also provide these products at no charge to qualifying patients or designated providers who hold a valid recognition card.

(4) **Unlicensed practice of medicine.** No owner, employee, or volunteer of a retail outlet holding a medical marijuana endorsement may:

(a) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality; or

(b) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana products.

(5) Failure to comply with subsection (4) of this section may result in suspension or revocation of the medical marijuana endorsement.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-081 Who can apply for a marijuana retailer license?** (1) The WSLCB may accept applications for marijuana retail licenses at time frames published on its web site at [lcb.wa.gov](http://lcb.wa.gov). Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the liquor control board will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated. ~~((Once the number of locations per city and at large have been identified, the eligible applicants will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county. Any lottery conducted by the board will be witnessed by an independent third party.))~~

(2) The number of ~~((marijuana))~~ retail licenses determined by the board can be found on the ~~((liquor control board))~~ WSLCB web site at ~~(([www.liq.wa.gov](http://www.liq.wa.gov)))~~ [lcb.wa.gov](http://lcb.wa.gov).

(3) Any entity and/or principals within any entity are limited to no more than three retail marijuana licenses ~~((with no multiple location licensee allowed more than thirty-three percent of the allowed licenses in any county or city.))~~

~~((4) The board will initially limit the opportunity to apply for a marijuana retailer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana retailer license application 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 retailer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.))~~

**WSR 16-08-126**  
**EMERGENCY RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed April 6, 2016, 11:06 a.m., effective April 6, 2016, 11:06 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: New rules are needed to protect consumer safety through ensuring laboratories employ appropriate testing methodologies and achieve accurate testing results for marijuana. The Washington state liquor and cannabis board (WSLCB) also needs rules to suspend or revoke the certification of a laboratory that does not follow rule requirements for testing or for those laboratories that do not consistently achieve accurate testing results.

Statutory Authority for Adoption: RCW 69.50.342 and 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: Marijuana and marijuana products sold in WSLCB licensed retail stores are a consumable product and it is important that they are safe for human consumption. These emergency rules relating to accurate testing procedures and results and laboratory accountability are needed to ensure the public health and safety of the citizens of Washington. Permanent rule making will also begin immediately for these 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: April 6, 2016.

Jane Rushford  
Chairman

NEW SECTION

**WAC 314-55-1025 Proficiency testing.** (1) For the purposes of this section, the following definitions apply:

(a) "Field of testing" means the categories of subject matter the laboratory tests, such as pesticide, microbial, potency, residual solvent, heavy metal, mycotoxin, foreign matter, and moisture content detection.

(b) "Proficiency testing (PT)" means the analysis of samples by a laboratory obtained from providers where the composition of the sample is unknown to the laboratory performing the analysis and the results of the analysis are used in part to evaluate the laboratory's ability to produce precise and accurate results.

(c) "Proficiency testing (PT) program" means an operation offered by a provider to detect a laboratory's ability to produce valid results for a given field of testing.

(d) "Provider" means a third party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

(e) "Vendor" means an organization(s) approved by the WSLCB to certify laboratories for marijuana testing, approve PT programs, and perform on-site assessments of laboratories.

(2) WSLCB or its vendor determines the sufficiency of proficiency tests (PT) and maintains a list of approved PT programs. Laboratories may request authorization to conduct PT through other PT programs but must obtain approval for the PT program from WSLCB or WSLCB's vendor prior to conducting PT. The WSLCB may add the newly approved PT program to the list of approved PT programs as appropriate.

(3) As a condition of certification, laboratories must participate in proficiency testing (PT) for each field of testing for which the lab will be or is certified.

(4) A laboratory must successfully complete a minimum of one round of PT for each field of testing and provide proof of the successful PT results prior to initial certification.

(5) A certified laboratory must participate in a minimum of two rounds of PT per year for each field of testing to maintain its certification.

(a) Laboratories already certified by the WSLCB at the time of the effective date of this section must register for the next available round of PT offered by an WSLCB or WSLCB vendor approved provider for each available field of testing unless the certified laboratory provides proof of successful completion of PT for each available field of testing within six (6) months prior to the effective date of this section.

(b) To maintain certification, the laboratory must achieve a passing score, on an on-going basis, in a minimum of two out of three successive rounds of PT. At least one of the scores must be from a round of PT that occurs within six (6) months prior to the laboratory's certification renewal date.

(6) If a laboratory fails a round of PT, the laboratory must investigate the root cause of the laboratory's performance and establish a corrective action report for each unsatisfactory analytical result. The corrective action report must be kept and maintained by the laboratory for a period of three (3) years, available for review during an on-site assessment or inspection, and provided to the WSLCB or WSLCB's vendor upon request.

(7) Laboratories are responsible for obtaining PT samples from vendors approved by WSLCB or WSLCB's vendor. Laboratories are responsible for all costs associated with obtaining PT samples and rounds of PT.

(8) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples, includ-

ing but not limited to adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

(9) The laboratory must authorize the PT provider to release all results used for certification and/or remediation of failed studies to WSLCB or WSLCB's vendor.

(10) The WSLCB may require the laboratory to submit raw data and all photographs of plated materials along with the report of analysis of PT samples. The laboratory must keep and maintain all raw data and all photographs of plated materials from PT for a period of three (3) years.

(11) The WSLCB may waive proficiency tests for certain fields of testing if PT samples or PT programs are not readily available or for other valid reasons as determined by WSLCB.

(12)(a) The WSLCB will suspend a laboratory's certification if the laboratory fails to maintain a passing score on an on-going basis in two out of three successive PT studies. The WSLCB may reinstate a laboratory's suspended certification if the laboratory successfully analyzes PT samples from a WSLCB or WSLCB's vendor approved PT provider, so long as the supplemental PT studies are performed at least fifteen (15) days apart from the analysis date of one PT study to the analysis date of another PT study.

(b) The WSLCB will suspend a laboratory's certification if the laboratory fails two consecutive rounds of PT. WSLCB may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the WSLCB a deficiency report identifying the root cause of the failed PT, and successfully analyzes PT samples from a WSLCB or WSLCB's vendor approved PT provider. The supplemental PT studies must be performed at least fifteen (15) days apart from the analysis date of one PT study to the analysis date of another PT study.

(13) If a laboratory fails to remediate and have its certification reinstated under subsections (12)(a) or (b) of this section within six (6) months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

(14) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension as provided in chapter 34.05 RCW.

#### NEW SECTION

**WAC 314-55-1035 Laboratory certification—Suspension and revocation.** (1) The board may summarily suspend or revoke the certification of any third-party testing lab certified under WAC 314-55-102 for any of the following reasons:

(a) The laboratory owner or science director violates any of the requirements of chapter 314-55 WAC relating to the operations of the laboratory.

(b) The laboratory owner or science director aids, abets, or permits the violation of any provision of chapter 314-55 WAC, chapter 69.50 RCW, chapter 69.51A RCW, or Titles 9 or 9A RCW related to the operations of the laboratory, or the

laboratory owner or science director permits laboratory staff to do so.

(c) Evidence the certificate holder or owner made false statements in any material regard:

(i) On the application for certification;

(ii) In submissions to the Board relating to receiving or maintaining certification; or

(iii) Regarding any testing performed or results provided to WSLCB or the marijuana licensee by the certificate holder or owner pursuant to WAC 314-55-102.

(d) The laboratory owner or science director is convicted of any crime substantially related to the qualifications or duties of that owner and related to the functions of the laboratory, including a conviction for falsifying any report of or that relates to a laboratory analysis. For purposes of this subsection, a "conviction" means a plea or finding of guilt regardless of whether the imposition of sentence is deferred or the penalty is suspended.

(e) The laboratory submits proficiency test sample results generated by another laboratory as its own.

(f) The laboratory staff denies entry to any employee of the WSLCB or WSLCB's vendor during normal business hours for an onsite assessment or inspection, as required by WAC 314-55-102, 314-55-1025, or WAC 314-55-103.

(2)(a) The following violations are subject to the penalties as provided in subsection (2)(b) of this section:

(i) The laboratory fails to submit an acceptable corrective action report in response to a deficiency report, and failure to implement corrective action related to any deficiencies found during a laboratory assessment.

(ii) The laboratory fails to report proficiency testing results pursuant to WAC 314-55-1025.

(iii) The laboratory fails to remit certification fees within the time limit established by a certifying authority.

(iv) The laboratory fails to meet records-keeping requirements as required by chapter 314-55 WAC unless the failure to maintain records is substantial enough to warrant a suspension or revocation under subsection (1) of this section.

(b) The penalties for the violations in subsection (2)(a) of this section are as follows:

(i) First violation: 10-day suspension of laboratory certification or until the laboratory corrects the violation leading to the suspension, whichever is longer.

(ii) Second violation within a three-year period: 30-day suspension of laboratory certification or until the laboratory corrects the violation leading to the suspension, whichever is longer.

(iii) Third violation within a three-year period: Revocation of laboratory certification under WAC 314-55-102.

(3) A laboratory may also be subject to a suspension of certification related to proficiency testing requirements under WAC 314-55-1025.

(4) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension or revocation as provided in chapter 34.05 RCW.